

Articles of association and shareholders' agreements explained

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A company's articles of association (otherwise known as 'Articles') set the governance rules and procedures the company, its directors and its shareholders must follow. Articles are mandatory under the [Companies Act 2006](#) - all companies incorporated in England and Wales must have them.

Companies with more than one shareholder often enter into a shareholders' agreement to establish further constitutional rules. This article examines the roles of Articles and shareholders' agreements, their differences, and the reasons each business might consider having both in place.

What are Articles?

Articles are constitutional documents of a company which need to be filed and are open to inspection at [Companies House](#). Company law prescribes certain forms for Articles, called "model articles". A company can amend the model articles to suit its needs.

Articles set out the company's essential management and administrative structure and prescribe the rights attaching to its shares (including voting, dividend and capital distribution rights). They also regulate the company's internal affairs, such as how shares can be issued, transferred or bought back; procedures for board and shareholder meetings; and the powers and duties of directors and how they may be appointed and terminated.

What is a shareholders' agreement?

A shareholders' agreement is a contract between a company's shareholders and, often, the company. Like the Articles, this agreement seeks to regulate the company's and its shareholders' conduct by setting out their respective rights and responsibilities, but usually

within the broader context of establishing a fair relationship between them and preventing potential shareholder disputes. However, unlike Articles, shareholders' agreements are not mandatory. Importantly, they are private between their parties and not filed at Companies House.

Typical shareholders' agreement provisions include:

- the protection of minority and majority shareholders;
- dispute resolution mechanisms;
- the extent to which shareholders may have other business interests besides the company;
- the decision-making power of shareholders and directors;
- when it may be compulsory for shareholders to transfer shares; and
- post-shareholding restrictions for shareholders.

What are the differences between Articles and shareholders' agreements?

The main difference between shareholders' agreements and Articles is that while Articles are publicly available at Companies House, shareholders' agreements are private between the parties, and so their provisions remain confidential.

Shareholders' agreements apply only to those shareholders who are party to it (original parties or by entering into a deed of adherence). In contrast, the Articles apply to the company and all its shareholders and directors.

Why might a business consider having both Articles and a shareholders' agreement?

The decision as to whether a company needs a shareholders' agreement in addition to Articles often hinges on the confidential nature of the rules it wishes to implement and whether any information likely to be included is commercially sensitive.

What if there's a breach?

A shareholders' agreement is a contract between shareholders. One party's breach of its terms enables the other parties to sue the defaulting party for damages. They can also apply to the court for an injunction to prevent or limit a breach.

On the other hand, a breach of the Articles may result in the action or decision made in breach of the Articles being void or invalid.

Shareholders deciding whether to include provisions in Articles or a shareholders' agreement should therefore consider whether and in what circumstances a claim in damages, or an injunctive relief, is as valuable as the potential remedy of having the breaching action declared void or invalid.

How can we help?

It can be challenging to navigate the requirements of company law and to determine whether it might be appropriate to put more complex governance provisions in place and when.

RIAA Barker Gillette's experienced corporate and commercial team can help you tackle these issues and advise how best to reflect your goals and intentions in your company's constitutional documents.

Speak to corporate solicitor [Evangelos Kyveris](#) today.

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Note: This article is not legal advice; it provides information of general interest about current legal issues.

