

23. The method of forming a company in the United Kingdom is newly regulated by the Companies Act 2006. This Act is the restatement of British company law, replacing former company legislation (e.g. the Companies Act 1985). Read the text about the basic issues of registration.

1 Under the Companies Act 2006, the role of the *memorandum of association* is greatly reduced for both existing companies and new 3 companies. It will contain only very limited information: the names of the subscribers (one or more persons); the fact that they wish to 5 form a company; and that they agree to become members of the company and, if the company has share capital, take at least one share 7 in the company each. It will be primarily an historical record rather than affecting the ongoing operation of the company. Information that 9 was previously provided in the memorandum on formation will be provided to the Registrar in the articles of association if these are not 11 supplied by the *default* application of model articles⁶ and in the form of a series of *statements* made in the application for registration. The

⁶ The formation provisions in the Companies Act 2006 have been drafted with a view to supporting electronic incorporation, and it is envisaged that the required information could be provided to the Registrar in the form of a series of data entries or alternatively in hard copy.

⁷ The British term *memorandum of association* should be translated, according to the type of company, either as *společenská smlouva* or *zakladatelská smlouva*; *Articles of Association* should be translated in both types of company as *stanovy*. The US term *Articles of Incorporation* corresponds to the British *Memorandum* and Czech *společenská* or *zakladatelská smlouva*; *stanovy* are usually called *corporate by-laws* in the US and are NOT filed with the Secretary of State.

⁸ A *company limited by guarantee* is an alternative type of incorporation used primarily for non-profit organisations that require corporate status. A guarantee company does not have a share capital, but has members who are guarantors instead of shareholders. The guarantors give an undertaking to contribute a nominal amount towards the winding up of the company in the event of a shortfall upon cessation of business. It cannot distribute its profits to its members, and is therefore eligible to apply for charitable status if necessary. Common uses of guarantee companies include clubs, membership organisations, sports associations and charities.

⁹ In line with the recommendations of the Company Law Review Group (which was in charge of the company law reform) the Secretary of State will have the power to prescribe model articles, including "default" model articles, for different descriptions of companies formed under the Companies Act 2006.

13 memorandum used to provide the *company's objects*. For new companies this will not be necessary, as the default position under the 15 new Act is that a company's objects are unrestricted [s. 31(1)].⁷

The *application for registration* of the company must state (a) the 17 company's proposed name, (b) whether the company's registered office is to be situated in England and Wales (or in Wales), in 19 Scotland or in Northern Ireland, (c) whether the liability of the members of the company is to be limited, and if so whether it is to be 21 limited by shares or by guarantee⁸, and (d) whether the company is to be a private or a public company. If the company is supposed to have 23 a share capital the application must also contain (a) a *statement of capital* and initial shareholdings, and (b) a statement of the company's 25 proposed officers. The application must also include a *statement of the intended address* of the company's registered office, and (b) a 27 copy of any proposed articles of association⁹. The *statement of compliance* is attached to the application documents and its purpose 29 is to confirm that the requirements of registration have been complied with. The registrar could rely on the statement of compliance, but in 31 practice his staff check that the documents are formally in order. If satisfied the registrar will issue a *Certificate of Incorporation*.

www.dti.gov.uk

M. Chromá, New Introduction to Legal English, II.

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