

AGREEMENTS

Bespoke Articles of Association

When the Model Articles stop being adequate, and how tailored articles deal with share classes, transfer restrictions and director appointments.

What the Model Articles give you

A company that does not adopt its own articles is treated as having the Model Articles in force at incorporation (section 20 of the Companies Act 2006 and the Model Articles Regulations 2008). For a sole director, or a small group of equal shareholders who all trust each other, they work well. They are free, familiar and a safe default.

They were drafted as a general-purpose starting point. They assume one class of share, a board that agrees, and shareholders whose interests do not diverge.

When they stop being adequate

Signs that tailored articles are needed:

- **More than one class of share.** Different dividend or voting rights, for example for family members, investors or staff.
- **Unequal shareholders.** One shareholder wants a veto, a board seat or protection against dilution.
- **Control over who owns the shares.** The Model Articles allow the directors to refuse to register a transfer, but they say little about pre-emption, valuation or compulsory transfers.
- **Directors.** A shareholder wants the right to appoint or remove a director, or the company needs a casting vote or a quorum rule.
- **Investment or growth shares.** Rights attached to a new class must be written into the articles.
- **A shareholders' agreement.** Key protections work best when they appear in both documents.

What bespoke articles can add

Tailored articles are built around the company's real structure. They can set out different classes of share and the rights attached to each, rules on how shares may be transferred, and how directors are appointed and decide. They can also include provisions for compulsory transfers when a shareholder leaves or dies, which a shareholders' agreement can then support.

Reading what you already have

Before changing anything, read the articles actually in force. Some companies adopted bespoke articles at incorporation or later, and the Model Articles in a filing cabinet may not be the ones that apply.

Key points

- The Model Articles are a sensible default, not a tailored solution.
- Articles are public, so commercially sensitive terms belong in the shareholders' agreement.
- Rights attached to a share class must be in the articles.
- Changing the articles needs a special resolution, 75% of votes cast.
- Entrenched provisions can make certain changes harder.
- File the new articles with Companies House within 15 days.

Share classes

Articles can create classes such as A and B ordinary shares, with different rights to dividends, votes and capital. Common uses are discretionary dividends for family members, non-voting shares for staff, or a class held by an investor with preferred rights. Each right should be spelled out, together with how the class is varied. A change to a class's rights usually needs that class's consent.

Transfer restrictions

Articles can limit who may hold shares. Typical provisions are:

- a right of first refusal for existing shareholders
- a valuation method if the parties cannot agree a price
- permitted transfers to family members, trusts or other group companies
- compulsory transfers on death, bankruptcy or leaving the business
- drag-along and tag-along rights

Appointing and removing directors

Articles can give a shareholder or class of shares the right to appoint a director, set the number of directors, and give the chair a casting vote. A director appointed under the articles can still be removed by ordinary resolution, so a minority holder who needs protection often relies on weighted votes on a removal resolution or on a shareholders' agreement as well.

Making the change

Adopting new articles needs a special resolution, usually passed as a written resolution. Within 15 days the company must send the resolution and the new articles to Companies House (sections 29 and 30). Existing shareholders who lose rights should be consulted first. Where the company has lenders or investors, check that their consent is not needed.

Matching the articles to the practice

Articles that nobody follows are a liability. If the articles require a board meeting to appoint a director, or a shareholder vote to transfer shares, those steps must be taken and recorded. Draft provisions the company can operate, with a short note for the directors on how each one works, and review the articles whenever the shareholders, the capital or the business plans change. Where outside investors or lenders are involved, check any consent they hold over changes to the articles before proposing them.

Before you start

- How many classes of share are needed?
- Who may buy shares, and at what price?
- Who appoints directors?
- What decisions need a higher majority?
- Is there a shareholders' agreement to match?
- Are existing articles already bespoke or are they the Model Articles?

How MTM can help

0161 835 2080
client@mtmlp.co.uk

We prepare bespoke articles for practices and their clients, whether for a new company or an existing one. We take instructions from you, draft the articles and resolutions, make the Companies House filings and update the registers. We can also draft the shareholders' agreement to match.