

The Companies Act 2006: Are you gearing up for 1 October 2009?

This is a checklist of core action points to take account of implementation of the Companies Act 2006 (“CA06”) on 1 October 2009 from the perspective of administering an existing company. For the legal background, see our Corporate Legal Alert “The Companies Act 2006: What’s happening on 1 October 2009?”.

If Mayer Brown’s company secretarial department looks after your companies, they will be in touch with you shortly about this.

Action points for directors

ACTION		COMMENTS
1	Have you provided all additional information to enable the new register of directors to be made up?	<p>If you are an individual, see action points 2 to 4. If you are an EEA company, see action point 5. If you are a non-EEA company, see action point 6.</p> <p>The information in a company’s register of directors will be filed with the registrar and publicly available.</p>
2	Have you provided details of each former name that you have used for business purposes in the last 20 years and the date on which you stopped using it?	<p>The rules on which former names need to be contained in the register of directors are changing on 1 October 2009.</p> <p>Married women who have previously used their maiden name for business purposes in the last 20 years must provide this information. The current blanket exception that allows the register not to contain details of a married woman’s maiden name will end on 30 September 2009.</p> <p>Currently, a former name does not need to be disclosed if a director stopped using it before the age of 18. From 1 October 2009, that age will be reduced 16. So a director who stopped using a former name at the age of 16 or 17 will now need to provide that information if that former name was used for business purposes in the last 20 years.</p>
3	Have you provided details of the country or state (or part of the UK) in which you usually reside?	Companies House have said that England, Wales, Scotland, Northern Ireland and UK will all be acceptable responses.
4	Have you provided details of your service address (i.e. an address at which documents may be served on you)?	<p>Your service address can be the company’s registered office or another address. There will be no requirement (as there is at the moment for directors who have a confidentiality order) that a service address be within the EEA, so it will be able to be anywhere in the world.</p> <p>Your usual residential address (or, if you have a confidentiality order in place on 30 September 2009, your current service address) will become your service address on 1 October 2009 unless you notify the registrar of a different address.</p>

5	Have you provided details of the register where the company file is kept (including the relevant state) and the registration number in that register?	This only applies to corporate directors (or secretaries) which are EEA companies. Remember that all UK companies will have to have at least one director who is a natural person (i.e. an individual) from 1 October 2010.
6	Have you provided details of the legal form of the corporate body or firm and the law by which it is governed? If applicable, have you provided details of the register in which it is entered (including the state) and its registration number in that register?	This only applies to corporate directors (or secretaries) which are non-EEA companies.
7	If you have a confidentiality order in place on 30 September 2009, do you want to apply for the removal of your home address from Companies House records that pre-date the date of your confidentiality order?	This will only be possible for documents filed after 1 January 2003. Companies House has indicated that the fee will be £45.00 for each document and that you or your representative will need to identify the relevant records.
8	If you are or have been employed by GCHQ, MI5, MI6 or a police force, do you want to apply for your usual residential address not to be disclosed to credit reference agencies and/or for your usual residential address to be removed from Companies House records?	Removal of your address from Companies House records will only be possible for documents filed after 1 January 2003. Companies House has indicated that the fee will be £45.00 for each document and that you or your representative will need to identify the relevant records.

Action points for secretaries

ACTION		COMMENTS
9	Have you provided all additional information to enable the new register of secretaries to be made up?	If you are an individual, see action points 2 and 4. If you are an EEA company, see action point 5. If you are a non-EEA company, see action point 6. The information in a company's register of secretaries will be filed with the registrar and publicly available. There will be no requirement to disclose a secretary's usual residential address to the company or to Companies House.
10	If you have a confidentiality order in place on 30 September 2009, do you want to apply for the removal of your home address from Companies House records that pre-date the date of your confidentiality order?	This will only be possible for documents filed after 1 January 2003. Companies House has indicated that the fee will be £45.00 for each document and that you or your representative will need to identify the relevant records.

Action points relating to the company's records

ACTION		COMMENTS
11	Have you created the new register of directors?	<p>Currently, the register of directors and secretaries must include details of shadow directors of a company. From 1 October 2009 details of shadow directors are not required to be included in the register of directors.</p> <p>Details of other directorships held by a director will not need to be included in the new register of directors.</p> <p>If you have been maintaining a combined register of directors and secretaries you can continue to do that until 1 October 2009 but the information relating to the current directors and secretaries (if any) and any new appointments going forward should be kept in separate registers.</p>
12	Have you created the new register of directors' residential addresses?	Details of a director's residential address must be filed with the registrar but are not generally publicly available.
13	Have you created the new register of secretaries?	A private company will need to do this even if it does not have a secretary although the new register will be blank unless and until a secretary is appointed in future.
14	Have you decided where the company's records should be held?	<p>From 1 October 2009, the law in this area is being simplified and the default location for all of the company's records will be its registered office.</p> <p>Alternatively, a company may choose to keep some or all of its records at one other location in the same part of the UK as the company's registered office. This other location is called the single alternative inspection location or SAIL. You must give details of any SAIL and the types of documents located there to the registrar.</p>
15	Are you familiar with the new rules for inspection of company books and records that apply from 1 October 2009?	A new appointment system will be introduced for inspection of a private company's records. There will be new rules about when you can provide hard or electronic copies. Fees may still be charged for inspection/copies, but there will be a revised fee scale.
16	Do the members or former members of the company want the company to apply on their behalf to the registrar to have their addresses removed from annual returns or returns of allotment of shares delivered to the registrar on or after 1 January 2003?	<p>This is only possible if there is a serious risk that they or persons who live with them will be subjected to violence or intimidation.</p> <p>Companies House has indicated that the fee will be £45.00 for each document and that the relevant records will need to be identified by the applicant or his representative.</p>
17	Do the subscribers to the company's memorandum of association want the company to apply on their behalf to the registrar to have their addresses removed from the memorandum?	<p>This is only possible if the memorandum of association was delivered on or after 1 January 2003 and there is a serious risk that the subscribers or persons who live with them will be subjected to violence or intimidation.</p> <p>Companies House has indicated that the fee will be £45.00 for each document and that the relevant records will need to be identified by the applicant or his representative.</p>

Action points for memorandum and articles of association

ACTION		COMMENTS
18	Have you considered removing from the articles (or updating) provisions which will be incorporated from the memorandum on 1 October 2009?	<p>This includes the company's objects and clauses in the memorandum dealing with its name, registered office, limited liability status, authorised share capital and, in the case of a public company, the required statement that it is to be a public company.</p> <p>You can prevent this by amending your articles by special resolution to remove some or all of these provisions or adopting new articles which do not contain them.</p>
19	Have you safeguarded provisions dealing with the company's limited liability status?	<p>If you take action point 18, ensure you either retain in your articles the language from the memorandum dealing with the company's limited liability status or replace it with a new version.</p> <p>Ideally, you should replace it with language which tracks the CA06 provisions dealing with limited liability status.</p>
20	Have you considered removing any limitation on the maximum amount of shares which may be allotted?	<p>If you do not take action point 18, the statement in your memorandum that sets out the company's authorised share capital will be treated as a provision of your articles setting the maximum amount of shares that may be allotted. You can remove this limitation by ordinary resolution or you can adopt new articles which do not contain this limitation.</p>
21	Have you considered adopting unrestricted objects?	<p>If you do not take action point 18, you will not be able to take advantage of the new facility to have unrestricted objects. Whether this is appropriate depends on the company's purpose. Special rules apply to charities, for example.</p> <p>If you do amend your articles so as to add, remove or alter a statement of the company's objects, that amendment will only be effective once you have filed form CC04 with the registrar and it has been entered on the register.</p>
22	Have you prepared a new set of articles for inspection, display and filing?	<p>If you do not take action point 18, whenever your articles have to be displayed, made available for inspection or filed, they will need to be accompanied either by the old memorandum marked up to show which provisions are deemed to have been incorporated or by separate copies of the relevant clauses.</p>

23	Have you considered updating your articles generally to reflect final implementation of the CA06 on 1 October 2009?	<p>Action points 18 to 22 may lead you to amend your articles. Apart from that, in practice, already up-to-date articles could in theory survive in their current form at least for the immediate future or until next overhauled. Many upcoming changes are permissive rather than restrictive. In most cases, they override the articles anyway.</p> <p>But existing articles will become increasingly out of date and unreliable. Many companies, particularly those which are widely held or whose shares are publicly traded, will want to update their articles at the next opportunity from a corporate governance and investor relations point of view.</p> <p>Table A will no longer be updated. Articles based on the new model articles will be simpler and easier to read and move with the underlying legislation more easily.</p> <p>This is an opportunity to give the directors a specific facility to authorise situational conflicts of interest if you have not done so already.</p> <p>You need to consider the impact on your articles of the EU Shareholders' Rights Directive which will be implemented in the UK on 3 August 2009 (see our Corporate Legal Alert "The Companies Act 2006: What's happening on 3 August 2009? Implementation of the Shareholders' Rights Directive in the UK and other changes").</p>
24	In the case of a private company with only one class of shares, do you want the directors to have the power to allot shares without the prior authority of the members?	If you want to give the directors this power you will have to pass an ordinary resolution and file it with the registrar.

If you have any questions or require specific advice on any matter discussed in this alert or on the CA06 more generally, please contact:

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