

COMPANIES ACT 2006- MEMORANDUM OF ASSOCIATION AND AUTHORISED SHARE CAPITAL

Memorandum of Association

For companies which are incorporated on or after 1st October 2009 the Memorandum of Association will simply contain a statement of the subscriber(s) to the Memorandum who wish to form a company and agree to become members. If the company is to have share capital the subscriber(s) will also have to agree to take a least one share each.

The new style Memorandum will not record details of share capital or objects of the company. It will simply be used for the purpose of incorporation and will have no further relevance thereafter. The companies 'objects' will be unrestricted unless objects are set out in its Articles of Association.

For companies which have been incorporated prior to 1st October 2009, the objects clause within its Memorandum of Association will form part of the companies Articles of Association and will restrict the capacity of the company to that which is permitted by its objects.

What action needs to be taken?

For companies which are incorporated on or after 1st October 2009 thought will need to be given as to whether to restrict the capacity of the company by the insertion of 'objects' within the Articles of Association (for example, charitable organisations), or whether to incorporate the company with unlimited capacity.

For existing companies, if the objects are no longer relevant the company can on or after 1st October 2009, pass a special resolution to amend or remove those objects under section 21(1) of the 2006 Act (the objects deemed to form part of the Articles on and from that date). The resolution must be filed with the registrar within 15 days, together with notice of the change under s.31(2)(a) of the 2006 Act. The amendment or removal will not be effective until that notice is registered by the Registrar.

Authorised Share Capital

Companies which are incorporated on or after 1st October 2009 are not required to have an authorised share capital. For companies which are incorporated after 1st October 2009, if shareholders wish to restrict the number of shares which can be issued they will need to insert relevant restrictions in the company's Articles of Association.

Companies incorporated before 1st October 2009 will continue to be subject to any maximum authorised capital stated in its memorandum but this will be deemed to be a restriction in the company's Articles of Association.

What action needs to be taken?

Existing companies may wish to dispense with having an authorised share capital provision. To do so, they will need to pass an ordinary resolution which can be passed on or after 1st October 2009.

Alternatively they can adopt new articles which omit a statement of the authorised capital (in which case no additional resolution is required).

For existing companies wishing to restrict the number of shares that can be issued by the company they will need to amend the articles of association by special resolution to include suitable provisions, if the articles do not already contain such a restriction (or are not deemed to contain such a restriction by virtue of what was set out in the Memorandum of Association).