

**Companies Act 2006 implementation – changes to constitutional documents, including model articles: a summary of what the new approach means**

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## **INTRODUCTION**

1.1 A company's articles of association are its internal rulebook. Every company formed under the Companies Act 2006 or that has been formed under the various Companies Acts (or their Northern Ireland equivalents) that have preceded it over the last 150 years, will have articles of association – commonly referred to simply as the company's "articles".

1.2 The articles are chosen by the members and form a contract between a company and its members, and between each of the members.

1.3 Members need to agree how things will be done in a given set of circumstances before a company finds itself in those circumstances. The articles help to ensure that a company's business runs as smoothly and efficiently as possible. In practice the articles tend to contain provisions on a relatively restricted range of matters, for example rules on decision taking by the members and directors and various matters connected with shares.

1.4 Every company is required to have articles by law and the articles are legally binding on the company and all of its members.

1.5 The articles are not the only rules that apply to companies. They supplement other sources of company law, for example, the rules set out in the Companies Act 2006 and case law (rules made by judges when a company law matter is decided in court). All companies' articles of association are subject to the Companies Act 2006.

1.6 The articles cannot contain rules that are against the law. Provided that the members observe this general principle they have complete freedom to choose which rules go into their company's articles, although they may find it convenient to rely on model articles as a default position. If the members 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.

### **What are model articles?**

1.7 Successive Companies Acts (and Northern Ireland Companies Orders) have balanced UK companies' freedom to make their own rules with the convenience of providing for standardised model articles set out in legislation so that companies do not have to reinvent the wheel. No company is obliged to adopt the provisions of these model articles, but they provide useful guidance and, in some cases, a safety net.

1.8 This guidance primarily sets out the differences between the model articles under the Companies Act 1985 (Table A) and the new model articles prescribed under the Companies Act 2006. It also includes information on changes to other constitutional documents and guidance for existing and new

companies on the procedures that they must follow or may wish to follow as a result of these changes.

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## **Part 1 – CONSTITUTIONAL DOCUMENTS**

2.1 In this guidance the term 'constitutional documents' usually refers to the memorandum of association and articles of association.

2.2 Some parts of the Companies Act 2006 use the term 'constitution' or 'constitutional documents' with a wider meaning, such as in Part 13 of the Act, where references to the company's constitution are defined in section 257 of the Act to include resolutions and decisions made by members of the company.

2.3 Information on what existing companies need to do with regard to changes to their constitutional documents is set out in Part 2 of this guidance ('Guidance for existing companies').

### **Position for companies incorporated prior to 1 October 2009**

#### ***What were a company's constitutional documents?***

2.4 Prior to 1 October 2009, companies were required to have the following constitutional documents:

- Memorandum of Association;
- Articles of Association.

2.5 The Memorandum stated the company name, the situation of the Registered Office in Great Britain or Northern Ireland, the objects of the company, the liability of its members and its authorised capital. The company's objects define its powers. A company does not have the power to act outside the scope of its objects.

#### ***What model articles are in place for companies incorporated prior to 1 October 2009?***

##### "Table A" – Companies (Tables A to F) Regulations

2.6 Model articles are prescribed for all companies limited by shares in what is commonly known as "Table A" (contained in the Companies (Tables A to F) Regulations 1985 [S.I. 1985/805]) (S.R. 1986 No. 264 in Northern Ireland).

2.7 This naming convention for the Articles began with the Companies Act 1862 (following a brief spell as "Table B" under The Joint Stock Companies Act, 1856) and has continued until the Companies Act 2006. Tables B to F of

the 1985 Act regulations contain standard forms of memoranda of association and the standard forms to adapt Table A articles to suit other types of company, for example Table C adapts Table A so that it applies to a private company limited by guarantee.

2.8 Over time, these Tables have been amended to ensure that they accurately reflect current company law. The version of Table A that applies to any one company will depend on its date of incorporation and the version of Table A applicable at that time. All versions of Table A (dating back 150 years) can be found on the Companies House website at <http://www.companieshouse.gov.uk/about/tableA/index.shtml>

2.9 Tables A to F were most recently amended in October 2007 and April 2008 to reflect changes in the law, for example those applying to resolutions, meetings and electronic communications. The amendments were made only to correct regulations that had become in direct conflict with company law as a result of commencement of provisions within the Companies Act 2006 – they did not remove superfluous text or go as far as some provisions of the 2006 Act.

2.10 The revised version of Table A applies to new companies formed on or after 1 October 2007 who choose to adopt it. The revised versions of Tables C and E apply to new private companies limited by guarantee or unlimited companies formed on or after 6 April 2008 who choose to adopt them. The revised versions of these Tables also apply by default to companies formed on or after these dates that do not register articles of association of their own with the Registrar.

2.11 Table A model articles will be superseded by the Companies Act 2006 model articles on 1 October 2009 as model articles for companies incorporated on or after that date. Table A will, however, remain in force for companies incorporated under the Companies Act 1985 that adopted it (or to which it applies by default) until those companies choose to make a change to their articles.

2.12 More detailed information on the changes to Tables A to F is provided in Part 4 of this guidance.

## **Position on or post 1 October 2009**

### ***What are a company's constitutional documents?***

2.13 Companies incorporated under the 2006 Act, on or after 1 October 2009, are required to have the following constitutional documents:

- Memorandum of Association;
- Articles of Association.

2.14 All limited companies, regardless of when they are incorporated, are also required to have a:

- Statement of capital and shareholdings *or*
- Statement of guarantee.

2.15 Information on what existing companies need to do with regard to changes to their articles or statement of capital or guarantee is set out in Part 2 of this guidance ('Guidance for existing companies').

#### Memorandum of Association

2.16 New companies incorporated under the Companies Act 2006, on or after 1 October 2009, will adopt a new style memorandum, which is a much reduced document than that required by companies incorporated under the Companies Act 1985. Essentially it contains simply the names of the subscribers to the company and authentication that they have agreed to become members of that company.

2.17 The prescribed form of the new memorandum is in the Companies (Registration) Regulations 2008 (S.I. 2008/3014).

2.18 Any new companies formed on or after 1 October 2009 will not be required to list objects for the company as these will be unrestricted from that point forward, unless the company chooses specifically to restrict them.

#### Statement of capital and shareholdings or Statement of guarantee

2.19 Information on capital and shareholdings is no longer part of the memorandum from 1 October 2009; this information will be contained in either a 'statement of capital and shareholdings' or, for those companies limited by guarantee, a 'statement of guarantee'. New companies incorporated on or after 1 October 2009, under the 2006 Act, will be required to file the appropriate statement with the Registrar on registration. Subsequent, updated, statements should be filed with the Registrar as necessary.

### ***What model articles are in place for companies incorporated on or post 1 October 2009?***

2.20 The Companies (Model Articles) Regulations 2008, made under the Companies Act 2006, prescribe model articles for the three most common types of company:

- Private companies limited by shares;
- Private companies limited by guarantee; and
- Public companies.

2.21 Other types of company to those listed above are relatively rare and often have very specific needs that do not justify a standardised approach, but they can use the model articles as a guide to prepare bespoke articles.

2.22 The new model articles:

- reflect updated provisions of company law;
- follow a principle of avoiding archaic and legalistic language wherever possible; and
- do not duplicate provisions of the Companies Act 2006 governing procedural matters e.g. Part 13 of the Act sets out procedures for resolutions and meetings.

2.23 In the case of articles for private companies, the approach has been to 'think small first'. The result is sets of model articles that are more accessible to the directors and members of small companies.

2.24 Companies should always ensure that they govern themselves according to the general provisions of company law as well as the provisions of their articles.

### **Availability of model articles and “bespoke” or “tailor-made” articles**

2.25 The Companies Act 2006 model articles regulations (SI 2008/3229) are available from the website of the Office of Public Sector Information (OPSI) and also in hard copy from The Stationery Office.

2.26 All three sets of model articles are available electronically on the Companies House website.

<http://www.companieshouse.gov.uk/about/modelArticles/modelArticles.shtml>

2.27 If the company's members 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.

2.28 Articles can also be purchased from law/legal stationers and from formation agents.

### ***What does a 2006 Act company need to do on incorporation?***

2.29 The incorporation requirements for new companies formed under the Companies Act 2006 on or after 1 October 2009 are largely similar to those for companies formed under previous Companies Acts.

2.30 Companies applying to be incorporated under the 2006 Act will not be able to use 1985 Act forms. Further guidance on incorporation under the 2006 Act and the new forms to be used is available in draft on the Companies House website

(<http://www.companieshouse.gov.uk/forms/formsAvailable.shtml>)

2.31 Those incorporating 2006 Act companies need to draw up a memorandum of association using the prescribed form and, if a company with limited liability, prepare the appropriate statement of share capital or guarantee, as applicable.

2.32 They should also draw up appropriate articles of association. As with "Table A", the 2006 Act model articles will apply by default to any limited company of the relevant type which is formed and registered under the 2006 Act, to the extent that it does not choose to modify or exclude the provisions of the relevant model articles in its own registered articles.

2.33 Where a company has filed its own articles at Companies House, the model articles will automatically be applied to 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). This is known as "default application" of model articles.

2.34 Under the Companies Act 2006, the default application of model articles means that limited companies do not need to register articles at all when they are formed if they are happy to rely on model articles in their entirety.

2.35 Companies may add to the default rules or exclude or amend any of the rules set out in the model articles to such an extent as they see fit (so long as any new or amended rules are not against the law). There are a number of different ways in which the provisions of model articles can be excluded or modified:

- a company's articles may simply state that the 2006 Act model articles, or a particular provision of the model articles, do(es) not apply;

- they may make provision which contradicts, and therefore implicitly excludes, provisions of the 2006 Act model articles; or
- they may state that the 2006 Act model articles, or particular provisions of the 2006 Act model articles, apply with specified modifications.

For example:

- A company limited by shares or by guarantee formed under the Companies Act 2006 might begin its registered articles by stating that specified model articles apply, with specified modifications and omissions (for example that the private company limited by shares model articles apply with the exception of certain articles);
- A private company limited by shares might include in its articles some of the provisions from the model articles for public companies.

2.36 The company's articles must be contained in a single document and divided into paragraphs that are numbered consecutively (s. 18 of the Companies Act 2006). As with current practice under the 1985 Act, it is sufficient when filing articles with the Registrar for them to contain cross-references to model articles and, where relevant, to set out how these have been modified (i.e. by the omission of certain articles or by the deletion and replacement of certain words).

## Part 2 – GUIDANCE FOR EXISTING COMPANIES

3.1 By 'existing companies' we mean those companies registered under the Companies Act 1985 or previous Companies Acts (or equivalent Northern Ireland legislation).

3.2 **Important to note:** directors and members of existing companies are not required to make any changes to their constitutional documents as a result of the Companies Act 2006 coming into force on 1 October 2009.

3.3 There are however points to note in terms of provisions that become effective at the point at which existing companies do make changes to their constitutional documents on or after 1 October 2009, which are as set out below.

### **Memorandum of association**

3.4 As set out in Part 1 of this guidance, from 1 October 2009 there is a new style memorandum of association for companies that simply contains the names of the subscribers to the company and authentication that they have agreed to become members of that company.

3.5 For limited liability companies, the limited liability status will be covered in the articles of association.

3.6 From 1 October 2009, the parts of the memorandum of an existing company that are additional to that of the new-style memorandum of association will be automatically deemed to be part of the company's articles of association.

3.7 These parts typically include the company's objects and limited liability status, but may include anything specific to the company that is not the names of the subscribers and their authentication of its formation.

3.8 In itself, the automatic deeming of these parts moving to the company's articles requires no action from existing companies.

3.9 Where members of an existing company (or anyone else entitled to a copy of the articles) request a copy of the articles on or after 1 October 2009, the company can either –

- 1) append a copy of the old-style memorandum to the articles, or
- 2) send a copy of the old-style memorandum with the articles indicating the provisions that are deemed to be provisions of the articles.

3.10 However, the first time, on or after 1 October 2009, that existing companies amend their current articles, by special resolution, or where pre-1

October 2009 amendments take effect on or after that date, they will have to include the relevant parts of their existing memorandum and objects which are not deleted as part of their up to date articles of association filed at Companies House.

3.11 Existing limited companies, if making further amendment to those parts of their articles that contain the original memorandum, should not remove or alter an article that limits their liability – unless they intend to re-register to change the limited liability status of the company.

#### Statement of capital and shareholdings or Statement of guarantee

3.12 Information on capital and shareholdings is no longer part of the memorandum from 1 October 2009; this information will be contained in either a 'statement of capital and shareholdings' or for those companies limited by guarantee a 'statement of guarantee'.

3.13 If a company registered under the 1985 Act (or previous Companies Acts) changes its share capital after 1 October 2009, a new 'statement of capital' should be sent to Companies House.

3.14 Existing companies should also be alert to the fact that, unless already changed by special resolution, their articles will contain their authorised capital as set out in the company's original memorandum (now deemed to be part of the articles). The provision as to the amount of authorised capital will be treated on and after 1 October 2009 as setting the maximum amount of shares that may be allotted by the company, although this can be amended or revoked by ordinary resolution.

#### **Changing an existing company's articles**

3.15 The articles of association registered by a company when it was incorporated, always remain its articles of association, according to the Companies Act applicable when the company was formed, unless the company registers a change to those articles. Table A will continue to provide the default articles for companies formed before 1 October 2009.

3.16 If the members of an existing company have not filed articles with the registrar of companies, the default articles that apply to that company are the articles set out in the version of Table A applicable on the date at which the company was formed. All versions of Table A for the past 150 years are available from the Companies House website at <http://www.companieshouse.gov.uk/about/tableA/index.shtml>

3.17 Members of existing companies are able to amend their articles at any point in time by passing a special resolution. 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. However where an existing company changes its name on or after 1 October 2009 it is not required to amend its articles to effect the change.

3.18 Companies wishing to take advantage of new provisions in the Companies Act 2006 should check that their own articles do not specifically prohibit them from doing so. For example, from 1 April 2008 there is no longer a requirement for a private company to have a company secretary. A company wanting to remove its company secretary should ensure that its own articles are not written in such a way that requires a secretary. If they are so written, such a company might consider, with legal advice as necessary, whether to amend their articles by special resolution. Table A and the new 2006 Act model articles are written permissively to allow a secretary to be employed if a company so wishes.

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## **Part 3 – GUIDE TO THE NEW MODEL ARTICLES**

### **Private companies limited by shares**

4.1 This part of the guidance focuses on the content of the model articles and is prepared with private companies limited by shares in mind. Typically, such companies are likely to be small and may well be owner-managed (that is, the same people may be the shareholders and directors).

4.2 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.

4.3 Some or all of these rules may also 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 members can draw up their own rules, or purchase "ready made articles" via law/legal stationers and from formation agents. The members can also change the private company model articles to fit their company's needs (subject to special resolution), including incorporating other types of model articles (such as those for public companies).

### **Specific points to note on model articles for a private company**

#### Annual general meetings

4.4 A private company (limited by shares or by guarantee) is no longer required to hold an annual general meeting, under the Companies Act 2006. There is therefore no provision made for annual general meetings in the model articles on the assumption that most small private companies will take advantage of this change in the law.

4.5 Company directors of existing companies should be aware however that although the law no longer requires them to hold annual general meetings, their articles of association might – if these have not been changed by special resolution by the company. Members of such companies may, therefore, still anticipate an annual general meeting being held.

4.6 Also if the members of a new company incorporated under the Companies Act 2006 wish the company to hold annual general meetings, they should ensure that provisions for annual general meetings are written specifically into their articles as appropriate. Provisions included in the model articles for public companies could be used for this purpose.

## Company Secretaries

4.7 Similarly, a private company is no longer required to have a company secretary, although one can be appointed if the members wish. Model articles for private companies are written permissively in the case that a company secretary exists but include no requirement for a company secretary. Should the members of a private company wish the company to require a company secretary then they should ensure that such provisions are written into their articles.

## Shareholders' / Members' reserve power

4.8 This article provides that the company's members have a reserve power to tell the directors what to do (or not to do). Although the shareholders or members generally delegate the running of the company to the directors, they may decide to reassert their authority in relation to a particular matter.

4.9 However this does not give shareholders or members carte blanche. Directors are not compelled to comply with such directions where they involve them doing something which is unlawful or contrary to their general duties as directors.

## Directors may delegate

4.10 This article sets out to whom and how directors may delegate their powers but only go so far and it is for a company to determine the extent to which directors delegate their powers. It does not, nor does anything in articles, permit a director to delegate his overall responsibility as a director of the company.

## Articles on decision-taking by members

4.11 It is likely that the majority of private companies will take advantage of the written resolution procedure and therefore the model articles for private companies do not go as far as those for public companies in setting out detailed rules for general meetings. Provisions for the conduct of general meetings are set out fully in the Companies Act 2006. If the members of a private company anticipate the need for regular general meetings they can consider including provisions of the public company model articles within their own articles.

## **Examples of where articles are permissive or indicative but give the directors and others freedom to decide provisions that suit their own particular needs**

4.12 This guidance is not exhaustive – model articles are prepared to provide a default position and in any case companies should consider whether they fit their own specific needs.

### 4.13 Indemnity and insurance

The model articles include short permissive articles on indemnity and insurance which gives company directors the power to resolve that the company indemnify directors and/or purchase and maintain insurance for directors, in accordance with the Act. Companies wishing to have further, specific, indemnifying or insurance provisions, in line with company law, in their articles, can amend the model provisions to suit their own needs.

### 4.14 Amendment of a special resolution at a general meeting

The model articles do not impose restrictions on a chairman's freedom to run meetings as he or she sees fit. This particular article makes explicit case law that a special resolution to be proposed at a general meeting may only be amended by ordinary resolution to correct grammatical or other non-substantive errors. Beyond that, and within the limits of the law, companies can decide more specific parameters that are particular to their own needs.

### 4.15 Records of decisions to be kept

This is an example of a model article that includes a time period or number threshold which is guided by the Companies Act 2006 but can be governed by a company's articles. In this case, the model articles present a reasonable default position of ten years for records of decisions to be kept, but this period may be altered by the members of the company to suit their needs.

### 4.16 Attendance and speaking at general meetings

The model articles do not cater for every eventuality that a company's directors may face in the running of the company's affairs in the way that Table A articles attempted to. This is an example of such a model article. It is permissive and simply allows directors to make any arrangements appropriate to enable those attending a general meeting to exercise their rights to speak or vote at it.

4.17 It does not suggest what those arrangements should be, for example facilitating video conferencing or what to do in case those arrangements cannot be met, such as, using the previous example, technological breakdown. A company's members can leave such detail to the directors or can prepare their own articles to ensure that such provisions are laid out more specifically to suit the needs of the company.

## **Examples of where articles are not stand alone rules and must be applied in conjunction with wider company law**

4.18 Again, this guidance is not exhaustive – articles are generally subject to the Companies Act and to case law – but a few key examples are provided to demonstrate this principle.

### 4.19 Share transfers

Article 26 of the model articles for a private company limited by shares sets out that directors may refuse to register the transfer of a share. It does not restate what is already clearly set out in section 771 of the Companies Act 2006, that when directors make a refusal they must give reasons for doing so.

### 4.20 Organisation of general meetings

The private company model articles no longer include provisions for calling or providing notice of general meetings, which they did in Table A. This is another example of articles not restating what is already set out in the Companies Act 2006 (see Part 13 Resolutions and Meetings). Provisions in the 2006 Act set out the statutory minimum period of notice. Companies can, if they wish, provide for a longer period of notice in their own articles.

### 4.21 Quorum for general meetings

The article sets out that business cannot be transacted at a general meeting, other than the appointment of the chairman, if the meeting is inquorate. The article makes it clear that the quorum is set out in the Companies Acts, relying on the company to cross-refer to the Act as necessary.

Part 5 of this guidance sets out a full comparison of the Companies Act 1985 Table A articles with the Companies Act 2006 model articles, including cross-references to sections of the 2006 Act that have not been restated but should nonetheless be observed.

## **Part 4 – GUIDE TO CHANGES TO THE COMPANIES (TABLES A TO F) REGULATIONS**

### **Key provisions that have already changed in default articles**

5.1 The Government made regulations in September 2007 making amendments to Table A to enable new companies formed on or after 1 October 2007 to take advantage of and to avoid conflict with the provisions of the Companies Act 2006 in force at that date. It made further regulations in March 2008 making amendments to Table C and E to ensure coherence between these Tables and the previously amended Table A.

5.2 The changes made are set out in:

- The Companies (Tables A to F) (Amendment) Regulations 2007 (S.I. 2007/2541);
- The Companies (Tables A to F) (Amendment) (No. 2) Regulations 2007 (S.I. 2007/2826); and
- The Companies (Tables A to F) (Amendment) Regulations 2008 (S.I. 2008/739)

which are all available from the Office of Public Sector Information (OPSI) website.

5.3 Existing companies, incorporated under the Companies Act 1985 or previous Companies Acts, can choose to amend their existing articles of association, by special resolution, to bring them in line with changes in the law as expressed in these revised Tables.

5.4 Remaining provisions of the Companies Act 2006 coming into force on 1 October 2009 have no impact on the revised Tables A to F.

5.5 Tables A to F will cease to apply as default articles for new companies formed on or after 1 October 2009, but will continue to apply to existing companies unless they change them by special resolution.

5.6 Specific impacts of the amendment regulations made on 28 September 2007 that existing companies should be aware of are:

5.7 Regulation 50 of Table A was deleted for both private and public companies as it conflicts with section 282 of the Companies Act 2006. The effect of this section, in force from 1 October 2007, is that an ordinary resolution cannot be passed on a chairman's casting vote. From 14 January 2008, however, companies which immediately before 1 October 2007 had the 1985 Companies Act Table A as their articles of association, or had a provision identical to or with the same effect as regulation 50 of the 1985 Companies Act Table A in their articles of association, will be able to continue

to rely upon a chairman's casting vote, or to restore it if they have in the meantime got rid of it, notwithstanding section 282.

5.8 Regulation 54 of Table A was amended to reflect the new rights for proxies to vote on a show of hands provided by sections 284(2)(b) and 324(1) of the 2006 Act. This regulation now reads:

54. Subject to any rights or restrictions attached to any shares, on a show of hands every member who (being an individual) is present in person or by proxy or (being a corporation) is present by a duly authorised representative or by proxy, unless the proxy (in either case) or the representative is himself a member entitled to vote, shall have one vote and on a poll every member shall have one vote for every share of which he is the holder.

5.9 Existing companies whose articles include words to the effect of the unamended version of regulation 54 of the 1985 Companies Act Table A, so that they do not specifically reflect proxy rights, may find that from 1 October 2007, section 324 of the Companies Act 2006 nonetheless gives proxies rights.

5.10 Specific impacts of the amendment regulations made in March 2008 that existing companies should be aware of are:

5.11 Regulation 8 of Table C has been amended to bring it in line with the revised Regulation 54 of Table A to reflect the new rights for proxies to vote on a show of hands provided by sections 284(2)(b) and 324(1) of the 2006 Act. This regulation now reads:

8. On a show of hands every member present in person or by proxy shall have one vote. On a poll every member present in person or by proxy shall have one vote.

5.12 Existing companies whose articles include words to the effect of the unamended version of regulation 8 of the 1985 Companies Act Table C, so that they do not specifically reflect proxy rights, may find that section 324 of the Companies Act 2006 nonetheless gives proxies rights.

5.13 Regulation 2 of Table E was deleted for unlimited companies as it conflicts with section 307(1) of the Companies Act 2006. The effect of this section, in force from 1 October 2007, is that all companies must provide at least 14 clear days' notice of a general meeting.

## Part 5 – Comparison of the Companies Act 1985 (1986 in Northern Ireland) Table A with the Companies Act 2006 model articles

*Note: this table indicates which provisions of each set of model articles correspond to each regulation of the 1985 (1986 in Northern Ireland) Table A. In some cases, the 2006 Act model articles provisions are not identical in substance with the Table A provisions to which they correspond.*

*Key – “pcls” = “private company limited by shares”, “plc” = “public limited company” and “clg” = private company limited by guarantee*

TABLE A REG.	SUBJECT MATTER	PCLS MODEL ARTICLE	PLC MODEL ARTICLE	CLG MODEL ARTICLE	COMMENTS
<b>INTERPRETATION</b>					
1	Definitions	1	1	1	
<b>SHARE CAPITAL</b>					
2	Company may determine rights of shares	22(1)	43(1)	N/A	
3	Power to issue redeemable shares	22(2)	43(2)	N/A	
4	Power to pay commissions	Omitted	44	N/A	Unlikely to be relevant to most small private companies
5	Company not to recognise holding of shares on trust etc	23	45	N/A	See also Companies Act 2006, s.126.
<b>SHARE CERTIFICATES</b>					
6	Issue of share certificates	24	46-48	N/A	
7	Replacement of share certificates	25	49	N/A	

TABLE A REG.	SUBJECT MATTER	PCLS MODEL ARTICLE	PLC MODEL ARTICLE	CLG MODEL ARTICLE	COMMENTS
<b>LIEN</b>					
8	Company's lien on partly paid shares	Omitted	52	N/A	Pcls model articles have been drafted on the assumption that most small private companies will not wish to issue partly paid shares (other than to subscribers on formation) and will therefore not need to make provision for the company to have a lien on such shares. See article 21 pcls.
9	Power to sell shares subject to lien	Omitted	53(1), (2)	N/A	
10	Arrangements for sale of shares subject to lien	Omitted	53(3)	N/A	
11	Proceeds of sale of shares subject to lien	Omitted	53(4)	N/A	
<b>CALLS ON SHARES AND FORFEITURE</b>					
12	Power to make calls on partly paid shares	Omitted	54, 55(1)	N/A	Pcls model articles have been drafted on the assumption that most small private companies will not wish to issue partly paid shares (other than to subscribers on formation) and will therefore not need to make provision for the company to make calls on and forfeit such shares. See article 21 pcls.  Table A reg. 13 omitted from plc model articles as unnecessary.
13	When call deemed to be made	Omitted	Omitted	N/A	
14	Joint holders' liability to pay calls	Omitted	55(2)	N/A	
15	Interest on unpaid calls	Omitted	57	N/A	
16	Deemed calls	Omitted	56	N/A	
17	Differentiation of shares as regards calls	Omitted	55(3)	N/A	
18	Notice requiring payment of unpaid call	Omitted	58	N/A	
19	Power to forfeit shares where calls remain unpaid	Omitted	59, 60(1)	N/A	
20	Dealing with forfeited shares	Omitted	60(1), (4), 61(1)	N/A	
21	Effect of forfeiture	Omitted	60(3)	N/A	
22	Title to forfeited shares	Omitted	61(2), (3)	N/A	

TABLE A REG.	SUBJECT MATTER	PCLS MODEL ARTICLE	PLC MODEL ARTICLE	CLG MODEL ARTICLE	COMMENTS
<b>TRANSFER OF SHARES</b>					
23	Form of instrument of transfer of shares	26(1)	63(1)	N/A	
24	Power of directors to refuse to register transfer of shares	26(5)	63(5)	N/A	Pcls model articles do not specify grounds for directors to refuse to register transfers: more discretionary approach is in keeping with small company practice.
25	Refusal to register transfer to be notified within two months	Omitted	Omitted	N/A	Provided for in Companies Act 2006, s.771.
26	Power to suspend registrations of transfers	N/A	N/A	N/A	Companies Act 2006 does not provide for closure of register of members.
27	No fee to be charged for registering transfer	26(2)	63(2)	N/A	
28	Dealing with instrument of transfer after (non)-registration	26(3), (5)	63(3), (6)	N/A	
<b>TRANSMISSION OF SHARES</b>					
29	Transmission of shares of deceased member	27(1)	65	N/A	
30	Registration of person entitled by death or bankruptcy as member	27(2)(a), 28	66(1)(a), 67(1), (2), (4)	N/A	
31	Rights of person entitled by death or bankruptcy	27(2)(b), (3)	66(1)(b), (2)	N/A	
<b>ALTERATION OF SHARE CAPITAL</b>					
32	Power to increase, consolidate etc share capital	Omitted	Omitted	N/A	Companies Act 2006 makes general provision for alteration of share capital (Chapter 8 of Part 17) and removes concept of authorised share capital. As to
33	Procedures relating to consolidation	Omitted	69	N/A	

<b>TABLE A REG.</b>	<b>SUBJECT MATTER</b>	<b>PCLS MODEL ARTICLE</b>	<b>PLC MODEL ARTICLE</b>	<b>CLG MODEL ARTICLE</b>	<b>COMMENTS</b>
34	Power to reduce share capital etc	Omitted	Omitted	N/A	the capital redemption reserve, see sections 733, 734 and 831. Consolidation procedural provision omitted from pcls model articles as unlikely to be required by most small private companies.
<b>PURCHASE OF OWN SHARES</b>					
35	Power to purchase own shares	Omitted	Omitted	N/A	See Companies Act 2006, Part 18, Chapter 4 for provisions governing purchase of own shares.
<b>GENERAL MEETINGS</b>					
36	Extraordinary general meetings defined	N/A	N/A	N/A	Companies Act 2006 does not use the term "extraordinary general meeting".
37	Directors' power / duty to call general meetings	Omitted	Omitted	Omitted	See Companies Act 2006, sections 302 to 304 for directors' power or, in some cases, duty to call general meeting.
<b>NOTICE OF GENERAL MEETINGS</b>					
38	Notice of general meetings	Omitted	Omitted	Omitted	See Companies Act 2006, sections 307 and 310 governing requirements for notices of general meetings.
39	Accidental failure to give notice does not invalidate meeting	Omitted	Omitted	Omitted	See Companies Act 2006, section 313 (accidental failure to give notice of resolution or meeting).
<b>PROCEEDINGS AT GENERAL MEETINGS</b>					
40	Quorum must be present	38	30	24	The quorum for general meetings is provided for in the Companies Act 2006, section 318.
41	Adjournment of meeting if quorum not present	41(1), (4)	33(1), (4)	27(1), (4)	
42	Chairman or another director to chair general meeting	39	31	25	

<b>TABLE A REG.</b>	<b>SUBJECT MATTER</b>	<b>PCLS MODEL ARTICLE</b>	<b>PLC MODEL ARTICLE</b>	<b>CLG MODEL ARTICLE</b>	<b>COMMENTS</b>
43	Chairman of general meeting when no director present	39	31	25	
44	Non-member directors may attend and speak	40(1)	32(1)	26(1)	
45	Chairman's power / duty to adjourn general meeting	41(2), (3), (5), (6)	33(2), (3), (5), (6)	27(2), (3), (5), (6)	
46	Voting methods; conditions for demanding a poll vote	42, 44(2)	34, 36(2)	28, 30(2)	
47	Chairman's declaration of vote result	Omitted	Omitted	Omitted	See Companies Act 2006, section 320 (declaration by chairman on a show of hands).
48	Withdrawing demand for poll	44(3)	36(3)	30(3)	
49	Procedure for taking poll	44(4)	37(1), (2), (3)	30(4)	Pcls and clg poll provisions simplified because in a small company it should always be possible to take polls immediately.
50	Chairman's casting vote	Omitted	Omitted	Omitted	The effect of the Companies Act 2006 is to prohibit a chairman's casting vote.
51	When polls are to be taken	44(4)	37(2)-(6)	30(4)	See comment on regulation 49; see also additional requirements for quoted companies concerning polls in Chapter 5 of Part 13 of the Companies Act 2006.
52	Notice of polls	Omitted	37(7), (8)	Omitted	See comment on regulation 49.
53	Members' written resolution	Omitted	Omitted	Omitted	Written resolutions of private companies are provided for in Chapter 2 of Part 13 of the Companies Act 2006.
<b>VOTES OF MEMBERS</b>					
54	How many votes per member on show of hands and poll	Omitted	Omitted	Omitted	See Companies Act 2006, s. 284 (votes: general rules).
55	Voting by joint holders	Omitted	Omitted	Omitted	See Companies Act 2006, s. 286 (votes of joint

<b>TABLE A REG.</b>	<b>SUBJECT MATTER</b>	<b>PCLS MODEL ARTICLE</b>	<b>PLC MODEL ARTICLE</b>	<b>CLG MODEL ARTICLE</b>	<b>COMMENTS</b>
					holders of shares).
56	Voting on behalf of mentally incapacitated members	Omitted	Omitted	Omitted	Model articles avoid repetition of general non-company law.
57	Members who owe the company money in respect of their shares may not vote	Omitted	41	N/A	As set out above, pcls model articles have been drafted on the assumption that most small private companies will not issue partly paid shares, therefore no provision is needed.
58	Objections to votes	43	35	29	
59	Proxy / poll voting	Omitted	Omitted	Omitted	See Companies Act 2006, sections 284 (votes: general rules) and 324 (rights to appoint proxies).
60	Proxy appointment form (if proxy has discretion as to how to vote)	45	38	31	Model articles adopt an approach of requiring that certain information is included in proxy appointment forms and permitting the company to require use of a particular form, rather than prescribing the actual wording of forms as Table A does.
61	Proxy appointment form (if proxy is to be instructed how to vote)	45	38	31	
62	Procedure for appointing proxies	46	39	32	See also Companies Act 2006, s. 324 (rights to appoint proxies).
63	Effect of termination of proxy's authority	Omitted	Omitted	Omitted	See Companies Act 2006, s. 330 (notice required of termination of proxy's authority).
<b>NUMBER OF DIRECTORS</b>					
64	Minimum number of directors	Omitted	Omitted	Omitted	Model articles do not provide for minimum number of directors.
<b>ALTERNATE DIRECTORS</b>					
65	Directors may appoint alternates	Omitted	25(1)	Omitted	Pcls and clg model articles assume that most small private companies will not want to give directors power to appoint alternates.
66	Alternates' right to receive notice of meetings etc	Omitted	26(1), (3)	Omitted	

<b>TABLE A REG.</b>	<b>SUBJECT MATTER</b>	<b>PCLS MODEL ARTICLE</b>	<b>PLC MODEL ARTICLE</b>	<b>CLG MODEL ARTICLE</b>	<b>COMMENTS</b>
67	Termination of alternate's appointment	Omitted	27	Omitted	
68	Notifying company of alternate's appointment or removal of alternates	Omitted	24(2), (3), 27(a)	Omitted	
69	Legal status of alternates	Omitted	26(2)	Omitted	
<b>POWERS OF DIRECTORS</b>					
70	Directors' functions	3, 4	3, 4	3, 4	See also Companies Act 2006, section 171 (director's duty to act within powers).
71	Directors' power to appoint agents	5	5	5	
72	Directors' power to delegate	5, 6	5, 6	5, 6	
<b>APPOINTMENT AND RETIREMENT OF DIRECTORS</b>					
73	Directors' retirement by rotation	Omitted	21	Omitted	Pcls and clg model articles do not provide for retirement by rotation, as this is assumed not to be required in most small private companies. Plc model articles omit the more complex procedural aspects of Table A provision on appointment of directors at general meetings as unnecessary given the framework in Part 13 of the Companies Act 2006.
74	Which directors retire by rotation at each AGM	Omitted	21	Omitted	
75	Automatic re-appointment if vacancy not filled	Omitted	Omitted	Omitted	
76	New appointments at AGM	Omitted	Omitted	Omitted	
77	Notification of candidates for appointment / re-appointment at AGM	Omitted	Omitted	Omitted	
78	Members' right to appoint directors	17(1)	20	17(1)	
79	Directors' power to appoint directors	17(1)	20	17(1)	
80	Re-appointment of retiring directors	Omitted	Omitted	Omitted	
<b>DISQUALIFICATION AND REMOVAL OF DIRECTORS</b>					
81	When directors' appointment terminates automatically	18	22	18	

<b>TABLE A REG.</b>	<b>SUBJECT MATTER</b>	<b>PCLS MODEL ARTICLE</b>	<b>PLC MODEL ARTICLE</b>	<b>CLG MODEL ARTICLE</b>	<b>COMMENTS</b>
<b>REMUNERATION OF DIRECTORS</b>					
82	Directors' entitlement to remuneration as directors	19	23	19	
<b>DIRECTORS' EXPENSES</b>					
83	Company may pay directors' expenses	20	24	20	
<b>DIRECTORS' APPOINTMENTS AND INTERESTS</b>					
84	Managing and executive directors	5, 19	5, 23	5, 19	
85	Conflict of interests: exceptions	Omitted	Omitted	Omitted	Provisions set out in Chapter 3 of Part 10 of the Companies Act 2006.
86	Notification of interests and interests to be disregarded	Omitted	Omitted	Omitted	
<b>DIRECTORS' GRATUITIES AND PENSIONS</b>					
87	Directors' pensions etc	19(3)	23(3)	19(3)	
<b>PROCEEDINGS OF DIRECTORS</b>					
88	Directors' meetings: general	7-10, 13, 16	7-9, 14, 15, 19	7-10, 13, 16	
89	Quorum at directors' meetings	11(1), (2)	10	11(1), (2)	
90	Where number of directors less than quorum	11(3)	11	11(3)	
91	Chairman of board	12	12	12	
92	Acts of persons not properly appointed as directors	Omitted	Omitted	Omitted	See Companies Act 2006, s. 161 (validity of acts of directors).
93	Written resolutions of directors	8(2)	17, 18	8(2)	
94	Conflicted directors may not vote except in certain cases	14	16	14	

<b>TABLE A REG.</b>	<b>SUBJECT MATTER</b>	<b>PCLS MODEL ARTICLE</b>	<b>PLC MODEL ARTICLE</b>	<b>CLG MODEL ARTICLE</b>	<b>COMMENTS</b>
95	Director not entitled to vote not to count in quorum	14(1)	16(1)	14(1)	
96	Suspension of prohibition against voting if conflicted	14(2), (3)(a)	16(2), (3)(a)	14(2), (3)(a)	
97	Composite resolutions	Omitted	Omitted	Omitted	Unnecessary.
98	Resolving questions of entitlement to vote	14(6), (7)	16(5), (6)	14(6), (7)	
<b>SECRETARY</b>					
99	Appointment of secretary	Omitted	Omitted	Omitted	Unnecessary for any company (whether or not it chooses to appoint a company secretary, or is obliged to do so under the Companies Act 2006).
<b>MINUTES</b>					
100	Keeping of minutes of directors' / general meetings	15	18(4)	15	See also Companies Act 2006, s.248 (minutes of directors' meetings).
<b>THE SEAL</b>					
101	Company seal	49	81	35	
<b>DIVIDENDS</b>					
102	Dividends: general	30(1)-(3)	70(1)-(3)	N/A	
103	Interim dividends	30(1), (4)-(7)	70(1), (4)-(7)	N/A	
104	Calculation of dividends	Omitted	71	N/A	
105	Payment of dividends by distribution of assets	34	76	N/A	
106	Payment of dividends	31	72	N/A	
107	No interest on dividends	32	74	N/A	

<b>TABLE A REG.</b>	<b>SUBJECT MATTER</b>	<b>PCLS MODEL ARTICLE</b>	<b>PLC MODEL ARTICLE</b>	<b>CLG MODEL ARTICLE</b>	<b>COMMENTS</b>
108	Unclaimed dividends	33	75	N/A	
<b>ACCOUNTS</b>					
109	Members have no right to inspect company books	50	83	36	
<b>CAPITALISATION OF PROFITS</b>					
110	Capitalisation of profits	36	78	N/A	
<b>NOTICES</b>					
111	Notices to be in writing	48	79, 80	34	See also Companies Act 2006, sections 1139-1148 (service of documents; sending or supplying documents or information).
112	Method of giving notices under articles				
113	Deemed receipt of notices				
114	Persons entitled to shares bound by notices	29	68	N/A	See Companies Act, s.1147 (deemed delivery of documents and information) See Companies Act 2006, Schedule 5, para 17 (death or bankruptcy of holder of shares)
115	Proof of delivery	Omitted	Omitted	Omitted	
116	Giving notices to persons entitled by death / bankruptcy	Omitted	Omitted	Omitted	
<b>WINDING UP</b>					
117	Liquidator may divide assets among members in specie	Omitted	Omitted	Omitted	
<b>INDEMNITY</b>					
118	Indemnity for directors in certain cases	52	85	38	

## **Part 6– OTHER DEFINITIONS OR ISSUES**

### **Re-registration**

6.1 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.

6.2 If, prior to re-registration, the company was using model articles, the form of model articles for the type of company originally registered with the registrar will continue to apply to the company on re-registration, unless they are amended. Companies should therefore consider making such an amendment.

6.3 Examples:

- If a company is originally incorporated and registered as a public company and relies on default model articles, the public company model articles will apply. If it later re-registers as a private company limited by shares, it will remain subject to the default application of the public company model articles unless its own articles are amended and provide otherwise.
- If a company is originally incorporated as a private company limited by shares and it subsequently re-registers as a public company, the public company model articles will not apply to it unless it adopts them, wholly or in part, in its own articles (it can do this either by reproducing the text of the relevant provisions or by incorporating them by reference).
- If a company starts life as an unlimited company and subsequently re-registers as a private company, it will then need to register articles of association, which it could do by adopting the relevant set of model articles.

### **Unlimited companies**

6.4 There are no model articles provided for unlimited companies and, as such, no default provision (s.20 of the Companies Act 2006 only provides for default application of model articles to limited companies).

6.5 Unlimited companies are free to choose to use provisions of model articles as the basis of their own articles of association. Those forming unlimited companies under the Companies Act 2006 are advised to take into account the following points when drawing up their articles of association:

- There should not be a provision within the articles for the liability of the members to be limited; and
- Consideration should be given to the inclusion of an article containing power for an unlimited company by special resolution to increase or consolidate share capital, subdivide or cancel shares or reduce share capital and any share premium account.

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## **SUMMARIES**

### **6.6 What a company must do in respect of its articles**

- A company's articles of association are a matter of public record.
- If it does not rely entirely on statutory model articles, a company must register its own articles with the registrar of companies when it is formed.
- Articles must be contained in a single document and divided into consecutively numbered paragraphs, although the articles may cross refer to model articles for a particular type of company and state how these have been applied or modified.
- If a company changes its articles (by special resolution of its members) an up to date copy of the articles must be registered with the registrar of companies not later than 15 days after the amendment takes effect.
- Companies must also make up to date copies of their articles available to their members on request.
- Articles must not include provisions which would cause the company or its directors to operate outside the law.
- The articles of association of a limited company must include a statement of limited liability to ensure the limitation exists for the company.

## **At a glance – Twenty things for private companies to know about Companies Act 2006 model articles of association**

### 6.7 General

- Every company is required to have articles by law and the articles are legally binding on the company and all of its members.
- The directors of a company must comply with the articles and if they don't they will be in breach of their duties as directors (in addition to those duties set out in the Companies Act 2006).
- A company's existing articles of association should always be interpreted in the context of current law. From 1 October 2009, all companies' articles of association are subject to the Companies Act 2006. Prior to that date, the articles are subject to the provisions of the 2006 Act which are already in force.
- The new form model articles for private companies limited by shares, private companies limited by guarantee, and public companies incorporated under the Companies Act 2006 come into effect on 1 October 2009.
- The Companies Act 2006 model articles are available in hard copy from The Stationery Office, or can be accessed at the Office of Public Sector Information (OPSI) website in either HTML or printable PDF form.

[http://www.opsi.gov.uk/si/si2008/uksi\\_20083229\\_en\\_1](http://www.opsi.gov.uk/si/si2008/uksi_20083229_en_1)

[http://www.opsi.gov.uk/si/si2008/pdf/uksi\\_20083229\\_en.pdf](http://www.opsi.gov.uk/si/si2008/pdf/uksi_20083229_en.pdf)

### 6.8 Existing companies

- The articles of association registered by a company when it was incorporated, remain its articles of association, according to the Companies Act applicable when the company was formed, unless the company registers a change to those articles.
- Companies should ensure that, if they decide to adopt any provisions of the new form of model articles, they are not compromising any particular provisions in their existing articles, which were written in at the time of incorporation, or later, to accomplish a purpose specific to their own needs. In such cases, existing companies might wish to seek legal advice before changing their articles.
- Existing limited companies should be careful when updating their articles of association in future, the provisions of the memorandum being deemed

to be part of them, that they do not remove or alter an article that limits their liability – unless they intend to re-register to change the limited liability status of the company.

#### 6.9 Statement of capital

- If a company registered under the 1985 Act (or previous Companies Acts) changes its share capital after 1 October 2009, a new 'statement of capital' should be sent to Companies House.
- Existing companies should also be alert to the fact that, unless already changed by special resolution, their articles will contain their authorised capital as set out in the company's original memorandum (now deemed to be part of the articles). Existing companies should consider whether to amend their articles, by special resolution, to delete this.

#### 6.10 Memorandum and objects

- Any new companies formed on or after 1 October 2009 will not be required to list objects for the company as these will be unrestricted from that point forward, unless they are specifically restricted by the company.
- Model articles now cover the main content of the old-style memorandum including a statement of limited liability.
- From 1 October 2009, the memoranda of association (including the objects) of existing companies will be automatically deemed to be part of the companies' articles of association.
- The first time on or after 1 October 2009 that existing companies (those companies registered under the various previous Companies Acts) amend their current articles, by special resolution, they will have to include their existing memorandum and objects as part of their up-to-date articles of association filed at Companies House.

#### 6.11 Filing articles of association with Companies House

- From 1 October 2009, when any company makes amendments to its articles of association (by special resolution) it must file an up to date copy of the entire set of articles not later than 15 days after the amendment takes effect. Failure to do this is an offence by the company and its officers, which carries a civil penalty.
- Where a limited company formed under the Companies Act 2006, on or after 1 October 2009, adopts model articles without amendment, there is no need for that company to file its articles at Companies House, until it subsequently makes an amendment to the articles.

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