

Changes under the Companies Act 2006 relevant to Charitable Companies

September 2009



The final implementation of the Companies Act 2006 (“the 2006 Act”) will occur on 1 October 2009.

Many of the changes introduced by the 2006 Act have a direct impact on corporate governance and may be implemented to assist in the administration of charitable companies or charities with corporate trading subsidiaries. The constitution of a company incorporated prior to 1 October 2009 and under legislation other than the 2006 Act will continue to be applicable but in some circumstances the 2006 Act will override inconsistent provisions of a company’s constitution.

The areas of a charitable company’s constitution listed below should be reviewed and can be amended to ensure that companies are taking advantage of the changes introduced by the 2006 Act:

1. **Objects** - It is important to ensure that any changes to the objects are registered at Companies House as any such changes will only take effect from the date of registration. If a change to a company’s objects is not registered a company could be operating outside its objects which is particularly serious when dealing with charitable companies. Remember companies also need to obtain other regulatory approvals for changes to their objects.
2. **Entrenchment** - An entrenched provision in a company’s constitution is a term which either cannot be altered or can only be altered if certain conditions are met. Any provision for amendment to or inclusion of an entrenched provision after 1 October 2009 will have to comply with notification requirements to Companies House.
3. **Conflicts of Interest** - Changes have been brought about by the 2006 Act to directors’ duties and authorisations in relation to conflicts of interest. Most companies incorporated before 1 October 2008 will need to pass a resolution or amend their articles to permit authorisations of conflicts of interest. Companies should review their articles and consider alteration to take advantage of increased flexibility and protection under the 2006 Act.
4. **Electronic Communication** - Companies should consider if their articles need to be amended to allow electronic communication with shareholders (and others) which can assist with the administration of a company.
5. **Annual General Meeting** - The 2006 Act removes the requirement for private companies to hold an annual general meeting from 1 October 2007 unless their articles impose a requirement for an annual general meeting. If a company wishes to take advantage of this relaxation of company law requirement their articles may need to be amended.

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6. **Notice for general meetings** - A company may wish to amend its articles to take advantage of the shorter notice period acquired for a general meeting. The 2006 Act provides for a notice period of 14 days for a general meeting. Often company's articles specify that 21 days notice or longer must be given for a general meeting. A company may decide to amend its articles to take advantage of shorter notice provisions under the 2006 Act.
7. **Company Secretary** - From 6 April 2008 private companies do not need to have a company secretary. This is subject to any contrary provisions in the company's articles and again amendments may need to be made. Please note that the duties carried out by the secretary must still be fulfilled.
8. **Written Resolutions** - Private companies in most circumstances can pass written, ordinary and special resolutions without requiring unanimity as was required under previous legislation. Companies should consider clarifying this point in their articles and in particular removing any conflicting provisions.
9. **Proxies** - The rights granted to proxies under the 2006 Act override any conflicting provisions in a company's articles. Articles should be reviewed to ensure that they comply with the 2006 Act.

In view of the changes under the 2006 Act and further changes to be enacted under the Charities Act (Northern Ireland) 2008 now is a good time to review your memorandum and articles and to get advice on how changes brought about by the 2006 Act impact on your company and in particular on how to modernise and update your constitution.

For further information please contact Jenny Ebbage on 028 9027 1302 or j.ebbage@cfrlaw.co.uk or any member of the Charities Team.

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