

For intermediaries only



Business Protection

Shareholder protection – Companies Act 2006

Here we consider the impact of the Companies Act 2006 on shareholder protection.

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The [Companies Act 2006](#) overhauled and modernised company law. While it received Royal Assent in November 2006, its provisions came into force in stages with implementation complete by 1 October 2009.

In this factsheet, we'll specifically look at changes to the:

- incorporation documents;
- relevance of Articles of Association in business protection arrangements, and
- company share purchase process.

Incorporation documents

When starting a business, the owner(s) must consider how it will operate, for example whether it will be a sole trader, partnership, limited liability partnership or limited company.

To incorporate a private limited company, they must file certain documents with [Companies House](#).

Companies incorporated on or after 1 October 2009 need to register the following:

- a Memorandum of Association;
- Articles of Association, and
- an application to register a company (Form IN01).

Memorandum of Association

The Memorandum of Association is a much shorter document than companies which incorporated before 1 October 2009 needed. It contains the names of the subscribers to the company and confirmation of their intention to form, and become members of, a company.

Articles of Association

The Articles of Association form the basis of the company's constitution. They're commonly referred to as the internal rule book of the company. The articles are chosen by its members and are legally binding on the company and its members. A company's articles must comply with the Companies Act 2006, so they can't contain rules that would cause the company or its directors to operate outside the law.

A company can choose to adopt either:

- statutory model articles in their entirety;
- model articles with additional or amended provisions, or
- bespoke articles.

The Companies (Model Articles) Regulations 2008 (SI No. 3229)

The statutory [model articles](#) are available from Companies House. They were amended on 28 April 2013 by the introduction of the Mental Health (Discrimination) Act 2013. As a result, the provision for terminating a director's appointment on the grounds of mental health was removed.

The new model articles will apply by default to all private and public limited companies incorporating on or after 28 April 2013 under the Companies Act 2006. The old model articles continue to apply by default to all companies incorporated between 1 October 2009 and 27 April 2013.

Both the old and new model articles are available from Companies House.

If a company adopts either model articles with amendments or bespoke articles, and these don't cover all circumstances, the rule from the statutory model articles will apply by default. If the company doesn't want this to happen, it must make it clear that the default rules shouldn't apply.

If a company doesn't rely entirely on the statutory model articles, it must register its articles with the registrar of companies when it's formed.

Articles of Association – business succession

When a shareholder dies, their shares will form part of their estate. These will ultimately pass to their beneficiaries under the terms of their will or the laws of intestacy if they don't have a will. Similarly, a company's articles are likely to contain rules about the transferability of shares.

The Companies Act 2006 states that, 'the shares or other interest of any member in a company are transferable in accordance with the company's articles'.

If the company's own articles don't mention the transferability of shares, the statutory model articles will apply. Section 27 of the statutory model articles regulations provides that 'a transmittee who produces such evidence of entitlement to shares as the directors may properly require – (a) may, subject to the Articles, choose either to become the holder of those shares or to have them transferred to another person, and (b) subject to the articles, and pending any transfer of the shares to another person, has the same rights as the holder had'.

Application to register a company (Form IN01)

Since the Companies Act came into force on 1 October 2009, information on capital and shareholdings no longer forms part of the Memorandum of Association. Instead this information is contained in a statement of capital and shareholdings, which forms part of Form IN01.

Companies incorporated before 1 October 2009

We've outlined the documents to be filed for companies incorporating from 1 October 2009. Companies that incorporated before this, also had to file a Memorandum of Association and Articles of Association. These companies will be registered under the Companies Act 1985 or previous Companies Acts (or equivalent Northern Ireland legislation).

They didn't have to make any changes to their memorandum and articles as a result of the Companies Act 2006 coming into force on 1 October 2009.

Memorandum of Association

We've mentioned that the Memorandum of Association is a much shorter document for companies incorporating now. Before 1 October 2009 the memorandum stated:

- the company name;
- the registered office;
- the company's objects;
- the liability of its members, and
- its authorised capital.

Companies no longer have to list objects for the company as these will be unrestricted unless the company chooses specifically to restrict them. Objects define a company's powers, with the company unable to act outside the scope of its objects.

Any parts of the memorandum which aren't provisions of the memorandum under the Companies Act 2006, for example the company's objects, will automatically form part of the company's articles.

Articles of Association – 'Table A'

Model Articles of Association were prescribed for all limited companies which incorporated before 1 October 2009, in what's commonly known as 'Table A'.

'Table A' model articles have been superseded by the Companies Act 2006 model articles, for all companies that have incorporated since 1 October 2009. 'Table A' will remain in force for companies incorporated under the Companies Act 1985.

Companies with 'Table A' articles can amend their articles by passing a special resolution. If a company does this, it must register an up-to-date copy with the registrar.



Company share purchase

The Companies Act 2006, Part 18, Chapter 4 introduced changes to the process for a company buying its own shares. Broadly, the main changes are:

- a company's articles no longer have to allow a company to buy its own shares;
- a company is able to purchase its own shares as long as it's not restricted or prohibited in the articles, and
- before a company share purchase can take place, the directors must make a statement about the solvency of the company, which is more straightforward than the statutory declaration that was previously required.

You can find out more about company share purchase in our [Shareholder protection – an unquoted company buying its own shares](#) factsheet.

If you need any help with this, please speak to your usual Aegon sales representative or visit [our website](#) for more business protection support.



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