

## Factsheet for directors and partners

*This document is intended to provide general corporate law advice for businesses in light of the current coronavirus pandemic. This document may be updated from time to time if the legal position changes. Please therefore check the latest version on our website ([www.tinsdills.co.uk](http://www.tinsdills.co.uk)) to be sure the information you receive is entirely up-to-date (see disclaimer below).*

*We have also produced factsheets for employers and for businesses in relation to non-performance of contractual obligations and these are also available on our website.*

### Corporates

#### Articles of Association

If your company does not have bespoke articles of association, the default position will be that your company adopted either Table A or Model Articles (depending on the date on which the company was incorporated). The provisions of those default articles are set out in prevailing legislation in force at the time, most likely either the Companies Act 1985 (**Table A**) or the Companies Act 2006 (**Model Articles**). Your company may still be operating under Table A articles in part even if you have bespoke articles of association (see below).

Where there is more than one director and shareholder of the company, in the event that a shareholder or a director were to pass away, it is likely that the remaining shareholders/directors will be able to continue running the business. **The same is not true where the company has only one shareholder and director under the 1985 Act.**

#### What if there is only one shareholder who is also the Company's sole director?

*If your company was incorporated before 1 October 2009 and you have not made any changes to your articles of association since then, it is likely that you will be using Table A Articles, either in their entirety or because they are incorporated into your bespoke articles of association..*

#### Directors

In the event that the sole shareholder-director of the company passes away, Table A articles do not include a right for the deceased shareholder's personal representatives to appoint a new director and the company cannot continue its day-to-day business at that point as no-one will have the appropriate authority. Court involvement would be required following the death of a sole shareholder-director of a company for this reason (to enable a director to be appointed.)

#### Shares

The good news is that, even if the company is operating under Table A articles, the shares of a deceased shareholder-director will automatically pass to the personal representative(s) (PRs) on death. However, before dealing with the transfer of the deceased shareholder's shares, the PRs will generally be expected to prove their legal title to the shares by producing the grant of probate or letters of administration (as the case may be) to the company. Issues arise though where there is no company secretary and the sole shareholder was also the only director as there is nobody to receive the evidence of title. It will therefore be necessary to apply to the court for rectification of the register of members.

Court involvement can be avoided with the adoption of new, bespoke articles.



*If your company was incorporated **after 1 October 2009**, you will be operating under the Model Articles for private companies limited by shares, either in their entirety or because they are incorporated into your bespoke articles of association.*

### **Directors**

The situation with regard to the death of a sole shareholder-director differs from the situation under the Table A articles. Under the Model Articles where, as a result of death, the company has no shareholders and no directors, the PRs of the last shareholder to have died have the right, by notice in writing, to appoint a person to be a director. Theoretically, where there is no company secretary, there is nobody to receive such notice from the PRs. However, in practice, and given the spirit of the Companies Act 2006 (and the Model Articles), a notice addressed to the company is generally accepted as valid even where there are no directors or a company secretary in office to receive it.

### **Shares**

The position is generally the same as set out above in respect of Table A articles. However, the provisions of Model Articles are simpler to implement.

By having bespoke articles (or, at the very least, Model Articles), you can avoid delays in the operation of the company's business following the death of a sole director-shareholder together with court applications.

*If you would like advice on your company's articles of association, please contact us to discuss.*

## **Partnerships**

### **Partnership agreements and the lack thereof**

A partnership is a business structure whereby a group of individuals runs a business together with a view to profit. It involves sharing the legal responsibility for your business with one or more people. All of the partners are personally responsible for both the profits and the losses of the business.

Ideally, all of the partners would sign a 'partnership agreement' which defines how the ownership, profits and liabilities are divided. However, that is not always the case and where no agreement exists the fall back position will be the provisions of the Partnership Act 1890.

A partnership formed under the Partnership Act 1890 is brought to end by its dissolution or insolvency. There is no statutory definition of 'dissolution' in relation to a partnership but it is the term used to refer to the end of a partnership.

When the composition of a partnership changes (for example, because a partner dies or retires from a partnership or a new partner is admitted to a partnership) the partnership in existence immediately before the change is **dissolved**.

Strictly speaking, when a partnership is dissolved, the partnership must realise its assets and liabilities (meaning all debts must be repaid and assets distributed). However, it is usual for a new partnership, taking into account the changes, to succeed the dissolved partnership immediately and for that new partnership to take on the assets and liabilities of the dissolved partnership and to continue its business.

In the event a partner dies, in order to avoid any confusion as to what the partners intended to happen to the partnership in this event, it is important to have an agreement in place which sets out these and other provisions. **You should note that, in the event of the death or retirement of a partner, you are required (as a minimum) to post notice in the London Gazette to announce that partner's departure.**

*If you would like advice on an existing Partnership Agreement or to put a new one in place, please contact us to discuss.*



If you would like further advice on dealing with coronavirus in the workplace, please contact a member of **our Business Services team** on:

**01782 652300**

or through our online contact form at:

**<https://tinsdills.co.uk/about-us/contact-us/>**

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