

# Corporate Focus



News, views, insights & advice from the UK's market leader.

Issue 10

## Welcome

At long last, the final phase of the Companies Act 2006 goes live on the 1st October. For Jordans this has meant a significant six figure investment in essential changes to our systems and articles.

We are keen to share the fruits of this investment with our customers and in this edition of the Corporate Focus, you can read about some of the invaluable services and products we have waiting for you. The first and perhaps most important area concerns company articles. In conjunction with external counsel we have produced one of the most comprehensive and robust suites of articles to cover almost every conceivable requirement.

Our new Companies Act 2006 compliant drafts will be available after 1 October 2009 whether you choose to form your companies via our website, telephone or our free of charge Incorporator software. If you wish to use these drafts for post incorporation work you can do so under our licensing arrangement; read more inside this edition.

Jordans is looking forward to a busy year ahead with a move towards a wider range of new services including our director briefing workshops and outsourcing for you to take advantage of. Whether you are a professional advisor or a corporate client, we have a number of services, tailored to the level of support you will need in the months to come.

Paul Townsend  
Divisional Director

## How will the October implementation affect you?

1st October sees the last of the Companies Act 2006 provisions coming into force.

Much of the 2006 Act consolidates previous legislation but there are major changes.

What will these changes mean for companies in the UK? Much will depend on the type of company in question. The 2006 Act relaxes or removes many outdated and unnecessarily onerous obligations on small private companies but larger companies, particularly those with publicly-traded shares, are still heavily regulated as ever.

New company formation procedures are covered elsewhere in this Corporate Focus.

This article summarises the other changes and practical consequences for private companies and small, non-traded public companies.

### 1. Company names

From 1 October a company may change its name by special resolution or any other means specified in its articles, giving much more flexibility. For example, the articles might provide that a change of company name can be authorised by board resolution or by a certain key member or members. A change of name may also be conditional upon a certain event.

There are also new provisions enabling the directors to authorise a change of name upon restoration of a dissolved company to the register (where the existing name has been taken by a new company) or at the direction of the Secretary of State.

There are new statutory forms (NM01 to NM05) for name changes. Filing fees remain the same for the time being.

The Company and Business Names (Miscellaneous Provisions) Regulations 2009 covers the choice of characters that may be used and provide that names must not exceed 160 characters.

### 2. Company constitutions

(a) Memorandum of association and objects

For a company incorporated before 1 October 2009, provisions of its 'old-style' memorandum that are not required to be set out in the memorandum under the 2006 Act (for example, its objects) will be treated as provisions in the articles of association. Existing companies can alter or update provisions in their constitution which are set out in their memorandum by amending their articles.

Under the 2006 Act a new company's objects will be unrestricted unless the articles specifically restrict them.



Whenever a company (existing or new) changes its articles to add, remove or alter a statement of the company's objects, it must give notice to the Registrar on Form CC04. The alteration does not take effect until it has been registered by the Registrar.

(b) Articles of association

Model articles for private companies limited by shares, private companies limited by guarantee and public companies become effective from 1 October 2009. There are no model articles for unlimited companies.

In keeping with the principle of 'think small first' these

*Continued on page 2*

### In this issue

How the October implementation will affect you	1
Northern Ireland companies	4
Mixed views	4
Updating Memorandum & Articles	5
New articles	6
Getting your technology right	6
Company formation	7
Redenomination of share capital	8

articles are shorter and less complicated than the current default articles. A new company must register its articles of association unless it wishes to take the relevant model articles. It is open to companies to adopt or disapply the model articles in their entirety or to adopt them with amendments. Arguably the simplification of the new model articles has gone too far and it is anticipated that almost all new companies will adopt a modified version of the relevant model.

Companies formed before 1 October 2009 are regulated by their existing articles until they pass appropriate resolutions to alter or replace them. There is no obligation on them to alter or update their memorandum and articles but there are good practical and commercial reasons for doing so.

(c) Entrenchment of provisions in the articles

Entrenchment means that a company's constitution may contain a provision which can only be altered or repealed if certain conditions are met, or procedures are complied with, which are more onerous than those required for a special resolution. Under the 1985 Act provisions could only be entrenched by putting

them in the memorandum and expressly providing for or prohibiting their alteration. Absolute entrenchment of rights in the constitution for new companies is no longer permitted under the 2006 Act. Companies will only be able to adopt entrenchment provisions in their articles on formation or if all the shareholders agree to an amendment to the articles. Entrenchment was rare under the 1985 Act but companies may in future be more creative, for example, by entrenching provisions which would otherwise be set out in a shareholders' agreement.

**3. Company re-registration**

The principal change here is the introduction of new statutory provisions permitting re-registration from public company directly to private unlimited company.

Otherwise, the procedures for re-registration remain broadly the same as under the 1985 Act.

**4. Shares and share capital**

The October changes have a significant impact upon the share capital of companies.

(a) Abolition of concept of authorised share capital

A company formed under the 2006 Act may simply allot and issue shares in accordance with the

provisions of the 2006 Act, with no statutory "ceiling" on the number of shares that may be issued.

Even though the concept of the authorised share capital is disappearing, the authorised share capital of existing companies will continue to operate as a restriction on the number of shares that the directors may issue under the articles. If an existing company no longer wishes this restriction to apply, it will need to either pass an ordinary resolution or modify its articles to remove the restriction. This is another good reason to consider adopting new articles.

(b) Allotment of shares: general

Under the 1985 Act, for all companies, if the directors wished to allot shares (other than for an employees' share scheme), they were required to obtain authority from the shareholders (either by means of the company's articles or by resolution of the shareholders). The 2006 Act abolishes the need for such an authority in the case of private companies with only one class of share, but retains it in all other cases. The directors may in any case allot shares in pursuance of an employees' share scheme (or grant rights to subscribe for, or convert any security into, shares so allotted) without any further authority.

(c) Allotment of shares by a private company with only one class of share

From 1 October, if a private company has only one class of shares, the directors may exercise any power of the company to allot shares of that class (or grant rights to subscribe for or convert any security into such shares) except to the extent that they are prohibited from doing so by the company's articles.

Note, however, that the directors of a company incorporated prior to 1 October 2009 will still need to obtain the shareholders' approval to any allotment of shares that exceeds the scope of any authority currently in force unless the members of the company pass a further resolution to

extend the directors' power. Such a resolution will be required to be filed at Companies House.

But any existing allotment authority given by a company under section 80 or 80A of the 1985 Act will continue to have legal effect until it expires and will be treated as if it had been passed under the 2006 Act.

(d) Allotment of shares by a private company with more than one class of share or by a public company

If the company is a private company that will have more than one class of share in issue after a proposed allotment or is a public company, then the directors must be authorised to allot shares (or grant rights to subscribe for or to convert any security into shares) by the company's articles or by resolution of the members. A resolution to give, vary, revoke or renew such authorisation may be an ordinary resolution, even though it amends the company's articles. Such a resolution must set out certain matters specified in the 2006 Act and is required to be filed at Companies House.

(e) Returns of allotment

There is a new requirement coming into force on 1 October 2009 to register an allotment of shares on form SH01 as soon as practicable and in any event within two months of the date of the allotment.

(f) Share warrants can be issued directly to bearer in respect of fully paid shares

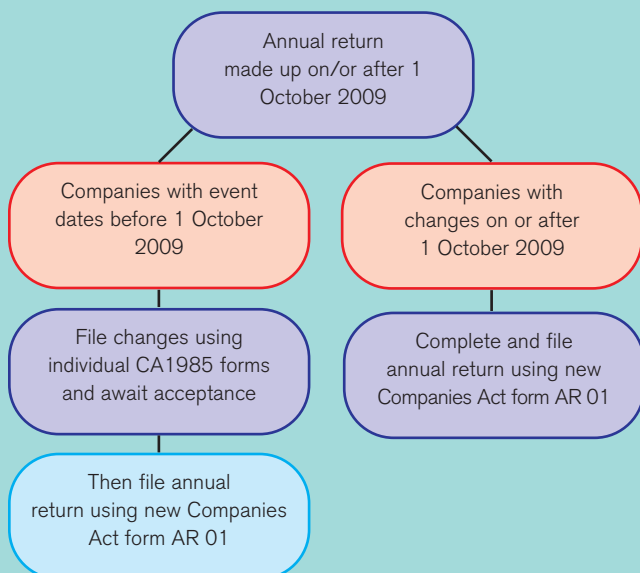
Despite this new provision, the general view is that it is not possible for a company's subscriber shares to be issued directly to bearer. This is because section 7(1)(a) of the 2006 Act states that a company is formed by one or more persons subscribing their names to the memorandum of association.

(g) Varying class rights

Private or public companies will, from 1 October 2009, be able to specify in their articles less demanding procedures for varying class rights. However holders of

Wondering which forms you need to file with your annual return after 1 October 2009?

This diagram will help.



not less than 15% of the issued shares of the relevant class can still apply to the court to have the variation cancelled.

(h) Purchase of own shares and redemption of shares

From 1 October 2009 private and public companies will no longer require specific authorisation in their articles to purchase their own shares. A company will be permitted to purchase its own shares unless there is a specific prohibition or restriction on such purchase in its articles.

A private company will no longer need authorisation in its articles to be able to redeem or purchase its shares out of capital, and the requirement for the directors of a private company to make a statutory declaration about the company's financial position for a redemption or purchase of own shares out of capital will be replaced with a requirement for a directors' statement.

Private companies will no longer require specific authorisation in their articles to allot redeemable shares. The articles may, however, exclude or restrict this general power. A public company will still need to be authorised by its articles to issue redeemable shares.

For off-market purchases a company can enter into a repurchase contract conditional upon shareholder approval (rather than having to obtain approval before entering into the contract).

(i) Re-denomination of share capital

See our separate article in this edition of Corporate Focus.

(j) Reduction of share capital

The provisions for reduction in capital by way of a special resolution supported by a solvency statement came into force on 1 October 2008. From 1 October 2009, the existing rules governing reduction of capital confirmed by court order are re-enacted without substantial amendment.

## 5. Disclosure of directors' and secretaries' personal details

In order to allay fears over the misuse of personal information that is available for public inspection, the regime governing disclosure of directors' and secretaries' home addresses changes from 1 October. From that date, directors are required to notify a service address as well as their residential address to their company and the Registrar but only the service address will be publicly disclosed.

There are also changes to the rules relating to information required to be disclosed by directors that are corporate bodies.

For more information about the new rules, see our article in this Corporate Focus.

## 6. Striking off and restoration of a company

From 1 October 2009 an application for striking off can be made in respect of a public company. This avoids the current need for a public company to re-register as a private company before applying to be struck off.

Under the 1985 Act the only way to restore a dissolved company to the Register was to obtain a Court Order.

In order to reduce the time and expense involved in restoring a company, the 2006 Act introduces a new administrative procedure for the restoration of a company to the register by a director or shareholder after it has been struck off by the Registrar for failure to file returns and/or accounts. However, it does not apply where a company is struck off after voluntary application by the directors; in those cases it is still necessary to apply to the court for restoration.

The other important changes made by the 2006 Act with effect from 1 October 2009 are to replace the existing separate regimes under 1985 Act with a single court application process and altering the time within which an application to restore may be made. The new provisions extend the range of persons who can apply.

They also change the period in which restoration must be applied for to 6 years except

where the application is for the purpose of bringing proceedings against the company for damages for personal injury.

## 7. Overseas companies

The regime for existing overseas companies has been simplified by a single registration regime that applies to companies that open an 'establishment' in the UK. Previously the requirements differed depending upon whether a company had established a 'place of business' or a 'branch'.

Generally the new provisions adopt the existing branch registration rules. Consequently companies that would have registered a place of business under the old regime may find the new requirements more onerous than was previously the case.

## 8. Conclusion

The provisions of the 2006 Act that are coming into force on 1 October 2009 will have important consequences for companies. An existing company can address these changes by:

- (a) adopting new articles that are fully consistent with the 2006 Act and incorporating any objects that it wishes to retain;
- (b) passing an ordinary resolution to remove what was formerly known as the authorised share capital of the company;
- (c) if it is a private company and has only one class of shares, passing an ordinary resolution to give the directors a general power to allot shares;
- (d) changing the directors' service addresses to show an address that is different from their home address (if desired);
- (e) updating the company's own registers. This is particularly important for the register of directors which now needs to be split for individuals into a register for service addresses and a register for usual residential addresses.

For further information and help with any of the above matters, please contact us or visit our website – [www.jordans.co.uk](http://www.jordans.co.uk).

## Quick & easy guide

With over 200 forms in the new Companies Act, Jordans have produced a Companies Act 06 form finder and comparison tool to help you familiarise yourself with the new act.

Some of these forms will be revised versions of existing forms and some are completely new forms so it is not just a case of a straight one for one swap. But don't worry, our comparison tool will allow you to look up old forms and see the new ones that you should be using. The tool is available for you to use free of charge and you can access this via our website.

## Forms

Every form is changing and, on many of them, so is the data to be submitted. New forms must be submitted for company events that take place on or after 1 October. For more information visit [www.thecompaniesact.co.uk](http://www.thecompaniesact.co.uk) where you can also register for our free updates.

## Accounts

You have one month less in which to file accounts. The filing period is reduced to nine months for a private company. In addition, the financial penalty for late filing of statutory accounts has doubled and now ranges from £150 to £1,500 depending on how late they are filed.

## Annual Return

There is a new Annual Return form as well as additional information required to complete the form. The required information regarding the issued share capital is changing; a statement of capital (voting rights) has been added and, if your company has any corporate directors or secretaries, additional information is required.

# Northern Ireland Companies

The final phase of the Companies Act 2006 will see a single company law regime apply to all companies registered in Great Britain and Northern Ireland from 1 October 2009.

So what does this mean in practice? There will no longer be a GB or Northern Ireland company and all companies will be defined as UK companies instead. Northern Irish companies will retain their NI

company number prefix in the same way as the SC prefix in Scotland. These companies will be governed by the same legislation as companies registered in England, Wales and Scotland.

Companies Registry Northern Ireland (CRNI) will merge with Companies House and form one large registry with UK wide responsibility. There will still be a registry function and registrar based in Belfast. This presence will be along similar lines to the Companies House Scotland model.

Northern Irish companies will still be required to have a registered office in Northern Ireland. Any statutory changes and updates to these companies conducted after 1 October will need to be carried out using the new set of Companies Act 2006 forms, and, apart from a short transitional period, the old CRNI forms will no longer apply.

Also for the first time, companies and their advisers in Northern Ireland can enjoy the benefit of being able to file certain forms electronically at Companies House. The formation process will also be available electronically and, subject to Companies House capacity at the time companies will be formed within 2 to 4 hours.

Andrew Cockburn, Director

Jordans (Scotland) commented "These changes will affect companies and professional advisers in Northern Ireland in a similar way to that experienced in Scotland in the past. As such, we see there will be a great deal of synergy between our experience in Scotland and the way forward for professional firms in Northern Ireland."

For more information on the ways that Jordans can help companies and professional advisers in Northern Ireland visit our website [www.oswalds.co.uk](http://www.oswalds.co.uk) or call Andrew Cockburn tel. 0131 200 7126.

## Mixed views from Jordans clients.

"Administrative upheaval and confusion with no real reduction in red tape".

That was the verdict of the overwhelming majority of directors, company secretaries and professional intermediaries who took part in a recent Jordans survey. We asked our clients for their views on the impact on companies of the Companies Act 2006 – both the measures already in place and those coming into effect in October.

Whilst more than 50% of those surveyed saw the overall effect of the changes so far as lacking real benefit, a minority of professional intermediaries (11%) did believe that the measures implemented to date had reduced red tape and simplified company administration. Furthermore, when asked for their views on the delay in full implementation in the Act until October 2009, respondents were united across the sectors in the belief that it would have been preferable to keep to the original timetable. More than 80% of company directors and secretaries thought that the delay had

merely caused confusion about which sections were in force and which were still to be implemented. "These views are consistent with those expressed by the business and professional communities in previous Jordans surveys (July 2007 and September 2008) so it seems that the Act has gained few advocates in the interim," commented Jordans divisional director Paul Townsend.

### Benefit of service addresses

Directors, secretaries and professional intermediaries were again of one accord when asked for their views on specific measures introduced under the Act. Nearly 80% of company officers and 66% of professionals saw real benefit for directors who will now be able to provide a service address on incorporation or appointment, keeping their residential address off the public record. The ability of directors of a private company with a single share class to allot shares without prior shareholder approval was also welcomed, with more than 50% of respondents in both sectors viewing this as a beneficial change. There was concern however in both camps regarding the changes in

relation to accounts filing. Nearly 70% of professionals and a third of directors saw the one month reduction in the time allowed for filing accounts at Companies House as a problem, compounded by the increase in penalties for late filing.

### Company Secretary

But there the similarities end with company officers, perhaps unsurprisingly, taking a very different view from their professional counterparts regarding the role of the company secretary. More than 40% of professional advisers believe the fact that a private company no longer needs to appoint a company secretary would have no effect, but over half of the company officers surveyed saw this as a potential problem. When asked for their views on this in more detail, 84% of company officers said they intended to retain their company secretary, believing they will play a vital role in keeping the company up-to-date with its legal obligations.

Previous surveys had highlighted concern over directors' awareness of the Act and its implications for their companies and for them as individuals. Here, once again professional advisers (30%) still believe very few directors are aware of what the Act means for their business and three quarters thought directors knew nothing of the changes relating to directors'

conflicts of interests. Interestingly, directors consider themselves to be considerably better informed with more than half aware that they can now authorise a directors' conflict of interest situation in certain circumstances. Furthermore, when asked if changes in relation to directors' duties and the new derivative action provisions had made directors more cautious or risk-averse in their decision making, almost half felt that directors had not allowed the changes to influence how they run their business.

### What next?

So it seems clear that even in the final throes of implementation, the Companies Act 2006 remains capable of generating mixed views among the business and professional communities. As those of us who have to work with the Act come to terms with it operationally in the weeks and months to come, time alone will tell if the Act achieves its stated aims.

If you would like further information on the changes in the Act, why not visit our website specifically set up for the Companies Act [www.companiesact.co.uk](http://www.companiesact.co.uk)

# Updating memorandum and articles

Many companies are now considering how the Companies Act 2006 will affect their current memorandum and articles of association and whether updating them will bring benefits.

In these difficult economic times, the expense of changing a company's articles (including professional fees, costs of convening and holding a general meeting or circulating written resolutions to members, and printing costs) counts against it. Moreover, the unfamiliarity of the new statutory provisions and forms may tempt directors and shareholders to put off such a decision until amendment of the articles becomes critical to a transaction the company wishes to carry out.

Here are a selection of questions that we are currently being asked:

## What are the model articles?

In December 2008 the government published new regulations, The Companies (Model Articles) Regulations 2008 (SI 2008/3229), which prescribed new model articles for public limited companies, private companies limited by shares and private companies limited by guarantee. The new models will apply to companies registered on or after 5 October 2009 and replace the default memoranda and articles that currently apply under Companies (Tables A to F) Regulations 1985 (as amended).

The model articles are shorter and less complicated than their current equivalents and have been drafted with the government's "Think small first" principle in mind. So, for example, the private company limited by shares model contains no provision for the allotment of nil or partly paid share, for the appointment of alternate directors or the appointment of a company secretary, on the assumption that such provisions will not normally be required by

a small company.

The model articles for public companies are more detailed and include provisions for all of the above-mentioned matters as well as provisions for uncertificated shares, share warrants and retirement of directors in rotation at the company's annual general meetings.

## What are the benefits of updating the constitution?

By updating your company's constitution you can:

- take advantage of the unlimited capacity afforded to companies by the 2006 Act (which would otherwise be restricted by the company's current objects);
- remove the limit on the number of shares that the company may issue in the future (otherwise restricted by the company's current authorised share capital);
- permit directors to authorise the conflicts of interest of other directors without the need to obtain shareholder approval;
- extend the scope of protection for directors and other officers against liability;
- make greater use of the internet and other electronic means to send notices and documents to members and others, saving time and resources;
- allow directors and members who are unable to attend meetings in person to participate via electronic communication;
- make the constitution consistent with the 2006 Act in general and remove any references to old statutes.

## What are the consequences of not updating a company's constitution after 1 October?

A company formed before 1 October 2009 can carry on after that date with its present constitution. Provisions which were contained in the memorandum of association before 1 October will be treated

as provisions contained in its articles after 1 October - section 28 of the 2006 Act.

However, because the current memorandum and articles are based on provisions of the Companies Act 1985 that will be superseded by the 2006 Act on 1 October:

- they contain some regulations that do not fit easily with the new law;
- some of their provisions may be subject to complicated transitional arrangements;
- they include certain provisions that will simply no longer be relevant under the new law (such as articles referring to change of authorised share capital); and
- some of the provisions may prevent the company from benefitting fully from the deregulation of private companies under the new law (for example, they include restricted objects).

Any of these factors may cause uncertainty for the directors and members and increase the risk of ineffective or ambiguous decisions or inadvertent breach of the new statutory requirements. There are also practical issues (such as what documents a company must file with the Registrar in future if it amends its old-style articles but not its memorandum) which can be overcome by starting afresh after 1 October with a new set of articles fully compatible with the new Act.

## What advantages do Jordans' new articles have over the model articles?

Our new articles for private companies limited by shares incorporate the following powers and provisions which are not contained in the model articles:

- allow the allotment of nil and partly paid shares as well as fully paid shares;
- include provision for the appointment of a company secretary (if required) and alternate directors;
- clarify the shareholders' rights of first refusal when

the directors propose to issue new shares;

- confer full powers to give notices by means of electronic communication including publication on a website (subject to obtaining the necessary consents);
- include regulations concerning company meetings and members' resolutions including quorum provisions and members' voting and proxy rights (which are not mentioned in the model articles);
- relax the restrictions on directors voting on matters in which they have a personal interest; and
- include a general power to approve directors' conflicts of interest by board resolution;
- our articles for public companies also omit the requirement for directors to retire by rotation.

## How do I go about updating my constitution?

- New services enabling companies to adopt new articles with the minimum of disruption and expense are available from Jordans.

For more information about updating articles, contact our Corporate Legal Services team on 0117 918 1497 or visit our website – [www.jordans.co.uk](http://www.jordans.co.uk).

## Precedents

If you would like to take advantage of access to Jordans new bank of precedents, you can do so under our new licensing arrangement.

To find out how this arrangement will work in practice call Mark Bevan on 0207 400 3316 or email [mark\\_bevan@jordans.co.uk](mailto:mark_bevan@jordans.co.uk)

# New articles from Jordans

We know that the quality of Jordans client company constitutions is vital.

We therefore took the updating of our precedents to meet the requirements of the Companies Act 2006 very seriously. We wanted to ensure that each new set of articles of association in our range formed a robust, flexible constitution. This not only had to comply with the new Act but will also meet the needs of businesses as they grow in the 21st century.

Our in-house legal team initially conducted a preliminary review of the statutory model articles, which were published by OPSI in December 2008. The consultation process then began in earnest with a round-table event in April 2009 focusing on the model articles for private companies limited by shares. This was attended by corporate specialists from nine professional firms as well as our own representatives and counsel.

Delegates were generally of the opinion that directors would be using the articles to assist them in their role running their companies. The model articles assume knowledge of many sections of the new Act and so, for example, there is no reference to the number of persons required for a quorum at

members' meetings or to members' voting and proxy rights. Information on provisions which directors commonly use could be placed in the articles to make them more useful and user-friendly.

It was generally agreed that reliance solely on the model articles would rarely be sufficient for a company: most companies would seek to tailor their articles to their own needs. It was also thought it would be advantageous to include the following provisions in our standard articles for private companies:

- Power to appoint alternate directors
- Ability to issue shares as nil or partly paid and consequential provisions in relation to liens and forfeiture
- Methods of appointment and removal of company secretary (as some wish to have two officers' signatures on documents in order to execute and others appreciate the guidance that a secretary can give)
- Removal of director if absent from meetings of the board for 6 months or more (as set out in Table A currently)
- Permitting communication by a company via a website and clarifying conditions for the holding of virtual meetings.

Customer surveys, client

consultations and market research also provided us with valuable information to help us draw up the specifications for our new articles.

Since April, we have been working closely with counsel and liaising further with the roundtable delegates, and other experts to put together the best possible articles of association for all the different types of companies that we form or look after.

Of course, articles for incorporated professional practices, such as solicitors, accountants, chartered surveyors and the like are also affected by the 2006 Act. We have been liaising with the appropriate regulatory bodies to ensure that our new articles for these types of companies conform fully with their respective rules.

Property management and right to manage companies, football clubs and companies operating as, or connected with, charities all have distinctive needs. These too are, of course, addressed in our new articles for these specialist companies.

If you would like further information about how the 2006 Act affects you please contact us or visit our website – [www.jordans.co.uk](http://www.jordans.co.uk).

## Your local Contacts

### England & Wales

Mark Bevan  
Jordans Limited  
T 0207 400 3316  
E [mark\\_bevan@jordans.co.uk](mailto:mark_bevan@jordans.co.uk)

Adrian Brown  
Jordans Limited  
T 0207 400 3304  
E [adrian\\_brown@jordans.co.uk](mailto:adrian_brown@jordans.co.uk)

Daniel Stewart  
Jordans Limited  
T 0113 258 1583  
E [daniel\\_stewart@jordans.co.uk](mailto:daniel_stewart@jordans.co.uk)

### Scotland, North East of England & Northern Ireland

Andrew Cockburn  
Jordans Scotland Limited  
(trading as Oswalds)  
T 0131 557 7126  
E [andrew\\_cockburn@jordans.co.uk](mailto:andrew_cockburn@jordans.co.uk)

## Getting your technology right

As can be seen from this edition of Focus, the new Act introduces far reaching changes in practice and procedures.

For many the emphasis at the moment will be concentrating on familiarizing themselves with the new provisions and adopting new drafts. It is perhaps easy to overlook that much can be achieved by use of the latest technology and ensuring that

existing technology has been thoroughly updated by providers.

It is important to be aware of the following key examples:

- Current e-mail relay based form filing has not been deemed secure enough to file director's residential address details at Companies House from 1st October 2009 when this will be protected information. Accordingly, Companies House have converted their electronic filing service to receive data in XML (Extensible Markup Language) over the Web via the Companies House Gateway.

As a result you need to check

any electronic company formation system or corporate administration system is fully working in XML.

- Also ensure that any electronic company formation system embedded drafts have been updated for 1st October.
- Over 200 new forms have been introduced as a result of the new act. Confirm that the relevant new forms are available in your systems. (The best systems should also be sensitive to pre and post 1st October events !)
- Statutory references adjusted timescales and many minor changes will be required in an extensive range of

resolutions, minutes and precedents.

Check your corporate packages include these.

- Good quality systems support, help lines and training based upon a thorough working knowledge of the provisions will also be essential.

If you are confident your existing corporate formation and administration systems offer these features then you are well placed to deal with the final stages of implementation. If not – or if you wish to discuss any of these matters further please call or email Mark Bevan on 0207 400 3316 or [mark\\_bevan@jordans.co.uk](mailto:mark_bevan@jordans.co.uk).

# Company formation – it's all change

It's inevitable, as with any legislative change, that the process and tools we have grown used to over the years and grown to accept need to be altered to reflect the requirements of the Companies Act 2006.

So how is the company formation procedure affected? Listed below is a sample of the most common queries:

## 1. What do I need to do when forming a new company?

If you form your companies through Jordans, you can rely on our processes to guide you through the new procedure. Where possible, we've tried to keep to familiar formats and you will be prompted to provide the new or amended information as appropriate. So whether you form your companies online, over the phone or through our Incorporator system, you will find that the process remains user friendly and intuitive throughout.

If you are not using Jordans company formation service, an application to form a company is made on Form IN01 (all 18 pages!). This has to be accompanied by a memorandum of association (see below) the articles and the correct registration fee.

## 2. What are the changes to the memorandum of association and how does this affect the formation process?

The memorandum of association is now a shorter document. The sole purpose of which is to provide evidence of the intention of each subscriber to form a company and become a member of that company. It is almost confusing that there is still a document called the memorandum of association when it is so different to the current form.

## 3. Do I still need to provide authorised share capital on incorporation?

Authorised share capital will not apply to companies incorporated

from 1 October 2009.

Companies incorporating as limited by shares (whether private or public) on or after 1 October 2009 must however complete a statement of capital and initial shareholdings. The statement of capital is a "snapshot" of a limited company's issued share capital at a given time. If limited by guarantee, a different statement needs to be given.

## 4. Do I still need to a declaration of compliance?

The need for a declaration of compliance sworn before a solicitor will be replaced with a statutory statement of compliance by the subscribers. There will be no need to attend a solicitor for this. The statement may be in paper or electronic form and need not be witnessed. It will be an offence to make a false statement of compliance.

## 5. What information do I need to provide in relation to directors' addresses?

The major change here is that directors will have to supply a service address as well as their residential address. This will be disclosed on the public file and may be the registered office of the company, their home address or any other address at which legal documents and official notices may be served. The home address will be kept separately in a protected part of the Register which will only be disclosed to certain public authorities and credit reference agencies. Special rules allow directors who are at risk of intimidation or violence to apply to the Registrar to prevent their home addresses from being disclosed to credit reference agencies.

## 6. What information do I need to provide in relation to the appointment of company directors?

Your company must have at least one director who is a natural person aged 16 years or over. You cannot form a company with only a corporate director in office i.e. with another company acting as the only director.

For each director who is an individual you will need:

- Full Forename and surname
- Any former name(s) used for business purposes, including maiden name/s and previous married name/s
- Full service address including town, county and postcode (for the public record)
- Usual residential address (protected information)
- Country/state of residence
- Date of birth
- Nationality
- Occupation
- The number of shares, if any, the director is to have in the company
- Security items from the criteria required by Companies House (if the company is formed electronically).

It is no longer a requirement to supply or keep details of directors' other directorships.

## 7. What information do I need to provide in relation to the appointment of corporate directors?

- Corporate/firm name
- Registered/principal office address
- For an EEA company, details of the register where the company file is kept (including state) and its registration number in that register.
- For a non-EEA company, details of the legal form of the corporate body or firm and the law by which it is governed; and, if applicable, the register in which it is entered (including the state) and its registration number in that register.
- Security items from Companies House criteria (if the company is formed electronically).

## 8. I want to appoint a company secretary, what do I need?

A private company does not have to appoint a secretary, but if it chooses to do so will need to provide the same details as a director. Except, however, a secretary does not have to provide a residential address, date of birth or their occupation.

## 9. What about the appointment of a corporate secretary?

In relation to corporate secretaries, the changes are similar to corporate directors and relate once again to providing different information depending on whether they are an EEA company or not. So an EEA company must provide details of the register where the company file is kept (including the state) and its registration number in that register. A non-EEA company needs to provide details of the legal form of the corporate body or firm, the law by which it is governed, details of the register in which it is entered, if applicable, (including the state) and its registration number in that register.

## 10. What additional information do I need to provide in relation to the Shareholder

- Full Forename(s)
- Surname
- Full address including town, county and postcode
- The number of shares the shareholder is to have in the company

If you have any further questions about forming a new company, please contact us on (0117) 918 1391 or by email at [companyformation@jordans.co.uk](mailto:companyformation@jordans.co.uk).

### Companies Act Seminars London 21 October 2009 Bristol 24 Nov 2009

With the final phase of the Companies Act implemented, changes are now biting with ramifications for both companies and their advisers.

These seminars, recap the most significant changes and highlight issues companies are facing, along with suggested practical solutions.

The seminar includes a light breakfast. Jordans expert speakers will explore topics such as:

- the key October changes
- use of new model articles
- why update?

Full details are shown on our website [Jordans.co.uk](http://Jordans.co.uk)

Book your place now £65 +VAT. **Save by booking online at only £59 +VAT through our website**

# Redenomination of share capital

Among the new procedures introduced by the Companies Act 2006 on 1 October 2009 is the ability to “redenominate” a company’s share capital.

These new provisions will make the conversion of share capital from one currency to another (which used to involve the repurchase or reduction of shares in the old currency and issue of shares in the new currency) a much less cumbersome process.

Under section 622 of the 2006 Act a company limited by shares may re-denominate its share capital by ordinary resolution unless the company’s articles restrict or prohibit the exercise of this power or require a higher majority or unanimity. The conversion must be at an appropriate spot rate of exchange and specified in the resolution. The redenomination takes effect from the date the resolution is passed or such

later date as may be determined in accordance with the resolution, but must take place within 28 days after the date of passing of the resolution if it is not to lapse. Notice of the redenomination on Form SH14 must be given to the Registrar.

The 2006 Act also includes a new procedure allowing a company to cancel part of its share capital by special resolution following a redenomination for the purposes of rounding share values to whole units of the new currency without obtaining the prior approval of the courts or the directors making a solvency statement. The amount by which a company is allowed to reduce its share capital in order to redenominate its shares is limited to 10% of the nominal value of the company’s allotted share capital immediately after the reduction. The company must file with the Registrar a statement by the directors confirming that the reduction does not exceed the 10% limit.

The redenomination of shares does not affect any rights or obligations of members under the company’s constitution, or any restrictions affecting members under the company’s constitution. In particular, it does not affect entitlement to dividends, voting rights or any liability in respect of amounts unpaid on shares.

According to the Explanatory Notes to the 2006 Act, as the 2006 Act is silent on the point, a public company will be free to redenominate all of its share capital, including the authorised minimum, into another currency once the initial minimum capital requirements to obtain the trading certificate have been satisfied.

Unlimited companies with a share capital are already free to redenominate their share capital as they see fit and the 2006 Act makes no change in respect of such companies.

For assistance with redenomination of share capital, speak to a member of our Corporate Legal Services team on 0117 918 1497 or visit the Corporate Legal Services area of our website – [www.jordans.co.uk](http://www.jordans.co.uk).

On this day in history...

**11 March 1985**

The 1985 Companies Act was given Royal Assent but also

Mikhail Gorbachev becomes the Soviet Union’s leader.

Mohammed Al Fayed buys the London-based department store company Harrods.

**1 July 1985**

The Companies Act 1985 comes into force and

U.S.S.R. performs nuclear test at Semipalitinsk, Eastern Kazakhstan U.S.S.R.

**8 Nov 2006**

The Companies Act 2006 receives Royal Assent

Basil Poledouris the American composer who wrote scores for famous movies such as Conan the Barbarian, Red Dawn, Robocop, Free Willy, The Hunt for Red October and also the opening ceremony music for Atlanta Olympics died.

For more information or to update the details we hold for you, please complete this section and fax it back to the number shown below or post to Jordans Limited, FREEPOST, BS2348, PO Box 260, BRISTOL, BS99 7BR.

- Tick here if you do not wish to receive mail from our UK offices.
- Tick here if you do not wish to receive mail from our overseas offices.
- Tick here if you do wish to receive occasional emails from us.
- Tick here if you do wish to receive emails from our overseas offices.

Please note:

Your details are held for Jordans Limited, Jordans (Scotland) Limited and Jordan Publishing Limited’s use only (which include our offices in major offshore locations). Apart from any use made in connection with our acting on your behalf – including for credit control reasons (only if you are a client) – we would only use your details to send you occasional materials on our products, services and events that we think may be of interest to you (as either a contact or a client). None of your details will be passed to third parties for any purpose. For further information on how your data may be used, please contact our Data Protection Officer on +44 (0)117 918 1431 or email [dataprotection@jordans.co.uk](mailto:dataprotection@jordans.co.uk)

Jordans Limited: Registered in England and Wales under no. 865285.  
Registered Office: 21 St Thomas Street, Bristol BS1 6JS VAT No: GB 137 4442 71

## Jordans Limited

21 St Thomas Street Bristol England BS1 6JS  
T +44 (0)117 923 0600 F +44 (0)117 923 0063 E [info@jordans.co.uk](mailto:info@jordans.co.uk)

- Please send me future editions of Corporate Focus via email.

Email \_\_\_\_\_

- Please send me details of Jordans services.

Title / Initials \_\_\_\_\_

Surname \_\_\_\_\_

Position \_\_\_\_\_

Organisation \_\_\_\_\_

Type of business \_\_\_\_\_

Address \_\_\_\_\_

Town \_\_\_\_\_

Postcode \_\_\_\_\_

Telephone \_\_\_\_\_

