

UK-CPart09

## **Articles of Association: family owner-managed company**

**The Companies Act 2006**

**Memorandum and articles of [company name], a company limited by shares**

**Company Number: [number]**

**Incorporated on [date]**

## Memorandum of association of **[insert company name]**

Each subscriber to this Memorandum of Association wishes to form a company under the Companies Act 2006 and agrees to become a

[ ].

Name of each subscriber	Authentication by each subscriber

Dated: **[date]**

# Articles of Association of [Company name]

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**The Companies Act 2006**

**Company Limited by Shares**

**Articles of Association**

**Of**

**[Company name]**

**(the "Company")**

**Part 1**

**Interpretation and statement of limited liability**

**1. Defined terms**

In these articles, unless the \_\_\_\_\_ :

"Articles" means the company's articles of association.

"Companies Acts" means the Companies Act 2006 and all subsequent amending legislation and \_\_\_\_\_ .

"Director" means a director of the company, and includes any person occupying the position \_\_\_\_\_ , \_\_\_\_\_ .

"Document" includes, unless otherwise specified, any document sent \_\_\_\_\_ .

"Fully paid" in relation to a share, means that the nominal value and any premium to be paid to the company \_\_\_\_\_ .

"Hard copy form" has the meaning given in section 1168 of \_\_\_\_\_ 2006 .

"Holder"	in relation to shares means the person whose name is entered in the register
"Ordinary resolution"	has the meaning given in section 282 of 2006 .
"Paid"	means paid or credited as paid.
"Participate"	in relation to a directors' meeting, has the meaning [ 11 ].
"Representative Director"	means a director who is appointed or nominated
"Shareholder"	means a person who is the holder of
"Shares"	means shares in the company.
"Special resolution"	has the meaning 283 2006 .
"Transmittee"	means a person entitled to a share

## 2. Construction of articles

Unless the context otherwise requires, other words or expressions contained

A reference in these articles to any act or matter relating to the directors shall, at any time ,

### 3. Liability of members

The liability of the members is

,

## Part 2 Directors

### 4. Number of directors

4.1. There shall be [ ] [ ] .

4.2. Whenever there are no more than two directors,

.

### 5. Directors' general authority

Subject to these articles, the directors are responsible

,

.

### 6. Shareholders' reserve power

6.1. The shareholders may, by special

,

,

.

6.2. No such special resolution invalidates

.

### 7. Directors may delegate

7.1. An individual director may not delegate his

.

7.2. The body of directors may delegate

.

7.3. The directors may instruct

7.4. The directors may invite the attendance

## 8. Directors to take decisions collectively

8.1. The general rule about decision-making by directors is

8.2. A decision may take the form of a resolution in ,

8.3. A decision may not be taken in

8.4. A decision of the directors on any on

:

8.4.1 a loan to a director;

8.4.2 any contract between the ;

8.4.3 issue or transfer of shares;

8.4.4 any matter which has ;

8.4.5 change of name of company;

8.4.6 [ ].

## 9. Directors' written resolutions

9.1. Any director may propose

9.2. A directors' written resolution is adopted when all the directors

:

9.2.1 signed one or more copies of it; or

9.2.2 otherwise indicated their agreement to it in writing.

9.3. A directors' written resolution is not adopted

## 10. Calling a directors' meeting

10.1. Any director may call a

10.2. Notice of any directors' meeting must indicate:

10.2.1 its proposed date and time;

10.2.2 where it is to take place; and

10.2.3 if it is anticipated that directors participating in the meeting

10.3. [\[Written/proper\]](#)

10.4. Notice of a directors' meeting need not be given to directors who waive their entitlement to notice of that meeting, by giving notice

## 11. Participation in directors' meetings

11.1. Subject to the articles, directors

11.1.1 the meeting has been  
;

11.1.2 they can each communicate to the others  
.

11.2. In determining whether directors are participating in  
,

11.3. If all the directors participating in a meeting are not  
,  
.

## 12. Quorum for directors' meetings

12.1. At a directors' meeting, unless a quorum  
,

12.2. The quorum for directors' meetings may be fixed from time to  
,

12.3. If the total number of directors for the time being is less than  
,

## 13. Chairing of directors' meetings

*[Keep this paragraph if you*  
" ]

13.1. The directors  
.

13.2. The person so appointed for the  
,

13.3. The directors

13.4. If the chairman is not participating in a directors' meeting within

## 14. Casting vote

14.1. In the event of equality of votes for ,  
[ 50 % ]

OR

14.2. In the event of equality of votes  
[ / ]

14.3. But this does not apply if, in accordance with the ,

## 15. Conflicts of interest

15.1. If a proposed decision of the directors is concerned with an actual or proposed transaction

15.2. Last previous sub article shall not :

15.2.1 the company by ordinary resolution dis-applies the

15.2.2 the director's interest cannot reasonably

15.2.3 the director's

15.3. For the purposes of this article, a /

:

15.3.1 a guarantee given, or to be given,

;

15.3.2 subscription, or an , ;

15.3.3 pension or some other benefit to employees and directors ,

15.4. For the purposes of this article,

15.5. If a question arises at a meeting of directors or of a committee of directors as to the right of a director to participate in the meeting (or part ) ,

15.6. If at the adjourned meeting the question remains , ,

## 16. Records of decisions to be kept

The directors must ensure that the company keeps a record, [\[in hard or soft \]](#), 10

## 17. Methods of appointing directors

17.1. Any person who is willing to act as a director,

,

.

17.2. In any case where, as a result of death, the company has no

,

,

,

.

17.3. For the purposes of sub article 2, where two or

,

.

## 18. Termination of director's appointment

A person :

18.1. that person ceases to be a director by

2006

;

18.2. a bankruptcy order is made against that person;

18.3. a composition is made

;

18.4. a registered medical practitioner who is treating that person gives a  
written

;

18.5. notification is received by the company from the

,

;

18.6. it is resolved in general meeting

.

## 19. Directors' remuneration

19.1. A director shall provide services to the company in accordance

[Alternative 01 - ]

19.2. The structure of all systems or arrangements which result

19.3. Every payment made to a director and not approved by

19.4. If at any time, the shareholders dis-approve of a payment

[Alternative 02 - ]

19.5. A director is

19.5.1 for his ,

19.5.2 for any

19.6. Subject to , :

19.6.1 take any form, and

19.6.2 include any arrangement in connection with the payment of a

19.7. Unless the directors ,

19.8. Unless the directors decide otherwise, a director is not accountable to the company

## **20. Directors' expenses**

The company may re-imburse a

## **Part 3**

### **Shares and distributions**

## **21. All shares to be fully paid up**

21.1. No share is to be issued for less than

21.2. This does not apply to shares

## **22. Powers to issue different classes of share**

22.1. Subject to the articles, but without prejudice to the

22.2. The company may issue shares which are to be redeemed, or are liable

## 23. Company not bound by less than absolute interests

23.1. No person is to be recognised by the company as holding any share upon any trust,

.

23.2. As an exception to the last sub-paragraph, the company

.

## 24. Share certificates

24.1. In respect only of fully paid shares, the company must issue each

,

,

.

24.2. Every certificate must specify:

24.2.1 in respect of how

,

,

;

24.2.2 the nominal value of those shares;

24.2.3 that the shares are fully paid; and

24.2.4 any distinguishing numbers assigned to them.

24.3. No certificate may be

.

24.4. If more than one person

,

.

24.5. Each certificate must be

.

## 25. Replacement share certificates

25.1. If a certificate

:

25.1.1 damaged or defaced, or  
25.1.2 said to be lost, stolen or destroyed,  
that shareholder is entitled to

25.2. A shareholder exercising

25.3. may at the same time

25.4. must return the certificate which

25.5. must comply with such conditions as

## 26. Share transfers

26.1. Neither the company nor the directors shall recognise a

26.1.1 Spouse or civil partner

26.1.2 Child

26.1.3 Parent

26.1.4 Sibling

26.1.5 A person authorised to become a

26.1.6 A person to

26.2. Shares may be transferred by means of an document of transfer  
executed by or on

[  
]

26.3. No fee may be charged for registering

26.4. The company may

26.5. The transferor remains the holder of a

26.6. Within [\[14\]](#) days of receipt of an document of transfer the company shall either register the share transfer or

## 27. Transmission of shares to transmittee

27.1.

27.2.

27.3.

27.4.

27.5.

## 28. Procedure for declaring dividends

28.1. [

].

28.2.

28.3.

28.4.

28.5.

28.6.

28.7.

## 29. Payment of dividends and other distributions

29.1.

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:

29.1.1

;

29.1.2

(  
) , (

;

29.1.3

;

29.1.4

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29.2.

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29.3.

, " " ,

:

29.3.1 the holder of the share; or

29.3.2

,

;

29.3.3

, ;

29.3.4

( , ) .

## 30. No interest on distributions

30.1.

:

30.1.1

,

30.1.2

.

## 31. Unclaimed distributions

31.1. All dividends or other sums which are:

31.1.1 payable in respect of shares, and

31.1.2 unclaimed after having been declared or become payable,

.

31.2.

.

31.3. [ ]

,

,

.

## 32. Non-cash distributions

32.1.

‘ ‘ ‘  
( ‘ ‘  
)  
.

32.2.

‘ ‘ ‘  
‘ ‘ ‘ :

32.2.1 fixing the value of any asset;

32.2.2

;

32.2.3 vesting any assets in trustees.

## 33. Waiver of distributions

33.1.

.

33.2.

‘ ‘ ‘  
‘ ‘ ‘  
‘ ‘ ‘  
.

33.3.

## 34. Authority to capitalise and appropriation of capitalised sums

34.1.

‘ ‘ ‘  
:

34.1.1 ( ) ,

;

34.1.2 ( " ") ( " ) .

34.2. Capitalised sums must be applied:

34.2.1 on behalf of the persons entitled, and

34.2.2 .

34.3. ,

34.4.

34.5.

34.6.

, :

34.6.1 disregard fractional entitlements; or

34.6.2 issue fractional certificates; or

34.6.3 make cash payments; and/or

34.6.4

## Part 4

### Decision-making by shareholders

#### 35. Attendance and speaking at general meetings

35.1.

35.2.

35.3.

35.4.

35.5.

( ) ( )

35.6. 313 ( 1 )

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## **36. Requirement for quorum for general meetings**

36.1.

36.2.

:

36.2.1

## **37. Chairing general meetings**

37.1.

37.2.

, :

37.2.1 the directors present, or

37.2.2 if no directors are present, the meeting,

37.3.

"

".

## **38. Attendance and speaking by directors and non-shareholders**

38.1.

38.2.

,

,

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## 39. Adjournment

39.1.

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,

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39.2.

:

39.2.1 the meeting consents to an adjournment, or

39.2.2

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39.3.

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39.4.

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39.5.

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39.6.

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39.7.

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):

39.7.1

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39.7.2

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39.8.

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## 40. Voting: general

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## 41. Poll votes

41.1. A poll on a resolution shall take place:

41.1.1 as provided in last previous article, or

41.1.2

.

41.2.

.

41.3.

.

41.4.

.

## 42. Errors and disputes

42.1.

,  
.

42.2.

,  
.

## 43. Content of a proxy notice

43.1.

( " ") :

43.1.1

;  
;

43.1.2

;

43.1.3

,  
;

43.1.4

.

43.2.

,

.

43.3.

(  
)

.

43.4.

,

:

43.4.1

,

43.4.2

.

## 44. Delivery of proxy notices

44.1.

[ ]

48

.

44.2.

( )

,

,

.

.

44.3.

.

44.4.

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44.5.

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## 45. Amendments to resolutions

45.1.

:

45.1.1

48

(

),

45.1.2

,

,

.

45.2.

,

:

45.2.1

,

45.2.2

-

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## Part 5

### Administrative arrangements

## 46. Means of communication to be used

46.1.

,

2006

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46.2.

,

(

)

It shall be deemed to have been delivered:

46.3.

46.4.

## 47. Joint holders

47.1.

47.2.

47.3.

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5

## 48. No right to inspect accounts and other records

## 49. Indemnity

49.1.

49.2.

- ( 3 ),

:

49.2.1

49.2.2

235 ( 6 )

(

2006 );

49.2.3

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49.3.

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## **50. Insurance**

50.1.

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50.2.

,

,

,

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## Explanatory notes:

### Articles of Association: family owner-managed company

## General note

### General principles of structure

Our assumption in drawing this set of articles is that your company will have two shareholders, both of whom will be directors. Nonetheless, we have provided of the possibility of more, because it is easier for you to leave these provisions dormant now than for you later to have

We have assumed that if you are buying these articles, you want equality of shareholding and management control. Of course, that may not be the case. However, these articles will be just as effective and

## Articles-specific notes

Notes on each of the numbered articles

### 1. Defined terms

These are the terms used in this document. If you need to use different terms, by all means add them. But make sure no such new term added contradicts any requirement of the Companies Act 2006. In this case

### 2. Construction of articles

Leave this paragraph in place. You may not intend that there shall ever be only one director but there should be suitable provision

### 3. Liability of members

This is an absolute fact and you should not edit it

### 4. Number of directors

A company cannot have fewer than one director. There is no statutory maximum number of directors. At least one director must be a natural person. We assume your company will have two directors, but we have drawn

If you personally own and control the company, one director may be enough! If that is not the case, set a number large enough to provide balanced management and small

## **5. Directors' general authority**

We suggest do no edit. This is general provision regarding authority

## **6. Shareholders' reserve power**

Leave these in place.

If you want to restrict the directors or be involved in regulating the company's management in more detail, then it is far more efficient to have a shareholders' agreement to cover in

## **7. Directors may delegate**

Every part of this article may be edited to suit your requirement. Delete if not required. However, it is far safer to appoint sufficient

## **8. Directors to take decisions collectively**

A meeting does not have to be a meeting! Under the Act a directors' meeting can take place when the directors are in different places. This article authorises a meeting to take place less formally than "around a table". It recognises that "life is too short" to have meetings around

2006

In practice most decisions will be taken without any formal meeting. The question arises as to when a formal meeting is required. It is

The Act states that all decisions of the directors shall be recorded. That clearly implies that every decision that could realistically be called important, should be recorded. In practice, it will apply only to those decisions which could be challenged by a third party or between the two of you.

The second area when decisions should be agreed at a meeting and recorded, is any occasion where you might possibly disagree. In that case,

The last sub-article provides a list as requiring ratification. In your case this is

## **9. Directors' written resolutions**

This is a power provided by the Act. We advise you to leave it in place. It

This provision permits a single director to call a formal meeting to raise an issue. A requirement for this will most commonly arise when there is likely to be a difference of opinion among the directors. We strongly advise you to keep it. It is a potential pressure valve to permit disagreements to be aired and discussed.

## **10. Calling a directors' meeting**

This is the alternative and more usual, provision to

Arrangements for a meeting are important because earlier articles allow a meeting to take place while the directors are in different locations. By all means edit to tighten it up, but we advise you not to make it less particular. If you do,

## **11. Participation in directors' meetings**

We suggest do not edit. It accords with the law.

## **12. Quorum for directors' meetings**

If you have two directors, you may want a quorum of two. That prevents one of you from making any decision. However, that may be

## **13. Chairing of directors' meetings**

Historically, in most companies, small and large, a chairman has been appointed by his colleagues and all of them expect that he will continue as chairman of every meeting. However, that is a misinterpretation of the law.

There is no “office” of chairman. You can use the old way and leave your chairman with the power that accompanies that title. Alternatively, you can set down here, in the articles, some specific provision for a revolving chairmanship. Even the

#### **14. Casting vote**

In any company, business will proceed most efficiently if there are an odd number of directors, so that there cannot ever be deadlock. This is particularly important in a husband and wife team. If deadlock arises, you do need a third party director. He should act as mediator, but when the chips are

If you follow our advice for the last previous article, then the chairman will not have a casting vote. That is because, in a private company,

If you do decide to leave the chairman with a casting vote, look again at the provisions for appointment of the chairman. In the

#### **15. Conflicts of interest**

We have drawn this article with very great care. This article applies to the directors deciding on a transaction in which one of their colleagues has an interest, as well as to the director with

#### **16. Records of decisions to be kept**

This is a requirement of the Act. Do not reduce below 10 years. A majority will want to be able to prove they had the legal right

#### **17. Methods of appointing directors**

The law does not specify who may appoint a director, but clearly, the directors may be appointed by the body of shareholders. We suggest that

If the appointment of a new director is particularly sensitive, you could require that he or she be 50 %

#### **18. Termination of director's appointment**

We have covered all possible situations. We assume no change

#### **19. Directors' remuneration**

Make sure that no director's service contract conflicts with the articles. If it does, the

We have provided two alternatives, each with options.

#### **20. Directors' expenses**

This article merely empowers the company to pay directors' expenses. What is paid and

#### **21. All shares to be fully paid up**

This is sensible for sound accounting

#### **22. Powers to issue different classes of share**

This simple article gives very wide authority to the shareholders to create the structure they want.

We think best for this power to lie with the shareholders, but

#### **23. Company not bound by less than absolute interests**

This is a simple provision but it is important. It prevents a beneficiary under a trust from arriving at the general meeting and insisting that he can vote

because he is the beneficial owner of .

#### **24. Share certificates**

Most small private companies do still issue paper certificates because the holder feels more comfortable with something that

However, the signing of certificates by a director

#### **25. Replacement share certificates**

We suggest no change.

#### **26. Share transfers**

This is "rule", not an empowerment. It is therefore important to set down what you want. Imagine different scenarios if a shareholder sells outside

#### **27. Transmission of shares to transmittee**

There are three possible classes of transmittees:

- i. executors of a deceased shareholder;
- ii. a trustee in bankruptcy;
- iii. a divorced spouse or civil partner

You must decide what happens if shares are "transferred"

No person has the power to impose rules or restrictions on a trustee in bankruptcy - particularly if that office is the only party affected. So if you do not want a government appointee to ,

Fortunately, trustees in bankruptcy prefer to avoid involvement in the affairs of a company

**28. Procedure for declaring dividends**

A balanced set of provisions. You may or may not allow  
32 . 1

**29. Payment of dividends and other distributions**

Edit freely, but do not be restrictive. The purpose of

**30. No interest on distributions**

This is reasonable. You

**31. Unclaimed distributions**

The period of 12

**32. Non-cash distributions**

This provides extra

**33. Waiver of distributions**

We suggest no change.

**34. Authority to capitalise and appropriation of capitalised sums**

Leave this in place.

**Part 4: Decision-making by shareholders**

Part four is about meetings. You will note that these articles do not mention how to call a meeting. That is because the

- 302 308

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“ ”

“ ”

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The directors may call general meetings when they wish (CA 2006, sec302) and must call a

( - ).

( ).

( ).

There are statutory rules governing the period of notice that must be given for a meeting (sec307 - sec313). The minimum statutory

14 ( ),

( 90 95 %,

)

( - )

For detail you may visit:

<http://www.legislation.gov.uk/ukpga/2006/46/part/13/chapter/3>

### **35. Attendance and speaking at general meetings**

See sub article 6. This provision in the Act enables a

### **36. Requirement for quorum for general meetings**

We advise leave this in place.

### **37. Chairing general meetings**

Similar considerations apply

### **38. Attendance and speaking by directors and non-shareholders**

We suggest no change.

### **39. Adjournment**

We have

### **40. Voting: general**

This is entirely optional. It avoids the situation

**41. Poll votes**

We suggest no change.

**42. Errors and disputes**

We advise that the basis of the decision should

**43. Content of a proxy notice**

A complete

**44. Delivery of proxy notices**

Law is flexible

**45. Amendments to resolutions**

We suggest no change.

**46. Means of communication to be used**

We have included all communication tools allowed under the Act except fax.

**47. Joint holders**

A technical point

**48. No right to inspect accounts and other records**

A shareholder does not have an automatic right to come into a company and rifle through the

**49. Indemnity**

It is reasonable to provide

**50. Insurance**

Again it is good to provide