

Note:- One of ARMA's key roles is to provide its members with technical support. However, from time to time, technical or other issues arise where guidance for lessees as well as their property manager is deemed appropriate. Such guidance is contained in these Lessee Advisory Notes (LANs) which ARMA members can copy and distribute to their clients and lessees as appropriate.

Summary

- The Companies Act 2006 (which was fully implemented in October 2009) changes the way small private companies such as resident management companies (RMCos) can and will be run.
- From October 2009 all newly formed RMCos have new model default articles that replace the Tables in previous Companies Acts.
- There are also new model default articles for Right to Manage Companies (RTMCos) which also apply to existing RTMCos.
- Existing RMCos can choose to adopt some of the changes in the 2006 Act if they wish.
- If an existing RMCo wishes to change then ARMA advises that you check the articles of your company and seek specialist legal advice.
- There are other changes which follow from the 2006 Act or changes at Companies House that are requirements for any company. We have set these out as well.

Streamlining of Meetings and AGMs

The Act abolishes the current obligation for private companies to hold annual general meetings. Companies can still hold shareholder meetings if they wish to; or by members representing 10% of voting shares requesting one. (5% if it is more than 12 months since the members met.) Companies may still need to hold a meeting in certain circumstances, since they will not be able to dismiss a director or an auditor before the end of his/her term of office by written resolution.

The Government has clarified that articles based on the 1985 Company Act Table A do not count as expressly requiring an AGM. But do check the ones written for your company.

There will no longer be a requirement to send out annual accounts before an AGM, if no AGM is to be held, but annual accounts must be sent to shareholders or members by the time they are due for filing at Companies House. Note that there is no requirement for annual company accounts to be approved by the shareholders/members; that is the responsibility of the directors. If no AGM is held any auditor appointed by a private company will be deemed re-appointed for the following year unless the company takes steps to do otherwise.

Use of Written Resolutions

So if there are no meetings how do shareholders or members have a say? The 2006 Act assumes that all small private companies such as RMCos will use written resolutions in future, perhaps sent electronically, to obtain approval. The Act sets out how these written resolutions have to be carried out by directors if that is what they choose to do.

Position of Company Secretary

Private companies do not have to appoint a company secretary unless they choose to do so but do check the articles of your company. If the company secretary is not used, any director or person authorised by the directors can carry out some or all of the duties of the secretary. All that is required is for the current secretary to resign.

Use of E-mails to Communicate with Shareholders/Members

All companies can opt to use e-mails to communicate with their members/shareholders as the default position for communications subject to certain conditions. Namely there needs to be a shareholders' or members' resolution to approve the use of e-mails if the current articles do not allow it; and any individual has the right to opt out at any time and be sent a hard copy.

Use of Websites to Communicate with Shareholders/Members

A company can adopt communication by website as a default position subject to certain conditions, (Part 4 of Schedule 5 of the Act). The company needs both to seek individual agreement of each intended recipient and to pass a resolution for the company to use website communications as the default. Where an individual fails to respond within 28 days, the company may consider this as the individual's deemed agreement. The company cannot ask again for his or her agreement within less than 12 months. The company must notify the individual each time information is published on the website.

Advice to Existing RMCos and RTMCos

Directors and members of existing companies are not required to make any changes to their constitutional documents as a result of the Companies Act 2006.

Existing companies may wish to change their existing articles to take advantage of the greater flexibility in the newer models if the existing articles do not allow those changes. If they wish to do so they are strongly advised to take legal advice. To do so those companies need to make a change by passing a special resolution in which 75% of those eligible to vote must vote in favour whether the vote is by show of hands, by poll at meeting or by written resolution.

THERE ARE OTHER PARTS OF THE 2006 ACT OR ACCOMPANYING CHANGES MADE BY COMPANIES HOUSE THAT ARE NOT OPTIONAL FOR RMCOS AND RTMCOS AS FOLLOWS.

Deadline for Filing of Company Accounts

The deadline for private companies to file annual accounts and reports reduces from 10 months to 9 for financial periods beginning on or after 5 April 2008.

New Rules Relating to Directors' and Secretaries' Addresses

Company secretaries, if appointed, need only file at Companies House a service address; there is no need to give a home address.

Other directors have to file two addresses; a service address which goes on the public record and a home address which is kept on a confidential site and only disclosed to certain public authorities. Companies have to keep a register of the addresses of directors but this should contain service addresses, for example simply the company's registered office. Companies must also keep a register of directors' home addresses but this should be kept confidential and may be kept in whatever form the directors think best.

Register of Members or Shareholders

Any shareholder or member of a company has the right of access to the register without charge and any other person on payment of a fee. The 2006 Act amends this right by requiring those who ask to inspect the register to explain who they are, what is the purpose of the request and whether the information will be disclosed to others. The directors, if not happy with the purpose, may apply to a court for an order to permit the company to refuse the request. The Act also allows for a shareholder, member or other person to ask for a copy of the whole or part of the register on payment of a fee.

Company Websites and E-Mail Communications

The 2006 Act allows all companies to make use of electronic communications if they wish. But it is a legal requirement that all companies using a website and emails must put on them the same information as required on letter headed paper. So the information will be registered name and office of the company, trading name if different, company registration number and whether registered in England, Scotland or Wales.

Late Filing Penalties Increased

All private and public limited companies must send their accounts and reports to Companies House. The directors are personally responsible for ensuring that company accounts and reports are delivered before the time allowed runs out. Delivery means actual receipt at Companies House in the correct format. If they are late, the law automatically creates a penalty.

Length of delay (measured from the date the accounts are due)	Private Company
Not more than 1 month	£150
More than 1 month but not more than 3 months	£375
More than 3 months but not more than 6 months	£750
More than 6 months	£1,500

The amounts set out in the table above will be doubled where the accounts are filed late under the Companies Act 2006 and the previous year's accounts under that Act were also filed late.

- 0 -

Association of Residential Managing Agents Limited (ARMA)
178 Battersea Park Road, London SW11 4ND
Tel: 020 7978 2607 Fax: 020 7498 6153
Email: info@arma.org.uk Website: www.arma.org.uk

Whilst every effort has been made to ensure the accuracy of the information contained in this Lessee Advisory Note, it must be emphasised that because the Association has no control over the precise circumstances in which it will be used, the Association, its officers, employees and members can accept no liability arising out of its use, whether by members of the Association or otherwise. The Lessee Advisory Note is of a general nature only and makes no attempt to state or conform to legal requirements; compliance with these must be the individual user's own responsibility and therefore it may be appropriate to seek independent advice.