Guid[redacted] Capital

This Guidance Note is designed [redacted] relation to the administration of a company and specifically in rela[redacted] This Guidance note considers removing the authorised share capital, ho[redacted] allots shares and how shares are transferred within a private com[redacted]

Authorised Share Capital [redacted]

The concept of companies [redacted] an authorised share capital was abolished under the 2006 Co[redacted]herefore no ceiling on the amount of shares that a company can is[redacted]rence as to how companies approach this issue depending on wheth[redacted]ed before or since the Companies Act 2006. Where a company ha[redacted]ed share capital, it is treated as a restriction in the articles on all[redacted]ed to be amended or revoked.

Companies incorporated bef[redacted] 2006

Companies that were incorpor[redacted]ies Act 2006 was implemented had to state an authorised share cap[redacted] of Association. This means that there is (and unless the restriction is [redacted] be) a limit on the maximum amount of shares that can be issued.

This becomes a problem wh[redacted]shes to issue new shares above the maximum prescribed in the Me[redacted]n.

Note that since the implemen[redacted]art of the Companies Act 2006, which came into force on 1st Octo[redacted]ons provide that any provisions of a company's memorandum of a[redacted]ing out an authorised share capital, are to be treated as provisions [redacted]es of association. This provision will therefore (unless removed) ac[redacted]mpany's articles of association.

Companies incorporated sin[redacted]2006

The concept of authorised s[redacted]hed by the 2006 Act, so companies incorporated since the releva[redacted]d (1st October 2009) will not have an authorised share capital. Such[redacted]unlimited numbers of shares (unless a limit on the share capital was [redacted]he Articles of Association. The Articles of Association should be chec[redacted] do not include any prohibition on the number of shares that can be [redacted]

How to remove the authorise[redacted]

The limits imposed by the au[redacted]an be removed by one of two means, both of which require a genera[redacted]lders:

1. Delete the article(s) that re[redacted]hare capital

The regulations state that th [redacted] the articles of association relating to authorised share capital ma [redacted] oked by the company by **ordinary resolution** *(See: [Sharehold*er [redacted] *Deletion of Authorised Share Capital](#))* *(note that normally, a special r* [redacted] *mend the articles of association, but in this case an ordinary resolutio* [redacted]

2. Adopt a completely new s [redacted] ation

Entirely new articles of asso [redacted] by passing a shareholders' special resolution *(See: Shareholders* [redacted] *loption of New Articles of Association)*. Although this requires a grea [redacted] ers to vote in favour of the resolution (i.e. 75% rather than 50%), th [redacted] having a clear new set of articles will assist them in complying with [redacted] 2006 Act and operating the company more efficiently.

Obviously, the new Articles to [redacted] ntain any limit on the number of shares that can be issued. Neither [redacted] *ee: Articles of Association – Private Company Limited by Shares)* [redacted] lternate version of the Model Articles *(See: Modified Model Articles* [redacted] *ed by Shares))* make any reference to an authorised share capital.

Whichever method is used, a [redacted] nary or special resolution must be filed with Companies House *(See:* [redacted] *se – File New Articles and Resolution)*, along with a printed copy of th [redacted] as altered. Note that if the amendment is minor, Companies House v [redacted] articles with the new wording pasted over the top, and then photoco [redacted] ng is clear.

Steps to be taken by the con [redacted]

1.	Call a board meeting. Th [redacted] e whether to simply remove the articles relating to authorised sha [redacted] tirely new articles. The directors should ther [redacted] e a general meeting of shareholders *(See: Board Minutes – C* [redacted] *Remove the Authorised Share Capital)*, or to circulate a shareholder [redacted]
2.	Send out notice of gener [redacted] ders and debenture holders (14 days notice required).
3.	Hold the general meeting [redacted] special shareholders' resolution.
4.	Arrange to have the artic [redacted] as appropriate, and file the shareholders' resolution, along with the [redacted] Companies House.

Issue and allotment of shar [redacted] ity to issue and allot shares

Under the Companies Act 1985 [redacted] to allot shares if they were authorised to do so. Under the [redacted] panies with only one class of shares, there is no requirement for auth [redacted] f the same class. For private companies with more than one [redacted] public companies), the 2006 Act regime is substantially the same [redacted]

(A) 2006 Act Companies w [redacted] hares

1. Check the articles of ass [redacted] here is any prohibition on the allotment of shares by th [redacted]

2. If there is no prohibition, [redacted] y have the authority to issue and allot shares (section 550 Com [redacted] is no need for any further shareholders' resolution. [redacted]

3. If there is a prohibition (w [redacted] essed as 'disapplication of section 550 of the Companies Act 20 [redacted] meeting and pass an ordinary resolution *(See: Shareho* [redacted] *n – Authority to Allot New Shares)*, as described in 3) below.

(B) 1985 Act Companies w [redacted] hares and 2006 Act companies with more than one class o [redacted]

For 1985 Act companies [redacted] *otion has to be activated by an Ordinary Resolution of S* [redacted] *eholders' Ordinary Resolution – Authority to Allot New S* [redacted]

1. Check to see whether th [redacted] permit the directors to issue and allot shares.

2. If they do not, or if the a [redacted] olders' resolution is required, check to see whether there is an [redacted] **thorisation'** in place.

   A 'section 551 authorisa [redacted] *tion passed by the shareholders in general meeting, which* [redacted] *eral authority to allot shares up to a specified maximum and* [redacted] *limited to a maximum of five years.*

3. If no section 551 authori [redacted] eholders' general meeting in order to pass such a resolution *(* [redacted] *ary Resolution – Authority to Allot New Shares)*. A copy of [redacted] dged with Companies House *(See: Letter to Companies Ho* [redacted]

Pre-emption Rights

What are pre-emption rights?
Pre-emption rights give existing [redacted] to be offered any new shares that the company proposes to issue fo [redacted] heir existing holdings of such shares. This means that the existence [redacted] bar to the issue of new shares to new shareholders and an anti-dilutio [redacted] hareholders.

General position under the Com[redacted]

There is a statutory right of pre[redacted]npanies Act 2006, which means that a company cannot allot shares [redacted]ered them to each existing holder in proportion to their existing hold[redacted] be made in writing, and must remain open for 14 days).

How to disapply statutory pre[redacted]

A company can disapply the pr[redacted]ng shareholders in relation to either a specified allotment, or to allotm[redacted]

Pre-emption rights in relation [redacted]an only be disapplied by passing a special resolution of the share[redacted] at a general meeting. The directors must recommend the special re[redacted] must set out:

- their reasons for mak[redacted]
- the amount of payme[redacted]llotted, and
- the directors' justifica[redacted]

As a result of these cumberso[redacted]usual for a company to disapply the pre-emption rights in relation to[redacted]mally, the directors are given general authority to allot shares (the 'se[redacted]rred to above), and at the same time the company will disapply the p[redacted]ies Act 2006 in relation to allotments made under that general author[redacted]cation must either

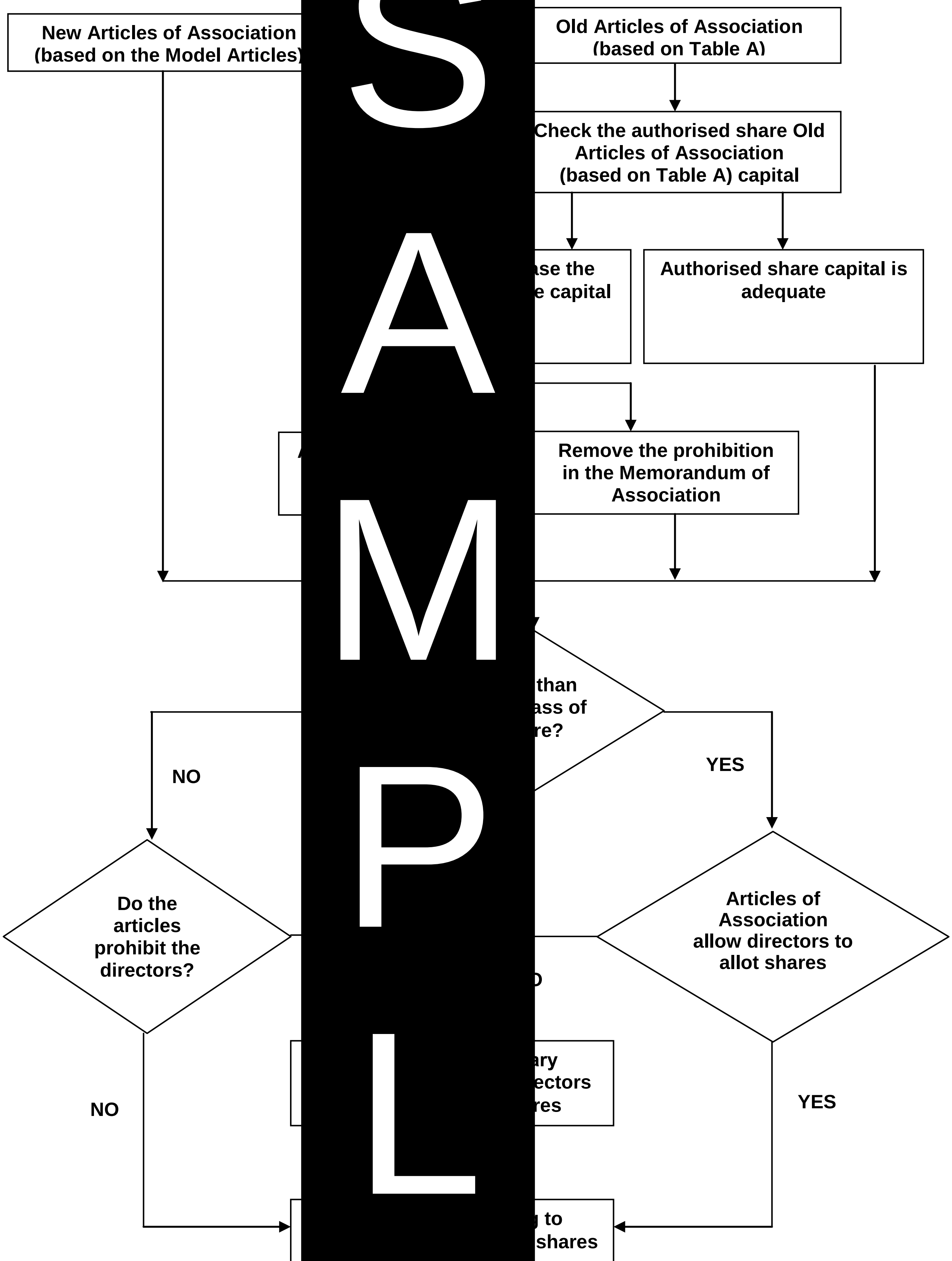
(i) be contained in the artic[redacted]ompany; or
(ii) be effected by way o[redacted] passed by its shareholders *(See: Shareholders' Special R*[redacted]*n of Pre-Emption Rights)* .

Practical procedure for iss[redacted]hares

1	Check that any issues wit[redacted]e capital, (b) directors' authority to issue shares, and (c) right[redacted]een resolved as set out above.
2	Set up a board meeting a[redacted]e directors to (i) approve the allotment and (ii) if relevan[redacted]e company seal. Record the resolution(s) i[redacted]*d Minutes – Directors' Resolution to Allot Shares for Cash*).
3	Once funds are received [redacted]nt for the shares, the company secretary must enter an a[redacted]company's Register of Members (*See: Register of Member*[redacted], and in any event within two months of the date of allotment.
4	Prepare and send out sha[redacted]*e Certificate)*.
5	Within one month of the d[redacted]ompanies House of the new shares allotted, on Form SH01 ('r[redacted]*: Companies House Form – Return of Allotment of Shares*). T[redacted]ust be accompanied by a Statement of Capital (which is a snap[redacted]l subscribed capital at a particular

	point in time – in this case, the date to which the return of allotments is made up).

Below is a flow chart that runs through these issues. Follow it through according to whether your company has new or old style articles of association to see what approvals you need to put in place.


New Articles of Association
(based on the Model Articles)
Old Articles of Association
(based on Table A)
Check the authorised share Old Articles of Association
(based on Table A) capital
Authorised share capital is adequate
Remove the prohibition in the Memorandum of Association
NO
YES
Do the articles prohibit the directors?
Articles of Association allow directors to allot shares
NO
YES

Share Transfers

How to deal with a share tr [redacted] ues

In relation to shares that have [redacted] y the company, and are held by an existing shareholder, the sce [redacted] hat the shareholder (the seller or transferor) has agreed with and [redacted] sation (the buyer or transferee) to sell shares to him or her. A compa [redacted] er such a transfer if an instrument of transfer, which has been duly s [redacted] - see below) has been delivered to it.

Note that there may be restricti [redacted] dividual to transfer his or her shares; either because of the existence [redacted] ese can be statutory or set out in the articles see above), or because [redacted] existing shareholders' agreement to which the seller is bound. This [redacted] this Guidance Note, which assumes the seller has a free right to dis [redacted] here is a brief note on this subject at the end of this Guidance Note.

In the event of a freely transfer [redacted] company secretary will be required to handle the share transfer; to [redacted] oard meeting, then to follow up the registration paperwork.

Sale of <u>all</u> the shares represe [redacted]

The following procedure applie [redacted] ng all the shares represented by one share certificate to the buyer:

1	The seller signs a stock tr [redacted] *Transfer (or Share Transfer) Form*) and passes the form, alon [redacted] te(s) to the buyer, who makes the payment for the shares to [redacted]
2	The buyer arranges for th [redacted] e stamped. Ad Valorem stamp duty is payable if the consideratio [redacted] ore than £1,000. A cheque for stamp duty should be made to 'H [redacted] amp Office, together with the completed form. See www [redacted] formation. If the transaction value is [redacted] ption certificate on the reverse of the stock transfer form should [redacted] no need to pay stamp duty, or to get the form stamped.
3	Once the stock transfer fo [redacted] tively, the exemption certificate signed) the buyer should l [redacted] n the share certificate with the company secretary.
4	On receipt, the company s [redacted] at the form is properly executed and stamped by the Stamp Of [redacted] n certificate on the back of the form has been completed. This is important, as the c [redacted] personally liable for a penalty if he or she registers an imperfe [redacted] payment of stamp duty is evidenced by an impressed Revenue [redacted] rm (never by an adhesive sticker). The company secretary m [redacted] e particulars of the seller and the shareholding match the R [redacted]

5	The stamped stock transfer form is then passed to the directors for consideration. If acceptable according to the articles (i.e. there are no restrictions on transfer of shares, and the directors do not wish to exercise any power of refusal), the board will resolve to pass the transfer for registration *(See: Board Minutes – Approval of Share Transfer)*. If a seal is in use by the company, the board can simultaneously authorise the use of the seal on the share certificate.
6	The company secretary will update the Register of Members and send a share certificate out to the new member *(See: Share Certificate)*. This must be done within two months of the transfer being lodged with the company.
7	The stock transfer form must be kept by the company as evidence of the transfer.

Sale of <u>part only</u> of the shares represented by the share certificate

Where only a portion of the shares represented by one certificate are being sold, the following procedure applies:

1	The seller lodges the stock transfer form and the share certificate(s) with the company.
2	The company secretary keeps the share certificate(s), and certifies the fact of lodgement on the margin of the transfer form, which is then returned to the seller.
3	The seller delivers the transfer form to the buyer and receives the consideration for the shares. The buyer will arrange to pay the stamp duty, and get the form stamped by the Stamp Office (if applicable, see Step 2 above). He or she will then submit the duly stamped stock transfer form with the company secretary for registration.
4	The company secretary will put the proposed share transfer to the Board of directors (see Step 5 above).
5	After completing the registration and updating the Register of Members, the company secretary will send out two new certificates, one to the seller for the shares retained, and the second one to the buyer for the shares transferred.

Transmission of Shares (on death or bankruptcy)

When a shareholder dies or becomes bankrupt, his or her shares will vest with his personal representatives or his trustee in bankruptcy. Such representatives will have the right to take the shares into their own name, or to transfer them.

The company secretary must confirm the representative's right to the shares. This can be done by checking on the probate, letters of administration, certificate of appointment (or whatever document gives the representative his authority), to ensure that the person presenting themselves as the shareholder's representative is duly appointed as such. The representative will also need to produce the share certificate.

The company secretary sh[redacted]shares are held in a representative capacity on the company's [redacted]hould not accept any notice of trust. What this means is that, or[redacted]to the shares *as representative* has been confirmed (see pre[redacted]company secretary can treat the shareholder named on the [redacted]though he or she were the absolute owner of the shares.

Joint shareholders

If a joint shareholder dies, [redacted]r(s) are automatically entitled to the shares. The company secre[redacted]ertified copy of the death certificate, and then update the Registe[redacted].

Shareholders' agreemen[redacted]ghts

A shareholders' agreement[redacted]*the shareholders* (in contrast to the articles of association, which[redacted]ween the shareholders of a company and the company itself).

A shareholders' agreement [redacted]ents of the shareholders' relationship with each other and often in[redacted]efusal ('pre-emption') for the parties, should one shareholder wis[redacted]is helps to prevent outside investors from muscling in on the c[redacted]each members' shareholding in the company as a proportion of [redacted]g.

If a shareholders' agreemen[redacted]uals to whom shares are transferred must agree to be bound by [redacted]lder agreement, as a precondition to the transfer. This can be ach[redacted]of Adherence.

This subject is beyond the s[redacted]te, which only deals with the practical steps needed to be taken [redacted]tary to affect a transfer of shares. However, the Simply-docs [redacted]ite of shareholders' agreements and related documents, which in[redacted]ersions of the shareholder agreement itself, and also a Deed of Ad[redacted]

(See: [Shareholder Agreeme[redacted]ment - Complementary Documents])