



MEMORANDUM & ARTICLES OF ASSOCIATION FAQs

> What is a Memorandum of Association

- The Memorandum of Association is required for those who wish to form a new business in the UK. It governs the relationship between the company and the outside.
- It is required to incorporate a company and works alongside the Articles of Association in the governance of the business and the outlining of responsibilities.
- The Memorandum of Association is a document submitted to Companies House agreed between the individuals forming a business, under the Memorandum they agree to become members of the company and once submitted (along with the statement of compliance and Articles of Association) should they have agreed to share capital, to undertake to receive a share of that capital each also.

> What is an Article of Association?

- The majority of UK businesses require Articles of Association unless they are of a unique business model that does not legally require them.
- While it is no longer a legal requirement to have a Memorandum of Association (since 2009) traditionally the Memorandum and Articles work together to form a comprehensive document clearly outlining and guiding forward the governance, responsibilities, powers and objectives of the business.
- The Articles are important to a business, which is why it is vital they are tailored appropriately to business needs, they often act as a reassurance to shareholders of a company in terms of powers and expectations of Directors.

HOW IS THE COMPANIES ACT 2006 INVOLVED?

Before 2009 and the Companies Act 2006, UK businesses were required to have a Memorandum of Association and it included restriction and powers of Directors, however now this is instead included in the Articles of Association, with a Memorandum no longer strictly a necessity.

However, despite this the majority of businesses still employ a Memorandum along with the Articles for a comprehensive outline of the governing of the company, and for the security and peace of mind of those individual owners of the business.



WHAT DO THE ARTICLES CONTAIN?

The Articles of Association bind each member of the company to compliance and outline how the company should be run, the powers of the Directors and guidance as to employees, contracts and clients. It should cover a number of various items including the following:

- Appointment and removal of Directors
- The powers of the Directors and any restrictions
- Company members liability
- How to proceed in events of conflict of interest, meetings, voting and decision making
- Records of the decisions made
- Directors rights in terms of voting on transactions
- Details of company shares, share classes and transfers
- The rights of those shares in respect of selling, purchasing as well as who can sell and purchase and if it requires shareholder approval
- Communication within the company
- The borrowing ability of the company
- Objectives of the company
- Treatment and conduction of contracts and clients held by the company
- Company indemnity and insurance
- Guidance in the event of a Director dispute

CAN YOU CHANGE AN EXISTING COMPANY'S ARTICLES?

Businesses can change as they develop from the initial start up stage and when a company has only employed the statutory Articles, they later find that this does not adequately cover their business needs.

Often, the value of the Articles of Association is underestimated, but they are a key document in the formation of a business and in attracting investors.

It is possible to amend Articles of existing businesses where new provisions are required.

The Articles must be resubmitted to Companies House following an agreement from the Directors that the Articles should be changed (at least $\frac{3}{4}$ of Directors must agree to this).

Following this agreement and the implementation of amended Articles, they must be submitted to Companies House within 15 days or face a substantial fine and penalties.



WHY CHANGE AN EXISTING COMPANY'S ARTICLES?

There are many reasons why a company may choose to amend their Articles, such as the following:

- > To keep in line with changes to the law in terms of the Companies Act 2006
- > At its formation the business made use of Statutory Articles and now requires something more tailored
- > To introduce new classes of shares and to restrict shareholders from selling shares without offering to existing shareholders first
- > To placate potential disputes before they occur
- > To cover company developments and growth
- > To cover specific anticipated scenarios involving investment, shares, conflicts etc.

ARE THE COMPANY ARTICLES PUBLIC INFORMATION?

Business owners should be aware that the Articles are public information and can be viewed freely. If there are items that it is preferred are kept private, this is often done so by the creation of a Shareholders Agreement working alongside the Articles, in which the governance of the company is outlined but also terms that the company shareholders may wish to keep private from the public.

DO I REQUIRE A SHAREHOLDERS AGREEMENT?

Whilst a Shareholders Agreement is not a legal requirement, it provides additional security for those investors that may not necessarily be involved in the day to day running of the business.

As mentioned above it can be used to contain terms that the shareholders may prefer to remain private as opposed to publically accessible in the Articles of Association.

A Shareholders Agreement is useful in the following;

- Minimising the risk of disputes between members of the business
- Protecting the rights of minority shareholders and the value of their investment
- Providing additional security working alongside the Articles, attracting further investors
- Holding information agreed between the shareholders and outlining the legal position of the agreement
- Preventing one shareholder having a detrimental effect on the others should their circumstances change
- Protecting the interest of the shareholders and their families should they unfortunately die
- Determining in more detail the basis on which important decisions are made and at what level



HOW DO THE ARTICLES AFFECT INVESTORS IN A COMPANY?

> What do they look for?

The majority of businesses, particularly in their early stages, will be looking for investors. Well written and thought out Articles can be key in attracting investors to a business, predominantly they are looking for Articles that protect the value of their investment and cover items such as voting rights, shares etc.

Our team have a great deal of experience in all aspects of business, for more information on how we can assist please contact us at corporatelaw@taylor-rose.co.uk
