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## **Less than two months left to amend your MOI**

The Companies Act, 2008 became effective 1 May 2011. The Act amended the requirements for companies when incorporated to have a set of articles of association and memorandum of association (articles and memorandum) to a new Memorandum of Incorporation (MOI). The previous articles and memorandum is deemed to be the new MOI for the purposes of the Companies Act, 2008. The Transitional provisions provided that for a period of 2 years after 1 May 2011, a company can amend their MOI's free of charge to bring it in line with the Companies Act, 2008 requirements.

The deadline of 1 May 2013 for this replacement is fast approaching and less than 2 months remain for companies to amend their articles and memorandum of association to a MOI free of charge.

There seems to be uncertainty from companies on the implications of them not amending their article and memorandum. During the 24 months, from 1 May 2011 to 1 May 2013 the old articles and memorandum remains in effect for companies unless there are specific transitional provisions that override the articles and memorandum of association. The transitional provisions is captured in Schedule 5 of the Act and includes requirements such as the duties, conduct and liabilities of directors, approval of financial assistance or distributions. The requirements set out in Schedule 5 therefore apply to companies with effect of 1 May 2011, even if the articles and memorandum had stated any other requirements.

After the 24 months, and therefore from 1 May 2013, the previous articles and memorandum will continue as the MOI of the company. If there is any requirements in the articles and memorandum of association that is in conflict with the Act then those requirements will be void from 1 May 2013.

Companies should undertake a review of their memorandum and articles and identify any possible conflicting provisions. The decision to amend the articles and memorandum is ultimately the company's own decision and should be based on their review of the documents.

An example that companies need to consider is the fact that the current articles and memorandum requires a company to prepare annual financial statements that are required to be audited at the end of each financial year. In terms of the Companies Act, 2008 not all companies require an audit of their annual financial statements. Companies should therefore take note that this is one of the requirements included in their memorandum and articles that should be adhered to. As this is not in conflict with the Companies Act, 2008 then after 1 May 2013 this should still be adhered to although not a requirement of the Companies Act, 2008. Companies can alter their MOIs to impose a higher restriction or more onerous requirements on the company, which the company would then have to adhere to.

Companies should take note that it is not compulsory to amend their articles and memorandum (deemed MOI) but it would be a prudent business decision to review the current articles and memorandum requirements in line with the requirements of the new Act and to take note that any conflicting provisions, not already included in the transitional provisions, will not be valid after 1 May 2013.