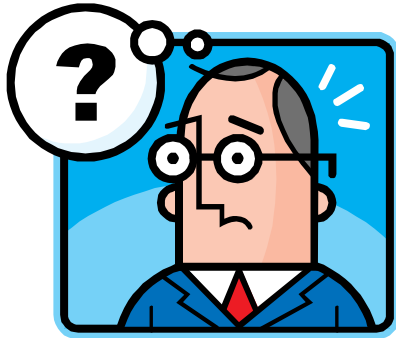
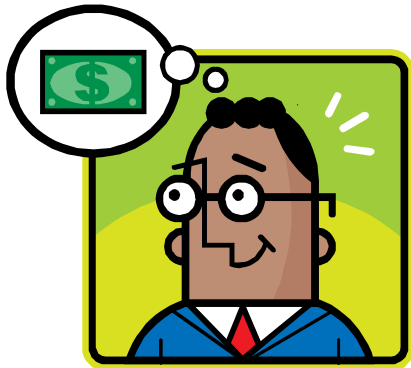


**Update on provisions of
Companies Act 2006
which came into force
1st October 2009**

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Chaos!



Fundraising!

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Constitutional documents

- Fundamental changes to memorandum and articles
- New model forms of both

Memorandum

- Much reduced role on company's objects automatically become part of its articles (no need to register at Companies House)
- No requirement for objects at all and if none contained company's objects unrestricted

Example Memorandum

COMPANY HAVING A SHARE CAPITAL

Memorandum of association of *[insert name of company]*

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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WATCH THIS SPACE!

In response to lobbying from lawyers and company formation agents and others in the industry an interim U turn sees the re-introduction to the formation documents of a prescribed memorandum detailing subscriber information. Pending decision next year.

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Articles of Association

- New model articles have replaced the current “default” articles of association prescribed by regulation eg table A
- Published model articles:
 - Private company limited by shares
 - Private company limited by guarantee
 - Public company

Procedure

- New companies can either adopt new model articles unaltered or ones of own
- Old ones for existing companies can remain but to the extent inconsistent with Companies Act 2006, the requirements of the Act to prevail
- Consider amending articles to update and remove previous provisions contained in memorandum eg specific objects and update from Companies Act 1985

Model articles for private Company with share capital

- Generally well drafted and clear
- Not as lengthy as table A and do not contain mostly inapplicable provisions for private companies having limited number of directors and shareholders such as:
 - Retirement of directors by rotation
 - Liens on shares
 - Proxies

- Model articles do not specify grounds for directors to refuse to register transfers: more discretionary approach in keeping with small company practice
- Table A article 49 (taking a poll) much simplified because in a small company it should always be possible to take polls immediately
- Table A article 69 omitted – model articles do not provide for a minimum number of directors
- Table A article 65-69 omitted (power to appoint alternate directors). Model articles assume most small owner managed businesses will not want power to appoint alternates.

Entrenchment

- General rule: articles changed by special resolution
- If a company's articles contain restrictions on making changes so that specified articles can be changed only if conditions are met or procedures applied which are more restrictive than a special resolution, then those articles contain provision for entrenchment

Entrenchment continued

- Some may require consent or agreement of third party (eg secretary of state, regulatory authority)
- Some may prohibit amendment altogether – Charitable companies trading for individual profit/distributing profits to members
- If not unchangeable then provision can be changed by unanimous consent (section 22 (3) Companies Act 2006)

Section 22 (2) Companies Act 2006

- Problematic provision which defines provision for entrenchment and provides that such provisions can only be introduced in one of two ways: on formation or by unanimous agreements of members
- All of section 22 was to be brought in but it was pointed out this may also apply to class rights where you have different classes of share which can only be amended by holders of that particular class of share
- Not brought into force and under contemplation

Entrenchments continued

- Removal of an entrenchment provision requires notification under section 23(2) Companies Act 2006
- When a company has a provision for entrenchment in its articles section 24 will require any changes to it to be accompanied by a Statement of Compliance when sent to Companies House

- On a buy back of shares, no longer need to have power in articles. Can specifically state different term of powers exercised by the company but default position is company does have power by a special resolution to buy back shares
- Similar provision in relation to issue of redeemable shares
- Company no longer needs to have authority to reduce its share capital in its articles.

COMPANIES ACT 2006
CHANGES FROM 1 OCTOBER 2009
CHANGES TO SHARE CAPITAL

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Allotment of shares without authority

**What happens to current authorities and
shareholder rights of pre-emption?**

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**Will authorised share capital still have to
be taken into account for share allotment?**

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**Does the law change in relation to
redeemable shares?**

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**What about other procedures that impact
on share capital, such as own share
purchases and reductions in capital?**

**Can companies redenominate their shares
into shares of another currency?**

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MISCELLANEOUS OTHER POINTS OF INTEREST

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Officers

- Company Secretary (Part 12)
- and
- Directors (Part 10)

Company Secretary

- s.270: private company is no longer required to have a secretary.
- Although a company MAY still have a CS if they wish and status is same as under 85 act
- Acts carried out by secretary – s.274(b)
- Execution of documents

Directors

- At least one 'natural person' s.155
- Sole shareholder and director – cannot be corporate
- Minimum age of 16 – s.157
- Codification of duties s.170 – s.177

Service Address

- Companies House records are public documents
- S.240 - protection from disclosure
- Option to use an alternative
 - Trading address
 - Registered office
- No info on other directorships either
- Current information will remain until changed

Electronic Communication

- much easier for companies to communicate electronically
- however, can only be sent/receive if agreed generally
- various provisions deem agreement: s.298
- no deeming provisions for individual

Use of Website

- company can provide information to members on its website
- agreement or articles
- but MUST inform members by e-mail/hard copy when new info is published
- entitlement to request hard copy: s.1145

Company Name

- procedure for changing name can now be contained within articles: s.79
- existing companies can amend articles to allow this
- opportunity to challenge 'same as' names: s.67
- 2 stage process at CH

Written Resolutions

- no longer unanimous consent required
- ordinary – 50%+
- special 75%
- proposed by either the directors or shareholders

Connected Persons

- relevant to inter alia, substantial property transactions
- definition has been extended
- DOES NOT include a director's siblings!

Forms

ALL CHANGE!

The seminar content is not intended to cover all aspects of the 1 October 2009 implementation of the new Companies Act 2006. It is designed to provide a general introductory summary of the subject matters covered. It does not purport to be exhaustive or to provide legal advice; nor should it be used as a substitute for such advice. If you require further advice as to how the Companies Act 2006 will impact your company, particularly with regard to changes that may be necessary to your articles of association, please contact either Martin Smith or Kate Blank whose details are provided below:-

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