

Short note on the constitution of a company limited by guarantee

1 Introduction

This note is a short introduction to the constitution of a company limited by guarantee. It should not be regarded as comprehensive or relied on as a substitute for advice on specific circumstances or transactions. We are happy to provide further advice or explanation if requested.

1.1 Separate legal personality

1.1.1 Under English law a company (whether or not limited by guarantee) has its own legal personality independent of both those who own it and those who manage it. In the same way as an individual, a company may own property, be party to a contract, sue and be sued and even commit certain crimes.

1.1.2 However, a company is unable to act except through the agency of individuals. For a company to enter into a contract, for example, requires someone with appropriate authority on the company's behalf to acknowledge that the company agrees to be bound by the terms of the contract and, if necessary, to sign or execute the appropriate document.

1.1.3 What determines who has that authority depends in part upon the company's own constitution - its articles of association ("articles") - and in part upon the general law.

1.2 Articles

1.2.1 The articles of a company establish the basis of the relationship between the shareholders (or, in the case of a company limited by guarantee, its members), both in relation to each other and in relation to the company as a whole. For example, the articles will cover the procedure for becoming a member, the calling of a meeting of the members and each member's ability to vote at a general meeting.

1.2.2 The articles also provide for the establishment of the company's board of directors and vest in the board its power and authority to run the company on behalf of the shareholders or members. The articles generally provide that, subject to the statutory requirements of the Companies Act 2006, the particular provisions of the company's own articles and specific directions given from time to time by the shareholders or members, the business of the company is to be managed by the directors, who are authorised to exercise all the powers of the company. The directors may therefore run the company, within the law, subject only to those residual powers expressly reserved to the shareholders or members.

1.2.3 The articles also govern the appointment and removal of directors and the manner in which they are to act and reach decisions. Broadly, to make a decision the directors must act collectively as a board at a properly convened meeting, notice of which has been given to all the directors, and must take the decision on the basis of a majority of the votes cast. However, the particular rules as to voting, delegation of powers to a committee or to a single director, and so forth depend upon each company's own articles.

- 1.2.4 It is of fundamental importance for anyone appointed as a director of a company to read carefully the articles of the company. It is equally important that directors continue to have regard to and abide by the regulations and restrictions which the articles impose upon them. Failure to do so may result in a director incurring personal liability for his actions.
- 1.2.5 The Companies Act 2006 prescribes a form of “model” articles capable of adoption on incorporation by a company limited by guarantee. We attach a copy of these model articles for your attention as they set out the kind of constitutional details which are expected to be covered by the articles of a company limited by guarantee. If it is decided that a company limited by guarantee is to be used as the form of the newly merged GLIMA/NHMBA entity, we would propose that these model articles are used as a basis for its constitution, modified as appropriate according to (i) your instructions and (ii) whether the company is to register as a charity.

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