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MODEL ARTICLES AND SOLE DIRECTOR AUTHORITY

Section 155(1) of the Companies Act 2006 determines that a private company must have at least one director who is “a natural person” but what if a sole directorship limits the ability for decisions to be made about such a company?

The Articles of Association are the written rules governing how a limited company is to be run. Model Articles are the default Articles of Association that a Company can use, as prescribed by Section 20 of the Companies Act 2006 and are the Model Articles for companies limited by shares under Schedule 1 of the Companies (Model Articles) Regulations 2008. These apply to companies incorporated from 1 October 2009 onwards and to earlier companies which have subsequently adopted Model Articles.

Within these Model Articles, the general rule about decision making by directors is that decisions must be made by a majority decision (Article 7.1). If the company has only one director and no provision of the articles requires it to have more than one director, the general rule does not apply and the director may make decisions without regard to any of the provisions of the articles relating to directors’ decision making (Article 7.2). However, Article 11 refers to quorums for directors’ meetings. No proposals can be voted on unless there is a quorum, for which there must never be less than two. Unless otherwise fixed it is two (Article 11.2). In the absence of a quorum, no decisions can be made save for appointing further directors or calling a general meeting of shareholders (Article 11.3).

In *Re Active Wear Limited [2022] EWHC 2340 (Ch)* the Court was asked to decide whether the appointment of joint administrators by a sole director was valid and if not to make Orders validating their appointment. That approach was prompted by the earlier decision in *Re Fore Fitness Investments Holdings Ltd [2022] EWHC 191 (Ch)*. In that case, crucially, FFIH had adopted a mixture of Model Articles and bespoke articles. Bespoke Article 16.1 of FFIH’s Articles stated that the quorum for the meeting of its board was two directors.

The Court held that “*Model Article 7.2...permits for a sole director to manage the company, but only in circumstances where no provision of the articles requires the company to have more than one director. Here bespoke article 16.1 does require there to be multiple directors in order for board meetings to be quorate.*”

AWL was incorporated in June 2015, but by March 2022 it was apparent that it would not survive without intervention. Its sole director throughout its trading life had been Marion Rabate. Ms Rabate appointed the joint administrators in April 2022. AWL was formed with unmodified Model Articles and no amendments were subsequently made.

The Court applied the principles of what a reasonable person might have understood the intention of the parties to be and concluded that the “*unambiguous effect*” of Article 7 was to allow a sole director to make any decision relating to the conduct of the affairs of the company. The Court stated that “*in circumstances where AWL was governed by articles consisting in their entirety of the Model Articles without alteration or amendment, Ms Rabate was in a position to take, in the wording of Article 7 itself, “decisions without regard to any of the provisions of the articles relating to directors’ decision-making” and that, in its terms, means that she was entitled on her own to take the decision to appoint the administrators.*”

The good news is that Article 7 therefore prevails over Article 11.

Editor’s Note

However, a word of warning. There is still uncertainty where a company with unamended Model Articles previously had multiple directors but which had been reduced to one. The Court stated that Article 7.2 applies “*only when there has never been a greater number of directors than one*”. In these circumstances, it may therefore be prudent to either appoint another director to validly appoint administrators or pass a shareholders’ resolution on behalf of the company to do so.



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