

Corporate Legal Services

Advantages of updating your company's constitution after 1 October 2009

On 1 October 2009 the remaining provisions of the Companies Act 2006 came into force. The changes include the introduction of new model forms of articles of association for private companies limited by shares, public limited companies and companies limited by guarantee.

Of course, a company formed before 1 October 2009 may continue to operate after that date under its existing constitution. Provisions in the memorandum of association will be treated as provisions contained in the articles from 1 October and the existing articles will remain in force to the extent that they are not overridden by any provision of the new Act.

But updating the constitution could bring material benefits to a company and is widely recommended by professional advisers.

The new model articles for private companies limited by shares are written in modern English and are drafted with the small, owner-managed business in mind, therefore being shorter and more accessible to the average director or shareholder. However, it is arguable that the model articles are too narrow in some respects. For example:

- (a) They do not allow the company to issue nil or partly paid shares
- (b) They contain no provision to appoint alternate directors (which may be useful if a director has to be away from the business for any significant period of time)
- (c) They do not include provisions that are expressly covered by the new Act such as rights of members and their proxies in relation to company meetings; this assumes a degree of knowledge of the new Act (which comprises 1300 sections) that might be considered unreasonable for directors and shareholders of a typical owner-managed business
- (d) They include no provision for the appointment of a company secretary, should the company wish to have one.

In addition, any articles of association based on Table A before 1 October 2007 will contain a number of provisions that have since been overridden by the new Act resulting in uncertainty for directors or members as to their present rights and obligations. In particular, provisions relating to members' rights to appoint proxies and situations where a director has a conflict of interest with the company are likely to be incorrect and in need of updating.

Jordans' new articles of association

Jordans' new articles of association not only give the company all the advantages of the new model articles but also cover those areas where additional powers or clarification of rights and obligations are desirable. The following deserve special attention:

Objects

The objects set out in the company's current memorandum of association will, from 1 October, be treated as provisions of the articles restricting the business activities of the company. Such restrictions can be removed by the adoption of new articles to replace the existing constitution and the filing of certain resolutions and other documents at Companies House.

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Share capital

The new Act dispenses with the concept of authorised share capital. Under transitional arrangements the authorised capital of an existing company will operate as a limit on the number of new shares the directors can issue. This limit, together with all provisions of the existing articles relating to change of authorised capital which are no longer relevant from 1 October 2009, can be removed by adopting new articles.

Share allotments

Like Table A, the new model articles contain no provisions concerning allotment of new shares by the company and accordingly the obligation to offer new shares to existing members will apply under section 561 of the 2006 Act. Jordans' articles set out the procedure to be followed on allotment of shares more clearly and save directors the time and trouble of referring to the new Act.

Share transfers

The model articles for private companies limited by shares allow directors to refuse to register any transfer of fully paid shares. Jordans' articles include a full range of alternative options for the company to select from, including (i) shareholders' rights to transfer shares to their spouses or civil partners, children and other relatives or (ii) a requirement to offer shares to the other shareholders pro rata to their existing holdings before transferring them to any person.

Directors

By updating its articles a company can:

- (a) permit directors to authorise the conflicts of interest of other directors without the need to obtain shareholder approval;
- (b) remind directors of their statutory obligations regarding declaration of personal interests in company contracts and transactions;
- (c) extend the scope of protection for directors and other officers against liability;
- (d) remove any unnecessary requirement for the directors to retire by rotation.

Meetings

By adopting Jordans' new articles an existing company can:

- (a) make greater use of the internet and other electronic means to send notices and documents to members and others, saving time and resources;
- (b) allow directors and members who are unable to attend meetings in person to participate via electronic communication;
- (c) delete any requirement under its current constitution to hold annual general meetings and to designate other general meetings as "extraordinary general meetings" (private companies only);
- (d) remove any unnecessary or onerous restrictions relating to periods of notice required for general meetings and the holding of meetings on short notice;
- (e) inform members of their rights in relation to company meetings and resolutions under the new Act, including proxy and voting rights.

Audit exemptions

Jordans' articles do not require the company to appoint auditors and audit the company's annual accounts (provided the company is not a public company and it meets the statutory audit exemption requirements for the financial year in question).

Public limited companies

The model articles for public companies are longer and more detailed. They reflect the more stringent statutory requirements applicable to public companies and include provisions for:

- (a) the allotment of partly-paid shares;
- (b) the holding of shares in uncertificated form;
- (c) the issue of bearer share warrants;
- (d) the retirement of directors by rotation at annual general meetings;
- (e) the appointment of alternate directors;
- (f) the refusal of share transfers by the directors only in specified circumstances (e.g. if the shares are not fully paid).

Jordans' new articles for a public company apply the model articles with certain modifications including:

- (i) omission of the requirement for directors to retire by rotation;
- (ii) power of the board to authorise a director's conflict of interest;
- (iii) relaxation of the restrictions on directors voting on matters in which they have a personal interest.

Companies limited by guarantee

The model articles for companies limited by guarantee are the shortest and simplest of all. They:

- (a) give the directors a discretion to admit new members to the company;
- (b) allow members to retire from membership on 7 days' notice;
- (c) contain no provisions for distribution of profits to members.

Companies limited by guarantee are the most likely type of company to require special articles specifically drafted to suit the purposes of the company. Common modifications to the model articles include:

- (i) restrictions on the business activities the company may undertake;
- (ii) qualifications for membership and longer or shorter notice of retirement from membership, depending on the nature of the company;
- (iii) a requirement to hold an annual general meeting (particularly for clubs and societies);
- (iv) restrictions on who can be appointed as directors;
- (v) a requirement for directors to retire by rotation or some other special appointment procedure.

Companies that wish to register as charities must incorporate additional restrictions into their articles to meet the Charity Commission's stringent registration requirements. They are most likely to have long-form articles specifically drafted to suit the charity's needs.

Jordans' Updating Articles services

For clients requiring personal attention to the updating of their company constitutions, Jordans' Corporate Legal Services team is pleased to offer the following range of services:

- Adopting Jordans' new articles** **from £150 + VAT per company**
For private commercial companies limited by shares that wish to replace their existing constitution with Jordans' new articles of association, our service includes the provision of our new 2006 Act articles, explanatory notes on the new articles, all necessary documents to pass the required resolutions in general meeting or by written resolution together with a procedural guide and assistance with filing at Companies House.

Optional articles from a specified range are available for an additional fee.

For further details and an order form, please contact a member of the Corporate Legal Services team on 0117 918 1497 or visit the Corporate Legal Services area of our website – www.jordans.co.uk

New! On-line ordering facilities

To obtain favourable discounts on our fees, you can also order this service through our **Incorporator** software or **on-line** by visiting our website – www.jordans.co.uk

- Company Healthcheck** **£140 + VAT per company**
If you are unsure whether the standard articles and options will be appropriate for your company, we can provide a Company Healthcheck. We will review the existing memorandum and articles of association and provide a comprehensive report of findings with recommendations for updating.

For more details or to place an order, call us on 0117 918 1497 or visit the Corporate Legal Services area of our website – www.jordans.co.uk

- Bespoke Updating** **£ P.O.A.**
We provide a full range of bespoke updating services for public companies and non-commercial or special purpose companies such as property management companies, joint venture companies and companies limited by guarantee. Please contact us to discuss your requirements.

If you have any questions about our Updating Articles services, speak to a member of our Corporate Legal Services team on 0117 918 1497 or email us at corporatelegalservices@jordans.co.uk