

**Masonic Halls Seminar
Ashlar House, Preston
Monday 18 October 2021
Memorandum and Articles of Association**

Generally prompts one or both of two questions:

What are they?

Where are they?



Memorandum and Articles of Association “M & A’s”

M & A’s, two distinct sections:



Memorandum: Contains key information required for incorporation, conditions on which the company is allowed to operate, “its permitted range of enterprise” -5 x Clauses

Name; Objects; Office; Liability; Capital

Articles: Contains the rules which govern the company. Table A 1985 Act

Memorandum and Articles of Association “M & A’s”

Companies Act 2006



Memorandum is subordinate to the Act



Articles are subordinate to the Memorandum
Special resolution required to change, needs an
“EGM”

For Charities, the “Act” is the Charities Act
The governing body is the Charities Commission

Memorandum and Articles of Association “M & A’s”

Duties of Directors

7 x Codified duties – emphasis on corporate social responsibility:

1. *To act within their powers* – abide by terms of the M & A’s and decisions made by shareholders

2. *to promote the success of the company* - act in a way that benefits the shareholders as a whole.

There is an additional list of non-exhaustive factors to which the directors must have regard:

Memorandum and Articles of Association “M & A’s”

Duties of Directors

-/ 2 Contd

Other non exhaustive factors

- a. the long term consequence of decisions
- b. The interests of employees
- c. the need to foster the company’s business relationships with suppliers, customers and others
- d. the impact on the community and the environment
- e. the desire to maintain a reputation for high standards of business conduct
- f. The need to act fairly as between members

Memorandum and Articles of Association “M & A’s”

Duties of Directors

3. *to exercise independent judgement* – must not fetter their discretion to act

4. *to exercise reasonable care, skill and diligence* – to the standard of:

a. someone with the general knowledge, skill and experience reasonably expected of a person carrying out the duties of a director (*objective test*) and;

b. the actual knowledge, skill and experience of that particular director (*subjective*)

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Duties of Directors

Contd

5. *to avoid conflicts of interest*

6. *not to accept benefits from third parties*

7. *to declare an interest in a proposal or transaction with the company* – carve outs for matters that are not likely to give rise to a conflict of interest or which the directors are already aware

Memorandum and Articles of Association “M & A’s”

Duties of a Trustee 6 main duties:

1. Ensure the charity is carrying out its purposes for the public benefit
2. Comply with your charity’s governing document and the law
3. Act in your charity’s best interests
4. Manage your charity’s resources responsibly
5. Act with reasonable care and skill
6. Ensure your charity is accountable

Memorandum and Articles of Association “M & A’s”

Good Practice:

- Ensure that the constitution is in line with current legislation
 - Health Check
- Be transparent in your dealings with shareholders and other stakeholders
- Be accountable (duty of stewardship)
- Maintain good records – shareholders, minutes, contractual documents, leases, directors and officers
- Understand your roles and duties
- Reporting – accurate, audited and timely accounts
- Safeguarding Policy

Clarity – Transparency – Accountability