

A Company with a Sole Director? There is One Problem.

By Ellen Roberts



A recent High Court case highlighted an issue which could put many private companies with sole directors at risk of not being able to make decisions lawfully.

What usually happens

When a company is incorporated it must adopt articles of association which are a set of rules that bind company officers in how the company is managed. Companies incorporated on or after 1 October 2009 automatically adopt the Model Articles (unless that are modified, amended or excluded).

In real estate finance transactions, a lender will always request board minutes and resolutions being provided confirming that the company has complied with its articles, can legally enter into the security documents and that the director/s are authorised to proceed with the transaction. Solicitors often are also asked to confirm that the company they are acting for has these powers.

What has changed

The case of *Hashmi v Lorimer-Wing* (which related to a director dispute) showed that for sole director companies there is an inconsistency within the Model Articles.

Article 7(2) permits a sole director to make decisions for the company alone provided that the articles have not been amended requiring more than one director. The Model Articles on their own do not stipulate a minimum number of directors, however article 11(2) states that a quorum for a meeting of directors (where resolutions are passed) shall not be less than 2 directors in attendance (unless a different quorum has been set).

The judge in this case concluded that despite many years of assumptions by the legal profession, article 7(2) does not override article 11(2). Therefore, the company in this case, which was a sole director company, did not have the legal power to enter into legal transactions.

What should you do?

While we wait to see the full impact of the judgements of this case, in real estate finance transactions we are already seeing many lenders react to this case. Lenders are requesting that sole director companies which have adopted the Model Articles either appoint a second

director (to fulfil the quorum required in article 11(2)) or to amend the article 11(2) to allow the quorum to be one director.

The new interpretation of the Model Articles will affect many sole director companies and we advise such companies to consider its position and where necessary either appoint a second director or amend the Model Articles. Our Corporate Team can advise on the appropriate course of action for your particular transaction. We can also arrange to the amend the articles if required.

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