

A company law problem for one-man companies (Lecture B1428 – 6.14 minutes)

When the only shareholder director of a company dies, this can cause severe difficulties for the personal representatives who are looking after the deceased's estate, unless the company's Articles of Association make suitable provision.

Companies with Articles based on Schedule 1 of The Companies (Model Articles) Regulations 2008, which came into force on 1 October 2009, do not have a problem, given that Article 17 reads as follows:

'Methods of appointing directors

17 (1) Any person who is willing to act as a director, and is permitted by law to do so, may be appointed to be a director:

- (a) by ordinary resolution; or
- (b) by a decision of the directors.

(2) In any case where, as a result of death, the company has no shareholders and no directors, the personal representatives of the last shareholder to have died have the right, by notice in writing, to appoint a person to be a director.

(3) For the purposes of paragraph (2), where two or more shareholders die in circumstances rendering it uncertain who was the last to die, a younger shareholder is deemed to have survived an older shareholder.'

As can be seen, Article 17(2) makes the necessary provision for a person to be appointed by the personal representatives.

However, companies having earlier Articles may well be in trouble, unless there is an express Article included which authorises the appointment of a director.

Without a director (or secretary) having the authority to register the personal representative's or beneficiary's name in the register of members, the company is effectively trapped in a vacuum. A personal representative or beneficiary cannot exercise any right as a shareholder unless they are registered in the register of members. As a result, they are unable to pass a shareholder resolution to appoint a director or to amend the Articles.

In such circumstances, it is necessary to apply to the court for an order to appoint a new director so as to bring the company out of its vacuum. This is an expensive and time-consuming mechanism.

It may sometimes be the case that the Articles provide for there to be an appointment in the will of a permanent director (i.e. one who does not have to retire by rotation) to succeed the testator.

Everyone should of course have a will, but it is particularly important in this situation that a sole shareholder director should have a valid will which is kept up to date. That person should ensure that their will is, at all times, consistent with the company's Articles in order to reduce

the likelihood of any conflict or confusion between the two documents, with particular reference to the ability to transfer the shares on the sole shareholder director's death.

If you have a client who is a sole shareholder director, it is imperative that their company's Articles are reviewed as soon as possible as part of any succession planning.

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