

# Corporate Law Firm of the Year

Winner of Lancashire  
Dealmakers Awards 2008 and 2009



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# Companies Act 2006: The Final Countdown

Business Law Department  
Forbes Solicitors

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# How Long Has This Been Going On? Introduction

Daniel Milnes



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How Long Has This Been Going On?

- The Long And Winding Road
- History and objectives of the Companies Act 2006
- Think Small First



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How Long Has This Been Going On?

- January 2007
  - Communications between members and companies
  - Hard copy, electronic or website
  - Directors' liability for false & misleading reports
- April 2007
  - Repeal of director's notification of dealing in company shares
  - Takeovers



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How Long Has This Been Going On?

- October 2007
  - Statutory Duties of Directors
    - SS171-178
    - Especially 172
  - New rules on Directors dealing with own companies
    - Loans to Directors permitted
    - Payments for loss of office more regulated



Derivative Actions against Directors

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How Long Has This Been Going On?

- **October 2007**
  - Written Resolutions by Majority
    - Effect on inconsistent Memorandum and Articles of Association?
    - New statutory procedure overrides
  - New Table A (modified twice)
    - Removed obsolete rules on Directors
    - Took out old regulation on written resolutions



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How Long Has This Been Going On?

- **April 2008**
  - New Accounts and Audit Rules
    - Financial years starting on or after 6 April 2008
    - Reduced time for filing
    - New rules on rolling audit appointments
    - Audit Liability Limitation Agreements
  - Company Secretaries
    - Not needed in a private company
  - Execution of Documents
    - New rules on how to sign off contracts and deeds



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How Long Has This Been Going On?

- **October 2008**
  - Creation of the Company Names Adjudicator
    - New rules for challenging company names
    - Similar to trade marks or domain names
  - Directors
    - At least one human being
    - No under 16s



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How Long Has This Been Going On?

- October 2008
  - Directors Continued
    - Conflict of interest (s175)
    - Authorisation of conflicts
    - Benefits from third parties (s176)
    - New declaration of interest rules (s177)
    - Retrospective declaration (s182)
    - Offence of failing to declare (s183)



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How Long Has This Been Going On?

- October 2008
  - Capital Reduction
    - Simplified process for private companies
    - No need to apply to Court
  - Abolition of Prohibition on Financial Assistance
    - Private companies only
    - Other provisions may still apply



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How Long Has This Been Going On?

- October 2008
  - New rules on political donations
  - Trading disclosures
    - Locations and documents
    - Full company name
    - More details in some cases
    - Fines for non-compliance



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# Everything Changes Company Formation

Alexandra Sagar



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## Company Formation

- Up to 30 September 2009
  - Form 10
  - Form 12
    - Statutory Declaration
  - Memorandum of Association
  - Articles of Association



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## Company Formation

- From 1 October 2009
  - Form IN01
    - Statement of Compliance
  - Memorandum of Association
    - 'snap shot' of the company at formation
    - Schedules 1 and 2 of The Companies (Registration) Regulations 2008



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## Company Formation

### Schedule 1 Regulation 2(a)

#### COMPANY HAVING A SHARE CAPITAL

Memorandum of association of [insert company name]

Each subscriber to this memorandum of association wishes to form a company under the Companies Act 2006 and agrees to become a member of the company and to take at least one share.

Name of each subscriber      Authentication by each subscriber

Dated



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## Company Formation

- From 1 October 2009
  - Memorandum of Association
    - Object Clause
    - Authorised Share Capital
  - Articles of Association
    - Default Model Articles
      - Schedules 1-3 The Companies (Model Articles) Regulations 2008
    - Bespoke Articles



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## Default Model Articles

- Comparison with Table A
  - Liability
  - Assets
  - Directors' Decision Making
  - Alternate Directors
  - Conflicts of Interests
  - Retirement by Rotation



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## Alteration of Articles

- Entrenching provisions in the Articles of Association
  - Particular provisions within the Articles of Association only amended or repealed
    - if conditions met; or
    - procedures complied with which are more restrictive than those required for special resolution.
  - Prohibition on permanent entrenchment
  - Benefits of entrenchment



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## Alteration of Articles

- Filing Requirements
  - Entrenchment
    - Notice to the Registrar
    - Statement of Compliance
  - All amendments to articles
    - File with Registrar amended articles
    - Sanctions for non compliance



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## Alterations of Articles

- Effect on pre 1 October 2009 companies
  - Memorandum treated as part of the Articles of Association
    - Objects Clause
    - Authorised Share Capital
  - Articles of Association
    - Existing Articles
    - Default model Articles
    - Bespoke Articles



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## There's No Limit Share Capital

Charlotte Wood



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## Share Capital

- Authorised Share Capital - Currently:
  - Company must have an Authorised Share Capital
  - Maximum level of share capital a company can issue
  - Stated in Memorandum
  - To allot more shares, amendment to Memorandum required (Ordinary Resolution), Form 123



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## Share Capital

- Authorised Share Capital - From 1 October 2009:
  - No requirement to have ASC
  - Can choose to have one by including provision in Articles
  - New companies likely to be formed without limit



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## Share Capital

- Authorised Share Capital - From 1 October 2009:
  - Existing companies with ASC in Memorandum:
    - Concept remains but treated as a restriction in the Articles on the number of shares that can be allotted
    - Can be amended or removed by Ordinary Resolution or on resolution of shareholders to allot new shares



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## Share Capital

- Issuing new shares – Currently:
  - 1985 Act, Section 80
  - Requires consent of shareholders or authority in Articles to allot new shares



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## Share Capital

- Issuing new shares – From 1 October 2009:
  - 2006 Act, ss 549 – 551
  - Requirement for consent abolished for private companies with one class of share, subject to Articles
  - Where have more than one class, old rules apply
  - Existing companies need formally to adopt s550
  - Notify Companies House, including statement of capital



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Please Mr Postman  
Members' and Directors'  
Addresses

Charlotte Wood



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Members' and Directors' Addresses

- Directors – Currently:
  - Addresses listed in Register of Directors & at Companies House
  - Accessible by the public
  - Confidentiality Orders may restrict access to addresses in limited circumstances



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Members' and Directors' Addresses

- Directors – From 1 October 2009:
  - Service address only in Register of Directors & at Companies House
  - Any address where documents can be delivered
  - New Register of Directors' Residential Addresses
  - Directors & former directors whose addresses already listed?



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Members' and Directors' Addresses

- Company Secretary's Address
  - Currently must be provided
  - From 1 October 2009 only a service address need be provided
  - No need to give a residential address for any records



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Members' and Directors' Addresses

- Register of Members:
  - Rules remain the same
  - Shareholder's name and postal address included (Address does not need to be residential address)
  - Information relating to his shareholding
  - A person wishing to inspect/make copies must apply to company and give reasons – “proper purpose”



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Members' and Directors' Addresses

- Members' details at Companies House
  - Annual Return
  - For private & non-trading public companies, addresses not included



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# OK Computer New Ways at Companies House

Sarah Wilkinson



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## New Ways at Companies House

- New Forms
  - 200 new and revised forms
  - New forms will replace the old forms from 1<sup>st</sup> October 2009



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The image shows a screenshot of the AP01 'Appointment of director' form. The form is titled 'AP01 Appointment of director' and includes instructions on how to use the WebFiling service. It contains several sections for data entry: 'Company details' (Company number, name, SIC code, etc.), 'Date of director's appointment' (with a date picker), 'New director's details' (Name, Title, Address, etc.), and 'New director's service address' (Address, Post code, etc.). There are also checkboxes for 'Filing in the form' and 'Filing in the form'.



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## New Forms

- 288a → **AP01/AP02/AP03**
  - Appointment of director/secretary
- 288b → **TM01/TM02**
  - Removal of a director/secretary
- 288c → **CH01**
  - Change of director's details
- 363 → **AR01**
  - Annual Return
- 287 → **AD01**
  - Change in registered office



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## New Forms

- 10 & 12 → **IN01**
  - Company formation
- 88(2) → **SH01**
  - Return of allotment of shares
- 395 → **MG01**
  - Particulars of mortgage/charge
- 403a → **MG02**
  - Statement of satisfaction in full or in part of mortgage/charge
- 225 → **AA01**
  - Change in accounting reference date



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## New Ways at Companies House

- Registrar's new powers – Part 35
  - Powers to amend the register (s1075)
  - Power to annotate register (s1081)
  - Inconsistency on the register (s1093)
  - Defective delivery of documents (s1072 -1074)
  - Administrative removal of material from the register (s1094)



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New Ways at Companies House

- Registrar's new powers – Part 35
  - Probability of compulsory electronic filing (s1069)
  - New general false statements offence (s1112)
  - Changes to the arrangements for inspecting a company's registers (s114-128)



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New Ways at Companies House

- Dissolution and Restoration
  - Administrative Restoration of companies to the register (s1024-1028)
    - Former member or director need not apply to Court
    - Several conditions to satisfy
  - Voluntary Dissolution extended to Public Companies (s1003)



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Pick Up The Pieces  
Filling In The Gaps

Daniel Milnes



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## Filling In The Gaps

- Trading Disclosures
  - The Companies (Trading Disclosures) (Amendment) Regulations 2009
  - Liquidators, Administrators, Receivers
  - Where all directors have protected addresses



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## Filling In The Gaps

- Company Charges
  - Mainly re-enacts the Companies Act 1985
  - Not the 1989 amendments that never came into effect
  - Can keep register of charges away from registered office
  - New powers to change and rationalise
  - Power to remove double registration requirements, creating deemed registration against company if registered against asset with own special register



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## Filling In The Gaps

- Buy-Back of Own Shares
  - Buy-back out of capital
    - No Statutory Declaration required
    - Directors statement and Auditor's report
    - Special Resolution
    - Public Notice
    - Directors statement and Auditor's report available for inspection at registered office
  - Period of authority for market and off-market purchase increased from 18 mths to 5 yrs
  - Limit on holding own shares in treasury removed (was 10%)



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## Filling In The Gaps

- **Company Names**
  - The Company and Business Names (Miscellaneous Provisions) Regulations
  - Use of numbers, punctuation etc
- **Overseas Companies**
  - Register if got an establishment in UK
  - Registration of charges over UK assets more like UK company rules



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## Tired Of Waiting

- **Charitable Incorporated Organisations**
  - Created by Charities Act 2006
  - Consultation recently closed on regulations
  - Model constitution very like Companies Act 2006 Company Limited by Guarantee
  - May be available 2010?



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## It Ain't Over 'Til It's Over Conclusion

Daniel Milnes



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## Conclusion

- Heaven Knows I'm Miserable Now
- Panic
- Ask
- Please, Please, Please Let Me Get What I Want
- How Soon Is Now?



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## Top Ten

10. Adopt electronic communication with shareholders
9. Use the right written resolution format
8. Use the right forms
7. Directors: addresses, disclosures, loans and conflicts
6. Financial assistance no longer prohibited for private companies



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## Top Ten

5. Get trading disclosures right
4. Fire the company secretary?
3. Directors: duties and service agreements
2. Dilution, protection and entrenchment
1. Articles review: consider adopting the new model or a variation from 1 October



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## Questions



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## Companies Act 2006: The Final Countdown

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