

LATEST UPDATE – April 2008

Welcome to our new publication which has been designed to keep you up to date with the latest developments in business. We will release further publications as and when issues of interest to you arise.

Our New Constitution

Our proprietary limited companies are now being incorporated with our new Constitution. Our Constitution has recently been reviewed and updated. The main areas of change include:

- Clauses 60 to 66 deal with Division 7A loan agreements. All definitions relating to these clauses are now located in clause 60. The provisions of these clauses have also been updated.
- Clause 12(a) relating to proxies has been inserted.
- There is now no maximum number of directors. See clauses 25 and 26.
- Clause 35 dealing with personal interests of directors has been amended to better reflect the provisions of sections 191-194 of the Corporations Act.
- Clause 59 dealing with indemnities has been amended to better reflect the provisions of sections 199A-199C of the Corporations Act.
- Clauses 79 to 89 dealing with forfeiture of shares and liens over shares have been substantially reviewed.
- The provisions dealing with share rights (clauses 98 to 102) have been redrafted so that the rights, privileges and obligations attaching to each class of shares have been consolidated in the clause dealing with the particular class or classes of shares.

Please telephone or email us to obtain a specimen copy of our new Constitution for your perusal.

Over recent years there have been many changes to company law which simplify the way private companies are administered. If your corporate clients have not upgraded their constitution within the last 10 years their constitutions will not include these time saving amendments. *Cut red tape and upgrade now!*

Division 7A – Shareholder Loans

Division 7A of Part III of the Income Tax Assessment Act 1936 requires a specific loan agreement to be in place to protect loans given to shareholders and associates by private companies from the 'deemed dividend' provisions of the Act.

Our Constitution incorporates a complying Division 7A loan agreement which is an open facility for all periods. *But beware! The Constitution by itself will not be accepted by the Commissioner of Taxation as a complying loan agreement for the purposes of Division 7A.*

The ATO has recently set out its interpretation of these loan agreements in Draft Taxation Determination TD2007/D19.

It is advisable that a schedule setting out each amount drawn down

under a Division 7A loan agreement and the date of the respective draw down is prepared and confirmed in writing by the parties to the loan, ie, the company and the shareholder or associate.

We will be watching out for further changes to the Draft Taxation Determination which may require further amendments to the relevant clauses in our Constitution.

In the meantime if you would like a copy of a Memorandum on open facility Division 7A loan agreements in constitutions prepared by Binetter Vale Lawyers, [please contact us](#).

OSR Cheque Acceptance Policy

As recently foreshadowed by us, the OSR has amended its policy on acceptable methods of payment of duties effective from 14 April 2008.

For amounts up to \$50

- Cash
- Money orders
- All cheques

For amounts between \$50 and \$5000

- Cash
- Money orders
- Building society, credit union or bank cheques
- Clearly marked trust or *general account cheques* drawn on the account of solicitors, accountants etc.

For amounts over \$5000

- Cash
- Money orders
- Building society, credit union or bank cheques
- Clearly marked trust cheques drawn on the account of solicitors, accountants etc.

We are happy to continue our 'stamping service' on the following basis.

For duty on a transaction up to \$50 we will provide the payment and include it in our invoice.

For duty on a transaction in excess of \$50 we will require from you payment by any of the required methods of payment.

Pension Implementation Pack

In addition to providing all necessary forms and minutes for account based and transition to retirement pensions, we can now provide you with a stand alone Product Disclosure Statement describing the main features of these pensions. You can [order on line or by email](#). All we need is the name of the Superannuation Fund!

Fee waivers for deceased estates

It has come to our attention that ASIC is no longer exercising its discretion on a regular basis to waive late lodgment fees on documents lodged and relating to deceased estates.

If any of your clients have passed away we recommend that you contact us as soon as possible to discuss the options available to update the ASIC records irrespective of whether Probate or Letters of Administration have been granted.

Disclaimer

The information provided in this document is for your general information only. It is not intended that anyone adopt this information to their personal circumstances without first seeking professional advice.