



# Companies Act 1948

1948 CHAPTER 38 11 and 12 Geo 6

## PART I

INCORPORATION OF COMPANIES AND MATTERS INCIDENTAL THERETO.

*Memorandum of Association.*

### **1 Mode of forming incorporated company.**

- (1) Any seven or more persons, or, where the company to be formed will be a private company, any two or more persons, associated for any lawful purpose may, by subscribing their names to a memorandum of association and otherwise complying with the requirements of this Act in respect of registration, form an incorporated company, with or without limited liability.
- (2) Such a company may be either—
  - (a) a company having the liability of its members limited by the memorandum to the amount, if any, unpaid on the shares respectively held by them (in this Act termed “a company limited by shares”); or
  - (b) a company having the liability of its members limited by the memorandum to such amount as the members may respectively thereby undertake to contribute to the assets of the company in the event of its being wound up (in this Act termed “a company limited by guarantee”); or
  - (c) a company not having any limit on the liability of its members (in this Act termed “an unlimited company”).

### **2 Requirements with respect to memorandum.**

- (1) The memorandum of every company must state—
  - (a) the name of the company, with “limited” as the last word of the name in the case of a company limited by shares or by guarantee;
  - (b) whether the registered office of the company is to be situate in England or in Scotland;

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- (c) the objects of the company.
- (2) The memorandum of a company limited by shares or by guarantee must also state that the liability of its members is limited.
- (3) The memorandum of a company limited by guarantee must also state that each member undertakes to contribute to the assets of the company in the event of its being wound up while he is a member, or within one year after he ceases to be a member, for payment of the debts and liabilities of the company contracted before he ceases to be a member, and of the costs, charges and expenses of winding up, and for adjustment of the rights of the contributories among themselves, such amount as may be required, not exceeding a specified amount.
- (4) In the case of a company having a share capital—
  - (a) the memorandum must also, unless the company is an unlimited company, state the amount of share capital with which the company proposes to be registered and the division thereof into shares of a fixed amount;
  - (b) no subscriber of the memorandum may take less than one share;
  - (c) each subscriber must write opposite to his name the number of shares he takes.

### **3 Stamp and signature of memorandum.**

The memorandum must bear the same stamp as if it were a deed, and must be signed by each subscriber in the presence of at least one witness who must attest the signature, and that attestation shall be sufficient in Scotland as well as in England.

### **4 Restriction on alteration of memorandum.**

A company may not alter the conditions contained in its memorandum except in the cases, in the mode and to the extent for which express provision is made in this Act.

### **5 Mode in which and extent to which objects of company may be altered.**

- (1) A company may, by special resolution, alter the provisions of its memorandum with respect to the objects of the company, so far as may be required to enable it—
  - (a) to carry on its business more economically or more efficiently; or
  - (b) to attain its main purpose by new or improved means; or
  - (c) to enlarge or change the local area of its operations; or
  - (d) to carry on some business which under existing circumstances may conveniently or advantageously be combined with the business of the company; or
  - (e) to restrict or abandon any of the objects specified in the memorandum; or
  - (f) to sell or dispose of the whole or any part of the undertaking of the company; or
  - (g) to amalgamate with any other company or body of persons:

Provided that if an application is made to the court in accordance with this section for the alteration to be cancelled, it shall not have effect except in so far as it is confirmed by the court.

- (2) An application under this section may be made—

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- (a) by the holders of not less in the aggregate than fifteen per cent. in nominal value of the company's issued share capital or any class thereof or, if the company is not limited by shares, not less than fifteen per cent. of the company's members; or
- (b) by the holders of not less than fifteen per cent. of the company's debentures entitling the holders to object to alterations of its objects:

Provided that an application shall not be made by any person who has consented to or voted in favour of the alteration.

- (3) An application under this section must be made within twenty-one days after the date on which the resolution altering the company's objects was passed, and may be made on behalf of the persons entitled to make the application by such one or more of their number as they may appoint in writing for the purpose.
- (4) On an application under this section the court may make an order confirming the alteration either wholly or in part and on such terms and conditions as it thinks fit, and may, if it thinks fit, adjourn the proceedings in order that an arrangement may be made to the satisfaction of the court for the purchase of the interests of dissentient members, and may give such directions and make such orders as it may think expedient for facilitating or carrying into effect any such arrangement:

Provided that no part of the capital of the company shall be expended in any such purchase.

- (5) The debentures entitling the holders to object to alterations of a company's objects shall be any debentures secured by a floating charge which were issued or first issued before the first day of December, nineteen hundred and forty-seven, or form part of the same series as any debentures so issued, and a special resolution altering a company's objects shall require the same notice to the holders of any such debentures as to members of the company.

In default of any provisions regulating the giving of notice to any such debenture holders, the provisions of the company's articles regulating the giving of notice to members shall apply.

- (6) In the case of a company which is, by virtue of a licence from the Board of Trade, exempt from the obligation to use the word "limited" as part of its name, a resolution altering the company's objects shall also require the same notice to the Board of Trade as to members of the company.
- (7) Where a company passes a resolution altering its objects—
  - (a) if no application is made with respect thereto under this section, it shall within fifteen days from the end of the period for making such an application deliver to the registrar of companies a printed copy of its memorandum as altered; and
  - (b) if such an application is made it shall—
    - (i) forthwith give notice of that fact to the registrar; and
    - (ii) within fifteen days from the date of any order cancelling or confirming the alteration, deliver to the registrar an office copy of the order and, in the case of an order confirming the alteration, a printed copy of the memorandum as altered.

The court may by order at any time extend the time for the delivery of documents to the registrar under paragraph (b) of this subsection for such period as the court may think proper.

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- (8) If a company makes default in giving notice or delivering any document to the registrar of companies as required by the last foregoing subsection, the company and every officer of the company who is in default shall be liable to a default fine of ten pounds.
- (9) The validity of an alteration of the provisions of a company's memorandum with respect to the objects of the company shall not be questioned on the ground that it was not authorised by subsection (1) of this section except in proceedings taken for the purpose (whether under this section or otherwise) before the expiration of twenty-one days after the date of the resolution in that behalf; and where any such proceedings are taken otherwise than under this section the two last foregoing subsections shall apply in relation thereto as if they had been taken under this section and as if an order declaring the alteration invalid were an order cancelling it and as if an order dismissing the proceedings were an order confirming the alteration.
- (10) In relation to a resolution for altering the provisions of a company's memorandum with respect to the objects of the company passed before the first day of December, nineteen hundred and forty-seven, this section shall have effect as if, in lieu of the proviso to subsection (1) and subsections (2) to (9) thereof, there had been enacted therein the provisions of subsections (2) to (7) of section five of the Companies Act, 1929.

*Articles of Association.*

**6 Articles prescribing regulations for companies.**

There may in the case of a company limited by shares, and there shall in the case of a company limited by guarantee or unlimited, be registered with the memorandum articles of association signed by the subscribers to the memorandum and prescribing regulations for the company.

**7 Regulations required in case of unlimited company or company limited by guarantee.**

- (1) In the case of an unlimited company the articles must state the number of members with which the company proposes to be registered and, if the company has a share capital, the amount of share capital with which the company proposes to be registered.
- (2) In the case of a company limited by guarantee, the articles must state the number of members with which the company proposes to be registered.
- (3) Where an unlimited company or a company limited by guarantee has increased the number of its members beyond the registered number, it shall, within fifteen days after the increase was resolved on or took place, give to the registrar of companies notice of the increase, and the registrar shall record the increase.

If default is made in complying with this subsection, the company and every officer of the company who is in default shall be liable to a default fine.

**8 Adoption and application of Table A.**

- (1) Articles of association may adopt all or any of the regulations contained in Table A.
- (2) In the case of a company limited by shares and registered after the commencement of this Act, if articles are not registered, or, if articles are registered, in so far as the articles

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do not exclude or modify the regulations contained in Table A, those regulations shall, so far as applicable, be the regulations of the company in the same manner and to the same extent as if they were contained in duly registered articles.

## **9 Printing, stamp, and signature of articles.**

Articles must—

- (a) be printed;
- (b) be divided into paragraphs numbered consecutively;
- (c) bear the same stamp as if they were contained in a deed;
- (d) be signed by each subscriber of the memorandum of association in the presence of at least one witness who must attest the signature, and that attestation shall be sufficient in Scotland as well as in England.

## **10 Alteration of articles by special resolution.**

- (1) Subject to the provisions of this Act and to the conditions contained in its memorandum, a company may by special resolution alter or add to its articles.
- (2) Any alteration or addition so made in the articles shall, subject to the provisions of this Act, be as valid as if originally contained therein, and be subject in like manner to alteration by special resolution.

*Form of Memorandum and Articles.*

## **11 Statutory forms of memorandum and articles.**

The form of—

- (a) the memorandum of association of a company limited by shares;
- (b) the memorandum and articles of association of a company limited by guarantee and not having a share capital;
- (c) the memorandum and articles of association of a company limited by guarantee and having a share capital;
- (d) the memorandum and articles of association of an unlimited company having a share capital;

shall be respectively in accordance with the forms set out" in Tables B, C, D and E in the First Schedule to this Act, or as near thereto as circumstances admit.

*Registration.*

## **12 Registration of memorandum and articles.**

The memorandum and the articles, if any, shall be delivered to the registrar of companies for England or the registrar of companies for Scotland according as the registered office of the company is stated by the memorandum to be situate in England or Scotland, and the registrar shall retain and register them.

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**13 Effect of registration.**

- (1) On the registration of the memorandum of a company the registrar shall certify under his hand that the company is incorporated and, in the case of a limited company, that the company is limited.
- (2) From the date of incorporation mentioned in the certificate of incorporation, the subscribers of the memorandum, together with such other persons as may from time to time become members of the company, shall be a body corporate by the name contained in the memorandum, capable forthwith of exercising all the functions of an incorporated company, and having perpetual succession and a common seal, but with such liability on the part of the members to contribute to the assets of the company in the event of its being wound up as is mentioned in this Act.

**14 Power of company to hold lands.**

- (1) A company incorporated under this Act shall have power to hold lands, and as regards lands in any part of the United Kingdom without licence in mortmain:  

Provided that a company formed for the purpose of promoting art, science, religion, charity or any other like object not involving the acquisition of gain by the company or by its individual members, shall not, without the licence of the Board of Trade, hold more than two acres of land, but the Board may by licence empower any such company to hold lands in such quantity, and subject to such conditions, as the Board think fit.
- (2) A licence given by the Board of Trade under this section shall be in accordance with the form set out in the Second Schedule to this Act, or as near thereto as circumstances admit.

**15 Conclusiveness of certificate of incorporation.**

- (1) A certificate of incorporation given by the registrar in respect of any association shall be conclusive evidence that all the requirements of this Act in respect of registration and of matters precedent and incidental thereto have been complied with, and that the association is a company authorised to be registered and duly registered under this Act.
- (2) A statutory declaration by a solicitor of the Supreme Court, and in Scotland by a solicitor, engaged in the formation of the company, or by a person named in the articles as a director or secretary of the company, of compliance with all or any of the said requirements shall be produced to the registrar, and the registrar may accept such a declaration as sufficient evidence of compliance.

**16 Registration of unlimited company as limited.**

- (1) Subject to the provisions of this section, a company registered as unlimited may register under this Act as limited, or a company already registered as a limited company may re-register under this Act, but the registration of an unlimited company as a limited company shall not affect the rights or liabilities of the company in respect of any debt or obligation incurred, or any contract entered into, by, to, with or on behalf of the company before the registration, and those rights or liabilities may be enforced in manner provided by Part VIII of this Act in the case of a company registered in pursuance of that Part.

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- (2) On registration in pursuance of this section the registrar shall close the former registration of the company, and may dispense with the delivery to him of copies of any documents with copies of which he was furnished on the occasion of the original registration of the company, but, save as aforesaid, the registration shall take place in the same manner and shall have effect as if it were the first registration of the company under this Act, and as if the provisions of the Acts under which the company was previously registered and regulated had been contained in different Acts from those under which the company is registered as a limited company.

*Provisions with respect to Names of Companies.*

**17 Prohibition of registration of companies by undesirable names.**

No company shall be registered by a name which in the opinion of the Board of Trade is undesirable.

**18 Change of name.**

- (1) A company may by special resolution and with the approval of the Board of Trade signified in writing change its name.
- (2) If, through inadvertence or otherwise, a company on its first registration or on its registration by a new name is registered by a name which, in the opinion of the Board of Trade, is too like the name by which a company in existence is previously registered, the first-mentioned company may change its name with the sanction of the Board of Trade and, if they so direct within six months of its being registered by that name, shall change it within a period of six weeks from the date of the direction or such longer period as the Board may think fit to allow.

If a company makes default in complying with a direction under this subsection, it shall be liable to a fine not exceeding five pounds for every day during which the default continues.

- (3) Where a company changes its name under this section, the registrar shall enter the new name on the register in place of the former name, and shall issue a certificate of incorporation altered to meet the circumstances of the case.
- (4) A change of name by a company under this section shall not affect any rights or obligations of the company or render defective any legal proceedings by or against the company, and any legal proceedings that might have been continued or commenced against it by its former name may be continued or commenced against it by its new name.

**19 Power to dispense with “limited ” in name of charitable and other companies.**

- (1) Where it is proved to the satisfaction of the Board of Trade that an association about to be formed as a limited company is to be formed for promoting commerce, art, science, religion, charity or any other useful object, and intends to apply its profits, if any, or other income in promoting its objects, and to prohibit the payment of any dividend to its members, the Board may by licence direct that the association may be registered as a company with limited liability, without the addition of the word “limited ” to its name, and the association may be registered accordingly and shall, on registration,

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enjoy all the privileges and (subject to the provisions of this section) be subject to all the obligations of limited companies.

- (2) Where it is proved to the satisfaction of the Board of Trade—
- (a) that the objects of a company registered under this Act as a limited company are restricted to those specified in the foregoing subsection and to objects incidental or conducive thereto; and
  - (b) that by its constitution the company is required to apply its profits, if any, or other income in promoting its objects and is prohibited from paying any dividend to its members;

the Board may by licence authorise the company to make by special resolution a change in its name including or consisting of the omission of the word “limited”, and subsections (3) and (4) of the last foregoing section shall apply to a change of name under this subsection as they apply to a change of name under that section.

- (3) A licence by the Board of Trade under this section may be granted on such conditions and subject to such regulations as the Board think fit, and those conditions and regulations shall be binding on the body to which the licence is granted, and (where the grant is under subsection (1) of this section) shall, if the Board so direct, be inserted in the memorandum and articles, or in one of those documents.
- (4) A body to which a licence is granted under this section shall be excepted from the provisions of this Act relating to the use of the word “limited” as any part of its name, the publishing of its name and the sending of lists of members to the registrar of companies.
- (5) A licence under this section may at any time be revoked by the Board of Trade, and upon revocation the registrar shall enter the word “limited” at the end of the name upon the register of the body to which it was granted, and the body shall cease to enjoy the exemptions and privileges or, as the case may be, the exemptions granted by this section:

Provided that, before a licence is so revoked, the Board shall give to the body notice in writing of their intention, and shall afford it an opportunity of being heard in opposition to the revocation.

- (6) Where a body in respect of which a licence under this section is in force alters the provisions of its memorandum with respect to its objects, the Board of Trade may (unless they see fit to revoke the licence) vary the licence by making it subject to such conditions and regulations as the Board think fit, in lieu of or in addition to the conditions and regulations, if any, to which the licence was formerly subject.
- (7) Where a licence granted under this section to a body the name of which contains the words “Chamber of Commerce” is revoked, the body shall, within a period of six weeks from the date of revocation or such longer period as the Board of Trade may think fit to allow, change its name to a name which does not contain those words, and—
- (a) the notice to be given under the proviso to subsection (5) of this section to that body shall include a statement of the effect of the foregoing provisions of this subsection; and
  - (b) subsections (3) and (4) of the last foregoing section shall apply to a change of name under this subsection as they apply to a change of name under that section.



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If the body makes default in complying with the requirements of this subsection, it shall be liable to a fine not exceeding fifty pounds for every day during which the default continues.

*General Provisions with respect to Memorandum and Articles.*

**20 Effect of memorandum and articles.**

- (1) Subject to the provisions of this Act, the memorandum and articles shall, when registered, bind the company and the members thereof to the same extent as if they respectively had been signed and sealed by each member, and contained covenants on the part of each member to observe all the provisions of the memorandum and of the articles.
- (2) All money payable by any member to the company under the memorandum or articles shall be a debt due from him to the company, and in England be of the nature of a specialty debt.

**21 Provision as to memorandum and articles of companies limited by guarantee.**

- (1) In the case of a company limited by guarantee and not having a share capital, and registered on or after the first day of January, nineteen hundred and one, every provision in the memorandum or articles or in any resolution of the company purporting to give any person a right to participate in the divisible profits of the company otherwise than as a member shall be void.
- (2) For the purpose of the provisions of this Act relating to the memorandum of a company limited by guarantee and of this section, every provision in the memorandum or articles, or in any resolution, of a company limited by guarantee and registered on or after the date aforesaid, purporting to divide the undertaking of the company into shares or interests shall be treated as a provision for a share capital, notwithstanding that the nominal amount or number of the shares or interests is not specified thereby.

**22 Alterations in memorandum or articles increasing liability to contribute to share capital not to bind existing members without consent.**

Notwithstanding anything in the memorandum or articles of a company, no member of the company shall be bound by an alteration made in the memorandum or articles after the, date on which he became a member, if and so far as the alteration requires him to take or subscribe for more shares than the number held by him at the date on which the alteration is made, or in any way increases his liability as at that date to contribute to the share capital of, or otherwise to pay money to, the company:

Provided that this section shall not apply in any case where the member agrees in writing, either before or after the alteration is made, to be bound thereby.

**23 Power to alter conditions in memorandum which could have been contained in articles.**

- (1) Subject to the provisions of the last foregoing section and of section two hundred and ten of this Act, any condition contained in a company's memorandum which could lawfully have been contained in articles of association instead of in the memorandum

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may, subject to the provisions of this section, be altered by the company by special resolution:

Provided that if an application is made to the court for the alteration to be cancelled, it shall not have effect except in so far as it is confirmed by the court.

- (2) This section shall not apply where the memorandum itself provides for or prohibits the alteration of all- or any of the said conditions, and shall not authorise any variation or abrogation of the special rights of any class of members.
- (3) Subsections (2), (3), (4), (7) and (8) of section five of this Act (except paragraph (b) of the said subsection (2)) shall apply in relation to any alteration and to any application made under this section as they apply in relation to alterations and to applications made under that section.
- (4) This section shall apply to a company's memorandum whether registered before or after the commencement of this Act.

**24 Copies of memorandum and articles to be given to members.**

- (1) A company shall, on being so required by any member, send to him a copy of the memorandum and of the articles, if any, and a copy of any Act of Parliament which alters the memorandum, subject to payment, in the case of a copy of the memorandum and of the articles, of one shilling or such less sum as the company may prescribe, and, in the case of a copy of an Act, of such sum not exceeding the published price thereof as the company may require.
- (2) If a company makes default in complying with this section, the company and every officer of the company who is in default shall be liable for each offence to a fine not exceeding one pound.

**25 Issued copies of memorandum to embody alterations.**

- (1) Where an alteration is made in the memorandum of a company, every copy of the memorandum issued after the date of the alteration shall be in accordance with the alteration.
- (2) If, where any such alteration has been made, the company at any time after the date of the alteration issues any copies of the memorandum which are not in accordance with the alteration, it shall be liable to a fine not exceeding one pound for each copy so issued, and every officer of the company who is in default shall be liable to the like penalty.

*Membership of Company.*

**26 Definition of member.**

- (1) The subscribers of the memorandum of a company shall be deemed to have agreed to become members of the company, and on its registration shall be entered as members in its register of members.
- (2) Every other person who agrees to become a member of a company, and whose name is entered in its register of members, shall be a member of the company.

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**27 Membership of holding company.**

- (1) Except in the cases hereafter in this section mentioned, a body corporate cannot be a member of a company which is its holding company, and any allotment or transfer of shares in a company to its subsidiary shall be void.
- (2) Nothing in this section shall apply where the subsidiary is concerned as personal representative, or where it is concerned as trustee, unless the holding company or a subsidiary thereof is beneficially interested under the trust and is not so interested only by way of security for the purposes of a transaction entered into by it in the ordinary course of a business which includes the lending of money.
- (3) This section shall not prevent a subsidiary which is, at the commencement of this Act, a member of its holding company, from continuing to be a member but, subject to the last foregoing subsection, the subsidiary shall have no right to vote at meetings of the holding company or any class of members thereof.
- (4) Subject to subsection (2) of this section, subsections (1) and (3) thereof shall apply in relation to a nominee for a body corporate which is a subsidiary, as if references in the said subsections (1) and (3) to such a body corporate included references to a nominee for it.
- (5) In relation to a company limited by guarantee or unlimited which is a holding company, the reference in this section to shares, whether or not it has a share capital, shall be construed as including a reference to the interest of its members as such, whatever the form of that interest.

*Private Companies.*

**28 Meaning of “private company”.**

- (1) For the purposes of this Act, the expression “private company” means a company which by its articles—
  - (a) restricts the right to transfer its shares; and
  - (b) limits the number of its members to fifty, not including persons who are in the employment of the company and persons who, having been formerly in the employment of the company, were while in that employment, and have continued after the determination of that employment to be, members of the company; and
  - (c) prohibits any invitation to the public to subscribe for any shares or debentures of the company.
- (2) Where two or more persons hold one or more shares in a company jointly, they shall, for the purposes of this section, be treated as a single member.

**29 Consequences of default in complying with conditions constituting a company a private company.**

Where the articles of a company include the provisions which, under the last foregoing section, are required to be included in the articles of a company in order to constitute it a private company but default is made in complying with any of those provisions, the company shall cease to be entitled to the privileges and exemptions conferred on private companies under the provisions contained in section thirty-one, subsection (1)

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of section one hundred and twenty-nine, paragraph (d) of section two hundred and twenty-two and paragraph (i) of proviso (a) to subsection (1) of section two hundred and twenty-four of this Act, and thereupon the provisions contained in the first, third and fourth of those enactments shall apply to the company as if it were not a private company and the provisions contained in the second of those enactments shall cease to apply to the company:

Provided that the court, on being satisfied that the failure to comply with the conditions was accidental or due to inadvertence or to some other sufficient cause, or that on other grounds it is just and equitable to grant relief, may, on the application of the company or any other person interested and on such terms and conditions as seem to the court just and expedient, order that the company be relieved from such consequences as aforesaid.

**30 Statement in lieu of prospectus to be delivered to registrar by company on ceasing to be private company.**

- (1) If a company, being a private company, alters its articles in such manner that they no longer include the provisions which, under section twenty-eight of this Act, are required to be included in the articles of a company in order to constitute it a private company, the company shall, as on the date of the alteration, cease to be a private company and shall, within a period of fourteen days after the said date, deliver to the registrar of companies for registration a statement in lieu of prospectus in the form and containing the particulars set out in Part I of the Third Schedule to this Act and, in the cases mentioned in Part II of that Schedule, setting out the reports specified therein, and the said Parts I and II shall have effect subject to the provisions contained in Part III of that Schedule:

Provided that a statement in lieu of prospectus need not be delivered under this subsection if within the said period of fourteen days a prospectus relating to the company which complies, or is deemed by virtue of a certificate of exemption under section thirty-nine of this Act to comply, with the Fourth Schedule to this Act, is issued and is delivered to the registrar of companies as required by section forty-one of this Act.

- (2) Every statement in lieu of prospectus delivered under the foregoing subsection shall, where the persons making any such report as aforesaid have made therein or have, without giving the reasons, indicated therein any such adjustments as are mentioned in paragraph 5 of the said Third Schedule, have endorsed thereon or attached thereto a written statement signed by those persons setting out the adjustments and giving the reasons therefor.
- (3) If default is made in complying with subsection (1) or (2) of this section, the company and every officer of the company who is in default shall be liable to a default fine of fifty pounds.
- (4) Where a statement in lieu of prospectus delivered to the registrar of companies under subsection (1) of this section includes any untrue statement, any person who authorised the delivery of the statement in lieu of prospectus for registration shall be liable—
- (a) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine not exceeding five hundred pounds, or both; or
  - (b) on summary conviction, to imprisonment for a term not exceeding three months or a fine not exceeding one hundred pounds, or both;

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unless he proves either that the untrue statement was immaterial or that he had reasonable ground to believe and did up to the time of the delivery for registration of the statement in lieu of prospectus believe that the untrue statement was true.

- (5) For the purposes of this section—
- (a) a statement included in a statement in lieu of prospectus shall be deemed to be untrue if it is misleading in the form and context in which it is included; and
  - (b) a statement shall be deemed to be included in a statement in lieu of prospectus if it is contained therein or in any report or memorandum appearing on the face thereof or by reference incorporated therein.

*Reduction of Number of Members below Legal Minimum.*

**31 Members severally liable for debts where business carried on with fewer than seven, or in case of private company two, members.**

If at any time the number of members of a company is reduced, in the case of a private company, below two, or, in the case of any other company, below seven, and it carries on business for more than six months while the number is so reduced, every person who is a member of the company during the time that it so carries on business after those six months and is cognisant of the fact that it is carrying on business with fewer than two members, or seven members, as the case may be, shall be severally liable for the payment of the whole debts of the company contracted during that time, and may be severally sued therefor.

*Contracts, &c.*

**32 Form or contracts.**

- (1) Contracts on behalf of a company may be made as follows:—
- (a) a contract which if made between private persons would be by law required to be in writing, and if made according to English law to be under seal, may be made on behalf of the company in writing under the common seal of the company;
  - (b) a contract which if made between private persons would be by law required to be in writing, signed by the parties to be charged therewith, may be made on behalf of the company in writing signed by any person acting under its authority, express or implied;
  - (c) a contract which if made between private persons would by law be valid although made by parol only, and not reduced into writing, may be made by parol on behalf- of the company by any person acting under its authority, express or implied.
- (2) A contract made according to this section shall be effectual in law, and shall bind the company and its successors and all other parties thereto.
- (3) A contract made according to this section may be varied or discharged in the same manner in which it is authorised by this section to be made.
- (4) A deed to which a company is a party shall be held to be validly executed according to the law of Scotland on behalf of the company if it is executed in accordance with the provisions of this Act or is sealed with the common seal of the company and subscribed

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*Status: This is the original version (as it was originally enacted). This  
item of legislation is currently only available in its original format.*

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on behalf of the company by two of the directors or by a director and the secretary of the company, and such subscription on behalf of the company shall be binding whether attested by witnesses or not.

**33 Bills of exchange and promissory notes.**

A bill of exchange or promissory note shall be deemed to have been made, accepted or endorsed on behalf of a company if made, accepted or endorsed in the name of, or by or on behalf or on account of, the company by any person acting under its authority.

**34 Execution of deeds abroad.**

- (1) A company may, by writing under its common seal, empower any person, either generally or in respect of any specified matters, as its attorney, to execute deeds on its behalf in any place not situate in the United Kingdom.
- (2) A deed signed by such an attorney on behalf of the company and under his seal shall bind the company and have the same effect as if it were under its common seal.

**35 Power for company to have official seal for use abroad.**

- (1) A company whose objects require or comprise the transaction of business in foreign countries may, if authorised by its articles, have for use in any territory, district, or place not situate in the United Kingdom, an official seal, which shall be a facsimile of the common seal of the company, with the addition on its face of the name of every territory, district or place where it is to be used.
- (2) A deed or other document to which an official seal is duly affixed shall bind the company as if it had been sealed with the common seal of the company.
- (3) A company having an official seal for use in any such territory, district or place may, by writing under its common seal, authorise any person appointed for the purpose in that territory, district or place to affix the official seal to any deed or other document to which the company is party in that territory, district or place.
- (4) The authority of any such agent shall, as between the company and any person dealing with the agent, continue during the period, if any, mentioned in the instrument conferring the authority, or if no period is there mentioned, then until notice of the revocation or determination of the agent's authority has been given to the person dealing with him.
- (5) The person affixing any such official seal shall, by writing under his hand, certify on the deed or other instrument to which the seal is affixed the date on which and the place at which it is affixed.

*Authentication of Documents.*

**36 Authentication of documents.**

A document or proceeding requiring authentication by a company may be signed by a director, secretary or other authorised officer of the company, and need not be under its common seal.