



THE PRIVATE LIMITED COMPANY

1. Introduction

The most common form of company in the UK is the private limited company; often abbreviated to “Limited” or “Ltd”.

This guide is intended to provide broad guidance on the main legal requirements that will need to be complied with or considered when setting up a business in England and Wales.

2. Minimum Requirements

A limited company needs:

- At least one Director and at least one individual on the Board of Directors. Subject to the Articles of Association there is no limitation on the number of directors a company can have.
- a Registered Office in England (which is the official address for service of legal proceedings and other documents and where Company's Statutory records should be held); and
- one Shareholder, holding at least one share.

3. Constitution

The constitution of the company is set out in the Memorandum of Association and Articles of Association.

The **Memorandum** sets out the initial incorporation details such as initial shareholders and directors relating to the company. The **Articles** govern how the company will be operated. The Companies Act 2006 provides a specimen form of articles, which is usually called "**Model Articles**" and generally accepted in England as fair and effective. Accordingly, most companies simply adopt the Model Articles with a few amendments as their Articles of Association.

4. Shares

The company will usually be a private company limited by shares.

A shareholder normally has no liability for the company's obligations, but he may have to pay up any part of the nominal capital of his shares which is unpaid.

Technical terms often used in company documents are "nominal capital", "issued capital", "paid-up capital" and "market value". The Articles of Association will set out the types of shares, which the company is able to issue and the rights attached to those shares (dividend, interest, votes etc). These can be as complicated or as

simple as the company and/or its shareholders may wish. Each class of share will be given a face value. This is usually £1, but can be anything (1p, 10p or even Euros).

Most companies have just one type of share (usually referred to as “**ordinary shares**”), which gives each shareholder one vote per share at shareholders’ meetings, and provides an income (“**dividend**”) to the shareholder these are according to the amount declared per share each year, if any, by the directors. The directors will usually seek approval from the shareholders in a shareholders general meeting before a declaration is made in respect of dividends.

The “**issued capital**” is the total of the face value of all the shares of all classes issued to shareholders.

When a company issues shares to a shareholder, it is not required to collect full cash payment of the nominal value. So, an ordinary share of £1 may be issued to the shareholder for payment of 25p. This is then called a “**partly paid share**”, and the shareholder owes a debt to the company of 75p being the difference between the nominal value (£1) and the payment (25p). The difference does not usually carry interest. The company may at any time make a “call” on the shareholder for all or part of the unpaid nominal value. The “**paid-up capital**” is accordingly the total amount received by the company on the issue of all classes of shares plus any calls made since their issue.

The “**market value**” of a share is the price which an independent buyer would be likely to be prepared to pay for the share, and is therefore related to the value of the company and its prospects.

The Articles of Association should set out any restrictions on the transfer of shares if this is required. The Model Articles gives power to the Board of directors to refuse to register the transfer of a share.

The Model Articles determine the issue of new shares.

5. The officers

Directors

The directors are appointed by the shareholders, save for the board having a limited authority to appoint a director to hold office only until the next Annual General Meeting of the shareholders.

The Model Articles give the directors the power to manage the business of the company.

There are very few matters on which the directors require the approval of the shareholders before they can act. Under company law it is, however, necessary regularly to renew powers given to the directors to control the issue of new shares.

For reasons of liability screening, it is often unwise for shareholders to seek to interfere in the activities of the Board and legal advice should always be taken when shareholders are considering giving explicit instructions to the Board to act or refrain from acting in a particular way.

There is no set period of notice required to convene a Board meeting, it just has to be ‘reasonable’ notice (but one may be provided for in the Articles of Association) and a quorum for such meetings is usually 2 directors (and the meeting may be held by

telephone), unless the company has just one director. Each director has 1 vote, the directors are free to choose the chairman (who chairs all meetings until replaced) and the chairman may have a casting vote (if the Articles provide for this). The Model Articles require a record to be made of the proceedings of all Board meetings with the names of the directors present (or involved by telephone) (called "**minutes**"). Where there is only 1 director, he is a quorum on his own.

The board can act by a written resolution (that is, without a meeting), but it must be signed by all the directors to be valid. A single director often has power to commit the company to third parties by his acts alone (in particular a Managing Director or CEO is assumed to have authority to do so, unless the Articles say otherwise).

Company law requires the directors each financial year:

- to prepare accounts for the company which give a true and fair view of the financial affairs of the company; and
- to prepare a report to the shareholders reviewing the development of the business during the relevant accounting period.

The accounting standards, and whether the accounts must be audited, vary according to whether the company is dormant or trading, and whether it qualifies as "small", "medium" or "large" (and see under *Accounts* below).

Company Secretary

Although it is no longer required under the Companies Act 2006 for private limited companies to appoint a Company Secretary it is advisable in order to ensure that all filing requirements are complied with as failure to do so will expose the company to various fines. The Board appoints the Company Secretary who usually acts as the principal administrative and compliance officer of the company for legal matters. The Company Secretary ensures that the company maintains the registers required by law (see section 8 below), files all the documents required by law at the Companies Registry, and is usually the person responsible for giving notice of Board and shareholder meetings and preparing the record of such meetings (often called the "minutes").

Auditors

The company's auditors are appointed by the shareholders. A dormant company and certain "small" companies are not required to appoint auditors. The auditors are required each financial year to prepare a report to the shareholders on whether the accounts give a true and fair view of the state of the company and have been properly prepared in accordance with the law. In carrying out this function, the auditors will usually:

- examine, on a test basis, the accounts prepared by the directors;
- assess whether proper accounting records have been kept by the directors; and
- assess the significant estimates and judgments made by the directors in preparing the accounts.

Auditors have rights to attend and speak at certain shareholder meetings and, when resigning, to place any matter they consider significant before a meeting of the shareholders (and to attend and speak at the meeting).

6. Shareholders

Often also called the “**members**”, these are the persons who hold the shares. Their rights vary according to the class of share held, and will be set out in the Articles of Association.

Decisions and voting

Shareholder decisions are usually made by simple majority vote, so that a resolution will be passed if 51% of those voting vote in favour (an “**ordinary resolution**”).

Sometimes the law requires a 75% majority (a “**special resolution**”). Decisions of shareholders are taken at meetings of the shareholders.

The Model Articles requires votes to be taken on a show of hands (one shareholder = 1 vote) unless a poll is duly demanded in accordance with the articles.

Shareholder Meetings

The Board calls meetings of the shareholders, and company law requires a written note to be made of their decisions.

Shareholder meetings are called by the company sending a written notice to each shareholder stating the time, date and place of the meeting, the business to be discussed and the text of any special resolutions to be proposed. There are strict rules concerning the minimum period of notice to be given for such meetings.

The chairman of the Board acts as chairman of the shareholders’ meeting; in his absence the chairman will be another director. If no directors are willing to act as chairman, then the shareholders may elect a chairman of the meeting.

A member may appoint a proxy to represent him at the meeting. Almost anyone can be appointed as a proxy, but the form of proxy must be deposited with the company at least 2 days before the meeting. A record must be made of the proceedings of all shareholder meetings (again, “minutes”).

Shareholder approval

Company law requires shareholder approval for a number of specific matters, the most common of which are:

- to change the constitution;
- appointment or removal of directors;
- appointment or removal of the auditors; and
- to approve major transactions between the company and the directors.

Except for matters required by company law to have shareholder approval, the Model Articles gives the power to the directors to manage the business of the company (see above).

7. Annual Tasks

Each year the company will be required to:

- file at Companies House a so-called annual return. This gives details of the directors and company secretary, the registered office, the number and type of shares available for issue, and (once every two years) a list of the current

shareholders and changes in shareholding since the previous list was filed. The form will appear on the public record. This means that, unless shares are held through a nominee, anyone can discover who owned the company at the relevant filing date – but the information is often out of date, where shares are transferred between filings;

- file at Companies House the accounts including directors' and auditors' reports if applicable. The accounting requirements, including the documents which must accompany the accounts, vary according to the size of the company;
- send to each shareholder a copy of the accounts.

8. Registers

Every company must keep "**statutory books**", which are registers of the following:

- shareholders' minutes, which record the proceedings of Board meetings or shareholders' meetings;
- directors;
- company secretaries;
- security granted over any company property;
- transfers of shares; and
- directors' interests in shares and securities.

The registers are normally kept at the registered office.

For further information and advice please contact:

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