Private Edge Knowledge Bank

Key features and requirements of private limited companies

DIRECTORS & OFFICERS

It is crucial for businesses set up as limited companies to comply with the requirements of the Companies Act 2006 ("CA 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 businesses in the UK.

1.2 The key features and requirements of a private limited company are that:

- it has separate legal personality from its owners (shareholders), meaning that it is considered a separate legal person in its own right, distinct from its shareholders and directors;
- responsibility for the management of a company generally falls to the board of directors; and
- the liability of each shareholder for the company's debt is generally limited to the amount which is paid up on that shareholder's shares.

A company 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 CA 2006. There are also strict statutory controls on a company's ability to make returns of value (dividends or distributions in specie) to its shareholders.

A company must have at least one director, who must be a natural person (i.e. the only director of a company cannot be another corporate entity). A private limited company is not required to have a company secretary, although it may choose to do so.

The nominal value of a private limited company does not have to exceed a specified amount.

2 Key Company Constitutional Documents

2.1 A 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 and operate essentially as a contract between the company's shareholders. 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 which exist as between its 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 made to the Articles must also be filed at Companies House and the CA 2006 regulates the way that changes may be made.

Statement of Capital: All companies are required to file a statement of capital at Companies House: (i) on incorporation; (ii) when filing its annual confirmation statements (form CS01); and (iii) if

the share capital has been altered, for instance as a consequence of an allotment of shares, or a buy-back and cancellation of them.

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 nominal value of the shares and the amount paid up, or unpaid, on them; and

(iii) information about the shares, including the prescribed particulars attributable to each type or "class" of share for instance 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, it 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. It is important to 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 CA 2006 and (ii) the SHA:

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. An example of such an obligation might be a restriction on a shareholder being able to sell, transfer or otherwise encumber his or her share.

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 vary according to the class of share held by a shareholder and the way in which that shareholder holds the shares but – in general – encompasses the right: (i) to a share certificate; (ii) to be entered on the register of members; (iii) to see certain company documentation; and (iv) to voting rights.

4 Meetings

4.1 A company is required by the CA 2006 to obtain the approval of its shareholders by an ordinary resolution (being a resolution passed by a simple majority of those entitled to vote) or by a 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. Within certain parameters, the SHA can alter the approval thresholds required to pass certain decisions, for instance a matter requiring a simple majority to pass under the CA 2006 could – as a matter of contract under the SHA – be enhanced to require 80% approval.

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 SHA.

COMPANY MEETINGS

4.3 Private companies are not required to hold an annual general meeting ("AGM") of shareholders unless obliged to do so under their 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 now generally use the "written resolution" procedure set out in the CA 2006 to pass decisions.

4.5 A general meeting of a private company must be called with at least 14 clear days' notice (the company's Articles may stipulate a longer period), or on shorter notice if the requisite number of shareholders consent to that short notice.

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. What is 'reasonable' depends on the nature of the business to be discussed and could, in theory, be immediate if the business is sufficiently important and urgent. A board meeting may be called by any director or by the company secretary (if the company has one) if asked to do so by a director. 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.

4.9 Apart from single-director companies, the minimum quorum for a board meeting is usually two directors, although the Articles may modify the quorum requirements.

4.10 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.

4.11 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?

5.1 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.

5.2 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.

5.3 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.

5.4 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.

5.5 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.

5.6 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').

5.7 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.

This article is not intended to constitute a definitive, up-to-date, or complete statement of the law, nor is any part of it intended to constitute legal advice for any specific situation. You should take specific advice when dealing with specific situations and jurisdictions outside England & Wales.

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