

## ***BUYING A COMPANY “OFF THE SHELF”***

If time is an important factor, you can consider buying a ready-made company. The exact procedure will depend on the company formation agents involved, but typically, the procedure is as follows:

### Purchasing the company

Formation agents usually have a number of companies recently incorporated. They will provide a list of names for you to make a reservation from. If required, at the time of purchase the formation agents will prepare special resolutions for changing the name and main objects, and arrange for them to be sent to the Registrar of Companies.

You will need to provide the agents with the following:

- Forms 288a naming, and signed by, a replacement director and a replacement secretary (the same person cannot act as both)
- Form 287 stating the location of the replacement registered office
- A cheque for the amount of the formation agents' invoice

The formation agents will then provide some or all of the following items:

- A certificate of incorporation (including change of name where relevant)
- A copy of the change of objects resolution (if any)
- A certificate of non-trading (up to the date of reservation of the company)
- The resignations of the original director and secretary
- Transfers in blank of the subscribers' shares
- Suggested minutes for the directors' meeting, a form 225 (change of accounting reference date), and form 88(2) (see Returns below)
- Copies of the Memorandum (as registered) and Articles of Association
- The combined register and minute book (in loose leaf or bound format) with share certificates

## Attending to post-incorporation matters

### *First meeting of the directors*

When you receive the Certificate of Incorporation, you should convene the first meeting of the directors to deal with the following matters:

- Appointing (if appropriate) a chairperson, managing director, and any other directors, and approving any employment contracts
- Appointing auditors (if appropriate)
- Approving for registration (subject to stamping) stock transfer forms transferring the subscribers' shares to the intended members of the company and, if appropriate, allotting further shares and issuing share certificates
- Approving banking arrangements, including agreeing authorised signatories in respect of the company's bank account and passing the resolutions required by the bank
- Approving any business contracts
- Disclosing any director's interests in contracts made with the company
- Disclosing in writing any director's interests in shares or debentures of the company and associated companies
- Altering the registered office of the company
- Adopting an accounting reference date
- Convening a general meeting (if required)

### *First general meeting*

A first general meeting of the company will be required to approve

- Any substantial property transaction between the company and any of its directors
- Any directors' service contracts for terms exceeding five years

## Returns

After the first board and general meetings, you should make the following returns to the Registrar of Companies:

- *Form 88(2)* (return of allotments of shares)
- *Forms 288a* (notice of appointment of director or secretary) signed by any new appointees
- If necessary *Form 225* (change of accounting reference date). Failure to notify a change will result in the company's accounting reference date becoming the anniversary of the end of the month of incorporation
- *Form 287* (notice of change in situation of registered office), if a further change has taken place

In special circumstances, the following returns may also have to be made:

- *Form 123* (Notice of increase in nominal capital) and a copy of the resolution authorising the increase
- A copy of any new or altered Memorandum or Articles, and special resolutions passed
- *Form 318* (Notice of place where copies of directors' service contracts or memoranda thereof are kept)
- *Form 325* (Notice of place where register of directors' interests in shares etc. is kept) where appropriate

## Other matters

- Any stock transfer forms in respect of the subscribers' shares should be produced for stamping
- Minutes of the first board and general meetings should be prepared
- The company should issue share certificates. (If the shares are fully paid up, distinguishing numbers may be dispensed with)
- The company's statutory books should be written up
- Shareholders should pay their share capital into the company's bank account
- Consider proposing elective resolutions to dispense with the need for annual general meetings and the laying of accounts and reports before a general meeting
- Consider using written resolutions in place of general meetings

## Transferring shares

### *General*

A company must not register a transfer of shares or debentures unless:

- a proper instrument of transfer, stamped with the appropriate duty, has been delivered to the company; or
- the right to the shares has been transmitted by operation of law (e.g. where they are inherited on the death of the holder)

A private company's Articles may restrict the right of a member to transfer his or her shares, often by prohibiting the member from transferring to an outsider at a certain price, unless existing members have refused to pay the same price.

Stamp duty on transfers of shares is usually payable by the purchaser and is at the rate of 0.5%, unless reliefs or exemptions apply.

### *Form of transfer*

The Articles usually state that transfers must be in writing in any form approved by the directors. It is normal to use a Stock Transfer Form J30.

The transferor is deemed to remain the holder of the shares until the name of the transferee is entered in the Register of Members.

Transfers by companies and other corporate bodies should normally be executed under their common seal (although this is no longer a strict legal requirement).

Normally the stock transfer form is signed only by the transferor. However if the shares are nil or only partly paid, the transferee must sign as well to signify acceptance of liability to meet the unpaid amount on the shares. In these circumstances the alternative form J10 may be used.

After a transfer has been registered, the company should be sure to retain the old share certificate and the transfer form, unless there is authority in the Articles to destroy them after a specific period.

The new share certificates should be ready for delivery within two months from the date the transfer is lodged with the company, unless:

- the terms on which the shares were issued provide otherwise, or
- the transfer is to a stock exchange nominee (for which no share certificate is needed)

Garbetts supply shelf companies and always have a stock in hand – see <http://www.garbetts.com/companyformations> for assistance.

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