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The Companies Act 2006 – Client Briefing No. 10

The Companies Act 2006

Introduction

As our corporate clients will be aware, the Companies Act 2006 (the Act) is being introduced over a period of time by statutory instrument, with the Government having set a target date of October 2009 to have the complete Act in force.

We would remind clients that the Department for Business Enterprise & Regulatory Reform (BERR) has a section on its website devoted to frequently asked questions on the 2006 Act. These are constantly being added to and may be of assistance to clients in answering specific queries.

Go to <http://www.berr.gov.uk/bbf/co-act-2006/index.html>. Then click on "FAQ Companies Act 2006" on the menu on the left of the screen.

New model articles of association for companies

We set out below details of the new model articles of association which will replace Tables A to F model articles made under the 1985 Companies Act.

Statutory Instrument No.3229 "*The Companies (Model Articles) Regulations 2008*" was laid before Parliament on 17 December 2008 and comes into force on 1 October 2009.

Every company formed under the Companies Acts must have articles of association which are rules, chosen by the company's members, which govern the company's internal affairs. Under previous Companies Acts model articles of association have been published which can be adopted by companies either in whole or in part and, provided that they do not conflict with legislation, can be amended to suit a company's specific circumstances.

The new Statutory Instrument sets out model articles of association for the three main types of company - a private company limited by shares, a private company limited by guarantee, and a public company.

If a company does not adopt its own tailor-made articles the new model articles will automatically be the articles of the company for all companies formed on or after 1 October 2009.

Companies can adopt all or part of the new model articles before 1 October. Any amendments to the company's existing articles must be made by special resolution.

It should be remembered that the model articles that were in force at the time that a company was originally registered will continue to apply to that company. So, for example, a company formed under the Companies Act 1985 will be governed by the Companies (Tables A to F) Regulations 1985 even after 1 October 2009.

There are a number of important points which should be noted in relation to the new model sets of articles, as follows.

Prior to the 2006 Act, a company could divide its constitutional rules between its memorandum and articles. This will change under the 2006 Act as all companies registered on or after 1 October 2009 will have a new-style memorandum. This document will be a simple document of purely historical significance, evidencing an intention to form a company. For example, there will be no objects or powers set out in the memorandum nor any references to share capital. For this reason the new model articles have been drafted so as to contain matters previously contained in the company's memorandum, eg the statement of liability, which in the past has usually been set out in paragraph 4 of the memorandum.

The new model articles have been drafted with the needs of small, owner-managed companies in mind. This approach follows the basic concept underlying the 2006 Act as a whole, ie "think small first". For this reason readers will note that the new model articles are much more simple and straight-forward than their predecessors.

An example of this simplification is the ability for a private company to appoint alternate directors. This was the case in the model articles under the Companies Act 1985 but it is extremely rare for a small company to avail itself of this power. For this reason regulations relating to the appointment of alternate directors are no longer contained in the new model articles.

Further examples of this simplification are that a private company is no longer required to have a company secretary and will very rarely issue partly paid shares. Reference to both these matters have therefore been removed from the new model articles.

The Government has attempted to avoid duplication between provisions contained in the 2006 Act and the new model articles. For example, there is no reference to resolutions and meetings as these are dealt with in Part 13 of the Act.

The new model articles for private companies run to just 53 articles compared with the existing model articles which contain 118 articles.

The new model articles are divided into the following sections:

Part 1: Interpretation and limitation of liability

Part 2: Directors

Part 3: Shares and distributions

Part 4: Decision-making by shareholders

Part 5: Administration arrangements

Advice:

Remember that the new model articles will, by default, regulate all companies registered on or after 1 October 2009.

Guidance on the new model articles will be posted on the Department for Business Enterprise & Regulatory Reform (BERR) website in early 2009 and will explain the differences between the approaches to default articles in the Companies (Tables A to F) Regulations 1985 and the new model articles. This guidance will primarily be aimed at small private companies.

Source:

Statutory Instrument 2008 No. 3229 "The Companies (Model Articles) Regulations 2008". Download, free of charge, together with explanatory notes, from the Office of Public Sector Information website at www.opsi.gov.uk.

The final sections of the Companies Act 2006 will come into force in October 2009 and will, in the main, include those parts of the Act dealing with the formation of companies.

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