

UK-CPart11

Memo and Articles: trading company with vesting shares

The Companies Act 2006

Memorandum and articles of [company name],

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
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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 [12].
"Qualifying Event"	means, in respect of any "B convertible" share, an event described in a resolution of the holders of "A ordinary" shares as an event
"Shareholder"	means a person who is the holder of
"Shares"	means shares in the company.
"Special resolution"	has the meaning 2006 . 283
"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

There shall

[]

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. Committees

8.1. The directors may make regulations in relation to the

8.2. Subject to any such regulations, the meetings and procedures

9. Directors to take decisions collectively

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

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

9.3. A decision may not be taken in

9.4. A decision of the directors on any on

:

9.4.1 a loan to a director;

9.4.2 any contract between the ;

9.4.3 issue or transfer of shares;

9.4.4 change of name of company;

9.4.5 to declare an interim dividend;

10. Directors' written resolutions

10.1. Any director may propose

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

:

10.2.1 signed one or more copies of it; or

10.2.2 otherwise indicated their agreement to it in writing.

10.3. A directors' written resolution is not adopted

11. Calling a directors' meeting

11.1. Any director may call a

11.2. Notice of any directors' meeting must indicate:

11.2.1 its proposed date and time;

11.2.2 where it is to take place; and

11.2.3 if it is anticipated that directors participating in the meeting

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

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

12. Participation in directors' meetings

12.1. Subject to the articles, directors

12.1.1 the meeting has been

12.1.2 they can each communicate to the others

12.2. In determining whether directors are participating in

12.3. If all the directors participating in a meeting are not

13. Quorum for directors' meetings

13.1. At a directors' meeting, unless a quorum

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

OR

13.3. The quorum for directors' meetings may

13.3.1 a quorum must never

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

14. Chairing of directors' meetings

[Keep this paragraph if you

14.1. The directors

14.2. The person so appointed for the

14.3. The directors

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

15. Casting vote

15.1. *In the event of equality of votes for*

[40 %]

OR

15.2. *In the event of equality of votes*

[/]

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

16. Conflicts of interest

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

16.2. Last previous sub article shall not

16.2.1 the company by ordinary resolution dis-applies the

16.2.2 the director's interest cannot reasonably

16.2.3 the director's

16.3. For the purposes of this article, a /

16.3.1 a guarantee given, or to be given,

16.3.2 subscription, or an

16.3.3 pension or some other benefit to employees and directors

16.4. For the purposes of this article,

16.5. 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)

16.6. If at the adjourned meeting the question remains

17. Records of decisions to be kept

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

18. Methods of appointing directors

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

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

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

19. Termination of director's appointment

A person :

19.1. that person ceases to be a director by
2006

- 19.2. a bankruptcy order is made against that person;
- 19.3. a composition is made
;
- 19.4. a registered medical practitioner who is treating that person gives a written
;
- 19.5. notification is received by the company from the
,
;
- 19.6. it is resolved in general meeting
.

20. Directors' remuneration

- 20.1. A director shall provide services to the company in accordance
.
- 20.2. The structure of all systems or arrangements which result
.
- 20.3. Every payment made to a director and not approved by
,
.
- 20.4. If at any time, the shareholders dis-approve of a payment
,
,
,
-
.

21. Directors' expenses

The company may re-imburse a

Part 3

Shares and distributions

22. All shares to be fully paid up

22.1. No share is to be issued for less than

22.2. This does not apply to shares

23. Powers to issue different classes of share

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

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

24. Rights attaching to "A Ordinary" shares

The rights attaching to each A Ordinary

25. Rights attaching to “B convertible” shares

The following rights

25.1. Entitlement to receive notices

25.2. Until converted, a B convertible share:

25.2.1 carries no vote at a meeting of the shareholders, on

25.2.2 is non-transferable

25.2.3 is redeemable at par

25.3. Each B Convertible share shall be deemed

25.4. Conversion is not dependent on the

26. Failure of Qualifying Event

If no Qualifying Event takes place in the terms and within the time specified by the

27. Company not bound by less than absolute interests

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

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

28. Share certificates

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

28.2. Every certificate must specify:

28.2.1 in respect of how

28.2.2 the nominal value of those shares;

28.2.3 that the shares are fully paid; and

28.2.4 any distinguishing numbers assigned to them.

28.3. No certificate may be

28.4. If more than one person

28.5. [Each certificate must be](#)

29. Replacement share certificates

29.1. If a certificate

29.1.1 damaged or defaced, or

29.1.2 said to be lost, stolen or destroyed,

that shareholder is entitled to

29.2. A shareholder exercising

:

29.2.1 may at the same time

;

29.2.2 must return the certificate which

;

29.2.3 must comply with such conditions as

30. Procedure for declaring dividends

30.1. The company may by ordinary resolution []
].

30.2. A dividend must not be declared unless the directors have made

30.3. No dividend may be

30.4. Unless the shareholders' resolution to declare or directors' decision to pay a dividend, or the

30.5. If the company's share capital is divided into different classes, no

30.6. The directors may pay at intervals any dividend

30.7. If the directors act in good faith, they do not incur any liability

31. Payment of dividends and other distributions

31.1. Where a dividend or other sum which is a

31.1.1 transfer to a bank or building

31.1.2 sending a cheque made payable to the payee by post to the payee at the payee's registered (), (

31.1.3 sending a cheque made payable to such person by post

31.1.4 any other means of payment as the

31.2. Subject to the provisions of these articles and to the rights attaching to any shares, any

31.3.

31.3.1 the holder of the share; or

31.3.2

, ;

31.3.3

, ;

31.3.4

(,) .

32. No interest on distributions

32.1.

:

32.1.1

,

32.1.2

33. Unclaimed distributions

33.1. All dividends or other sums which are:

33.1.1 payable in respect of shares, and

33.1.2 unclaimed after having been declared or become payable,

33.2.

33.3. []

,
,

34. Non-cash distributions

34.1.

34.2.

34.2.1 fixing the value of any asset;

34.2.2

34.2.3 vesting any assets in trustees.

35. Waiver of distributions

35.1.

35.2.

36. Authority to capitalise and appropriation of capitalised sums

36.1.

36.1.1

36.1.2

36.2. Capitalised sums must be applied:

36.2.1 on behalf of the persons entitled, and

36.2.2

36.3.

36.4.

36.5.

36.6.

36.6.1 disregard fractional entitlements; or

36.6.2 issue fractional certificates; or

36.6.3 make cash payments; and/or

36.6.4

Part 4

Transfer of shares

37. Share transfers

37.1.

37.1.1 Spouse or civil partner

37.1.2 Child over 16 years of age

37.1.3 Parent

37.1.4 Sibling

37.1.5

37.1.6

37.2.

37.3.

37.4.

37.5.

37.6. [14]

38. Transmission of shares

38.1.

38.2.

38.3.

38.4.

38.5.

38.6.

38.7.

39. Exercise of transmitters' rights

39.1.

39.2.

39.3.

40. Transmitters bound by prior notices

Part 5

Decision-making by shareholders

41. Attendance and speaking at general meetings

41.1.

41.2.

41.3.

41.4.

41.5.

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41.6.

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42. Requirement for quorum for general meetings

42.1.

42.2.

:

42.2.1

43. Chairing general meetings

43.1.

43.2.

- , :
- 43.2.1 the directors present, or
 - 43.2.2 if no directors are present, the meeting,

43.3.

44. Attendance and speaking by directors and non-shareholders

44.1.

44.2.

45. Adjournment

45.1.

45.2.

- :
- 45.2.1 the meeting consents to an adjournment, or

45.2.2

45.3.

45.4.

45.4.1

45.4.2

45.5.

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45.5.1

45.5.2

45.6.

46. Voting: general

47. Poll votes

47.1. A poll on a resolution shall take place:

47.1.1 as provided in last previous article, or

47.1.2

47.2.

47.3.

47.4.

48. Errors and disputes

48.1.

48.2.

49. Content of a proxy notice

49.1.

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49.1.1

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49.1.2

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49.1.3

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49.1.4

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49.2.

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49.3.

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49.4.

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49.4.1

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49.4.2

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50. Delivery of proxy notices

50.1.

[

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48

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50.2.

(

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50.3.

50.4.

50.5.

51. Amendments to resolutions

51.1.

51.1.1

48

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51.1.2

51.2.

51.2.1

51.2.2

- .

Part 6 Administrative arrangements

52. Means of communication to be used

52.1. ,

2006

52.2.) , (

It shall be deemed to have been delivered:

;

72 ;

- : 48

52.3. ,

52.4.

53. Joint holders

53.1.

53.2.

53.3.

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54. No right to inspect accounts and other records

55. Indemnity

55.1.

55.2. - (3),

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55.2.1

55.2.2

235 (6)

(

2006);

55.2.3

55.3.

56. Insurance

56.1.

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56.2.

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Explanatory notes:

Memorandum and Articles of Association: private company with vesting shares

General note

1. General principles of structure

We strongly advise you to consider each article in the light of your intentions over the next several years. You will find it inconvenient and inefficient to change your articles more frequently than every five years or so. So set up now for the structure you think you

2. Vesting shares

You may have selected this version for your articles because it provides a way to use the concept of “vesting” shares. Vesting is not a legal concept. It is merely a term of speech meaning that

Shares can be converted (“vested”) under whatever terms you choose. The terms should be set out in your shareholders’ agreement and not in the articles. Reason: the articles are the structural framework for your company, not a document

The Companies Act does not define or restrict the conditions or rights you attach with the shares i.e., the buy back or conversion on certain event. In this set of articles we have used a separate class of shares for the situation before vesting. Un-vested shares are called “B Convertible” shares. After vesting they will become “A ”

Remember that the articles provide a framework for the operation of the company. They are not a contractual document. It follows that the detailed conditions relating to vesting must be set down in another place. Use a shareholders’ agreement for that. Matters relating

3. Tax issues

This document takes no account of tax issues. It is essential that you take advice from your accountant before you finalise the terms

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. You may

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

7. Directors may delegate

Every part of this article may be edited to suit your requirement. However, it is far safer to appoint sufficient numbers of directors to cover any problems with absence. Then there is no

8. Committees

This provision is optional, but very useful. We advise you

9. 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. This is up

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 directors and

The second area when decisions should be agreed at a meeting and recorded, is any occasion where the directors are likely to disagree. In that case, the majority will want to record that they do have the power resulting from the majority,

The last sub-article provides a list as requiring ratification. All but the first item required shareholder approval by a

10. Directors' written resolutions

This provision permits a single director to call a formal meeting

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. This is particularly

11. 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,

12. Participation in directors' meetings

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

13. Quorum for directors' meetings

We have provided an optional flexibility for the directors to decide what number shall be a quorum, but that decision must be made in the context of the

A minority shareholder-director may not want important and/or binding decisions to be taken in the absence of himself and friendly colleagues. We have given options. You

Consider very carefully the last option in the last sub-article. If a meeting may be deferred, the possibility is opened up of a director intentionally avoiding attendance in order to prevent decisions he will not like. Although he would be defeated in court, right now, the company business will be stuck. So you must decide how you want to balance your particular requirement for

14. 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

15. Casting vote

In any company, business will proceed most efficiently if there 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 shareholdings make it important to keep a sensible balance between competing interests, the

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

16. 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

We suggest do not edit.

17. 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

!

18. 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

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

19. Termination of director's appointment

We have covered all possible situations. We assume no change

20. Directors' remuneration

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

We assume the shareholders will determine Director's remuneration

21. Directors' expenses

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

22. All shares to be fully paid up

This is sensible for sound accounting

23. 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

24. Rights attaching to “A Ordinary” shares

This text is inserted only for the avoidance of

25. Rights attaching to "B Convertible" shares

We have provided a neat and simple procedure which gives the holders of B Convertible shares very few rights. There are no fixed rules of law as to

”

26. Failure of Qualifying Event

Another flexible provision. If for any reason the Qualifying Event does not

We suggest do not change.

27. 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

28. 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

29. Replacement share certificates

We suggest no change.

30. Procedure for declaring dividends

A balanced set of provisions. You may or may not allow
35 . 1

31. Payment of dividends and other distributions

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

32. No interest on distributions

This is reasonable. You

33. Unclaimed distributions

The period of 12 years could be reduced to not

34. Non-cash distributions

This provides extra flexibility in how a

35. Waiver of distributions

We suggest no change.

36. Authority to capitalise and appropriation of capitalised sums

Leave this in place.

37. Share transfers

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

38. Transmission of shares

There are three possible classes of transmitters:

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

You must decide what

“ ”

No person has the power to impose rules or restrictions on a trustee in bankruptcy - particularly

Fortunately, trustees in bankruptcy prefer to

39. Exercise of transmitters' rights

The same

40. Transmitters bound by prior notices

Leave this in place.

Part 5: Decision-making by shareholders

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

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“ ”

, - “ ”

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

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

14 (),

(90 95 %,

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For detail you may visit:

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

41. Attendance and speaking at general meetings

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

42. Requirement for quorum for general meetings

We advise leave this in place.

43. Chairing general meetings

Similar considerations apply

44. Attendance and speaking by directors and non-shareholders

We suggest no change.

45. Adjournment

We have

46. Voting: general

This is entirely optional. It avoids the situation

47. Poll votes

We suggest no change.

48. Errors and disputes

We advise that the basis of the decision should

49. Content of a proxy notice

A complete

50. Delivery of proxy notices

Law is flexible

51. Amendments to resolutions

We suggest no change.

52. Means of communication to be used

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

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53. Joint holders

A technical point

54. 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

55. Indemnity

It is reasonable to provide

56. Insurance

Again it is good to provide

End of notes