

Companies Act 2006 1st October 2007 Implementations

Tables A and C

What is Table A?

All companies are required to adopt articles of association when they incorporate. Tables A to F of the Companies (Tables A to F) Regulations 1985 (more commonly known as Table A) set out standardised model articles, which companies can use as the basis for their own articles. If companies do not register their own articles of association, Table A applies by default.

Why has it been amended?

Tables A to F are amended from time to time to bring them into line with changes in company law. The Government made regulations in September 2007 making amendments to the Table A regulations to enable new companies formed on or after 1 October 2007 to take advantage of and avoid conflict with the Parts of the Companies Act 2006 that have come into effect by that date.

Why has a last minute further amendment been necessary?

The Government made draft amendments to Table A available for comment and took comments into account when finalising the regulations to give effect to those amendments over the summer. A couple of further issues were raised subsequent to those regulations being finalised, which caused us to make two further changes to the Table A. We completed this quickly to ensure that Table A would be compliant with the law from 1 October 2007.

What has changed?

The changes made are set out in the Companies (Tables A to F) (Amendment) Regulations 2007 and the Companies (Tables A to F) (Amendment) (No. 2) Regulations 2007, which are available from the OPSI website and / or set out in a statement on the BERR website.

Who does the new Table A apply to?

The new Table A applies to new companies incorporated on or after 1 October 2007 which do not register articles of their own when they apply to be incorporated. Companies are not obliged to use Table A however and can write their own articles or base them on the Table A articles. If companies do not register their own articles of association, Table A applies by default.

When will the new Table A be introduced?

The new Table A came into force on Monday 1 October 2007.

I am about to register a new company – how does this affect me?

The changes made by Government to Table A in September 2007 have ensured that the default articles which apply when a company does not register its own articles are consistent with company law in force from 1 October 2007.

How do these changes affect an existing company?

New Table A does not affect existing companies unless they choose to adopt it. Existing companies can choose to amend their existing articles of association, by special resolution, to bring them in line with changes in the law as expressed in the revised Table A.

Specific impacts of the amendment regulations made on 28 September 2007 that existing companies should be aware of are:

Regulation 50 of Table A is deleted for both private and public companies as it conflicts with sections 281 and 282 of the Companies Act 2006. The effect of these sections of the 2006 Act, in force from 1 October 2007, is that a resolution cannot be passed by use of a casting vote by a chairman. Existing companies with words to the effect of regulation 50 of the 1985 Companies Act Table A in their articles of association should note that such an article may be ineffective from 1 October 2007.

Regulation 54 of Table A is amended to reflect the new rights for proxies to vote on a show of hands provided by sections 284(2)(b) and 324(1) of the 2006 Act. This regulation now reads:

54. Subject to any rights or restrictions attached to any shares, on a show of hands every member who (being an individual) is present in person or by proxy or (being a corporation) is present by a duly authorised representative or by proxy, unless the proxy (in either case) or the representative is himself a member entitled to vote, shall have one vote and on a poll every member shall have one vote for every share of which he is the holder.

Existing companies whose articles include words to the effect of the unamended version of regulation 54 of the 1985 Companies Act Table A, so that they do not specifically reflect proxy rights, may find that from 1 October 2007, section 324 of the Companies Act 2006 nonetheless gives proxies rights.

How do these changes relate to the new draft model articles that come into effect on 1 October 2008?

The regulations setting out the model articles are due to be made in December 2007 and will be commenced on 1 October 2008. The changes to Table A have no impact on the model articles or the timing of their introduction. When the model articles come into force next year, they will replace Table A as the default articles: but a company which already has the revised Table A as its articles will not be affected by the model articles unless it chooses to switch to them.

Is Table A available on the Companies House website?

Yes, the latest version of Table A is available on the Companies House website.

Restricted access to the Register of Members

How does this apply to?

This restriction applies to all external requests from outside the company.

As a result of a request to see the Register of Members what information can the company ask for?

The requester's name and address, or if an organization, an individual's name plus the purpose of the request and whether the information will be disclosed. It is an offence to make a false statement when providing the details required for disclosure.

What options does the company have with regards to disclosure of the Register information?

The company must either comply with the request immediately or they can apply to the courts to restrict the access to the Register.

How would companies take advantage of the change in shareholder disclosure at Companies House?

After 1st October 2007 a company can change its made up date and file an annual return with the shareholders names and addresses (under the 1985 legislation) within 28 days of that new date. The company's next annual return filed after 1st October 2008 will comply with the 2006 legislation and not require the shareholders addresses only their names, unless the shareholders is of a PLC and holds 5% or more of the shares. In this case an address is needed.

Directors' duties

What Part of Directors duties is being implemented on 01/10/07?

Sections 171-174 of the CA 2006 will be implemented on 1st October 2007. These are the Duty to act within powers, Duty to promote the success of the company, Duty to exercise independent judgment and Duty to exercise reasonable care, skill and diligence.

Form 318

What is the Form 318?

It is a notification of the location of the directors' service contracts.

Will companies continue to use Form 318? Yes, companies will use Form 318 to notify the location of the directors' service contracts under new section 228, and directors' indemnities under section 237 until 30th September 2008.

Are there any restrictions around the notification?

Yes, the notification should only be when the register is returning to the register office address as the regulations under Section 1136 SAIL (Single Alternative Inspection Location) do not come into force until 1st October 2008.

Resolutions Part 13

When will Part 13 on Resolutions come into force?

1st October 2007

Will written resolutions need to be signed by all the shareholders?

No, the required majority will be similar to that for shareholders meetings – a simple majority of eligible shares for ordinary resolutions, or 75% for special resolutions.

Will proposed written resolutions have to be notified to the auditors?

Yes, Section 390 of the Companies Act 85 will be amended so that auditors are still entitled to receive all communications that go to members in connection with written resolutions.

Does my company still need to hold Annual General Meetings (AGMs)?

A private company does not need to hold an AGM if there is no obligation to do so in the articles. An existing company must continue to hold an AGM unless it changes its articles to remove any reference to AGM. Public companies have to hold AGMs.

What will be the notice period for shareholders meetings?

Shareholder meetings for private companies can now all be on a 14 day notice period, unless different arrangements are specified in a company's articles.

The Business Review and Directors Report

Who does this apply to?

The Directors Report in the accounts must contain a Business Review. This applies to all companies, except those that file small company accounts.

When does this come into force?

The Business Review will apply to all accounts with reporting periods beginning on or after 1st October 2007.

What is a Business Review?

A Business Review is a fair review of the company's business within the reporting period. It must be a balanced and comprehensive analysis of the development and performance for the company with a description of the principal risks. (See section 417 of the Companies Act 2006)