

Amend your Articles now or lose out

By [Andrew Hannington](#)

27 Feb 2012

Companies with a year end 29 February 2012, which have a public interest score of below 350 and have the opportunity to elect not to be audited, need to ensure they have altered their existing Articles of Association (deemed MOIs [Memorandum of Incorporation]) if they wish to avail of the benefits conferred on such companies under the new Companies Act, 2008, which finally came into effect last year.



The thresholds are as follows:

- >350 all companies require an audit;
- 100-350 (financial statements internally compiled) requires an audit;
- 100-350 (financial statements externally compiled) requires an independent review (a light form of audit);
- All other companies require an independent review unless the exemption below applies:

Companies where all the shareholders are directors do not require an independent review.

My concern is that grey areas still remain regarding the issue of the 'independent review' in the case of companies with such a public interest score. This uncertainty may have driven many company directors - and even more so their professional advisers who may stand to lose out on business - to have simply adopted a 'wait and see' attitude and omitted to perform this vital step.

Thousands of companies may find themselves having to perform an unnecessary annual statutory audit, at considerable expense conducted by highly skilled and highly-paid registered auditors if they have not changed their MOIs. Such companies have the option of continuing with the annual audit - and indeed I would recommend they do so for the assurance that it gives all stakeholders - but they are not compelled to do so. Certainly, many smaller firms should not be audited.

At issue is that companies that should not continue with the audit, through neglect may find themselves bound to certain requirements in Table B of Schedule 1 of the Companies Act, 1973. If this Schedule was adopted by companies then it would lead to additional requirements having to be met that are no longer required in terms of the Companies Act, 2008.

Already many companies with December year-ends will have found themselves on the wrong side of this wasteful predicament, though are perhaps unaware of their error. However, a far higher proportion of companies have a February year-end and unless they take immediate steps may find themselves footing an unnecessary bill.

Some companies will be paying for a full year's audit when an independent review would have been sufficient at half the cost of a full audit, while others still would not have needed the services of an auditor at all.

Unless you have some specific reason such as a corporate action pending, I would recommend that any company with a public interest score of less than 350 immediately amend its MOI, as this leaves you the option to have an audit or independent review or neither. Without the amendment, that flexibility is denied you.

Amendments

As to what amendments should be made, Table B of the Articles states that: the right to transfer shares is restricted; all companies must hold an Annual General Meeting; and all companies must appoint an auditor. The audit will then have to be conducted by a highly skilled, highly paid, registered auditor.

Each of these three requirements have been altered in the Companies Act, 2008, so if you have not amended your company's MOI, your company will still require an audit for its year end, even if it does not qualify for an audit under the Companies Act.

Therefore to amend your MOI before the year-end, companies have to approve a special resolution removing the requirement for audit and any additional changes.

As it is now extremely late I suggest companies do the following, unless otherwise expressly prohibit by your Articles/MOI: The special resolution be approved by electronic means (Section 60); and the notice period for a shareholders' meetings be waived (Section 62(2A)).

ABOUT THE AUTHOR

Andrew Hannington is the national chairman of PKF chartered accountants and business advisers. PKF chartered accountants and business advisers is an independent national and global network of independent firms, delivering services with local grounding and global reach. PKF has a longstanding track record in South Africa and comprises eight firms in the major centres with over 1000 employees. The firm was previously known as Fisher Hoffman.

For more, visit: <https://www.bizcommunity.com>