



# Companies (Consolidation) Act 1908

1908 CHAPTER 69 8 Edw 7

## PART X

### SUPPLEMENTAL.

#### *Legal Proceedings, Offences, &c.*

#### **276 Prosecution of offences.**

- (1) All offences under this Act made punishable by any fine may be prosecuted under the Summary Jurisdiction Acts.
- (2) In Scotland all prosecutions for offences or fines under the provisions of this Act relating to—
  - (a) the appointment of directors ;
  - (b) the restrictions on commencement of business by a company ;
  - (c) returns as to allotments ;
  - (d) false statements in respect-of which a penalty is provided by this Part of this Act;
  - (e) the filing of copies of a prospectus, an order revoking the dissolution, or an order sanctioning the reorganisation of the share capital of a company ;
  - (f) the filing of notice of appointment, of a liquidator or of the accounts of a receiver or manager ;
  - (g) general meetings ;
  - (h) companies-established outside the United Kingdom;
  - (i) the issue of debentures and certificates of shares and debenture stock ;
  - (j) the issue, circulation, and publication of balance sheets;
  - (k) unqualified persons acting as directors ;
  - (l) the inspection of registers of. debenture holders and the furnishing of copies of trust deeds ;

shall be at the instance of the Lord Advocate or a procurator fiscal as the Lord Advocate may direct.

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### **277 Applications of fines.**

The court imposing any fine under this Act may direct that the whole or any part thereof be applied in or towards payment of the costs of the proceedings, or in or towards the rewarding the person on whose information or at whose suit the fine is recovered, and, subject to any such direction all fines under this Act shall, notwithstanding anything in any other Act, be paid into the Exchequer.

### **278 Costs in actions by certain limited companies.**

Where a limited company is plaintiff or pursuer, in attraction or other legal proceeding, any judge having jurisdiction in the matter may, if it appears by credible testimony that there is reason to believe that the company will be unable to pay the costs of the defendant if successful in his defence, require sufficient security to be given for those costs, and, may stay all proceedings until the security is given.

### **279 Power of court to grant relief in certain cases.**

If in any proceeding against a director, or person occupying the position of director, of a company for negligence or breach of trust it appears to the court hearing the case that the director or person, is or may be liable in respect of the negligence or breach of trust, but has acted honestly and reasonably, and ought fairly to be excused for the negligence or breach of trust, that court, may relieve, him, either, wholly or partly, from his liability on such terms as the, court may think proper.

### **280 Jurisdiction of stannaries court.**

- (1) In the case of a company subject to the stannaries jurisdiction, the court exercising the stannaries jurisdiction shall have and exercise the like jurisdiction and powers, as well on the common law as on the equity side thereof, as the Court of the Vice-Warden of the stannaries possessed before the commencement of the Stannaries Court (Abolition) Act, 1896, by custom, usage, or statute in the case of unincorporated companies, but only so far as is consistent with the provisions of this Act and with the constitution of companies as prescribed or required by this Act.
- (2) For the purpose of giving fuller effect to that jurisdiction, all process issuing out of the said court, and all orders, rules, demands, notices, warrants, and summonses required Or authorised by the practice of the court to be served on any company, whether registered or not registered, or on any member or contributory thereof, or on any officer, agent, director, manager, or servant thereof, may be served in any part of England without any special order of the judge for that purpose, or by such special order may be served in any part of the British Islands, on such terms and conditions as the court may think fit:

Provided that no such service of process out of the limits of the stannaries in any suit or plaint on the common law side of the court shall be effected without the special-order of the judge made on a statement of the- nature and' object of the suit or plaint.

- (3) All decrees, orders, and judgments of the said court may be enforced in the same manner in which decrees, orders, and judgments of the Court of the Vice-Warden of the stannaries could before its abolition have been by law enforced, whether within or beyond the stannaries:

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**281 Penalty for false statement.**

If any person in any return, report, certificate, balance sheet, or other document, required by or for the purposes of any of the provisions of this Act specified in the Fifth Schedule hereto, wilfully makes a statement false in any material particular, knowing it to be false, he shall be guilty of a misdemeanour, and shall be liable on conviction on indictment to imprisonment for a term not exceeding two years, with or without hard labour, and' on summary conviction to imprisonment for a term not exceeding four months, with or without hard labour, and in either case to a fine in lieu of or in addition to such imprisonment as aforesaid :

Provided that the fine imposed on summary conviction shall not exceed one hundred pounds.

**282 Penalty for improper use of word " Limited."**

If any person or persons trade or carry on business under any name or title of which "Limited" is the last word, that person or those persons shall, unless duly incorporated with limited liability, be liable to a fine not exceeding five pounds for every day upon which that name or title has, been used.

*Report by Board of Trade.*

**283 Annual Report by Board of Trade.**

The Board Trade shall cause a general annual report of matters within this Act to be prepared and laid before both Houses of Parliament.

*Authentication of Documents issued by Board of Trade.*

**284 Authentication of documents issued by Board of Trade.**

Any approval, sanction, or licence, or revocation of licence, which under this Act may be given or made by the Board of Trade may be under the hand of a secretary or assistant secretary of the Board, or of any person authorised in that behalf by the President of the Board.

*Interpretation, &c.*

**285 Interpretation.**

In this Act, unless the context otherwise requires, the following expressions have the meanings hereby assigned to them (that is to say):—

“Existing company” means a company formed and registered under the Joint Stock Companies Acts, or under the Companies Act, 1862 ;

“Company ” means a company formed and registered under this Act or an existing company;

“Articles ” means the articles of association of a company, as originally framed or as altered by special resolution, including, so far as they apply to the company, the regulations contained (as the case may be) in Table B. in the Schedule annexed to the Joint Stock Companies Act, 1856, or in Table A. in

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the First Schedule annexed to the Companies Act, 1862, or in that Table as altered in pursuance of section seventy-one of that Act, or in Table A. in the First Schedule to this Act;

“Memorandum ” means the memorandum of association of a company, as originally framed or as altered in pursuance of the provisions of this Act;

“Document ” includes summons, notice, order, and other legal process, and registers ;

“Share ” means share in the share capital of the company, and includes stock except where a distinction between stock and shares is expressed or implied ;

“Debenture ” includes debenture stock ;

“Books and papers ” and “books or papers ” include accounts, deeds, writings, and documents ;

“The registrar of companies, ” or, when used in relation to registration of companies, “the registrar,” means the registrar or other officer performing under this Act the duty of registration of companies in England, Scotland, or Ireland, or in the stannaries, as the case requires;

“The court ” used in relation to a company means the court having jurisdiction to wind up the company ;

“Joint Stock Companies Acts ” means the Joint Stock Companies Act, 1856, the Joint Stock Companies Acts, 1856, 1857, the Joint Stock Banking Companies Act, 1857, and the Act to enable Joint Stock Banking Companies to be formed on the principle of limited liability, or any one or more of those Acts, as the case may require ; but does not include the Act passed in the eighth year of the reign of Her Majesty Queen Victoria, chapter one hundred and ten, intituled An Act for the Registration, Incorporation, and Regulation of Joint Stock Companies;

“The Gazette ” means, as respects companies registered in England, the London Gazette ; as respects companies registered in Scotland, the Edinburgh Gazette; and, as respects companies registered in Ireland, the Dublin Gazette ;

“Real and personal, ” as respects Scotland, means heritable and moveable ;

“General rules ” means general rules made under this Act, and includes forms;

“ Prescribed ” means, as respects the provisions of this Act relating to the winding-up of companies, prescribed by general rules, and as respects the other provisions of this Act, prescribed by the Board of Trade ;

“Company within the stannaries ” means a company engaged in or formed for working mines within the stannaries ;

“The court exercising the stannaries jurisdiction ” used in relation to any proceedings means the county court in which the jurisdiction formerly exercised by the court of the vice-warden of the stannaries in respect of those proceedings is for the time being vested ;

“Director ” includes any person occupying the position of director by whatever name called ;

“Prospectus ” means any prospectus, notice, circular, advertisement, or other invitation, offering to the public for subscription or purchase any shares or debentures of a company.

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*Repeal of Acts and Transitional Provisions.*

**286 Repeal of Acts and savings.**

- (1) The Acts mentioned in the First Part of the Sixth Schedule to this Act are hereby repealed to the extent specified in the third column of that Part:

Provided that the repeal shall not affect—

- (a) The incorporation of any company registered under any enactment hereby repealed ; or
  - (b) Table B. in the Schedule annexed to the Joint Stock Companies Act, 1856, or any part thereof, so far as the same applies to any company existing at the commencement of this Act; nor
  - (c) Table A. in the First Schedule annexed to the Companies Act, 1862, or any part thereof (either as originally contained in that Schedule or as altered in pursuance of section seventy-one of that Act) so far as the same applies to any company existing at, the commencement of this Act; nor
  - (d) The continuance in force of the enactments set out in the Second Part of the Sixth Schedule to this Act, being the enactments continued in force by section two hundred and five of the Companies Act, 1862.
- (2) The mention of particular matters in this section or in any other section of this Act shall not prejudice the general application of section thirty-eight, of the Interpretation Act, 1889, with regard to the effect of repeals.

**287 Saving of pending proceedings for winding up.**

The provisions of this Act with respect to winding up shall not apply to any company of which the winding up has commenced before the commencement of this Act, but every such company shall be wound up in the same manner and with the same incidents as if this Act had not passed, and, for the purposes of the winding up, the Act or Acts under which the-winding up commenced shall be deemed to remain in full force.

**288 Saving of deeds.**

Every conveyance, mortgage, or other deed, made before the commencement of this Act in pursuance of any enactment hereby repealed, shall be of the same force as if this-Act had not passed, and for the purposes of that deed the-repealed enactment shall be deemed to remain in full force.

**289 Former registration offices, registers, official receivers, &c continued.**

- (1) The offices existing at the commencement of this Act in England, Scotland, and Ireland for registration of joint stock companies shall be continued as if they had been established under this Act.
- (2) Registers of companies kept in any such existing offices shall respectively be deemed part of the registers of companies to be kept under this Act. '
- (3) The existing registrars, assistant registrars, officers, clerks, and servants in those offices shall during the pleasure of the Board of Trade hold the offices and receive the salaries hitherto held and received by them, but subject to any regulations of the Board of Trade with regard to the execution of their duties.

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- (4) The existing official receivers and officers of the Board of Trade appointed for the execution of the Companies (Winding Up) Act, 1890, shall during the pleasure of the Board of Trade hold the offices and receive the salaries or remuneration hitherto held and received by them.
- (5) Persons, other than officers of the Board of Trade, performing any duties under the Companies (Winding Up) Act, 1890, and receiving therefor any salary or remuneration by the direction of the Lord Chancellor, shall during his pleasure receive the salaries or remuneration hitherto received by them.
- (6) The Companies liquidation Account under this Act shall be deemed to be in continuation of the Companies Liquidation Account under the Companies (Winding Up) Act, 1890.

**290 Saving for existing rules of procedure, &c.**

Until revoked and except as varied under the powers of this Act, the general rules and orders, and scales of fees, under the Companies (Winding Up) Act, 1890, in force at the commencement of this Act, and the rules of court in force at the commencement of this Act in England, Scotland, and Ireland respectively with respect to the procedure for reduction of capital, and to winding up companies, and the practice and procedure for winding up companies in England, Scotland, and Ireland respectively in force at the commencement of this Act, shall, so far as they are not inconsistent with this Act, continue in force.

**291 Substitution of provisions of this Act for provisions of repealed Acts.**

Where any enactment repealed by this Act is mentioned or referred to in any document, that document shall be read as if the corresponding provision (if any) of this Act were therein mentioned or referred to and substituted for the repealed enactment.

**292 Saving for 28 & 29 Vict. c. 78. s. 3.**

Nothing in this Act shall affect the power of a company to alter its memorandum under the provisions of section three of the Mortgage Debenture Act, 1865.

**293 Saving for Life Assurance Companies Acts.**

Nothing in this Act shall affect the provisions of the Life Assurance Companies Acts, 1870 to 1872, except that references in those Acts to any provision of the Companies Act, 1862, shall be read as references to the corresponding provision of this Act.

**294 Saving for 34 & 35 Vict. c. 31. s. 5.**

Nothing in this Act shall affect the provisions of section five of the Trade Union Act, 1871, except that the reference in that section to the Companies Acts, 1862 and 1867, shall be read as a reference to this Act.

**295 Short title.**

This Act may be cited as the Companies (Consolidation) Act, 1908.

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**296 Commencement of Act.**

This Act shall come into operation on the first day of April nineteen hundred and nine.