

New model articles

Companies Act 2006

May 2009

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Introduction

From 1 October 2009, new model articles of association under the Companies Act 2006 will replace Table A.

We examine the approach and content of the model articles, and the reasons why existing companies may wish to adopt these.

Table A

Under the Companies Act 1985, standard form articles known as “Table A” are deemed to apply to a company limited by shares:

- where articles are not registered with registrar of companies, or
- where articles are registered, in so far as Table A is not excluded or modified

In contrast, companies limited by guarantee and unlimited companies must register articles on incorporation. Although the forms of such articles are prescribed (as Tables C and E respectively), these do not apply by default.

Model articles under the 2006 Act

Table A will be superseded with effect from 1 October 2009 by new “model articles”. The Secretary of State is empowered by the 2006 Act to prescribe model articles for all types of company, and has done so (by way of The Companies (Model Articles) Regulations 2008) for:

- private companies limited by shares
- private companies limited by guarantee
- public companies

The relevant model articles will apply to such companies as default articles on the same basis as Table A applies to companies limited by shares under the 1985 Act. Unlimited companies will be required to register articles but are free to choose the form of these.

Application of the model articles

The model articles do not apply automatically to existing companies as at 1 October 2009. To adopt these, the company would need to amend its articles by special resolution. Accordingly, articles based on Table A will continue to be seen for many years.

Further, the model articles do not apply by default on a re-registration. If a private company later re-registers as a public company, it would have to adopt appropriate new articles at that time (whether in the form of the model articles for public companies, or bespoke articles).

It has been common practice, particularly for private companies, to prepare articles stating initially that Table A applies generally, followed by express exclusions and variations of individual regulations of Table A. It is envisaged that from October 2009 many companies will similarly adopt the relevant model articles subject to specific modifications. However certain companies may prefer to tailor their own articles and exclude the model articles altogether, especially public companies whose shares are listed on a public market.

The remainder of this note focuses solely upon the model articles for private companies limited by shares

Approach of model articles

The model articles are designed to be straightforward and accessible. The language and drafting style is modern and succinct, whereas Table A was perceived to be cumbersome and complex.

Brevity is assisted by the policy of not repeating statutory provisions, though this means that the model articles do not provide a procedural manual for company governance.

The model articles assume that the company will simplify its administration to the greatest extent permitted under the 2006 Act, and may therefore be most appropriate for small owner-managed businesses. For example:

- a. the company's objects are not restricted
- b. there is no requirement to hold annual or other general meetings
- c. all shares are assumed to be fully paid-up
- d. directors are not required to retire by rotation, but are not permitted to appoint alternate directors

If any of this is not appropriate it will be necessary to amend the model articles. In certain cases wording can be borrowed from the model articles for public companies (which are much more detailed).

As with Table A, the model articles do not provide the types of restrictions on share transfers commonly found in the articles of joint venture or investment companies (such as rights of first refusal for the other shareholders).

Differences from Table A

As well as a change of style, there are a number of substantive differences between the model articles and Table A, for example:

Directors' decision-making

The model articles are designed to reflect modern commercial practice where directors can be available using technology, even if unable to attend a meeting in person. Board meetings may be held using telephone or video conferencing facilities, whereas Table A contains no express authorisation and the validity of resolutions passed by these means is subject to doubt.

Directors' decisions must be made either by a majority decision at a meeting, or by way of a "unanimous decision" where all eligible directors "indicate to each other by any means that they share a common view on a matter".

This could include a standard written resolution document signed by all directors (as under Table A), but is potentially wider – for example, emails or even text messages copied to all directors confirming agreement would suffice.

Delegation

Directors may delegate their powers to committees, and under the model articles such committees can be formed of non-directors (or a mixture of directors and non-directors). It is envisaged that the directors may decide to authorise sub-delegation by a person to whom powers are delegated.

Remuneration and expenses

Power is vested in the board to determine all remuneration payable to a particular director. Under Table A, remuneration payable in respect of the role of director had to be approved by ordinary resolution of the members, though the board could fix remuneration as an employee where the director is an executive.

Should existing companies adopt the model articles?

As explained above, from 1 October 2009 an existing company has the option of adopting new articles based on the model articles, but is not obliged to do so. The main arguments in favour include:

- a. Table A will no longer be updated and over time may become inconsistent with company law and current practice. In contrast, the model articles will be altered as company law develops
- b. versions of Table A issued prior to 1 October 2007 are already in conflict with current law, and also do not take advantage of deregulation opportunities under the 2006 Act
- c. the model articles are more user-friendly, being drafted in modern and clear language
- d. the model articles contain various useful features which would have to be added to Table A – for example, permitting telephone board meetings

However, the following points should be noted:

- future versions of the model articles would have to be formally adopted by the company (but it may be easier to do this where the constitution is already based on the model articles)
- the model articles do not repeat the law and the constitution will not provide a complete guide to operating the company
- the model articles are still likely to require modifications, such as allowing for alternate directors

Generally, the advent of the 2006 Act represents an ideal opportunity to update the constitution as a whole. Other changes taking effect from 1 October 2009, including the ability to dispense with an objects clause and the abolition of the concept of authorised share capital, could be dealt with as part of that process.

New incorporation procedures

The 2006 Act makes significant changes to the procedures for company incorporations from 1 October 2009:

- the memorandum of association is greatly simplified and can never be amended after incorporation. Any substantive provisions formerly set out here must instead be included in the articles
- all companies, including public companies, can be formed with a single member
- incorporation will require the filing of an application for registration together with a statement of capital and initial shareholdings (or a statement of guarantee for a company limited by guarantee), a statement of proposed officers and a statement of compliance - these replace Forms 10 and 12

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Detailed arrangements are being made as to how the registrar of companies will deal with incorporation applications on and around the changeover date. An incorporation may be processed shortly after 1 October 2009 but still under the 1985 Act where the application was received on, say, 29 September 2009. To avoid complications, it is advisable not to set up new companies at that time unless essential.

If choosing to do so, the review process should be started several months beforehand in order that the new articles and implementing resolutions can be prepared. For all but the simplest companies, the model articles will have to be varied to some extent, and it will also be a good time to review the constitution in its entirety.

Conclusion

The model articles represent an improvement from Table A in terms of clarity and modernity. Existing companies should therefore consider carefully whether it would be preferable to adopt these from 1 October 2009.

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