

**COMPANIES ACT 2006:  
CURRENT SITUATION AND PROVISIONS TO COME INTO FORCE IN APRIL 2008**

We set out below the situation regarding Articles of Association for existing companies and the most relevant changes for UK limited companies which will come into force from April 2008. We also refer you to our previous memos regarding provisions that are already implemented.

## **1. Articles of Association**

On 1<sup>st</sup> October 2007, the new Table A entered into force: new companies incorporated after this date will have to file Articles of Association which comply with the changes. The New Table A does not affect existing companies unless they choose to adopt it. Existing companies can choose to amend their current articles of association, by special resolution, to comply with the new Table A.

Existing companies should be aware of the following impacts of the revised Table A:

- Newly incorporated companies will be unable to pass a resolution at a General Meeting with the use of a casting vote by a chairman unless they have explicit provisions in their Articles to allow for this. However, a ‘saving provision’ has been included in the recently-published Fifth Commencement Order that will preserve the chairman’s casting vote for existing companies.
- That Table A is amended to reflect the new rights for proxies who attend shareholders’ meetings, in that they are now able to vote on a show of hands as well as on a poll.
- That there is a new written resolution procedure for private companies – unanimous consent is no longer required and resolutions must be approved by the necessary majority of shareholders within 28 days of their circulation, or else they lapse.
- If private companies wish to retain their retirement by rotation provisions, they should consider incorporating express provisions in their Articles to ensure an Annual General Meeting occurs, during which such retirement can take place.
- That 1985 Table A requires 21 days notice of meetings in certain situations, whereas the new Act requires only 14 days. This means that existing companies may be hindered by an unnecessarily long notice period, unless they can easily obtain consent to short notice.



Now may therefore be a good time to consider making changes to your company's articles of association if any of the above is particularly relevant to you. However – there are further changes to come, once the Act is fully implemented in October 2009. Please do not hesitate to contact us if you would like to discuss your options further.

## 2. AGMs

Our last newsletter on the implementation of the Companies Act 2006 advised that from 1<sup>st</sup> October 2007, private companies no longer need to hold AGMs. The situation is clear for newly incorporated companies and for companies which have elective resolutions dispensing with the holding of AGMs. However, for all other private companies, the requirements are less straight forward. For example, some companies will still have to hold them if their Articles expressly require it and accounts relating to a financial year ending prior to 1 October 2007 should still be laid before the shareholders. **For our clients who take advantage of our annual compliance service, we will be taking various factors into consideration when determining what paperwork is required.**

Private companies may want to continue to hold an AGM. If so, it is recommended that they include in their Articles a provision regarding when the AGM will be held and what business and resolutions will be considered at the meeting.

**If you would like to know the situation of your Company and to amend provisions in your Articles, do not hesitate to contact us.**

## 3. Provisions coming into force on 6th April 2008

### ➤ Company Secretary

From 6<sup>th</sup> April 2008, it will be optional for private limited companies to appoint a secretary. **However, it should be noted that the statutory work and duties remain.** If a company's articles expressly require the appointment of a secretary, this will override the relaxation and the company will still be required to have a secretary until it amends its articles. If we are appointed as named Company Secretary, we would suggest that this remains in place to ease administration of filings, the authentication of documents and communications with the Authorities. In the same vein, if your Company has a specific individual appointed as Company Secretary it may be more efficient for them to remain so, as the recognition of the position will remain with bodies such as tax authorities and banks, so your Company Secretary will be able to continue to communicate with such parties as an Officer of your company.



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➤ **Execution of Documents**

A deed or document may be executed by a company, as under the 1985 Act, by affixing its common seal or by the signatures of two directors or a director and secretary. However, from 6<sup>th</sup> April 2008, it will also be possible for a single director to execute a deed or document, provided that his signature is witnessed and that the Company's articles are not contravened by this.

➤ **Filing of Accounts**

For all accounting periods starting after 6th April 2008 both private limited and public limited companies will have a shorter period in which to file their accounts at Companies House. The filing period will reduce from 10 months to 9 months for private companies and from 7 to 6 months for public companies, with full calendar months being used for the purposes of calculating the filing period. **For those taking advantage of our annual compliance service, we shall be monitoring this for you and alerting you to deadlines as usual.**

➤ **Small & Medium Company Qualification**

There will be an increase of approximately 20% in the thresholds for the conditions for companies to qualify as small and medium sized companies. Medium sized groups will therefore lose the exemption from preparing group accounts under the Companies Act 2006.

➤ **Auditors Liability Limitation**

A company and its auditor will be able to enter into a liability limitation agreement which can limit an auditors' liability in relation to a company's accounts, negligence, and default, breach of duty and breach of trust. Such an agreement must be authorised by the company's shareholders.

**We hope that this information proves to be useful. Should you require any further assistance, please do not hesitate to contact us.**



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