

IS YOUR COMPANY UP TO DATE?

We think you should review your proprietary company's Constitution (memorandum and articles of association) and any Shareholders Agreement for compliance with changes in the law. In our experience, many companies are not up to date and their managers assume various repealed laws still operate. These issues become problems when the officers or shareholders change or are in dispute, or when the company borrows from a bank.

Company Powers: The "objects clauses" in the memorandum were to set out the kinds of activities the company could operate. These are now redundant and may be an impediment to modern business.

Constitution: The memorandum and articles of association are renamed as a "Constitution". There is now no legal requirement for a Constitution at all. There is also now a "replaceable rules" regime covering the internal affairs of a new company that applies, unless the Constitution says otherwise.

Shares: The concept of "par value" or nominal value, of a share has been abolished. All that remains is its actual issue price, which can be any amount on a case-by-case basis. The concept of an "authorised share capital" is also redundant. There is no limit on the number of shares that can be issued.

Financial assistance: The prohibition against a company helping a buyer of its shares has been diluted further.

Buy Back: A "buy-back authorisation" clause in the Constitution is now redundant.

Shareholders: Now a company need only have one shareholder (not two).

Directors: Now a company need only have one (Australian resident) director. The Constitution of a subsidiary may now authorise its directors to act in the best interest of the holding company.

Secretary: A secretary is now optional.

Officer's Indemnity: The rules about a company indemnifying its officers have been changed. (Your insurance policy should also be reviewed against these changes.)

Annual Financial Statements: These are now usually optional.

A.G.M.: Annual general meetings are not required for proprietary companies.

Common Seal: A common seal is now optional.

What to do? In our view a Constitution remains a useful document because company law alone may not satisfy the shareholders' true expectations. If there is no Constitution, the replaceable rules regime applies but that is not wholly satisfactory for a company that is not a family company. So we invite you to review your proprietary company's Constitution against the new laws and the commercial expectations of your shareholders. It is worth it.

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