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Guidance on Companies Act 2006 Changes in Respect of Constitutional Documents**August 12, 2009**

The Companies Act 2006 (the "2006 Act") provisions governing constitutional documents of UK companies, including the new model articles of association for (i) private companies limited by shares, (ii) private companies limited by guarantee and (iii) public companies, will come into force on 1 October 2009. The Department for Business, Innovation & Skills ("BIS") has published draft guidance for companies which summarises the differences between the old "default" articles under Tables A-F of the Companies Act 1985 (the "1985 Act") and the new model articles prescribed under the 2006 Act. The model articles will apply by default to any company incorporated on or after 1 October 2009 to the extent that the company does not choose to modify or disapply the provisions of the relevant model articles in its own articles. The guidance also includes information on changes to other constitutional documents and guidance for both existing and new companies on suggested procedures to follow as a result of these changes. Note that Table A remains in force for existing companies incorporated under the 1985 Act which adopted Table A articles (or to which Table A applies by default) until those companies choose to amend their articles.

Key Points for New Companies Incorporated Under the 2006 Act on or After 1 October 2009

- New companies will adopt a new style memorandum of association, which is a much shorter form of document than that required by companies incorporated under the 1985 Act. Essentially, it contains simply the names of the subscribers to the company and authentication that they have agreed to become members of the company. The form of the new memorandum is prescribed by The Companies (Registration) Regulations 2008.
- Any new companies formed on or after 1 October 2009 will not be required to set out an objects clause in their constitution. The default position will be that a company's objects will be unrestricted unless that company specifically chooses to restrict its objects.
- Information on capital and shareholdings will no longer be comprised in the memorandum. Instead, this information will be contained in a "statement of capital and shareholdings" or, for companies limited by guarantee, a "statement of guarantee". New companies incorporating on or after 1 October 2009 must

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file the appropriate statement on registration and updated statements as necessary.

- The 2006 Act requires a company's articles to be contained in a single document and divided into consecutively numbered paragraphs. However, the BIS guidance confirms that, as with current practice under the 1985 Act, it is sufficient when filing articles for them to contain cross references to model articles and, where relevant, to set out how these are modified.

Key Points for Existing Companies Incorporated Under the 1985 Act Before 1 October 2009

- Existing companies are not required to make any changes to their constitutional documents as a result of the provisions taking effect on 1 October 2009.
- From 1 October 2009, the parts of the memorandum of an existing company which are additional to that of the new-style memorandum, including the objects clause, will automatically be deemed to be part of the company's articles of association. No action is required in this regard but companies may elect to amend their articles, including those provisions from the memorandum which will be deemed to be part of their articles, for example by removal of the objects clause and provisions regarding authorised share capital.
- When a member of an existing company (or anyone else entitled to do so) requests a copy of the company's articles after 1 October 2009, the company may either append a copy of the old-style memorandum with the articles indicating the provisions that are deemed to be provisions of the articles.
- When an existing company's articles are amended for the first time on or after 1 October 2009, either by special resolution or as a result of pre-1 October changes taking effect on or after that date, the company must include the relevant parts of their existing memorandum and objects which are not deleted as part of their entire up-to-date articles filed at Companies House.
- An article from a company's old-style memorandum which limits liability should not be amended or removed unless the company intends to re-register to change its limited liability status.
- If an existing company changes its name on or after 1 October 2009, it is not required to amend its articles to effect the change.

This memorandum is intended only as a general discussion of these issues. It is not considered to be legal advice. We would be pleased to provide additional details or advice about specific situations. For additional information on this important topic, please feel free to call upon your Dewey & LeBoeuf relationship partner.

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- If an existing company changes its share capital on or after 1 October 2009, a new "statement of capital" must be filed with Companies House.

The draft BIS Guidance "Companies Act 2006 Implementation – Changes to Constitutional Documents, Including Model Articles: A Summary of What the New Approach Means" is available at <http://www.berr.gov.uk/files/file52470.pdf>.

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