



June 2009

## Simpler rules for small companies Remaining Companies Act changes – October 2009

The Companies Act 2006 (the “2006 Act”) is the largest piece of legislation yet, and introduces many significant changes to company law and procedure. Since receiving Royal Assent in November 2006, the provisions of the 2006 Act have been introduced in stages, with the remaining provisions now scheduled to come into force on 1<sup>st</sup> October 2009.

There are a number of areas that companies should review to ensure compliance with the new regime, and we set out below some of the key changes being introduced in this final round.

### Directors’ addresses and other details

- Σ Directors will be able to provide a service address and their private residential addresses will no longer appear on the public register at Companies House. Note, existing addresses will continue to appear on the register until amended.

### Share Capital

- Σ Companies incorporated after 1<sup>st</sup> October 2009 will not have an authorised share capital, and directors will be able to issue shares without limitation. Existing companies will continue to be subject to limitation until the restriction in the Articles is removed by an appropriate resolution.
- Σ Directors of companies with only one class of shares will be able to exercise any power of the company to allot shares unless prohibited by the Articles. Existing companies whose Articles do not include an authority to alter share capital will need to amend them to take advantage of the new provision.
- Σ Companies limited by shares will be able to purchase their own shares unless restricted by the Articles. This reverses the current position, and companies wishing to maintain such a restriction will need to amend their Articles accordingly.

### Constitution and Capacity of the company

- Σ The memorandum of association (“Memorandum”) will no longer form part of the company’s constitution, instead, the sole constitutional document will be the Articles.

- Σ For existing companies, any constitutional provisions presently found in the Memorandum will, by default, be incorporated in the Articles.
- Σ For newly incorporated companies, the objects (or purpose) of the company will be unlimited unless restricted by the Articles. For existing companies, any restrictions in the Memorandum will be carried over to the Articles and continue apply unless amended by an appropriate resolution.

#### Company and Business Names

- Σ Companies will be able to provide in their articles of association (“Articles”) for alternative methods of approving a change of company name.
- Σ The provisions of the Business Names Act 1985 have been carried over and widened.

#### Register of Members

- Σ Companies will be obliged to provide details of when the register or index of members’ details was last updated when allowing inspection. Failure to do so will be a criminal offence.

In a number of cases, the changes will have the effect of introducing significant new powers or restricting existing ones unless amendments are made to the Articles. Accordingly, it is vitally important to be certain that your company’s constitution continues to operate as intended. Royds would be pleased to undertake a fixed cost review of your Articles and company books and records and discuss what changes should be made to ensure that your company can move forward with a modern constitution that reflects the wishes of the members, is compliant with the new legislation and is taking advantage of the new provisions that streamline company procedure.

When fully implemented, the 2006 Act will have introduced significant changes that affect companies, shareholders and directors alike. Royds will from time to time circulate further updates that address in more detail the most significant changes that the 2006 Act makes, together with the steps that companies should be considering.

In the meantime, should you have any specific enquiries or concerns about the impact of the legislation, please contact:

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The information contained in this briefing note is intended as a general review of the forthcoming changes to the legislation and does not constitute legal advice. Detailed legal advice should always be taken before taking or refraining from taking any action.