

1. Articles of Association

(a) Articles Generally

The articles govern the internal management and organisation of the company.

The articles are secondary to the memorandum - if there is conflict between the articles and the memorandum, the memorandum prevails.

Re Duncan Gilmore & Co Ltd (Case 40)

Companies (Tables A - F) Regulations 1985 provides a model set of articles for a company limited by shares.

A company has three options:

- (i) It may adopt Table A in full.
- (ii) It may adopt Table A with modifications.
- (iii) It can exclude Table A entirely and write its own articles.

(Table A has existed in various forms since 1862 - a company which adopts Table A will be bound by the Table A existing at the time it was incorporated, not a later version).

Articles must be: (i) Printed
(ii) Set out in numbered paragraphs
(iii) Signed by the subscribers to the
memorandum

(b) Alteration of Articles

CA 1985, s.9 - articles can be altered by special resolution, which must be notified to the Registrar of Companies within 15 days.

Any provision in the articles which would have the effect of making them unalterable is void.

There are certain restrictions on the company's power to alter its articles:

(i) Express Statutory Restrictions

s.16 - cannot alter articles to increase a member's liability without his consent.

s.369(1) sets out notice periods for calling meetings and states this cannot be shortened by a provision in the articles.

(ii) General Law and Public Policy

A provision in the articles which is contrary to public policy is void.

St Johnstone Football Club Ltd v SFA (Case 41)

The same would apply to any provision which was inconsistent with the companies legislation.

(iii) Court Order

Certain sections of the 1985 Act give the court power to order that no alteration be made to the articles.

(iv) Memorandum

An alteration to the articles which conflicts with the memorandum would be effectively void.

(v) Improper Use of Power to Alter Articles

The Power to alter the articles must be exercised bona fide for the benefit of the company as a whole.

A member cannot challenge an alteration carried out in good faith for the benefit of the company, even if the alteration adversely affects his own rights.

Allen v Gold Reefs of West Africa Ltd (Case 42)

Greenhalgh v Arderne Cinemas Ltd (Case 43)

The courts will usually allow the alteration, but have sometimes found that it is not bona fide for the benefit of the company as a whole:

Brown v British Abrasive Wheel (Case 44)

Dafen Tinplate Co Ltd v Llanelly Steel Co (Case 45)

2. Legal Effect of Memorandum and Articles

The legal effect is described in s.14 CA 1985. The memorandum and articles operate as a contract between the company and its members, which both parties are bound to honour.

The effect of this is:

(a) Each member, in his capacity as a member, is bound to the company as if he personally had signed the memorandum and articles.

Hickman v Kent or Romney Marsh Sheep Breeders Association (Case 46)

(b) The company is bound to each member in his capacity as a member.

Wood v Odessa Waterworks Co (Case 47)

(c) The memorandum and articles do not constitute a contract binding the company or any member to an outsider - or to a shareholder in any other capacity than as a member.

Eley v Positive Government Life Assurance Co Ltd (Case 48)

Beattie v E & F Beattie Ltd (Case 49)

(d) Provisions of the memorandum or articles can sometimes form part of an extrinsic contract between the company and an outsider. This can happen in one of three ways:

(i) Where provisions of the memorandum or articles are expressly incorporated into an express contract between the company and the outsider.

(ii) Where there is no express contract but a provision in the memorandum/articles is incorporated by implication from the conduct of the parties.

(iii) Where there is an express contract which is silent on a particular matter, and relevant provisions in the articles or memorandum are used to fill in any gaps.

The company is not actually liable to the outsider on the basis of the articles, but under the extrinsic contract.

Re New British Iron Co, ex parte Beckwith (Case 50)

(e) A member has a right to compel the company to act according to the articles even if not enforcing a right which is personal to himself as a member.

Salmon v Quinn & Axtens Ltd (Case 51)

(f) The memorandum and articles constitute a contract between each member and every other member.

Rayfield v Hands (Case 52)