

Key features and requirements of private limited companies

It is crucial for businesses set up as private limited companies to comply with the requirements of the Companies Act 2006. This guidance note sets out the key legal requirements for private limited companies in the UK, discusses shareholders' rights and duties, and the process for convening company meetings and the passing of resolutions

1 What is a private limited company?

- 1.1 A private limited company is the most common form of trading vehicle for companies in the UK.
- 1.2 The key features and requirements of a private limited company are that:
 - It will have a separate legal personality from its owners (shareholders).
 - Responsibility for the management of a company generally falls to its directors;
 - The liability of each shareholder for the company's debt and other liabilities is generally limited to the amount which remains unpaid on that shareholder's shares;
- It must have an issued share capital comprising at least one share. Each issued share must have a fixed nominal value. The ways in which a company can alter its share capital is strictly controlled by the Companies Act 2006 ("CA 2006"). There are also strict statutory controls on a company's ability to make returns of value (dividends) to its shareholders;
- It must have at least one director. A private limited company is not required to have a company secretary, although it may choose to do so; and
- The nominal value of a private limited company does not have to exceed a specified amount. It is common practice for a private company to be incorporated with a share capital made up of just one £1 share.

2 Key Company Constitutional Documents

- 2.1 The company's constitution comprises certain key mandatory documents which evidence the existence of the company. These include:
 - **Memorandum of Association** ("Memorandum"): A short document containing a legal statement, signed by all initial shareholders, agreeing to form the company, agreeing to become members and in the case of a company that is to have share capital, agreeing to take at least one share each.
 - **Articles of Association** ("Articles"): The articles are generally the most important part of the company's constitution. All companies must have Articles which set out the basic management and administrative structure of the company. The Articles are a set of written rules that govern how the company is to be run and the rights between shareholders. The Articles are a public document and must be filed at Companies House at incorporation (unless the company has adopted Model Articles as set out in legislation). Any amendments to the Articles made must also be filed at Companies House.

- **Statement of Capital:** all companies are required to file a statement of capital at Companies House on: (i) incorporation; (ii) when filing its annual return; and (iii) if the share capital and been altered (on Form SH01). The statement of capital details:
 - (i) the total number of shares of each type that the company has and their total nominal value, known as the company's "share capital";
 - (ii) the names and addresses of all shareholders; and
 - (iii) information about the shares, including the rights each type (or "class") of shares gives the shareholders, to participate in dividends; to "redeem" their shares, to vote on company matters; and to receive a distribution of capital on winding-up.
- **Shareholders' Agreement ("SHA"):** An SHA records the commercial terms of any agreement between the shareholders. It is not compulsory to have an SHA and it is a private and confidential document which does not be filed at Companies House. Entering into an SHA is recommended as it sets out the extent of the shareholders' rights and obligations in operating the company, can manage a later exit of a shareholder and provide mechanisms for resolving potential disputes. It is recommended to seek legal advice on the terms and effect of any SHA. Always ensure that any SHA is executed correctly.

3 Shareholders' Rights and Duties

- 3.1 The rights of a shareholder depend on the provisions of the CA 2006, the company's Articles, the terms of issue of the shares, and any SHA in force. These are summarised briefly below:

CONTRACTUAL RIGHTS

- 3.2 Shareholders' contractual rights flow from: (i) the SHA; and (ii) the CA 2006:
- Under the CA 2006, the constitution of the company forms a contract between the company and its shareholders and between the shareholders themselves. A constitution will often grant shareholders certain rights, for example the right to vote or to receive a dividend. It will also impose an obligation on shareholders to observe the terms of the constitution.
 - The SHA can include any matters agreed between the shareholders, except that it cannot include anything that fetters the company's power to exercise its statutory duties and anything that would bind the shareholders as to how they would vote as directors.

STATUTORY RIGHTS

- 3.3 A shareholder also has a number of statutory rights under the CA 2006. These rights include, amongst others, the right to: (i) a share certificate; (ii) to be entered on the register of members; (iii) to see certain company documentation; and (iv) voting rights.

4 Meetings

- 4.1 A company is required by the CA 2006 to obtain the approval of its shareholders ordinary resolution (being a resolution passed by a simple majority of those entitled to vote) or special resolution (being a resolution passed by a majority of at least 75% of shareholders entitled to vote) in order to carry out certain actions, for example, to change the company's name or Articles.

- 4.2 The shareholders of the company will take decisions by passing resolutions at general meetings of the company or by way of written resolution. Which decisions need to be passed as ordinary resolutions and which as special resolutions depends on the CA 2006, the Articles and, if applicable, the Shareholders' Agreement.

COMPANY MEETINGS

- 4.3 Private companies are not required to hold an annual general meeting ("AGM") of shareholders unless obliged to do so under the Articles. The AGM will usually involve considering matters such as receiving the report and accounts, appointing auditors and declaring a dividend.
- 4.4 General meetings (which are not AGMs) are usually called by the directors, or by the company secretary acting on their authority. Shareholders representing at least 5% of such of the voting shares of the company have the power to require directors to call a general meeting (if the directors fail to do so then the shareholders have the power to call one directly). Rather than holding a general meeting, private companies can alternatively use the "written resolution" procedure set out in the CA 2006.
- 4.5 A general meeting of a private company must be called with at least 14 clear days' notice (the Articles may stipulate a longer period).
- 4.6 Under the CA 2006, the quorum for a general meeting is two shareholders present in person or by a representative (single member companies require only one). However, the Articles can require a higher quorum.
- 4.7 Voting can be conducted on a show of hands, where each shareholder typically has one vote. On a show of hands, an ordinary resolution is passed by simple majority of the votes cast by those entitled to vote. A special resolution is passed by a majority of no less than 75% of the votes cast by those entitled to vote.

DIRECTORS' MEETINGS

- 4.8 Subject to any provisions to the contrary in the Articles and/or any SHA, directors must be given reasonable notice of a board meeting.
- 4.9 Usually any director may call a board meeting, and the company secretary can call a board meeting if asked to do so by a director. The meeting must be called on reasonable notice (which depends on the circumstances). Unless the Articles specify otherwise, there is no requirement for the notice to be in writing, but notice must include the meeting's proposed date, time and location.
- 4.10 Apart from single-director companies, the minimum quorum for a board meeting is usually two directors, although the Articles may increase the quorum requirement.
- 4.11 Unless varied by the Articles, voting is on a simple majority basis, with each director having one vote. In the event of a 50/50 vote split, which would defeat the proposal, some companies allow for the chairman to have a casting vote.
- 4.12 An alternative to a board meeting is for the directors to pass a written resolution, for which there must usually be unanimous agreement among all those directors who would have been entitled to vote if the resolution had been raised at a board meeting.



5 What practical steps should I take to protect myself against claims?

- Company directors should take their responsibility for company administration seriously, setting up effective systems to ensure that proper procedures are followed in accordance with company law.
- Although a company secretary is no longer legally required for private companies, it is recommended to assign someone in the company specifically to handle company administration. Routine legal filings and record-keeping can also be delegated to an outside service, although it is important to remember that overall responsibility remains with the company's officers.
- The directors should ensure that there are clear rules on who can sign official company documents, such as contracts and the minutes of board meetings. This should include specifying when more than one signature is required.
- Key company decisions are taken at board meetings (by the directors) and general meetings of the shareholders. You must ensure that you follow the proper procedures for calling meetings and taking decisions, in accordance with company law and the company's Articles.
- Companies are legally obliged to keep various statutory records – such as the register of shareholders, register of Persons with Significant Control, and minutes of meetings. You will also need to keep other important records, such as accounting records and important contracts.
- The company must also, at least once every year, check the information filed at Companies House and either confirm to Companies House that it is up-to-date or, if it is not, bring it up to date. From 30 June 2016 you do this by filing a 'confirmation statement' (this replaces the previous 'annual return').
- Complex rules and procedure can apply to some areas of company law: for example, shareholder resolutions (decisions) requiring more than a simple majority. Directors should take advice where necessary.

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Legal advice in black and white

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