

Mr Adam Gray
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By email: companiesact2006_consultation@berr.gsi.gov.uk

29 June 2008

Dear Mr Gray,

Draft regulations: 'The Companies (Model Articles) Regulations' and 'The Companies (Shares, Share Capital and Authorised Minimum) Regulations 2008'

We welcome the opportunity to comment on the above draft regulations.

The Companies (Model Articles) Regulations

We appreciate that the Government's response to the July 2007 consultation indicates that separate model articles for unlimited companies are not to be included in these regulations. The reasons for this decision are said to be that these types of company either do not differ sufficiently from other types of companies for which model articles are provided, or are too specialised and thus likely to need bespoke articles.

We disagree with this position. Model articles for unlimited companies are already provided (Table E) in the existing legislation. We consider Table E to be very useful in practice and see its proposed loss as an unwarranted deprivation. When considering whether an unlimited company should be formed it is always advantageous to point to Table E as to the form of model articles that are needed. Similarly, when management are considering a share capital reduction in an unlimited company, Table E serves as a useful check that the articles contain the requisite powers. We do not believe that it would be difficult to emulate Table E in a similar fashion in the new regulations and recommend that it should be done.

We appreciate that the unlimited company model articles based on Table E need very few changes to the private limited company model articles. Consequently, an alternative approach (but less appealing), which reduces unnecessary replication and duplication in the regulations, is to have a regulation that specifies the necessary adaptation of the model articles for a private limited company so as to apply them to an unlimited company; thus avoiding a complete schedule for the model articles of an unlimited company. This would be similar to the approach taken in the Large and Medium-sized Companies and Groups (Accounts and Reports) Regulations 2008 (Regulation 4) when specifying the form and content of a medium-sized company's Companies Act individual accounts.

The Companies (Shares, Share Capital and Authorised Minimum) Regulations

We note that the draft regulations specify that *"The published spot rate is the middle spot exchange rate prevailing on the foreign exchange market at 4pm on the relevant day as published in respect of that day by the Financial Times"* [Article 4(2)].

We consider specification of an exact time of day is over prescriptive for two reasons. The Financial Times only publishes one rate each day and there can be no confusion of which rate to use. Secondly, although 4pm is the usual time at which the Financial Times derives its currency rates from WM/Reuters we do not believe that would be time used on 24 December 2008 and 31 December 2008, both 'working days' under the definition in the draft regulations, when the markets close early. In addition, in the future, it is possible that the markets' normal closing time could change, requiring an amendment to the regulations. We recommend that the proposed regulation makes no reference to a particular time.

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If you have any questions regarding our response, we shall be pleased to discuss them with you. Please contact Margaret Heneghan (020 7213 5329 or margaret.heneghan@uk.pwc.com) or Nigel Dealy (020 7814 2252 or nigel.dealy@uk.pwc.com).

Yours sincerely,

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