



Company News

An update from PELLYS LLP Company & Commercial Team

Companies Act 2006 - do you need to update your articles?

The final part of the Companies Act 2006 came into force on 1 October and brings with it major changes to a company's constitution and the way directors should act in running limited companies in the UK from now on.

Here we examine briefly what you should be looking at now:

Top Ten Items to Consider

1. **Objects.** A company now has all the powers of a natural person so, if you have objects or powers in your memorandum they will now be treated as restrictions.
2. **Capital.** If you have an authorised share capital, this is now a cap on the number of new shares the company may issue. The restriction can be lifted by deleting the clause or by adopting new articles.
3. **Authority to allot.** If a private company has only one class of shares, the directors no longer need shareholder authority (the old section 80 authority) to allot. An existing authority may act as a restriction.
4. **Change of capital.** Whereas companies used to need specific provisions in the articles for certain actions such as redemption of shares, now the reverse is true. If shareholders want to restrict the directors' powers, they must insert a restriction in the articles.
5. **Change of name.** A company can now change its name by other than a special resolution, e.g by the directors, if the articles contain an appropriate provision.
6. **Directors conflict of interest.** Directors now have a duty to avoid situations which conflict with the company's interests. The duty can be easily infringed. However the duty is not infringed if the matter has been authorised by the directors. The directors of a private company incorporated on or after 1 October 2008 have an automatic power of authorisation unless the articles contain conflicting provisions, but companies incorporated prior to this date need either to pass an ordinary resolution or amend their articles to take advantage of this power.

7. Since 6 April 2008, private companies no longer need to have a **company secretary**, but one is required if the articles demand it. If you wish to dispense with a secretary you must check and amend your articles if necessary.

8. The **notice period** required for a general meeting is now 14 clear days for any type of resolution (except for meetings called to deal with the removal of auditors or directors). If your articles specify a longer period an update is desirable.

9. Private companies do not now need to **hold an AGM** unless there is a specific provision in the articles. If there is such a provision you need to get it deleted to take full advantage of the Act.

10. **Written ordinary resolutions** can now be passed by a simple majority and written special resolutions by a 75% majority. As these provisions override anything in the company's articles, you should consider removing any conflicting provisions to avoid confusion.

In summary there is no legal requirement for an existing company to change its articles but we recommend that companies should review and update their articles of association to take advantage of new powers and remove any misleading provisions or outdated restrictions.

If you would like to update your articles to the most up to date version please let us know. We recommend that a shareholders agreement is essential and is signed by all shareholders of small and medium sized companies to govern the relationship between the owners of the business in their dealings with each other and with the company. We are seeing more and more shareholder disputes in the se hardening times most of which could have been avoided with a simple but carefully worded shareholders agreement.

If you have any questions or require any further information please do not hesitate to contact us.

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