

OCTOBER 2009 – THE FINAL PART OF
THE IMPLEMENTATION OF THE
COMPANIES ACT 2006

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Almost 800 sections of the Companies Act 2006 are now in force. 2009 will see the coming into force of the remaining 500 or so sections and the repeal of the equivalent sections of the Companies Act 1985 (“the 85 Act”).

Significant Changes from the 1985 Act

There are a number of key changes which are being implemented as of 1 October 2009 and we set out below certain of those changes which we believe are a substantial departure from the current legislation.

1. Share Capital (Part 17)

1.1 Authorised capital

The concept of authorised share capital is abolished for companies incorporated from 1 October 2009.

1.2 Authority to allot

The directors of a company with only one class of share will be able to exercise any power of the company to allot those shares or grant rights to subscribe, except to the extent that they are prohibited from doing so by the company's articles. If an existing company's articles do not include an authorisation to alter share capital, it will need to amend its articles. Under the 85 Act the directors would need authorisation from the shareholders by ordinary resolution as well a special resolution disapplying statutory pre-emption rights.

1.3 Redenomination

A limited company will be able to redenominate its share capital, or any class of its share capital, by ordinary resolution, - previously a special resolution was required.

A company will be permitted to reduce its share capital by an amount not exceeding 10% of the nominal value of its allotted share capital immediately after the reduction.

1.4 Redemption and share buy-back

Private companies will not require authority in their articles to issue redeemable shares. The terms and manner of redemption do not have to be specified in the articles but may be determined by the directors before the shares are allotted. Terms of redemption will no longer need to provide for payment in full on redemption.

Companies will no longer need authority from its articles to purchase their own shares. The directors will only need to make a simple statement of solvency, rather than a statutory declaration as before.

1.5 Register of members

Companies will be obliged to provide to parties inspecting a register or index of members' details of when the information was last updated. Failure to do so will be a criminal offence.

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Registers of members will not have to include details of past members beyond ten years following the end of their membership. Claims relating to register entries will be limited to ten years rather than 20 years.

The register of members can now be maintained in any location, provided the location is notified to the Registrar.

1.6 Class rights

A special resolution, rather than an extraordinary resolution, will be required to authorise a variation of class rights.

Provisions relating to variation of class rights will be extended to companies without share capital. Members of a company without a share capital representing at least 15% of a class will have a right to object to a variation of rights to which they have not consented and may apply to the Court to confirm or overturn the variation.

2. Directors (Part 10)

From 1 October 2009, directors will no longer need to state the names of other companies of which they have been or are a director.

Directors will have to disclose former names if used "for business purposes" within the previous 20 years; this could include, for example, changes of name on marriage.

Directors will be able to provide a service address instead of a residential address to go on public record. This will not, unfortunately, have retrospective effect.

Companies also have to keep a register of the usual residential addresses of directors who are individuals. This register will not be open to public inspection.

Directors will have powers to make provision (out of distributable profits) for the benefit of employees of the company or subsidiaries on cessation or transfer of all or part of their undertaking. This will require members' approval unless the company's articles exclude that requirement.

3. Constitution (Part 3)

The company's memorandum will merely become a statement that the subscribers wish to form a company, agree to become members and, where the company is to have a share capital, to take at least one share each.

An existing company will have to continue to abide by its existing memorandum and articles, unless duly amended.

It will be possible for companies to "entrench" certain provisions in their articles, i.e. to provide that certain provisions can be amended only with the approval of a majority exceeding 75%.

4. Capacity and objects (Part 4)

A company's objects will become unrestricted. Existing objects will remain in force to limit the activities of a company unless and until removed by appropriate members' resolutions.

5. Public companies (Part 20)

A public company will be permitted to have a single member but it must still have at least two directors. A public company will be able to re-register directly as a private

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unlimited company, instead of having to convert first to a private limited company and then separately to an unlimited company. The reverse will not apply.

There will be a new procedure whereby the Registrar will be able to process an application by a public company to re-register as a private limited company during the 28-day period in which dissenting members may apply to the court to cancel the resolution to re-register, provided the Registrar is satisfied that such an application cannot be made. If dissenting members do seek such an order, they must notify the Registrar.

Public companies which have ceased to trade will be able to use the informal application for striking off which currently applies only to private companies.

6. Company and business names (Parts 5 & 41)

A company will be able to change its name by special resolution (as now) or by other means provided for in the company's articles, e.g. by board resolution.

Where a company changes its name, its articles will be deemed to be amended so far as references to the name are concerned, so that no actual amendment will be required.

7. Miscellaneous

In general, companies will not incur criminal liability for breaches of the legislation where the only "victims" of the offence are the company or its members. Where others may potentially suffer, criminal liability will be imposed on the company.

The various provisions of the existing law which require statutory declarations by directors or others will be amended so that only statements of compliance (which could be in electronic form and which need not be witnessed) are required.

Need to know more?

Ask us. Joelson Wilson's experienced team of lawyers undertake a wide range of corporate and commercial transactions for private limited companies and listed clients in both the UK and overseas, please contact:

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