



C O R P O R A T E

A publication by Glaisyers Solicitors LLP

June 2009

## ARTICLES OF ASSOCIATION - TIME FOR A CHANGE & ARE YOU UP TO DATE?

### Introduction

The new Companies Act 2006 (**2006 Act**) is intended to make the incorporation and administration of companies much easier. However, the sheer volume of the legislation (the largest Act ever passed by Parliament) may mean that this objective cannot be achieved. The new legislation brings numerous changes, which we will be covering in our series of newsletters on the 2006 Act over the coming months. This month's newsletter covers the Act's changes in relation to the Articles of Association. Detailed below is a comprehensive but easily digestible overview of the current law on companies' articles, the changes resulting from the 2006 Act, advice on what you will need to do and our recommendations for best practice.

### Current Law

The Companies Act 1985 (**1985 Act**) still governs the requirements for a company's formation and constitution and will do until the respective provisions in the 2006 Act come into force on the 1<sup>st</sup> October 2009.

Under the 1985 Act, each company must have a Memorandum of Association and a set of Articles of Association. These two documents form a company's constitution. The memorandum contains the company name, registered office address, the objects clause (i.e. a statement of the company's powers), the type of company (i.e. public or private), its liability, the amount of issued share capital and the names and shareholdings of the initial subscribers. At present, the memorandum is a living document and can only be amended by a special resolution of the members of the company. The second document, the Articles of Association, is the fundamental aspect of a company's constitution and can similarly only be amended by a special resolution. The articles set out the internal administration of the company, including the rules on the decision-making process, the company's operational framework

and the arrangement between the members themselves. The articles bind both the directors and the shareholders as if it was a contract, which illustrates the importance of the articles being accurate and relevant. It is also crucial for the directors of the company to be aware of the contents of the memorandum and the articles as one of the general director's duties under the 2006 Act requires that the directors must act in accordance with the company's constitution and only exercise powers for the purpose for which they were conferred.

The 1985 Act provides 'model articles' known as "Table A". These are commonly used and although they assist smaller companies by dispensing with the need to draft articles from scratch, they are still quite involved and are not easily accessible.

### The New Articles – 1 October 2009

From the 1<sup>st</sup> October 2009 the new provisions of the 2006 Act will apply. From that date the memorandum will not contain the objects clause; this will be in the articles. The memorandum will merely state that the subscribers want to form a company and, if there is a share capital, that they will take a share each. The memorandum will become a historical snap-shot of the company at its incorporation, and will be unalterable. The Articles of Association will become the primary document in a company's constitution and the sole reference point for its powers.

The 2006 Act has also provided model articles for the three most common types of company – private companies limited by shares, private companies limited by guarantee and public companies. The new model articles are shorter, significantly more user friendly than the old Table A articles and are still flexible enough to allow larger companies to create more complex constitutions.

The new model articles also deal with the substantial administrative changes which have been brought in by the 2006 Act, such as the

### Glaisyers Solicitors LLP

One St James's Square, Manchester, M2 6DN

**Email:** [manchester@glaisyers.com](mailto:manchester@glaisyers.com) **Telephone:** 0161 832 4666 **Fax:** 0161 832 1981

[www.glaisyers.com](http://www.glaisyers.com)

**GLAISYERS**  
S O L I C I T O R S L L P  
www.glaisyers.com

widespread removal of the need for the private company general meeting.

### Conclusion - What you need to do

For the majority of existing companies, the objects clause in the memorandum will still apply after 1 October 2009 and will be treated as though it is contained in the articles. Where a company has used the Table A articles, these will also continue to apply (as will the subsequent amendments for companies incorporated after October 2007 which operate under the transitional Table A). It is recommended however that the directors of a company undertake a review of their articles to ensure they comply with their related director's duty. This also offers a good opportunity to consider whether the articles should be updated to bring them up to date with the provisions of the 2006 Act and to ensure that they reflect the long term, dynamic nature of their company and its relationship with its members.

### Help is at hand

In the current economic climate, the need for businesses to be able to adapt is more important than ever and precise, comprehensive but flexible company articles are the key to this. If you think your company would benefit from a constitutional shake-up we will happily carry out a **FREE REVIEW** of your existing memorandum and articles, and advise you of weaknesses and additional options available to you. If required we can prepare model or bespoke articles for your company, or revise your current constitution. Additionally we can provide you with a straight forward explanation of the key terms of your constitution and how this affects the day to day operation of your company.

### Contact details



**John McMuldroch**



**Julian Bond**

If you would like to receive more information regarding the contents of this newsletter or information on any other company law related matters then please do not hesitate to contact one of our Company / Commercial partners on **0161 832 4666**.

Julian and John specialise in all aspects of company / commercial work, mainly acting for SMEs but also undertaking international work such as joint ventures and manufacturing agreements.

## how we can help your business

We are a medium sized city centre firm with a high degree of expertise in our chosen fields. We therefore provide a level of service which is comparable to that offered by many a national and international law firm, whilst retaining a personal interest in our clients and their businesses.

We believe passionately in training and developing all the members of our team to ensure that our clients continue to obtain the highest quality of advice and support.



## Our range of services

- Commercial/ Corporate
- Family
- Property Development
- Public Law
- Commercial Disputes
- Employment
- Landlord and Tenant
- Corporate Finance
- Personal Injury
- Road Traffic Accidents
- Residential Property
- Housing
- Publicly Funded Work
- Intellectual Property
- Divorce/Child Care
- Mergers & Acquisitions
- Probate/Estate Planning
- Costs Law
- Debt Recovery

If you do not wish to receive further information from Glaisyers Solicitors LLP about events or legal developments which we believe may be of interest to you, please either send an email to [manchester@glaisyers.com](mailto:manchester@glaisyers.com) or contact Wendy Royle by telephone on 0161 832 4666 or by post at Glaisyers Solicitors LLP, 1 St James's Square, Manchester M2 6DN. The material contained in this article is provided for general purposes only and does not constitute legal or other professional advice. Appropriate legal advice should be sought for specific circumstances and before action is taken.