



COMPANY LAW MEMO 2008

COMPANIES ACT 2006

Draft new model articles destination table

Under the new Companies Act, newly incorporated companies will be able to adopt standard form “model articles”. These model articles will operate in the same way as Table A does now. Regulations will set out model articles for:

- private companies limited by shares;
- private companies limited by guarantee; and
- public companies.

Company Law Memo 2008 focuses on public and private companies limited by shares, so references to the draft model articles for these companies are given in order to flag up the forthcoming changes for readers.

When *Company Law Memo 2008* went to press, the July 2007 version of the new model articles was the latest draft. Therefore, the references in *Company Law Memo 2008* are to this version. A new draft has since been published (in March 2008). The draft Companies (Model Articles) Regulations 2008 is available on BERR's website: <http://www.berr.gov.uk/bbf/co-act-2006/draft/page40411.html>.

The tables below compare the July 2007 and March 2008 drafts of the new model articles for private companies limited by shares and public companies so that readers can follow the references to the draft new model articles given in *Company Law Memo 2008*. The tables will be updated if further drafts are published and when the text of the articles has been finalised.

Private companies limited by shares

July 2007 version (old)		March 2008 version (new)	
Reg	Subject matter	Reg	Differences to note in new provision
1	Definitions	1	Definitions omitted to reflect changes elsewhere in this version
-	-	2	New article stating that the liability of the members is limited to any amount unpaid on their shares
2	Directors' general authority	3	-
3	Shareholders' reserve power	4	-
4	Directors may delegate	5	-
5	Committees	6	-
6	Directors to take decisions collectively	7	To tie in with the deletion of the article allowing directors to take majority decisions without a meeting, the general rule is now that decisions must be taken at a board meeting or by written resolution
7	Unanimous decisions	8	-
8	Majority decisions without directors' meeting	-	Article deleted
9	Calling a directors'	9	Two provisions deleted:

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	meeting		<ul style="list-style-type: none"> » the requirement for the director calling the meeting to try and ensure that as many directors as possible are likely to participate » the provision deeming a director to have waived his entitlement to notice of a meeting if he did not give the company enough information to contact him
10	Participation in directors' meetings	10	-
11	Quorum for majority decisions	11	To tie in with the deletion of the article allowing directors to take majority decisions without a meeting, this article now sets out the quorum for directors' meetings. The only decision that can be taken at a meeting without a quorum is one to call another meeting.
12	Chairing of majority decision-making process	12	To tie in with the deletion of the article allowing directors to take majority decisions without a meeting, this article now only deals with chairing directors' meetings
13	Casting vote	13	To tie in with the deletion of the article allowing directors to take majority decisions without a meeting, this article now only gives the chairman a casting vote at directors' meetings
14	Conflicts of interest	14	One provision has been added: the other directors must decide whether the chairman can participate in the meeting if there is any doubt on the matter
15	Records of decisions to be kept	15	-
16	Directors' discretion to make further rules	16	-
17	Methods of appointing directors	17	-
18	Termination of director's appointment	18	-
19	Directors' remuneration	19	-
20	Directors' expenses	20	Specifically includes expenses properly incurred in attending board, shareholder and class meetings
21	All shares to be fully paid up	21	-
22	Powers to issue different classes of share	22	-
23	Company not bound by less than absolute interests	23	-
24	Share certificates	24	-
25	Replacement share certificates	25	-
26	Share transfers	26	-
27	Transmission of shares	27	-
28	Exercise of transmitters' rights	28	-
29	Transmitters bound by prior notices	29	-
30	Procedure for declaring dividends	30	-
31	Payment of dividends and other distributions	31	-
-	-	32	New article allowing companies to deduct sums payable to the company in respect of liens over shares. The deductions can be made from dividends or other sums payable in respect of the share.

32	No interest on distributions	33	-
33	Unclaimed distributions	34	-
34	Non-cash distributions	35	-
35	Waiver of distributions	36	-
36	Authority to capitalise and appropriation of capitalised sums	37	-
37	Attendance and speaking at general meetings	38	-
38	Quorum for general meetings	39	-
39	Chairing of general meetings	40	An additional situation in which an alternative chairman can be appointed has been added: when the chairman is present but unwilling to chair the meeting
40	Attendance and speaking by directors and non-shareholders	41	-
41	Adjournment	42	-
42	Voting: general	43	The chairman no longer has a casting vote
43	Errors and disputes	44	-
44	Poll votes	45	-
45	Content of proxy notices	46	-
46	Delivery of proxy notices	47	-
47	Amendments to resolutions	48	Specifies that an ordinary resolution must be amended by ordinary resolution
48	Means of communication to be used	49	-
49	Address and other contact details	-	Article deleted
50	Company seals	50	» Reference to securities seal has been removed » Any company secretary is specifically included as an authorised person
51	No right to inspect accounts and other records	51	-
52	Provision for employees on cessation of business	52	-
53	Indemnity	53	This article has been significantly simplified
54	Insurance	54	Officers and employees of associated companies have been included in the definition of "relevant officer"

Public companies

July 2007 version (old)		March 2008 version (new)	
Reg	Subject matter	Reg	Differences to note in new provision
1	Defined terms	1	-
-	-	2	New article stating that the liability of the members is limited to any amount unpaid on their shares
2	Directors' general authority	3	-
3	Members' reserve power	4	-
4	Directors may delegate	5	-
5	Committees	6	-
6	Directors to take	7	-

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	decisions collectively		
7	Calling a directors' meeting	8	<ul style="list-style-type: none"> » The notice of the meeting does not have to state the proposed subject matter » The requirement for the director calling the meeting to try and ensure that as many directors as possible are likely to participate has been deleted » The provision deeming a director to have waived his entitlement to notice of a meeting if he did not give the company enough information to contact him has also been deleted
8	Participation in directors' meetings	9	-
9	Quorum for directors' meetings	10	-
10	Meetings where total number of directors less than quorum	11	-
11	Chairing of directors' meetings	12	-
12	Voting at directors' meetings: general rules	13	-
13	Chairman's casting vote at directors' meetings	14	-
14	Alternates voting at directors' meetings	15	-
15	Conflicts of interest	16	One provision has been added: the other directors must decide whether the chairman can participate in the meeting if there is any doubt on the matter
16	Proposing directors' written resolutions	17	-
17	Adoption of directors' written resolutions	18	-
18	Directors' discretion to make further rules	19	-
19	Methods of appointing directors	20	-
20	Retirement of directors by rotation	21	Adds an exception to the directors who must retire by rotation: those who were not reappointed at one of the preceding two AGMs
21	Termination of director's appointment	22	The provision allowing a director to be removed by all of the other directors giving him signed notice to that effect has been deleted
22	Directors' remuneration	23	-
23	Directors' expenses	24	Specifically includes expenses properly incurred in attending board, shareholder and class meetings
24	Appointment and removal of alternates	25	-
25	Rights and responsibilities of alternate directors	26	-
26	Termination of alternate directorship	27	-
27	Members can call general meetings if not enough directors	28	-
28	Attendance and speaking at general meetings	29	-

29	Quorum for general meetings	30	-
30	Chairing of general meetings	31	An additional situation in which an alternative chairman can be appointed has been added: when the chairman is present but unwilling to chair the meeting
31	Attendance and speaking by directors and non-members	32	-
32	Adjournment	33	-
33	Voting: general	34	The chairman no longer has a casting vote
34	Errors and disputes	35	-
35	Demanding a poll	36	-
36	Procedure on a poll	37	-
37	Content of proxy notices	38	-
38	Delivery of proxy notices	39	-
39	Amendments to resolutions	40	Specifies that an ordinary resolution must be amended by ordinary resolution
40	No voting of shares on which money owed to company	41	-
41	Class meetings	42	-
42	Powers to issue different classes of share	43	-
43	Payment of commissions on subscription for shares	44	-
44	Company not bound by less than absolute interests	45	-
45	Certificates to be issued except in certain circumstances	46	-
46	Contents and execution of share certificates	47	-
47	Consolidated share certificates	48	-
48	Replacement share certificates	49	-
49	Uncertificated shares	50	-
50	Share warrants	51	-
51	Company's lien over partly paid shares	52	-
52	Enforcement of the company's lien	53	-
53	Call notices	54	-
54	Liability to pay calls	55	-
55	When call notice need not be issued	56	-
56	Failure to comply with call notice: automatic consequences	57	-
57	Notice of intended forfeiture	58	-
58	Directors' power to forfeit shares	59	-
59	Effect of forfeiture	60	-
60	Procedure following	61	-

	forfeiture		
61	Surrender of shares	62	-
62	Transfers of certificated shares	63	-
63	Transfer of uncertificated shares	64	-
64	Transmission of shares	65	-
65	Transmittee's rights	66	-
66	Exercise of transmittee's rights	67	-
67	Transmittees bound by prior notices	68	-
68	Procedure for disposing of fractions of shares	69	-
69	Procedure for declaring dividends	70	-
70	Calculation of dividends	71	-
71	Payment of dividends and other distributions	72	-
72	Deductions from distributions in respect of sums owed to the company	73	-
73	No interest on distributions	74	-
74	Unclaimed distributions	75	-
75	Non-cash distributions	76	-
76	Waiver of distributions	77	-
77	Authority to capitalise and appropriation of capitalised sums	78	-
78	Means of communication to be used	79	-
79	Addresses and other contact details	-	Article deleted
80	Failure to notify contact details	80	-
81	Company seals	81	The company secretary is specifically included as an authorised person
82	Destruction of documents	82	-
83	No right to inspect accounts and other records	83	-
84	Provision for employees on cessation of business	84	-
85	Indemnity	85	This article has been significantly simplified
86	Insurance	86	Officers and employees of associated companies have been included in the definition of "relevant officer"