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 H A R R I O T T  
H A R R I S O N

## Welcome to the summer edition of the MH Update

Although current market forces are bringing many challenges to us all, there are still investments being made and deals to be done. MH is approaching the third quarter with both enthusiasm and optimism.

The firm continues to grow and has been joined as a partner by David Bennett from S J Berwin. David brings experience of public offerings and mergers and acquisitions to the firm. David's debut article for MH Update is on the subject of the desirability for private companies to update their Articles of Association.

As a mark of the firm's progress, MH has been ranked in five categories in the forthcoming edition of Chambers 2009 to be published in October.

- Corporate Finance : AIM : Best of the UK
- Corporate Finance : Lower Mid-Market : London
- Media & Entertainment : Film & TV Finance and Production: Best of the UK
- Media & Entertainment : Music : Best of the UK
- Private Equity : Venture Capital Investment: Best of the UK

In addition, both **Jon Sweet** (Corporate Finance and Mid Markets) and **Duncan Innes** (Private Equity and Venture Capital Investment) are named as leaders in their fields.

These rankings affirm that MH is continually growing its reputation for the provision of quality services and they are particularly satisfying as they are based on peer and client reviews.

I hope that you enjoy this edition of MH Update and, as ever, your feedback will be welcome.

**Tony Morris**  
Managing Partner

## Private companies – Articles of Association

Large parts of the Companies Act 2006 (the "Act") are now in force with final provisions due to come into effect on 1 October 2008 and 1 October 2009. This article considers the reasons why private companies should consider updating their Articles of Association ("Articles"). The changes implemented by the Act are intended to streamline processes for small and medium-sized businesses. The key provisions for private companies which are affected by the Act and which may necessitate changes to the Articles are:

- for financial years ending on or after 1 October 2007 a private company is no longer required to lay accounts at an annual general meeting or hold an annual general meeting, unless required to do so by its Articles
- a private company does not need to re-appoint its auditors each year. The auditors will be deemed re-appointed unless the company's Articles state otherwise or the directors or shareholders decide to remove the auditors during the year
- from 1 October 2008, the directors will be able to approve conflicts of interest provided the Articles do not prescribe a different mechanism to approve conflicts. Companies incorporated before 1 October 2008 need shareholders' consent to take advantage of these provisions. The requisite resolution can be passed any time prior to 1 October 2008, and will be deemed effective on that date
- shareholders may ratify a director's negligent conduct provided this does not conflict with the company's Articles
- a private company is no longer required to appoint a company secretary, unless the Articles require it. It should be noted that if a company does continue to have a company secretary, the company secretary will retain his or her statutory powers including the right to

authenticate and execute documents

- a private company may convene any general meeting on 14 clear days' notice unless the Articles require a longer notice period. The majority of companies will still only be able to pass special resolutions (requiring 75 per cent. of the vote for approval) on 21 clear days' notice unless they first amend their Articles
- a private company may call a general meeting on short notice if a majority in number of the shareholders representing 90 per cent. (previously 95 per cent.) of the voting rights so consent, unless the Articles state otherwise
- the Act has broadened a company's power to indemnify the directors. The indemnity may now include, amongst other things, claims in relation to regulatory proceedings and associated companies. To be effective, the extension of this indemnity should be reflected in the Articles.

In addition, the Articles should be updated to correct a number of statutory references to the Companies Act 1985, and various provisions where the Articles may contradict the Act.

Further changes to the Articles should be considered in October 2009 on implementation of the final sections of the Act, which include removing the requirement to have an authorised share capital or Memorandum of Association. In addition, the directors will no longer need specific authority to issue shares from October 2009 provided that the company only has one class of share.

Holding a separate meeting to approve these changes can be avoided with a little forethought, if implemented with other business conducted at any forthcoming AGM or general meeting of the shareholders of the company.

**David Bennett**  
**MH Corporate**

## Design Rights – Are you protecting yours?

Design rights are intellectual property rights that protect the features of the design of a product. Whilst they are often overlooked, design rights can prove to be an effective and affordable method of protecting and adding value to many businesses. Previously perceived as applying only to certain industries, such as fashion and manufacturing, design rights are actually relevant to a wide range of enterprises.

### Unregistered Design Rights

Unregistered design rights confer upon the owner the right to prevent a third party from copying a design for a certain period of time. The first owner of such design rights will either be the person who created the design, or if the design was created in the course of employment, their employer. If the design was commissioned, then unlike the position in copyright, it will be the commissioner, not the person who created the design, who is the owner of any design rights.

Design rights will only vest in a design that is sufficiently original. If an original design relates purely to the "functional" qualities of an object (component parts of a mechanical device for example) the protection will only extend to the UK as the design will only qualify for protection under the UK unregistered design rights regime. If, however, an original design relates to the "aesthetic" qualities of a product (that is those qualities that relate to the appearance of the whole or part of the product and which may include lines, contours, colours shapes and textures) then the design may be protected not just in the UK but also in Europe, as it will qualify for protection as a "Community unregistered design".

Unregistered design rights arise automatically either upon creation of an original design or upon that design first being made available to the public. A business may therefore be unaware that it already owns a number of rights which can be asserted against competitors and which are valuable assets.

