



Entrepreneurs and the New Companies Act

The new Companies Act finally came into effect on 1 May. We will no doubt come across clauses and provisions that may be confusing and complicated – this is typical of any new piece of legislation. There are, however, some fundamental differences between the new Act and the old one.

The new Act is meant to have been written in clear and simple English, easily understood by the man in the street. A Memorandum of Incorporation (MOI) has replaced the memorandum and articles of association of the old Act. This is a document that sets out rights, duties and responsibilities of shareholders, directors and others within a company. All companies are required to have a MOI and only certain issues can be changed as identified in the Act. All current articles of associations will automatically be converted into the MOI.

The transitional provisions provide for the MOI to be replaced within two years from implementation of the new Act. The new MOI may deal with a matter not addressed by the Act, alter alterable provisions (not all provisions of the new Act may be amended by a company) and may impose a higher standard or more onerous provision than what the alterable provisions require. Review your existing articles of association and shareholders agreements and incorporate the principle provisions in the MOI.

There are also changes to the capitalisation of companies. Par value shares are a thing of the past as a company may not authorise new par value shares after 1 May, the effective date. Par value shares may continue to be issued up until the authorised share capital. All shares under the new Act will be no par value shares. The new Act replaces the existing regime of judicial administration of failing companies with a modern business rescue concept. They provide protection to the company and its stakeholders during times of financial crises.

Take time to familiarise yourself with the Act and consider what should be included in your MOI.

This will indeed be a learning curve for all business owners.

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