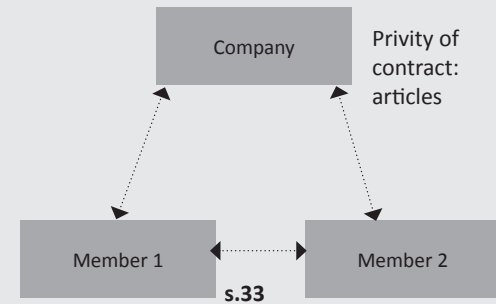


What are the “Articles of Association”?

- The internal rules which govern how a company is run – every company must have them (s.18)
- They may not conflict with mandatory provisions of the CA2006
- They are a **contract between the company and its members**
- May be bespoke, amended or default (Table A or MA)
- Always available for inspection by public at Companies House
- Must be in a single doc with numbered paras (s.18(3))
- Some articles may be entrenched (s.22) – i.e. harder to change. Must notify Registrar which articles are entrenched (s.23), members must pass SR to decide to entrench and send Form CC01 & a copy of the resolution to the Registrar.

s.33 CA 2006

Goes further and implies a contract between the members themselves. But this is valid only in so far as it deals with membership rights (*Beattie*) e.g. right to a share in a dividend if declared, or right to notice of GMs.



Setting up a Company

To Register a Company

“Promoters”

- Any contracts entered into by “promoters” (*Twycross v Grant*) of Co on its behalf BEFORE incorporation date are NOT binding on the company but are binding on the individual who made them (s.51).
- Ds must enter into novation agreement if they want the company to take over the contract.
- Note – solicitors are not “promoters” when acting in professional capacity.

Procedure

1. Submit to Companies House

- a) A registration application (INO1)
- b) fee
- c) Copy of your articles (or just those special articles you want s.20(1)(b)) otherwise default MA will apply s.20(1)
- d) A memorandum of association s.9(1) which states:
 - i. You wish to form a company
 - ii. Agree to members taking at least one share each s.8
 - iii. Giving names of subscribers, signatures and the date

2. Receive a certificate of incorporation s.15(1) issued by Registrar which is evidence of Co’s existence and states

- a) Name and Registered Number of company
- b) Date of incorporation and location of registered office (R/O)
- c) Limited/unlimited liability (by shares or guarantee) private/public

3. Organise your company!

- a) Write up company records on incorporation (defined in s.1134)
- b) Change a/c reference date (default – anniversary of last day in month in which incorporated s.391(4))
- c) Appoint auditors, elect a chairman (optional)
- d) Take out insurance in company name and open bank account
- e) Put up a notice of company name at R/O, SAIL, all places of business, on all websites and correspondence.
- f) Order stationery/forms giving company name, R/O, country of registration, Reg number, names of ALL or NONE of Ds

Registered Office

- Must have one s.86; doesn’t have to be the company’s main place of business
- It’s where important correspondence goes and statutory books are kept.
- May also have SAIL. (Second Alternative Inspection Location)

Directors

- Manage day to day business of company.
- Usually have “all the powers of the company” to let them do this. (e.g. MA3, TA70)
- Have a fiduciary, agency and employment relationship with company.
- Make important decisions at board meetings by passing resolutions.
- Can delegate some or all powers and roles to certain Ds or to employees. (e.g. MA 5 and TA 72 give very wide powers of delegation)

Directors are defined by s.250(1) CA2006 as any person occupying that position “*howsoever called*”....

- “**executive director**” – is an employee as well as a D. Runs Co day-to-day.
- “**non-executive director**” – not an employee and just attends BMs. Still has duties as a D and can be liable to the company for neglect or breach of these (*Equitable Life v Bowley*). More common in public companies.
- “**managing director**” – Board can give them any or all of the powers of the board, but can take them away too. Must be D. Table A 84 gives a specific right to appoint an MD.
- “**chairman**” – there may be a power in articles to appoint and remove one of these (e.g. MA13). Powers determined under articles but may include leading meetings and casting deciding vote in case of deadlock (MA13).
- “**shadow director**” – gives instructions to Ds that are followed i.e. has real and regular influence over board. NOT a professional adviser e.g. lawyer/accountant. Defined in s.251(1) CA2006. Relevant if someone is acting as D but trying to avoid liability/responsibilities.
- “**De Facto Director**” – someone who performs functions of but has never been properly appointed as a D whose appointment has expired. Can still fall within s.250(1). Overlaps a bit with shadow director. See also s.161CA2006 – improperly appointed Ds will have acts validated.
- “**alternates**” – a stand-in, someone who attends BM instead of the actual D. This may be permitted or not under articles – Table A allows alternates (art 65), the MA don’t. Usually another D acts as alternate, so will cast two votes.

Appointing Directors

| | |
|--------------------------------------|--|
| How many are needed? | <ul style="list-style-type: none"> CA - No maximum. Private company must have at least ONE (s.154(1)) Public company must have at least TWO (s.154(2)) Articles: no max or minimum under MA but under table A reg 64 there is no max but a minimum of two directors unless shareholders decide otherwise |
| Do they need to hold shares? | Not under the CA 2006 or 1985 and not under MA. |
| Who <i>can't</i> you appoint? | <ul style="list-style-type: none"> Undischarged bankrupts (s.11 CDDA 1986) Under 16s (s.157 CA 2006) Disqualified persons (s.13 CDDA 1986) |

Starting a company:

- Name Ds in statement of proposed officers on Form IN01.
- Ds must sign statement of consent to becoming a director (s.167(2)(b)).
- On incorporation they automatically become Ds. (s.16(6)(a)).

Any other time: (Check articles for alternative procedure)

- Under **MA 17** Resolve to appoint D, either by an OR of the SH at a GM; or by an OR of Ds at BM.
 - Under **Table A** –as above BUT if method 2 is used, (under art 79) the new D only holds office until the next AGM, where he has to be reappointed via method 2 (art 78). If method 1 is used, must comply with the conditions in arts 76&77.
- Admin:
- Send form AP01 to Companies House (AP02 for corporate D) within 14 days
 - Update the register of Ds and the register of Ds' residential addresses (within 14 days of appointment) (ss.162-7)
 - Make sure either ALL or NONE OF the Ds names are on the stationery of company (s.82)

WS2 Board Meetings

Declarations of Interest in a Proposed Transaction s.177

- Is a declaration needed?
 - s.177(1): If a director has in any way a direct or indirect interest in a transaction or arrangement with the company he must make a declaration. "Indirect" could be if a spouse etc. has shares in the other party to transaction
- Do any exceptions apply?
 - s.177(5): The director is not aware of either the interest or the transaction
 - A director is taken to know everything he ought reasonably to know.
 - s.177(6)(a): If the interest cannot reasonably be regarded as likely to give rise to a conflict of interest
 - s.177(6)(b): If the other directors are already aware of it (they are taken to be aware of everything they reasonably ought to be)
 - s.177(6)(c): If it concerns his interest in the terms of his service contract
 - A **sole director** need not make any declarations.
- When and how must it be made?
 - s.177(4): The director must declare the nature and extent of his interest BEFORE the company enters into the transaction
 - s.177(2): It may be made at a board meeting or by notice in accordance with s.184 (writing) or s.185 (a general notice)
 - s.177(2): If it becomes inaccurate or incomplete, a further declaration must be made.
- What are the effects of the declaration?
 - The director can't vote or count in the quorum (MA14(1))
 - Unless MA14(4) exception applies or MA14(3) is used (SH temporarily disapply MA14(1))

Declarations of Interest in an Existing Transaction – s.182

- Is a declaration needed?
 - s.182(1): If a director has in any way a direct or indirect interest in a transaction or arrangement with the company he must make a declaration "Indirect" could be if a spouse etc has shares in the other party to transaction.
- Do any exceptions apply?
 - s.182(5): The director is not aware of either the interest or the transaction
 - A director is taken to know everything he ought reasonably to know.
 - s.182(6): If the interest cannot reasonably be regarded as likely to give rise to a conflict of interest
 - s.182(6)(b): If the other directors are already aware of it (again, they are taken to be aware of everything they reasonably ought to be)
 - s.182(6)(c): If it concerns his interest in the terms of his service contract