

## Ringley's top tips

### How to avoid the pitfalls and set up a robust 'management company'

#### **Objects of Company**

to acquire the freehold of a property known as ..... ('the Property') and to hold the Property as an investment for the benefit of the lessees of the dwellings or units comprised in it;

to manage the Property and to collect the rents and income thereof and supply to the lessees the services undertaken by the lessor under the leases of the dwellings or units comprised in the Property and generally to discharge the duties of the freeholder of the Property from time to time;

to improve, manage, construct, repair, develop, exchange, let on lease or otherwise, mortgage, charge, sell, dispose of, turn to account, grant licences, options, rights and privileges in respect of or otherwise deal with all or any part of the Property and rights of the company

#### **Termination of director's appointment**

A person ceases to be a director as soon as—

that person ceases to be a director by virtue of any provision of the Companies Act 2006 or is prohibited from being a director by law;

a bankruptcy order is made against that person;

a composition is made with that person's creditors generally in satisfaction of that person's debts;

a registered medical practitioner who is treating that person gives a written opinion to the company stating that that person has become physically or mentally incapable of acting as a director and may remain so for more than three months;

by reason of that person's mental health, a court makes an order which wholly or partly prevents that person from personally exercising any powers or rights which that person would otherwise have;

notification is received by the company from the director that the director is resigning from office, and such resignation has taken effect in accordance with its terms.

he or she falls into service charge arrears or other breach of lease, save for breaches for which an application to regularise the breach are in progress.

#### **Directors' remuneration**

1. Directors may undertake any services for the company that the directors decide.
2. Directors are entitled to such remuneration as the directors or shareholders determine—
  - a. for their services to the company as directors, and

The risk is that service charge schemes are intended to be not for profit. So if management

<p>b. for any other service which they undertake for the company.</p> <p>3. Subject to the articles, a director’s remuneration may—</p> <p>a. take any form, and</p> <p>b. include any arrangements in connection with the payment of a pension, allowance or gratuity, or any death, sickness or disability benefits, to or in respect of that director.</p> <p>4. Unless the directors decide otherwise, directors’ remuneration accrues from day to day.</p> <p>5. Unless the directors decide otherwise, directors are not accountable to the company for any remuneration which they receive as directors or other officers or employees of the company’s subsidiaries or of any other body corporate in which the company is interested.</p>	<p>companies are merely a vehicle to facilitate good estate management then in an industry that suffers from leaseholder apathy enabling the directors not the shareholders to determine any Directors remuneration is a danger.</p>
<p><b><u>Shares or guarantee</u></b></p>	<p>If the purpose of the company is ‘good estate management’ rather than land ownership, ie, of the freehold then a company limited by guarantee is most appropriate.</p>
<p><b><u>Share capital for freehold purchase companies</u></b> – constitute with nominal share capital and monies needed to buy the freehold loaned to the company.</p>	<p>Then later if freehold shares or lease extensions are sold the proceeds, until the loan is repair, can be a ‘tax free’ loan repayment rather than a taxable share</p>

	distribution.
<p><b><u>One unit one vote</u></b>  Each unit holder shall whilst he is a unit holder be the registered holder of one ordinary share only in respect of each unit and if more than one person be jointly the unit holder such persons shall jointly be registered as the holders of the share relevant to the said unit.</p> <p>Where two or more persons jointly are a Dwellingholder they shall together constitute one Member and the person whose name first appears on the register if members shall (unless the persons notify the Secretary in writing at or before a general meeting of the company otherwise) exercise the voting and other powers vested in such Member, save that both or all such persons shall be entitled to speak at a general meeting. Any such notice shall remain in force until another such notice is served.</p>	Democracy = one vote per unit
<p><b><u>Votes for owners of multiple dwellings</u></b>  Where a person is a Dwellingholder in relation to more than one Dwelling he shall (where the context so admits) be treated as several members, one in respect of each such Dwelling and shall have that number of votes.</p>	It is recommended to ensure that the company is run in the interests of all interests including single flat minority interests that any one owner cannot be allowed to exercise a majority vote, ie; to have their vote effectively capped at 49%.
<p><b><u>Ability to create a reserve fund</u></b>  The members shall set aside such sums as a reserve or sinking fund as the Directors consider desirable to meet the future cost to be incurred by the Company in replacing, maintaining and renewing those items that the Company has covenanted to replace, maintain or renew under the terms of the members' holdings of Dwellings.</p> <p>Any reserve or sinking fund shall be established and maintained on normal commercial principles and in accordance with the principles of good estate management and held on a designated trust account by an agent appointed by the Directors (who may for the avoidance of doubt</p>	Essential if the lease does not provide for a reserve clause.

<p>be the managing agent) or nominated by a Member at a general meeting and so requisitioned. Such requisition shall give full details of the agents so nominated.</p> <p>Any reserve or sinking fund shall be held by the Company to apply it and only interest accruing upon it for the purposes for which it was collected and subject thereto upon trust for a period equal to the perpetuity period applicable for the persons who at the expiry of the perpetuity period are contributing to it in shall equal to the proportions in which they contribute to it.</p>	
<p><b><u>Service charge income or profits can become reserves</u></b>  The directors may set aside out of the income (if any) of the Company such sums as they think proper as a reserve or reserves which shall at the discretion of the Directors be applicable for any purpose to which the income of the Company may properly be applied, and pending such application may, at the like discretion either be employed in the business of the Company or be invested in such investments (other than the Shares of the Company) as the directors may from time to time think fit. The directors may also without placing the same to reserve carry forward any income which they may think prudent not to divide.</p>	<p>To provide that balancing charges which are credits need not be given back to unit holders but can be transferred to reserves</p>
<p><b><u>Service charges</u></b>  “pay to the Company on the date of this Lease an apportioned part of the Tenant’s Proportion of the estimated Expenses for the Accounting Year in which completion takes place calculated from the date of this Lease.” And “pay in advance by half yearly instalments on 1 July and 1 January in each Accounting Year such sum on account of the Expenses as the Company or the Company’s agents shall from time to time specify as a reasonable estimate of the Tenants Proportion of the Expenses but if no such sum is specified by 30 June in each year the Tenant shall pay to the Company the same amount as was payable in respect of the preceding half year”</p>	<p>Essential if the lease does not provide for advance collection of service charges.</p>
<p><b><u>Minutes of meetings</u></b>  Minutes of previous meeting deemed to be approved unless any objections raised within 30 days of issue to members</p>	<p>Many blocks of flats run through companies may not have the expertise to keep quality minute books.</p>
<p><b><u>Professional Directors</u></b></p> <p>clause to allow -</p> <p>In the absence of any director coming forward from the residents, the</p>	<p>Many sites end up with few directors – you should allow for a professional</p>

<p>subscribers or member, as defined in Article 11, can appoint themselves as director to keep the company running.</p> <p>The subscribers to the Memorandum of Association shall be members of the Company. A subscriber may nominate any person to succeed him as a member of the Company and any person so nominated (other than a unitholder) shall have the same power to nominate a person to succeed him as if he had been a subscriber.</p>	<p>director to be appointed should the company so wish.</p>
<p><b><u>Duties of Directors</u></b> Should also refer to directors being allowed to make “block or estate regulations” draft copy attached with this email</p>	
<p><b><u>Call upon members</u></b> The members shall from time to time, and whenever called upon by the company so to do, contribute equally, or in such proportions as the Directors may determine, to all expenses and losses with the company shall properly incur on their behalf and in respect of which they are not otherwise bound to contribute in their capacity as members.</p>	<p>This allows for costs of perhaps a voluntary improvement to be levied on those benefiting from such improvement, not as per the service charge percentages.</p>
<p><b><u>Insurance</u></b></p> <ol style="list-style-type: none"> <li>1. The directors may decide to purchase and maintain insurance, at the expense of the company, for the benefit of any relevant director in respect of any relevant loss.</li> <li>2. In this article— <ol style="list-style-type: none"> <li>a. a ‘relevant director’ means any director or former director of the company or an associated company,</li> <li>b. a ‘relevant loss’ means any loss or liability which has been or may be incurred by a relevant director in connection with that director’s duties or powers in relation to the company, any associated company or any pension fund or employees’ share scheme of the company or associated company, and</li> <li>c. companies are associated if one is a subsidiary of the other or both are subsidiaries of the same body corporate.</li> </ol> </li> </ol>	<p>Essential as probably directors and officers insurance or entity insurance is probably not listed in the schedule of service charge expenditure</p>
<p><b><u>Directors to take decisions collectively</u></b></p> <ol style="list-style-type: none"> <li>1. The general rule about decision-making by Directors is that any decision of the Directors must be either a majority decision at a meeting or a decision</li> </ol>	

taken in accordance with article 8 of the Companies Model Articles Regulations 2008 (model articles for companies limited by guarantee).

2. If—
  - a. the company only has one Director, and
  - b. no provision of the Articles requires it to have more than one Director, the general rule does not apply, and the Director may take decisions without regard to any of the provisions of the Articles relating to Directors' decision-making.

### **Unanimous decisions**

1. A decision of the Directors is taken in accordance with this article when the company elect more than 1 (one) Director and all of them indicate to each other by any means that they share a common view on a matter.
2. Such a decision may take the form of a resolution in writing, copies of which have been signed by each eligible Director or to which each eligible Director has otherwise indicated agreement in writing.
3. References in this article to eligible Directors are to Directors who would have been entitled to vote on the matter had it been proposed as a resolution at a Directors' meeting.
4. A decision may not be taken in accordance with this article if the eligible Directors would not have formed a quorum at such a meeting or whether the company had just one Director.

### **Quorum for Directors' meetings**

1. At a Directors' meeting, unless a quorum is participating or the Company has a sole Director, no proposal is to be voted on, except a proposal to call another meeting.
2. Where the Company has more than one Director, the quorum for Directors' meetings may be fixed from time to time by a decision of the Directors, but it must never be less than two, and unless otherwise fixed it is two. A person who holds office only as an alternate Director shall, if his appointor is not present, be counted in the quorum.
3. If the total number of Directors for the time being is less than the quorum required, the Directors must not take any decision other than a decision—
  - a. to appoint further Directors,
  - b. to manage the property in accordance with the lease(s) and transfer document(s) in relation to the properties that form part of the development.
  - c. to call a general meeting so as to enable the members to appoint further Directors.

### **Methods of appointing Directors**

1. Any person who is willing to act as a Director, and is permitted by law to do so, may be appointed to be a Director—
  - a. by Ordinary Resolution, or

Make sure there is no requirement to automatically appoint or re-

<p>b. by a decision of the Directors.</p> <p>2. In any case where, as a result of death, the company has no members and no Directors, the personal representatives of the last Member to have died have the right, by notice in writing, to appoint a person to be a Director.</p> <p>3. For the purposes of paragraph (2), where 2 or more members die in circumstances rendering it uncertain who was the last to die, a younger Member is deemed to have survived an older Member.</p> <p>4. In any case where the absence of any potential Directors coming forward from the residents, the subscribers or member, as defined in article X, can appoint themselves as Director to keep the company running.</p> <p>5. No person shall be appointed or reappointed as a Director at any general meeting unless</p> <p>a. he is recommended by three Dwellingholders each being a Dwellingholder in respect of a separate Dwelling and all being separate persons;</p> <p>b. he is not at the time of his appointment in any breach of his lease of more than £100 owed to the company for more than 21 days of demand, save for breaches for which an application to regularise the breach are in progress;</p> <p>c. he is free of any criminal convictions;</p> <p>d. not less than fourteen nor more than thirty-five clear days before the date appointed for the meeting, notice executed by a Member qualified to vote at the meeting has been given to the company of the intention to propose that person for appointment or reappointment stating the particulars which would, if he were so appointed or reappointed, be required to be included in the company's register of Directors together with notice executed by that person of his willingness to be appointed or reappointed.</p>	<p>appoint</p>
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**Termination of Director's appointment**

20. A person ceases to be a Director as soon as—

- that person ceases to be a Director by virtue of any provision of the Companies Act 2006 or is prohibited from being a Director by law;
- a bankruptcy order is made against that person;
- a composition is made with that person's creditors generally in satisfaction of that person's debts;
- he owes any sum in excess of £100 for 21 days or more of demand to the company, save for breaches for which an application to regularise the breach are in progress, or;
- a registered medical practitioner who is treating that person gives a written opinion to the company stating that that person has become physically or mentally incapable of acting as a Director and may remain so for more than three months;
- by reason of that person's mental health, a court makes an order which wholly or partly prevents that person from personally exercising any powers or rights which

that person would otherwise have;

notification is received by the company from the Director that the Director is resigning from office, and such resignation has taken effect in accordance with its terms.

he shall for more than six consecutive months have been absent without permission of the Directors from meetings of Directors held during that period and the Directors resolve that his office be vacated. or

he ceases to be ordinarily resident (in fact or lawfully) in the UK.

**Applications for membership**

1. The subscribers to the memorandum of association of the company and such other persons being Dwellingholders as are admitted to membership in accordance with the Articles shall be members of the company.
2. Becoming a member of the company  
No person shall become a Member of the company unless –
  - a. That person has completed an application for membership in a form approved by the Directors and executed by him, and
  - b. The Directors have approved the application (such approval shall not be reasonably withheld or delayed to an application by a tenant of the building, within the definition given in these Articles, to become a Member unless there are arrears of rent and/or service charge).
3. Where two or more persons jointly are a Dwellingholder they shall together constitute one Member and the person whose name first appears on the register of members shall (unless the persons notify the Secretary in writing at or before a general meeting of the company otherwise) exercise the voting and other powers vested in such Member, save that both or all such persons shall be entitled to speak at a general meeting. Any such notice shall remain in force until another such notice is served.
4. Where a person is a Dwellingholder in relation to more than one Dwelling he shall (where the context so admits) be treated as several members, one in respect of each such Dwelling and shall have that number of votes.
5. The members shall from time to time, and whenever called upon by the company so to do, contribute equally, or in such proportions as the Directors may determine, to all expenses and losses which the company shall properly incur on their behalf, and in respect of which they are not otherwise bound to contribute in their capacity as members.
6. The Landlord shall be entitled to be a Member of the company.
7. No person shall be admitted to membership of the company other than the subscribers hereto and the lessees from time to

Have a form in the Memorandum & Articles which a new owner can use to apply to become a member



time of the flats comprised in the property holding under leases derived immediately out of the freehold interest of the property.

### **Termination of membership**

A person's membership terminates when that person dies or (unless he is a subscriber to the memorandum of association) upon the Member ceasing to be a Dwellingholder.

### **DISTRIBUTION OF SHARE PREMIUMS**

1. Subject to the articles, the directors may, if they are so authorised by an ordinary resolution—
  - a. decide to capitalise any profits of the company (whether or not they are available for distribution) which are not required for paying a preferential dividend, or any sum standing to the credit of the company's share premium account or capital redemption reserve; and
  - b. appropriate any sum which they so decide to capitalise (a "capitalised sum") to the persons who would have been entitled to it if it were distributed by way of dividend (the "persons entitled") and in the same proportions.
2. Capitalised sums must be applied—
  - a. on behalf of the persons entitled, and
  - b. in the same proportions as a dividend would have been distributed to them.
3. Any capitalised sum may be applied in paying up new shares of a nominal amount equal to the capitalised sum which are then allotted credited as fully paid to the persons entitled or as they may direct.
4. A capitalised sum which was appropriated from profits available for distribution may be applied in paying up new debentures of the company which are then allotted credited as fully paid to the persons entitled or as they may direct.
5. Subject to the articles the directors may—
  - a. apply capitalised sums in accordance with paragraphs (3) and (4) partly in one way and partly in another;
  - b. make such arrangements as they think fit to deal with shares or debentures becoming distributable in fractions under this article (including the issuing of fractional certificates or the making of cash payments); and
  - c. authorise any person to enter into an agreement with the company on behalf of all the persons entitled which is binding on them in respect of the allotment of shares and debentures to them under this article.

### **DIVIDENDS AND OTHER DISTRIBUTIONS**

Procedure for declaring dividends

1. The company may by ordinary resolution declare dividends, and the directors may decide to pay interim dividends.
2. A dividend must not be declared unless the directors have made a recommendation as to its amount. Such a dividend must not exceed the amount recommended by the directors.

3. No dividend may be declared or paid unless it is in accordance with shareholders' respective rights.
4. Unless the shareholders' resolution to declare or directors' decision to pay a dividend, or the terms on which shares are issued, specify otherwise, it must be paid by reference to each shareholder's holding of shares on the date of the resolution or decision to declare or pay it.
5. If the company's share capital is divided into different classes, no interim dividend may be paid on shares carrying deferred or non-preferred rights if, at the time of payment, any preferential dividend is in arrear.
6. The directors may pay at intervals any dividend payable at a fixed rate if it appears to them that the profits available for distribution justify the payment.
7. If the directors act in good faith, they do not incur any liability to the holders of shares conferring preferred rights for any loss they may suffer by the lawful payment of an interim dividend on shares with deferred or non-preferred rights.

When distributing a dividend the articles, should define 'the distribution recipient' as —

- a. the holder of the share; or
- b. if the share has two or more joint holders, whichever of them is named first in the register of members; or
- c. if the holder is no longer entitled to the share by reason of death or bankruptcy, or otherwise by operation of law, the transmittee.

### **Unclaimed distributions**

1. All dividends or other sums which are—
  - a. payable in respect of shares, and
  - b. unclaimed after having been declared or become payable,may be invested or otherwise made use of by the directors for the benefit of the company until claimed.
2. The payment of any such dividend or other sum into a separate account does not make the company a trustee in respect of it.
3. If
  - a. 12 years have passed from the date on which a dividend or other sum became due for payment, and
  - b. the distribution recipient has not claimed it, the distribution recipient is no longer entitled to that dividend or other sum and it ceases to remain owing by the company.

### **Non-cash distributions**

1. Subject to the terms of issue of the share in question, the company may, by

ordinary resolution on the recommendation of the directors, decide to pay all or part of a dividend or other distribution payable in respect of a share by transferring non-cash assets of equivalent value (including, without limitation, shares or other securities in any company).

2. For the purposes of paying a non-cash distribution, the directors may make whatever arrangements they think fit, including, where any difficulty arises regarding the distribution—
  - a. fixing the value of any assets;
  - b. paying cash to any distribution recipient on the basis of that value in order to adjust the rights of recipients; and
  - c. vesting any assets in trustees.

### **Waiver of distributions**

Distribution recipients may waive their entitlement to a dividend or other distribution payable in respect of a share by giving the company notice in writing to that effect, but if—

the share has more than one holder, or more than one person is entitled to the share, whether by reason of the death or bankruptcy of one or more joint holders, or otherwise, the notice is not effective unless it is expressed to be given, and signed, by all the holders or persons otherwise entitled to the share.

### **CAPITALISATION OF PROFITS**

Authority to capitalise and appropriation of capitalised sums

1. Subject to the articles, the directors may, if they are so authorised by an ordinary resolution—
  - a. decide to capitalise any profits of the company (whether or not they are available for distribution) which are not required for paying a preferential dividend, or any sum standing to the credit of the company's share premium account or capital redemption reserve; and
  - b. appropriate any sum which they so decide to capitalise (a 'capitalised sum') to the persons who would have been entitled to it if it were distributed by way of dividend (the 'persons entitled') and in the same proportions.
2. Capitalised sums must be applied—
  - a. on behalf of the persons entitled, and
  - b. in the same proportions as a dividend would have been distributed to them.
3. Any capitalised sum may be applied in paying up new shares of a nominal amount equal to the capitalised sum which are then allotted credited as fully paid to the persons entitled or as they may direct.
4. A capitalised sum which was appropriated from profits available for distribution may be applied in paying up new debentures of the company which are then allotted credited as fully paid to the persons entitled or as they may direct.
5. Subject to the articles the directors may—
  - a. apply capitalised sums in accordance with paragraphs (3) and (4) partly

in one way and partly in another;

- b. make such arrangements as they think fit to deal with shares or debentures becoming distributable in fractions under this article (including the issuing of fractional certificates or the making of cash payments); and
- c. authorise any person to enter into an agreement with the company on behalf of all the persons entitled which is binding on them in respect of the allotment of shares and debentures to them under this article