

20 May 2019

SNIB Articles of Association

Articles of Association

1. The Articles of Association of a company in the United Kingdom are the main constitutional document of a company which determines what it can do and how it is to operate. Every company must have articles of association. This is prescribed in section 18(1) of the Companies Act 2006, a significant and detailed Act of the UK Parliament which, in effect, codifies UK company law and is the legislative framework against which all companies in the UK including the Scottish National Investment Bank must operate. It covers for example: a company's reporting duties, its accounting, the liabilities of directors, registration of charges, annual returns etc..

Companies Act 2006 and "model" articles of association

2. Although the Companies Act 2006 prescribes that all companies must have articles of association, it very much leaves it up to the shareholders to determine what the content of the articles of association should be, on the basis that the articles of association are in law an agreement among shareholders. Nevertheless the Secretary of State is given power to prescribe, and has prescribed, "model" articles of association for the three main types of company: private limited companies, companies limited by guarantee and public limited companies.

3. As the articles of association have the form of a legal agreement, it is open to a company's members to seek legal recourse should they consider the company's directors to have acted in a way that is contrary to the articles.

Objects clauses

3. Until 2007 companies had to have an objects clause stating what the purposes of the company were, but the Companies Act 2006 ended that requirement and the various model articles do not contain objects clauses. The default position set out in section 31(1) of the Companies Act 2006 is that unless a company's articles of association specifically restrict the objects of the company, the objects are unrestricted i.e. it can do anything. The Scottish National Investment Bank will have an objects clause to define its main purposes. Section 2 of the Scottish National Investment Bank Bill provides for the main object and the ancillary objects of the Bank. The proposals set out there continue to be the subject of considerable stakeholder interest. .

Scottish National Investment Bank Bill and articles of association

4. The Scottish National Investment Bank Bill could have created a statutory body and set out its constitution in the legislation. This was how Scottish Enterprise was created. There are two main drawbacks to that approach. First any change in the constitution of such a statutory body, however minor, would need primary legislation. Secondly primary legislation, (such as the Enterprise and New Towns (Scotland) Act 1990 establishing Scottish Enterprise) would not normally have the level of detail that is found in articles of association.

5. The public consultation on the proposals for the Scottish National Investment Bank, ran by the Scottish Government in September and October 2018, did not find support for a statutory company model.

Mandated and Entrenched Provisions

6. To avoid the drawbacks mentioned in the previous paragraph, the Scottish National Investment Bank Bill places Scottish Ministers under a statutory duty to set up a public limited company, to be called the Scottish National Investment Bank (section 1 of the Scottish National Investment Bank Bill), with a copy of its proposed articles of association published alongside the Scottish National Investment Bank Bill.

7. The proposed articles of association will be updated as necessary to reflect any changes resulting from amendments to the Scottish National Investment Bank Bill and will be finalised for the Bank's establishment.

8. Although the Scottish National Investment Bank will not be a statutory body like Scottish Enterprise, the Scottish National Investment Bank Bill not only mandates that certain key provisions concerning the Bank, including its objects, its ownership, its financing, its control etc., must be included in the articles of association in the terms set out in the Scottish National Investment Bank Bill, but also entrenches these provisions so that they cannot be changed except by resolution of the Scottish Parliament. In other words the main provisions of the Scottish National Investment Bank's constitution are as entrenched and immovable as if they were contained in an Act of the Parliament itself.

9. Arrangements are being put in place for an Order to be made (agreement-in-principle for this has been reached with UK Government Ministers) under section 104 of the Scotland Act 1998 to dis-apply a provision of the Companies Act 2006, which would have allowed entrenched provisions to be amended by agreement of all the shareholders. Its application would have been contrary to the purposes of the entrenchment provided for. The entrenched provisions are those set out in sections 2 to 10 of the Scottish National Investment Bank and are reflected in draft articles 3 to 9 and 13 and 14 of the draft articles of association with the headings emboldened in the index to the articles. Apart from the mandated and entrenched provisions the rest of the articles of association tracks the model articles for public limited companies referred to in paragraph 2.

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