

Annex B

Draft Guidance Notes on Model Articles of Association for Private Companies Limited by Shares (the “private company articles”)

1 What are articles of association?

Articles of association (“articles”) are rules, chosen by the shareholders, which govern a company’s internal affairs. The articles form a contract between a company and its shareholders, and between each of the shareholders.

2 Are all companies required to have articles of association?

Yes. A company is required to have articles by law.

3 Why do companies need articles of association?

The shareholders need to agree how things will be done in a given set of circumstances before a company finds itself in those circumstances (for example, the directors of a company may change and the shareholders may find it helpful to agree in advance how new directors can be appointed). The articles help to ensure that a company’s business runs as smoothly and efficiently as possible.

4 Are the articles of association the only rules that apply to companies?

No. The articles supplement other sources of company law, for example, the rules set out in the Companies Act 1985 [and the Company Law Reform Act 200X] and case law (rules made by judges when a company law matter is decided in court).

5 What type of rules do the articles of association contain?

The articles cannot contain rules that are against the law. Providing that the shareholders observe this general principle they have complete freedom to choose which rules go into their company’s articles.

6 Do the shareholders have to draw up the rules themselves?

No. The shareholders are free to make their own rules if they wish, but the shareholders may find it convenient to use “ready made articles” (see question 7).

If the shareholders decide to draw up their own rules they should consider whether they need to take legal or other professional advice and have “bespoke” or “tailor-made” articles drawn up for their company.

7 Where can I find a set of “ready made articles” of association?

Model articles for public companies and private companies limited by shares are provided by law. For private companies limited by shares formed after the date private company articles come into force, the model articles are set out in the “private company articles” (see questions 11 and 12).

Shareholders can also purchase articles from law/legal stationers and from formation agents.

8 Do the shareholders and directors have to obey the rules set out in articles of association?

Yes! The articles are legally binding on the company and all of its shareholders (even those who did not vote in favour of some or all of the rules set out in the articles, or who have become shareholders after the company was first formed, or after a particular rule was adopted). The directors of a company must also comply with the articles and if they don't they will be in breach of their duties as directors.

9 How are changes made to the articles of association?

Generally speaking, the articles may be changed by special resolution of the shareholders. In very broad terms, this means that 75 per cent of those eligible to vote on a proposed change must vote in favour of it.

10 What are entrenched articles?

The articles can specify that particular provisions in them can only be changed with the support of a higher (but not a lower) majority of shareholders than would be required to pass a special resolution (for example, they may specify that a particular rule can only be changed by unanimous consent of all of the shareholders). This type of rule is sometimes referred to as an “entrenched provision” or an “entrenched article”.

Companies House should be given notice of any entrenched provisions and the articles themselves must also make it clear what conditions need to be satisfied in order to change the entrenched provision in question.

11 What are model articles of association?

These are articles provided by law for certain types of company. The shareholders are not obliged to adopt them, but the relevant model articles for a particular type of company will apply, in their entirety, to companies of that type that do not file articles at Companies House (that is, they become such companies’ articles by default). Where a company has filed articles at Companies House, the model articles will plug any gaps in these articles (if a company has not made provision for a given set of circumstances for which there is a rule in the model articles, the rule in the model articles will apply by default unless the company’s articles make it clear that the default rule should not apply).

12 What are the private company articles?

The private company articles are the model articles provided by law for private companies limited by shares. They replace Companies Act 1985 Table A (the model articles for public companies and private companies limited by shares formed under the Companies Act 1985) for private companies limited by shares formed under the new Act.

Model articles are also provided for public companies (the “public company articles”) and private companies limited by guarantee (the “guarantee company articles”). The public company articles replace Companies Act 1985 Table A for public companies formed under the new Act

13 Are the private company articles suitable for all private companies limited by shares?

No. The private company articles are designed with the needs of typical private companies limited by shares in mind. Such companies are likely to be small and may well be owner-managed (that is, the same people may be the shareholders and directors). The private company articles contain the minimum number of rules which it is envisaged that a typical private company limited by shares will need and which the shareholders will want to have.

Some or all of these rules may be suitable for less typical companies, for example, those with a relatively large turnover or a large number of shareholders. If they are not suitable (or become unsuitable as the company’s business develops over time), the shareholders can draw up their own rules (see questions 5 and 6), purchase “ready made articles” (see question 7), or change the private company articles to fit their company’s needs (see question 16).

14 Which rules apply to companies formed before the date that the private company articles came into force?

The law will not change for companies that were incorporated before the date on which the private company articles come into force (“existing companies”). If an existing company limited by shares has not filed articles at Companies House, the model (default) articles that apply to that company are the articles set out in Table A applicable when the company was formed.

15 Can existing companies adopt the private company articles as their articles of association?

Yes, in so far as they can change their current articles to articles that exactly match the private company articles. This will normally require a special resolution (see question 9).

In these circumstances the company will need to file the “matching articles” at Companies House or, alternatively, notify the Registrar of Companies that it is using the private company articles as its articles. (As the private company articles do not apply by default to existing companies, such companies need to make it clear – in their articles and on the public register – that they are using the private company articles).

16 What if the rules set out in the private company articles are unsuitable for my company?

The shareholders don’t have to use the private company articles. If they do decide to use them, they may add to these rules, or exclude or amend any of the rules set out in the private company articles to such an extent as they see fit (so long as any new or amended rules are not against the law).

The model articles for public companies (the “public company articles”) contain a fuller set of rules which the shareholders of private companies limited by shares may wish to use as a precedent. There is nothing to stop shareholders from exactly copying a rule from the public company articles, or from previous versions of the model articles (for example, Companies Act 1985 Table A) but they should consider whether the rule in question would work for their company.

B Draft Guidance Notes on Model Articles of Association for Private Companies Limited by Shares (the “private company articles”)

17 If a private company limited by shares re-registers as a public company (or other type of company), which model articles of association will apply to it?

If, prior to re-registration, the company was using model articles (for example, Companies Act 1985 Table A or the private company articles), these will continue to apply to the company on re-registration unless they are amended.

Where a company re-registers from one type of company to another (for example, from private limited by shares to public or vice versa), it needs to ensure that its articles are appropriate to its new status and (where necessary) should take legal or other professional advice regarding its articles and re-registration generally.

18 Do articles of association need to be filed at Companies House?

Where a private company limited by shares and formed under the new Act adopts the private company articles without amendment, there is no need for that company to file articles at Companies House.

Where a company limited by shares and formed under an earlier Companies Act has adopted model articles without amendment (in the case of companies formed under the Companies Act 1985, the relevant model articles are the Companies Act 1985 Table A), there is no need for that company to file articles at Companies House.

In all other cases companies are required to file a copy of their articles (and any subsequent amendments to their articles) at Companies House. This includes amendments to the model articles.

19 Other relevant guidance material

Guidance material on linked areas, for example, conflicts of interest and special resolutions, will be available from Companies House.