



# Companies Act 1985

## 1985 CHAPTER 6

### PART I

#### FORMATION AND REGISTRATION OF COMPANIES; JURIDICAL STATUS AND MEMBERSHIP

### CHAPTER I

#### COMPANY FORMATION

##### *Memorandum of association*

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

- (1) Any two or more persons associated for a 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) A company so formed 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 (“a company limited by shares”);
  - (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 (“a company limited by guarantee”); or
  - (c) a company not having any limit on the liability of its members (“an unlimited company”).
- (3) A “public company” is a company limited by shares or limited by guarantee and having a share capital, being a company—
  - (a) the memorandum of which states that it is to be a public company, and

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- (b) in relation to which the provisions of this Act or the former Companies Acts as to the registration or re-registration of a company as a public company have been complied with on or after 22nd December 1980; and a “private company” is a company that is not a public company.

[<sup>F1</sup>(3A) Notwithstanding subsection (1), one person may, for a lawful purpose, by subscribing his name to a memorandum of association and otherwise complying with the requirements of this Act in respect of registration, form an incorporated company being a private company limited by shares or by guarantee.]

- (4) With effect from 22nd December 1980, a company cannot be formed as, or become, a company limited by guarantee with a share capital.

#### Textual Amendments

**F1** S. 1(3A) inserted (15.7.1992) by S.I. 1992/1699, reg. 2, Sch. para.1.

## 2 Requirements with respect to memorandum.

- (1) The memorandum of every company must state—
- (a) the name of the company;
  - (b) whether the registered office of the company is to be situated in England and Wales, or in Scotland;
  - (c) the objects of the company.
- (2) Alternatively to subsection (1)(b), the memorandum may contain a statement that the company’s registered office is to be situated in Wales; and a company whose registered office is situated in Wales may by special resolution alter its memorandum so as to provide that its registered office is to be so situated.
- (3) The memorandum of a company limited by shares or by guarantee must also state that the liability of its members is limited.
- (4) The memorandum of a company limited by guarantee must also state that each member undertakes to contribute to the assets of the company if it should be 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.
- (5) In the case of a company having a share capital—
- (a) the memorandum must also (unless it is an unlimited company) state the amount of the share capital with which the company proposes to be registered and the division of the share capital into shares of a fixed amount;
  - (b) no subscriber of the memorandum may take less than one share; and
  - (c) there must be shown in the memorandum against the name of each subscriber the number of shares he takes.
- (6) The memorandum must be signed by each subscriber in the presence of at least one witness, who must attest the signature; [<sup>F2</sup>and that attestation is sufficient in Scotland as well as in England and Wales].

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- (7) 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 by this Act.

#### Textual Amendments

- F2** Words in s. 2(6) repealed (S.) (1.8.1995) by 1995 c. 7, ss. 14(2), 15(2), **Sch. 5** (with ss. 9(3)(5)(7), 13, 14(3))

### 3 Forms of memorandum.

- (1) Subject to the provisions of sections 1 and 2, the form of the memorandum of association of—
- (a) a public company, being a company limited by shares,
  - (b) a public company, being a company limited by guarantee and having a share capital,
  - (c) a private company limited by shares,
  - (d) a private company limited by guarantee and not having a share capital,
  - (e) a private company limited by guarantee and having a share capital, and
  - (f) an unlimited company having a share capital,
- shall be as specified respectively for such companies by regulations made by the Secretary of State, or as near to that form as circumstances admit.
- (2) Regulations under this section shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

#### Modifications etc. (not altering text)

- C1** S. 3 excluded (E.W.) (26.7.2002 for E. for certain purposes and 30.9.2003 for E. in so far as not already in force, 1.1.2003 for W. for certain purposes and 30.3.2004 for W. in so far as not already in force) by **Commonhold and Leasehold Reform Act 2002 (c. 15), ss. 74(7)(a), 181(1); S.I. 2002/1912, art. 2(c); S.I. 2002/3012, art. 2(c); S.I. 2003/1986, art. 2; S.I. 2004/669, art. 2**  
S. 3 excluded (E.W.) (27.9.2004) by **Commonhold and Leasehold Reform Act 2002 (c. 15), ss. 34, 181(1), Sch. 3 para. 4(1)(a)** (with s. 63); S.I. 2004/1832, **art. 2**

### [<sup>F3</sup>3A Statement of company's objects: general commercial company.

Where the company's memorandum states that the object of the company is to carry on business as a general commercial company—

- (a) the object of the company is to carry on any trade or business whatsoever, and
- (b) the company has power to do all such things as are incidental or conducive to the carrying on of any trade or business by it.]

#### Textual Amendments

- F3** S. 3A inserted (4.2.1991) by **Companies Act 1989 (c. 40, SIF 27), ss. 110, 213(2)**

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**[4 F<sup>4</sup> Resolution to alter objects.**

- (1) A company may by special resolution alter its memorandum with respect to the statement of the company's objects.
- (2) If an application is made under the following section, an alteration does not have effect except in so far as it is confirmed by the court.]

**Textual Amendments**

**F4** S. 4 substituted (4. 2. 1991) by [Companies Act 1989 \(c. 40\)](#), **ss. 110(2), 213(2)**

**5 Procedure for objecting to alteration.**

- (1) Where a company's memorandum has been altered by special resolution under section 4, application may be made to the court for the alteration to be cancelled.
- (2) Such an application may be made—
  - (a) by the holders of not less in the aggregate than 15 per cent. in nominal value of the company's issued share capital or any class of it or, if the company is not limited by shares, not less than 15 per cent. of the company's members; or
  - (b) by the holders of not less than 15 per cent. of the company's debentures entitling the holders to object to an alteration of its objects;
 but an application shall not be made by any person who has consented to or voted in favour of the alteration.
- (3) The application must be made within 21 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) The court may on such an application make an order confirming the alteration either wholly or in part and on such terms and conditions as it thinks fit, and may—
  - (a) if it thinks fit, adjourn the proceedings in order that an arrangement may be made to its satisfaction for the purchase of the interests of dissentient members, and
  - (b) give such directions and make such orders as it thinks expedient for facilitating or carrying into effect any such arrangement.
- (5) The court's order may (if the court thinks fit) provide for the purchase by the company of the shares of any members of the company, and for the reduction accordingly of its capital, and may make such alterations in the company's memorandum and articles as may be required in consequence of that provision.
- (6) If the court's order requires the company not to make any, or any specified, alteration in its memorandum or articles, the company does not then have power without the leave of the court to make any such alteration in breach of that requirement.
- (7) An alteration in the memorandum or articles of a company made by virtue of an order under this section, other than one made by resolution of the company, is of the same effect as if duly made by resolution; and this Act applies accordingly to the memorandum or articles as so altered.

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- (8) The debentures entitling the holders to object to an alteration of a company's objects are any debentures secured by a floating charge which were issued or first issued before 1st December 1947 or form part of the same series as any debentures so issued; and a special resolution altering a company's objects requires the same notice to the holders of any such debentures as to members of the company.

In the absence of 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 apply.

## 6 Provisions supplementing ss. 4, 5.

- (1) Where a company passes a resolution altering its objects, then—
- (a) if with respect to the resolution no application is made under section 5, the company shall within 15 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, the company shall—
    - (i) forthwith give notice (in the prescribed form) of that fact to the registrar, and
    - (ii) within 15 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.
- (2) The court may by order at any time extend the time for the delivery of documents to the registrar under subsection (1)(b) for such period as the court may think proper.
- (3) If a company makes default in giving notice or delivering any document to the registrar of companies as required by subsection (1), the company and every officer of it who is in default is liable to a fine and, for continued contravention, to a daily default fine.
- (4) The validity of an alteration 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 section 4, except in proceedings taken for the purpose (whether under section 5 or otherwise) before the expiration of 21 days after the date of the resolution in that behalf.
- (5) Where such proceedings are taken otherwise than under section 5, subsections (1) to (3) above apply in relation to the proceedings as if they had been taken under that 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.

### Modifications etc. (not altering text)

- C2** S. 6(3) applied (4.2.1991) by Charities Act 1960 (c. 58, SIF 19), s. 30A(3) (as substituted by Companies Act 1989 (c. 40, SIF 27), ss. 111(1), 213(2))
- C3** S. 6(3) extended (E.W.) (1.12.1991) by Statutory Water Companies Act 1991 (c. 58, SIF 130), ss. 12(6), 17(2)
- S. 6(3) applied (E.W.) (1.1.1993) by Companies Act 1960 (c. 58), s. 30A(4) (as inserted (1.1.1993) by Charities Act 1992 (c. 41), s.40; S.I. 1992/1900, art. 4, Sch.3).
- S. 6(3) extended (E.W.) (1.8.1993) by 1993 c. 10, ss. 64(4), 99(1)

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### *Articles of association*

#### **7 Articles prescribing regulations for companies.**

- (1) 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.
- (2) In the case of an unlimited company having a share capital, the articles must state the amount of share capital with which the company proposes to be registered.
- (3) Articles must—
  - (a) be printed,
  - (b) be divided into paragraphs numbered consecutively, and
  - (c) be signed by each subscriber of the memorandum in the presence of at least one witness who must attest the signature [F5(which attestation is sufficient in Scotland as well as in England and Wales)].

#### **Textual Amendments**

**F5** Words in s. 7(3)(c) repealed (S.) (1.8.1995) by 1995 c. 7, ss. 14(2), 15(2), **Sch. 5** (with ss. 9(3)(5)(7), 13, 14(3))

#### **8 Tables A, C, D and E.**

- (1) Table A is as prescribed by regulations made by the Secretary of State; and a company may for its articles adopt the whole or any part of that Table.
- (2) In the case of a company limited by shares, if articles are not registered or, if articles are registered, in so far as they do not exclude or modify Table A, that Table (so far as applicable, and as in force at the date of the company's registration) constitutes the company's articles, in the same manner and to the same extent as if articles in the form of that Table had been duly registered.
- (3) If in consequence of regulations under this section Table A is altered, the alteration does not affect a company registered before the alteration takes effect, or repeal as respects that company any portion of the Table.
- (4) The form of the articles of association of—
  - (a) a company limited by guarantee and not having a share capital,
  - (b) a company limited by guarantee and having a share capital, and
  - (c) an unlimited company having a share capital,
shall be respectively in accordance with Table C, D or E prescribed by regulations made by the Secretary of State, or as near to that form as circumstances admit.
- (5) Regulations under this section shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

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#### Modifications etc. (not altering text)

- C4** S. 8 excluded (E.W.) (26.7.2002 for E. for certain purposes and 30.9.2003 for E. in so far as not already in force, 1.1.2003 for W. for certain purposes and 30.3.2004 for W. in so far as not already in force) by [Commonhold and Leasehold Reform Act 2002 \(c. 15\), ss. 74\(7\)\(b\), 181\(1\); S.I. 2002/1912, art. 2\(c\); S.I. 2002/3012, art. 2\(c\); S.I. 2003/1986, art. 2; S.I. 2004/669, art. 2](#)  
S. 8 excluded (E.W.) (27.9.2004) by [Commonhold and Leasehold Reform Act 2002 \(c. 15\), ss. 34, 181\(1\), Sch. 3 para. 4\(1\)\(b\)](#) (with s. 63); S.I. 2004/1832, [art. 2](#)

#### [<sup>F6</sup>8A Table G.

- (1) The Secretary of State may by regulations prescribe a Table G containing articles of association appropriate for a partnership company, that is, a company limited by shares whose shares are intended to be held to a substantial extent by or on behalf of its employees.
- (2) A company limited by shares may for its articles adopt the whole or any part of that Table.
- (3) If in consequence of regulations under this section Table G is altered, the alteration does not affect a company registered before the alteration takes effect, or repeal as respects that company any portion of the Table.
- (4) Regulations under this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.]

#### Textual Amendments

- F6** S. 8A inserted (*prosp.*) by [Companies Act 1989 \(c. 40, SIF 27\), ss. 128, 213\(2\), 215\(2\)](#)

#### 9 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 its articles.
- (2) Alterations so made in the articles are (subject to this Act) as valid as if originally contained in them, and are subject in like manner to alteration by special resolution.

#### *Registration and its consequences*

#### 10 Documents to be sent to registrar.

- (1) The company's memorandum and articles (if any) shall be delivered—
  - (a) to the registrar of companies for England and Wales, if the memorandum states that the registered office of the company is to be situated in England and Wales, or that it is to be situated in Wales; and
  - (b) to the registrar of companies for Scotland, if the memorandum states that the registered office of the company is to be situated in Scotland.
- (2) With the memorandum there shall be delivered a statement in the prescribed form containing the names and requisite particulars of—

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- (a) the person who is, or the persons who are, to be the first director or directors of the company; and
  - (b) the person who is, or the persons who are, to be the first secretary or joint secretaries of the company;
- and the requisite particulars in each case are those set out in Schedule 1.
- (3) The statement shall be signed by or on behalf of the subscribers of the memorandum and shall contain a consent signed by each of the persons named in it as a director, as secretary or as one of joint secretaries, to act in the relevant capacity.
  - (4) Where a memorandum is delivered by a person as agent for the subscribers, the statement shall specify that fact and the person's name and address.
  - (5) An appointment by any articles delivered with the memorandum of a person as director or secretary of the company is void unless he is named as a director or secretary in the statement.
  - (6) There shall in the statement be specified the intended situation of the company's registered office on incorporation.

## **11 Minimum authorised capital (public companies).**

When a memorandum delivered to the registrar of companies under section 10 states that the association to be registered is to be a public company, the amount of the share capital stated in the memorandum to be that with which the company proposes to be registered must not be less than the authorised minimum (defined in section 118).

## **12 Duty of registrar.**

- (1) The registrar of companies shall not register a company's memorandum delivered under section 10 unless he is satisfied that all the requirements of this Act in respect of registration and of matters precedent and incidental to it have been complied with.
- (2) Subject to this, the registrar shall retain and register the memorandum and articles (if any) delivered to him under that section.
- (3) A statutory declaration in the prescribed form by—
  - (a) a solicitor engaged in the formation of a company, or
  - (b) a person named as a director or secretary of the company in the statement delivered under section 10(2),
that those requirements have been complied with shall be delivered to the registrar of companies, and the registrar may accept such a declaration as sufficient evidence of compliance.

### **Modifications etc. (not altering text)**

**C5** S. 12(2) modified (27.7.1999) by 1999 c. 20, s. 4(1) (with s. 15)



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### 13 Effect of registration.

- (1) On the registration of a company's memorandum, the registrar of companies shall give a certificate that the company is incorporated and, in the case of a limited company, that it is limited.
- (2) The certificate may be signed by the registrar, or authenticated by his official seal.
- (3) From the date of incorporation mentioned in the certificate, 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.
- (4) That body corporate is then capable forthwith of exercising all the functions of an incorporated company, but with such liability on the part of its members to contribute to its assets in the event of its being wound up as is provided by this Act [F7 and the Insolvency Act].

This is subject, in the case of a public company, to section 117 (additional certificate as to amount of allotted share capital).

- (5) The persons named in the statement under section 10 as directors, secretary or joint secretaries are, on the company's incorporation, deemed to have been respectively appointed as its first directors, secretary or joint secretaries.
- (6) Where the registrar registers an association's memorandum which states that the association is to be a public company, the certificate of incorporation shall contain a statement that the company is a public company.
- (7) A certificate of incorporation given in respect of an association is conclusive evidence—
  - (a) that the requirements of this Act in respect of registration and of matters precedent and incidental to it have been complied with, and that the association is a company authorised to be registered, and is duly registered, under this Act, and
  - (b) if the certificate contains a statement that the company is a public company, that the company is such a company.

#### Textual Amendments

F7 Words added by [Insolvency Act 1986 \(c. 45, SIF 66\)](#), s. 439(1), [Sch. 13 Pt. I](#)

#### Modifications etc. (not altering text)

C6 [S. 13](#) excluded (8.10.2004) by [The European Public Limited-Liability Company Regulations 2004 \(S.I. 2004/2326\)](#), regs. 85, 88, [Sch. 4 para. 6](#) (with para. 11)

C7 [S. 13](#) modified (1.7.2005) by [Companies \(Audit, Investigations and Community Enterprise\) Act 2004 \(c. 27\)](#), [ss. 36\(8\), 65](#); [S.I. 2004/3322](#), [art. 2\(3\)](#), [Sch. 3](#) (subject to arts. 3-13)

### 14 Effect of memorandum and articles.

- (1) Subject to the provisions of this Act, the memorandum and articles, when registered, bind the company and its members 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.

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- (2) Money payable by a member to the company under the memorandum or articles is a debt due from him to the company, and in England and Wales is of the nature of a speciality debt.

**Modifications etc. (not altering text)**

**C8** S. 14 modified (12.2.1992) by S.I. 1992/225, regs. 1, 119(1).

**15 Memorandum and articles of company limited by guarantee.**

- (1) In the case of a company limited by guarantee and not having a share capital, 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, is void.
- (2) For purposes of provisions of this Act relating to the memorandum of a company limited by guarantee, and for those of section 1(4) and this section, every provision in the memorandum or articles, or in any resolution, of a company so limited purporting to divide the company's undertaking into shares or interests is to be treated as a provision for a share capital, notwithstanding that the nominal amount or number of the shares or interests is not specified by the provision.

**Modifications etc. (not altering text)**

**C9** S. 15 excluded by Companies Consolidation (Consequential Provisions) Act 1985 (c.9, SIF 27), s. 10

**16 Effect of alteration on company's members.**

- (1) A member of a company is not 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—
- (a) 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
  - (b) in any way increases his liability as at that date to contribute to the company's share capital or otherwise to pay money to the company.
- (2) Subsection (1) operates notwithstanding anything in the memorandum or articles; but it does not apply in a case where the member agrees in writing, either before or after the alteration is made, to be bound by the alteration.

**17 Conditions in memorandum which could have been in articles.**

- (1) A condition contained in a company's memorandum which could lawfully have been contained in articles of association instead of in the memorandum may be altered by the company by special resolution; but if an application is made to the court for the alteration to be cancelled, the alteration does not have effect except in so far as it is confirmed by the court.
- (2) This section—
- (a) is subject to section 16, and also to Part XVII (court order protecting minority), and

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- (b) does not apply where the memorandum itself provides for or prohibits the alteration of all or any of the conditions above referred to, and does not authorise any variation or abrogation of the special rights of any class of members.
- (3) Section 5 (except subsections (2)(b) and (8)) and section 6(1) to (3) apply in relation to any alteration and to any application made under this section as they apply in relation to alterations and applications under sections 4 to 6.

**Modifications etc. (not altering text)**

**C10** S. 17 extended (1.10.2009) by Companies Act 2006 (c. 46), ss. 63(5), 1300; S.I. 2008/2860, art. 3(e) (with arts. 5, 7, 8, Sch. 2)

**18 Amendments of memorandum or articles to be registered.**

- (1) Where an alteration is made in a company's memorandum or articles by any statutory provision, whether contained in an Act of Parliament or in an instrument made under an Act, a printed copy of the Act or instrument shall, not later than 15 days after that provision comes into force, be forwarded to the registrar of companies and recorded by him.
- (2) Where a company is required (by this section or otherwise) to send to the registrar any document making or evidencing an alteration in the company's memorandum or articles (other than a special resolution under section 4), the company shall send with it a printed copy of the memorandum or articles as altered.
- (3) If a company fails to comply with this section, the company and any officer of it who is in default is liable to a fine and, for continued contravention, to a daily default fine.

**Modifications etc. (not altering text)**

**C11** S. 18 applied with modifications by S.I. 1985/680, regs. 4–6, Sch.

**C12** S. 18(3) extended (12.2.1992) by S.I. 1992/225, regs. 1, 119(3).

**19 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—
  - (a) in the case of a copy of the memorandum and of the articles, of 5 pence or such less sum as the company may prescribe, and
  - (b) in the case of a copy of an Act, of such sum not exceeding its published price as the company may require.
- (2) If a company makes default in complying with this section, the company and every officer of it who is in default is liable for each offence to a fine.

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## 20 Issued copy of memorandum to embody alterations.

- (1) Where an alteration is made in a company's memorandum, 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 is liable to a fine, and so too is every officer of the company who is in default.

## 21 .....

F8 .....

### Textual Amendments

F8 S. 21 repealed (1.2.1994) by 1993 c. 38, ss. 30(2), 35(1), Sch. 2; S.I. 1994/115, art. 2(2)

### *A company's membership*

## 22 Definition of "member".

- (1) The subscribers of a company's memorandum are deemed to have agreed to become members of the company, and on its registration shall be entered as such 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, is a member of the company.

### Modifications etc. (not altering text)

C13 S. 22(1) applied (E.W.) (27.9.2004) by Commonhold and Leasehold Reform Act 2002 (c. 15), ss. 34, 181(1), Sch. 3 para. 15(1) (with s. 63); S.I. 2004/1832, art. 2

C14 S. 22(1) excluded (8.10.2004) by The European Public Limited-Liability Company Regulations 2004 (S.I. 2004/2326), regs. 85, 88, Sch. 4 para.7 (with para. 11)

C15 S. 22(2) excluded (E.W.) (27.9.2004) by Commonhold and Leasehold Reform Act 2002 (c. 15), s. 34, 181(1), Sch. 3 para. 15(2) (with s. 63); S.I. 2004/1832, art. 2

## [F9]23 Membership of holding company.

- (1) Except as mentioned in this section, 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 is void.
- (2) The prohibition does not apply where the subsidiary is concerned only as personal representative or trustee unless, in the latter case, the holding company or a subsidiary of it is beneficially interested under the trust.

For the purpose of ascertaining whether the holding company or a subsidiary is so interested, there shall be disregarded—

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- (a) any interest held only by way of security for the purposes of a transaction entered into by the holding company or subsidiary in the ordinary course of a business which includes the lending of money;
  - (b) any such interest as is mentioned in Part I of Schedule 2.
- (3) The prohibition does not apply where the subsidiary is concerned only as a market maker.

For this purpose a person is a market maker if—

- (a) he holds himself out at all normal times in compliance with the rules of a recognised investment exchange other than an overseas investment exchange (within the meaning of the Financial Services Act 1986) as willing to buy and sell securities at prices specified by him, and
  - (b) he is recognised as so doing by that investment exchange.
- (4) Where a body corporate became a holder of shares in a company—
- (a) before 1st July 1948, or
  - (b) on or after that date and before [<sup>F10</sup>1st November 1990], in circumstances in which this section as it then had effect did not apply,
- but at any time [<sup>F11</sup>on or after 1st November 1990] falls within the prohibition in subsection (1) above in respect of those shares, it may continue to be a member of that company; but for so long as that prohibition would apply, apart from this subsection, it has no right to vote in respect of those shares at meetings of the company or of any class of its members.
- (5) Where a body corporate becomes a holder of shares in a company [<sup>F11</sup>on or after 1st November 1990] in circumstances in which the prohibition in subsection (1) does not apply, but subsequently falls within that prohibition in respect of those shares, it may continue to be a member of that company; but for so long as that prohibition would apply, apart from this subsection, it has no right to vote in respect of those shares at meetings of the company or of any class of its members.
- (6) Where a body corporate is permitted to continue as a member of a company by virtue of subsection (4) or (5), an allotment to it of fully paid shares in the company may be validly made by way of capitalisation of reserves of the company; but for so long as the prohibition in subsection (1) would apply, apart from subsection (4) or (5), it has no right to vote in respect of those shares at meetings of the company or of any class of its members.
- (7) The provisions of this section apply to a nominee acting on behalf of a subsidiary as to the subsidiary itself.
- (8) In relation to a company other than a company limited by shares, the references in this section to shares shall be construed as references to the interest of its members as such, whatever the form of that interest.]

#### Textual Amendments

**F9** S. 23 substituted by Companies Act 1989 (c. 40, SIF 27), ss. 129(1), 213(2)

**F10** Substituted by S.I. 1990/1392, art. 8(a)

**F11** Substituted by S.I. 1990/1392, art. 8(b) as amended by S.I. 1990/1707, art. 8(2)

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**Modifications etc. (not altering text)**

- C16** S. 23 modified (subject to the transitional and savings provisions as mentioned in S.I. 1990/1392, **art. 6**) by Companies Act 1989 (c.40, SIF 27), ss. 144(4), 213(2), **Sch. 18 para. 32(2)**
- C17** S. 23 restricted (subject to the transitional and savings provisions as mentioned in S.I. 1990/1392, **art. 6**) by Companies Act 1989 (c.40, SIF 27), ss. 144(4), 213(2), **Sch. 18 para. 32(3)**

**24 Minimum membership for carrying on business.**

If a company [<sup>F12</sup>other than a private company limited by shares or by guarantee,] carries on business without having at least two members and does so for more than 6 months, a person who, for the whole or any part of the period that it so carries on business after those 6 months—

- (a) is a member of the company, and
- (b) knows that it is carrying on business with only one member,

is liable (jointly and severally with the company) for the payment of the company's debts contracted during the period or, as the case may be, that part of it.

**Textual Amendments**

- F12** Words in s. 24 inserted (15.7.1992) by S.I. 1992/1699, reg. 2, **Sch. para.2.**

**Modifications etc. (not altering text)**

- C18** S. 24 modified (12.2.1992) by S.I. 1992/225, **reg. 61(7).**  
 S. 24 amended (15.7.1992) by S.I. 1992/1699, **reg.3.**  
 S. 24 applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, **Sch. 2 Pt. I**

## CHAPTER II

### COMPANY NAMES

**25 Name as stated in memorandum.**

- (1) The name of a public company must end with the words “public limited company” or, if the memorandum states that the company's registered office is to be situated in Wales, those words or their equivalent in Welsh (“cwmni cyfyngedig cyhoeddus”); and those words or that equivalent may not be preceded by the word “limited” or its equivalent in Welsh (“cyfyngedig”).
- (2) In the case of a company limited by shares or by guarantee (not being a public company), the name must have “limited” as its last word, except that—
  - (a) this is subject to section 30 (exempting, in certain circumstances, a company from the requirement to have “limited” as part of the name), and
  - (b) if the company is to be registered with a memorandum stating that its registered office is to be situated in Wales, the name may have “cyfyngedig” as its last word.

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**Modifications etc. (not altering text)**

**C19** S. 25 excluded (1.7.2005) by Companies (Audit, Investigations and Community Enterprise) Act 2004 (c. 27), ss. 33(5), 65; S.I. 2004/3322, art. 2(3), Sch. 3 (subject to arts. 3-13)

**26 Prohibition on registration of certain names.**

- (1) A company shall not be registered under this Act by a name—
- (a) which includes, otherwise than at the end of the name, any of the following words or expressions, that is to say, “limited”, “unlimited” or “public limited company” or their Welsh equivalents (“cyfyngedig”, “anghyfyngedig” and “cwmni cyfyngedig cyhoeddus” respectively);
  - (b) which includes, otherwise than at the end of the name, an abbreviation of any of those words or expressions;
  - (c) which is the same as a name appearing in the registrar’s index of company names;
  - (d) the use of which by the company would in the opinion of the Secretary of State constitute a criminal offence; or
  - (e) which in the opinion of the Secretary of State is offensive.
- (2) Except with the approval of the Secretary of State, a company shall not be registered under this Act by a name which—
- (a) in the opinion of the Secretary of State would be likely to give the impression that the company is connected in any way with Her Majesty’s Government or with any local authority; or
  - (b) includes any word or expression for the time being specified in regulations under section 29.

“Local authority” means any local authority within the meaning of the <sup>M1</sup>Local Government Act 1972 or the <sup>M2</sup>Local Government (Scotland) Act 1973, the Common Council of the City of London or the Council of the Isles of Scilly.

- (3) In determining for purposes of subsection (1)(c) whether one name is the same as another, there are to be disregarded—
- (a) the definite article, where it is the first word of the name;
  - (b) the following words and expressions where they appear at the end of the name, that is to say—
    - “company” or its Welsh equivalent (“cwmni”),
    - “and company” or its Welsh equivalent (“a’r cwmni”),
    - “company limited” or its Welsh equivalent (“cwmni cyfyngedig”),
    - “and company limited” or its Welsh equivalent (“a’r cwmni cyfyngedig”),
    - “limited” or its Welsh equivalent (“cyfyngedig”),
    - “unlimited” or its Welsh equivalent (“anghyfyngedig”), and
    - “public limited company” or its Welsh equivalent (“cwmni cyfyngedig cyhoeddus”);
  - (c) abbreviations of any of those words or expressions where they appear at the end of the name; and
  - (d) type and case of letters, accents, spaces between letters and punctuation marks;

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and “and” and “&” are to be taken as the same.

**Modifications etc. (not altering text)**

- C20** S. 26(1)(c) extended (with modifications) by S.I. 1989/638, regs. 10(2), 18, 21, **Sch. 4 para. 1**  
**C21** S. 26(1)(d)(e) extended (with modifications) by S.I. 1989/638, regs. 18, 21, **Sch. 4 para. 1**  
**C22** S. 26(2)(3) extended (with modifications) by S.I. 1989/638, regs. 18, 21, **Sch. 4 para. 1**  
**C23** S. 26(2)(a) excluded (19.7.1995) by 1995 c. 24, s. 6  
**C24** S. 26(3) applied (with modifications) (E.W.) (1.9.1992) by Charities Act 1992 (c. 41), s. 4(7)(9); S.I. 1992/1900, art. 2(1), **Sch.1**.  
 S. 26(3) applied (E.W.) (1.8.1993) by 1993 c. 10, ss. 6(7), 99(1)

**Marginal Citations**

- M1** 1972 c. 70.  
**M2** 1973 c. 65.

**27 Alternatives of statutory designations.**

- (1) A company which by any provision of this Act is either required or entitled to include in its name, as its last part, any of the words specified in subsection (4) below may, instead of those words, include as the last part of the name the abbreviations there specified as alternatives in relation to those words.
- (2) A reference in this Act to the name of a company or to the inclusion of any of those words in a company’s name includes a reference to the name including (in place of any of the words so specified) the appropriate alternative, or to the inclusion of the appropriate alternative, as the case may be.
- (3) A provision of this Act requiring a company not to include any of those words in its name also requires it not to include the abbreviated alternative specified in subsection (4).
- (4) For the purposes of this section—
  - (a) the alternative of “limited” is “ltd.”;
  - (b) the alternative of “public limited company” is “p.l.c.”;
  - (c) the alternative of “cyfyngedig” is “cyf.”; and
  - (d) the alternative of “cwmni cyfyngedig cyhoeddus” is “c.c.c.”.

**28 Change of name.**

- (1) A company may by special resolution change its name (but subject to section 31 in the case of a company which has received a direction under subsection (2) of that section from the Secretary of State).
- (2) Where a company has been registered by a name which—
  - (a) is the same as or, in the opinion of the Secretary of State, too like a name appearing at the time of the registration in the registrar’s index of company names, or
  - (b) is the same as or, in the opinion of the Secretary of State, too like a name which should have appeared in that index at that time,



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the Secretary of State may within 12 months of that time, in writing, direct the company to change its name within such period as he may specify.

Section 26(3) applies in determining under this subsection whether a name is the same as or too like another.

- (3) If it appears to the Secretary of State that misleading information has been given for the purpose of a company's registration with a particular name, or that undertakings or assurances have been given for that purpose and have not been fulfilled, he may within 5 years of the date of its registration with that name in writing direct the company to change its name within such period as he may specify.
- (4) Where a direction has been given under subsection (2) or (3), the Secretary of State may by a further direction in writing extend the period within which the company is to change its name, at any time before the end of that period.
- (5) A company which fails to comply with a direction under this section, and any officer of it who is in default, is liable to a fine and, for continued contravention, to a daily default fine.
- (6) Where a company changes its name under this section, the registrar of companies shall (subject to section 26) 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; and the change of name has effect from the date on which the altered certificate is issued.
- (7) A change of name by a company under this section does not affect any rights or obligations of the company or render defective any legal proceedings by or against it; 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.

**Modifications etc. (not altering text)**

- C25** S. 28(2) extended (with modifications) by S.I. 1989/638, regs. 11(1), 18, 21, **Sch. 4 para. 2**
- C26** S. 28(3)–(5), (7) extended (with modifications) by S.I. 1989/638, regs. 18, 21, **Sch. 4 para. 2**
- C27** S. 28(6) applied (1.7.2005) by **Companies (Audit, Investigations and Community Enterprise) Act 2004** (c. 27), **ss. 38(6), 55(6)**, 65; S.I. 2004/3322, **art. 2(3)**, Sch. 3 (subject to arts. 3-13)
- C28** S. 28(6) modified (1.7.2005) by **Companies (Audit, Investigations and Community Enterprise) Act 2004** (c. 27), **ss. 38(8)**, 65; S.I. 2004/3322, **art. 2(3)**, Sch. 3 (subject to arts. 3-13)

**29 Regulations about names.**

- (1) The Secretary of State may by regulations—
  - (a) specify words or expressions for the registration of which as or as part of a company's corporate name his approval is required under section 26(2)(b), and
  - (b) in relation to any such word or expression, specify a Government department or other body as the relevant body for purposes of the following subsection.
- (2) Where a company proposes to have as, or as part of, its corporate name any such word or expression and a Government department or other body is specified under subsection (1)(b) in relation to that word or expression, a request shall be made (in writing) to the relevant body to indicate whether (and if so why) it has any objections to the proposal; and the person to make the request is—

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- (a) in the case of a company seeking to be registered under this Part, the person making the statutory declaration required by section 12(3),
  - (b) in the case of a company seeking to be registered under section 680, the persons making the statutory declaration required by section 686(2), and
  - (c) in any other case, a director or secretary of the company concerned.
- (3) The person who has made that request to the relevant body shall submit to the registrar of companies a statement that it has been made and a copy of any response received from that body, together with—
- (a) the requisite statutory declaration, or
  - (b) a copy of the special resolution changing the company's name, according as the case is one or other of those mentioned in subsection (2).
- (4) Sections 709 and 710 (public rights of inspection of documents kept by registrar of companies) do not apply to documents sent under subsection (3) of this section.
- (5) Regulations under this section may contain such transitional provisions and savings as the Secretary of State thinks appropriate and may make different provision for different cases or classes of case.
- (6) The regulations shall be made by statutory instrument, to be laid before Parliament after it is made; and the regulations shall cease to have effect at the end of 28 days beginning with the day on which the regulations were made (but without prejudice to anything previously done by virtue of them or to the making of new regulations), unless during that period they are approved by resolution of each House. In reckoning that period, no account is to be taken of any time during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than 4 days.

**Modifications etc. (not altering text)**

**C29** S. 29(1)(a) extended (with modifications) by S.I. 1989/638, regs. 18, 21, Sch. 4 para. 3

**30 Exemption from requirement of "limited" as part of the name.**

- (1) Certain companies are exempt from requirements of this Act relating to the use of "limited" as part of the company name.
- (2) A private company limited by guarantee is exempt from those requirements, and so too is a company which on 25th February 1982 was a private company limited by shares with a name which, by virtue of a licence under section 19 of the <sup>M3</sup>Companies Act 1948, did not include "limited"; but in either case the company must, to have the exemption, comply with the requirements of the following subsection.
- (3) Those requirements are that—
  - (a) the objects of the company are (or, in the case of a company about to be registered, are to be) the promotion of commerce, art, science, education, religion, charity or any profession, and anything incidental or conducive to any of those objects; and
  - (b) the company's memorandum or articles—
    - (i) require its profits (if any) or other income to be applied in promoting its objects,
    - (ii) prohibit the payment of dividends to its members, and

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- (iii) require all the assets which would otherwise be available to its members generally to be transferred on its winding up either to another body with objects similar to its own or to another body the objects of which are the promotion of charity and anything incidental or conducive thereto (whether or not the body is a member of the company).
- (4) A statutory declaration that a company complies with the requirements of subsection (3) may be delivered to the registrar of companies, who may accept the declaration as sufficient evidence of the matters stated in it; and the registrar may refuse to register a company by a name which does not include the word “limited” unless such a declaration has been delivered to him.
- (5) The statutory declaration must be in the prescribed form and be made—
- (a) in the case of a company to be formed, by a solicitor engaged in its formation or by a person named as director or secretary in the statement delivered under section 10(2);
  - (b) in the case of a company to be registered in pursuance of section 680, by two or more directors or other principal officers of the company; and
  - (c) in the case of a company proposing to change its name so that it ceases to have the word “limited” as part of its name, by a director or secretary of the company.
- (6) References in this section to the word “limited” include (in an appropriate case) its Welsh equivalent (“cyfyngedig”), and the appropriate alternative (“ltd.” or “cyf.”, as the case may be).
- (7) A company which is exempt from requirements relating to the use of “limited” and does not include that word as part of its name, is also exempt from the requirements of this Act relating to the publication of its name and the sending of lists of members to the registrar of companies.

**Modifications etc. (not altering text)**

**C30** S. 30(4) amended by [Financial Services Act 1986 \(c. 60, SIF 69\)](#), s. 116, **Sch. 9 para. 2(2)**

**C31** S. 30(7) restricted (E.W.) (1.1.1993) by [Charities Act 1960 \(c. 58\)](#), s. **30BB** (as inserted (1.1.1993) by [Charities Act 1992 \(c. 41\)](#), s. **42**; S.I. 1992/1900, art. 4, **Sch.3**).

S. 30(7) excluded (E.W.) (1.8.1993) by 1993 c. 10, **ss.67, 99(1)**

**Marginal Citations**

**M3** 1948 c. 38.

**31 Provisions applying to company exempt under s. 30.**

- (1) A company which is exempt under section 30 and whose name does not include “limited” shall not alter its memorandum or articles of association so that it ceases to comply with the requirements of subsection (3) of that section.
- (2) If it appears to the Secretary of State that such a company—
- (a) has carried on any business other than the promotion of any of the objects mentioned in that subsection, or

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(b) has applied any of its profits or other income otherwise than in promoting such objects, or

(c) has paid a dividend to any of its members,

he may, in writing, direct the company to change its name by resolution of the directors within such period as may be specified in the direction, so that its name ends with “limited”.

A resolution passed by the directors in compliance with a direction under this subsection is subject to section 380 of this Act (copy to be forwarded to the registrar of companies within 15 days).

- (3) A company which has received a direction under subsection (2) shall not thereafter be registered by a name which does not include “limited”, without the approval of the Secretary of State.
- (4) References in this section to the word “limited” include (in an appropriate case) its Welsh equivalent (“cyfyngedig”), and the appropriate alternative (“Ltd.” or “cyf.”, as the case may be).
- (5) A company which contravenes subsection (1), and any officer of it who is in default, is liable to a fine and, for continued contravention, to a daily default fine.
- (6) A company which fails to comply with a direction by the Secretary of State under subsection (2), and any officer of the company who is in default, is liable to a fine and, for continued contravention, to a daily default fine.

**Modifications etc. (not altering text)**

**C32** S. 31 amended by [Financial Services Act 1986 \(c. 60, SIF 69\)](#), s. 116, [Sch. 9 para. 2\(3\)](#)

**C33** S. 31(2) modified by [Financial Services Act 1986 \(c. 60, SIF 69\)](#), s. 116, [Sch. 9 para. 2\(3\)](#)

**32 Power to require company to abandon misleading name.**

- (1) If in the Secretary of State’s opinion the name by which a company is registered gives so misleading an indication of the nature of its activities as to be likely to cause harm to the public, he may direct it to change its name.
- (2) The direction must, if not duly made the subject of an application to the court under the following subsection, be complied with within a period of 6 weeks from the date of the direction or such longer period as the Secretary of State may think fit to allow.
- (3) The company may, within a period of 3 weeks from the date of the direction, apply to the court to set it aside; and the court may set the direction aside or confirm it and, if it confirms the direction, shall specify a period within which it must be complied with.
- (4) If a company makes default in complying with a direction under this section, it is liable to a fine and, for continued contravention, to a daily default fine.
- (5) Where a company changes its name under this section, the registrar shall (subject to section 26) 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; and the change of name has effect from the date on which the altered certificate is issued.
- (6) A change of name by a company under this section does not affect any of the rights or obligations of the company, or render defective any legal proceedings by or against

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it; 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.

**Modifications etc. (not altering text)**

**C34** S. 32 restricted (19.7.1995) by [1995 c. 24, s. 6](#)

**33 Prohibition on trading under misleading name.**

- (1) A person who is not a public company is guilty of an offence if he carries on any trade, profession or business under a name which includes, as its last part, the words “public limited company” or their equivalent in Welsh (“cwmni cyfyngedig cyhoeddus”).
- (2) A public company is guilty of an offence if, in circumstances in which the fact that it is a public company is likely to be material to any person, it uses a name which may reasonably be expected to give the impression that it is a private company.
- (3) A person guilty of an offence under subsection (1) or (2) and, if that person is a company, any officer of the company who is in default, is liable to a fine and, for continued contravention, to a daily default fine.

**34 Penalty for improper use of “limited” or “cyfyngedig”.**

If any person trades or carries on business under a name or title of which “limited” or “cyfyngedig”, or any contraction or imitation of either of those words, is the last word, that person, unless duly incorporated with limited liability, is liable to a fine and, for continued contravention, to a daily default fine.

**Modifications etc. (not altering text)**

**C35** S. 34 modified (8.10.2004) by [The European Public Limited-Liability Company Regulations 2004 \(S.I. 2004/2326\)](#), regs. 85, 88, [Sch. 4 para.8](#) (with [para. 11](#))

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**34A Penalty for improper use of “community interest company” etc.**

- (1) A company which is not a community interest company is guilty of an offence if it carries on any trade, profession or business under a name which includes any of the expressions specified in subsection (3).
- (2) A person other than a company is guilty of an offence if it carries on any trade, profession or business under a name which includes any of those expressions (or any contraction of them) as its last part.
- (3) The expressions are—
  - (a) “community interest company” or its Welsh equivalent (“cwmni buddiant cymunedol”), and
  - (b) “community interest public limited company” or its Welsh equivalent (“cwmni buddiant cymunedol cyhoeddus cyfyngedig”).

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- (4) Subsections (1) and (2) do not apply—
- (a) to a person who was carrying on a trade, profession or business under the name in question at any time during the period beginning with 1st September 2003 and ending with 4th December 2003, or
  - (b) if the name in question was on 4th December 2003 a registered trade mark or Community trade mark (within the meaning of the Trade Marks Act 1994 (c. 26)), to a person who was on that date a proprietor or licensee of that trade mark.
- (5) A person guilty of an offence under subsection (1) or (2) and, if that person is a company, any officer of the company who is in default, is liable to a fine and, for continued contravention, to a daily default fine.

### CHAPTER III

#### A COMPANY'S CAPACITY; FORMALITIES OF CARRYING ON BUSINESS

#### [<sup>F13</sup>35] **A company's capacity not limited by its memorandum.**

- (1) The validity of an act done by a company shall not be called into question on the ground of lack of capacity by reason of anything in the company's memorandum.
- (2) A member of a company may bring proceedings to restrain the doing of an act which but for subsection (1) would be beyond the company's capacity; but no such proceedings shall lie in respect of an act to be done in fulfilment of a legal obligation arising from a previous act of the company.
- (3) It remains the duty of the directors to observe any limitations on their powers flowing from the company's memorandum; and action by the directors which but for subsection (1) would be beyond the company's capacity may only be ratified by the company by special resolution.

A resolution ratifying such action shall not affect any liability incurred by the directors or any other person; relief from any such liability must be agreed to separately by special resolution.

- (4) The operation of this section is restricted by [<sup>F14</sup>section 65(1) of the Charities Act 1993]] and section 112(3) of the <sup>M4</sup>Companies Act 1989 in relation to companies which are charities; and section 322A below (invalidity of certain transactions to which directors or their associates are parties) has effect notwithstanding this section.

#### **Textual Amendments**

**F13** Ss. 35, 35A, 35B substituted (4. 2. 1991) for s. 35 (subject to the transitional and savings provisions in S.I. 1990/2569, art. 7) by Companies Act 1989 (c. 40), ss. 108(1), 213(2)

**F14** Words in s. 35(4) substituted (1.8.1993) by 1993 c. 10, ss. 98(1), 99(1), Sch. 6 para. 20(2)

#### **Modifications etc. (not altering text)**

**C36** S. 35 excluded by Charities Act 1960 (c. 58, SIF 19), s. 30B(1) as substituted (4. 2. 1991) (with transitional and savings provisions in S.I. 1990/2569, art. 7) by Companies Act 1989 (c. 40, SIF 27), ss. 111(1), 213

**Status:** Point in time view as at 02/12/1996. This version of this part contains provisions that are not valid for this point in time.

**Changes to legislation:** There are currently no known outstanding effects for the Companies Act 1985, Part 1. (See end of Document for details)

- S. 35 excluded by S.I. 1990/2569, **art. 7(1)**  
S. 35 excluded (S) (4. 2. 1991) by Companies Act 1989 (c. 40, SIF 27), **ss. 112(3)**, 213(2)
- C37** S. 35 applied with modifications by S.I. 1985/680, regs. 4-6, **Sch.** as amended (4. 2. 1991) by S.I. 1990/2571, **reg. 2(a)(b)**  
S. 35 excluded (E.W.) (1.8.1993) by 1993 c. 10, **ss. 65(1)**, 99(1)
- C38** S. 35(3) modified by Charities Act 1960 (c. 58, SIF 19), **s. 30(B)(4)** as substituted (4. 2. 1991) (subject to the transitional and savings provisions in S.I. 1990/2569, **art. 7**), by Companies Act 1989 (c. 40, SIF 27), **ss. 111(1)**, 213(2)  
S. 35(3) restricted (E.W.) (1.8.1993) by 1993 c. 10, **ss. 65(4)**, 99(1)

#### Marginal Citations

**M4** 1989 c. 40

### [<sup>F15</sup>35A Power of directors to bind the company.

- (1) In favour of a person dealing with a company in good faith, the power of the board of directors to bind the company, or authorise others to do so, shall be deemed to be free of any limitation under the company’s constitution.
- (2) For this purpose—
  - (a) a person “deals with” a company if he is a party to any transaction or other act to which the company is a party;
  - (b) a person shall not be regarded as acting in bad faith by reason only of his knowing that an act is beyond the powers of the directors under the company’s constitution; and
  - (c) a person shall be presumed to have acted in good faith unless the contrary is proved.
- (3) The references above to limitations on the directors’ powers under the company’s constitution include limitations deriving—
  - (a) from a resolution of the company in general meeting or a meeting of any class of shareholders, or
  - (b) from any agreement between the members of the company or of any class of shareholders.
- (4) Subsection (1) does not affect any right of a member of the company to bring proceedings to restrain the doing of an act which is beyond the powers of the directors; but no such proceedings shall lie in respect of an act to be done in fulfilment of a legal obligation arising from a previous act of the company.
- (5) Nor does that subsection affect any liability incurred by the directors, or any other person, by reason of the directors’ exceeding their powers.
- (6) The operation of this section is restricted by [<sup>F16</sup>section 65(1) of the Charities Act 1993] and section 112(3) of the Companies Act 1989 in relation to companies which are charities; and section 322A below (invalidity of certain transactions to which directors or their associates are parties) has effect notwithstanding this section.]

#### Textual Amendments

- F15** Ss. 35, 35A, 35B substituted (4.2.1991) for s. 35 (subject to the transitional and savings provisions in S.I. 1990/2569, **art. 7**) by Companies Act 1989 (c. 40, SIF 27), **ss. 108(1)**, 213(2)
- F16** Words in s. 35A(6) substituted (1.8.1993) by 1993 c. 10, ss. 98(1), 99(1), **Sch. 6 para. 20(2)**

*Status: Point in time view as at 02/12/1996. This version of this part contains provisions that are not valid for this point in time.*

*Changes to legislation: There are currently no known outstanding effects for the Companies Act 1985, Part I. (See end of Document for details)*

#### **Modifications etc. (not altering text)**

- C39** S. 35A excluded by [Charities Act 1960 \(c. 58, SIF 19\)](#), [s. 30B\(1\)](#) as substituted (4.2.1991) (subject to the transitional and savings provisions in [S.I. 1990/2569](#), [art. 7](#)) by [Companies Act 1989 \(c.40, SIF 27\)](#), [ss. 111\(1\)](#), 213(2)
- C40** S. 35A excluded (S.) (4.2.1992) by [Companies Act 1989 \(c. 40, SIF 27\)](#), [ss. 112\(3\)](#), 213(2)
- C41** S. 35A excluded by [S.I. 1990/2569](#), [art. 7\(2\)](#)
- C42** S. 35A applied with modifications by [S.I. 1985/680](#), [arts. 4–6](#), [Sch.](#) as amended (4.2.1991) by [S.I. 1990/2571](#), [reg. 2\(a\)\(b\)](#)  
 S. 35A excluded (E.W.) (1.8.1993) by 1993 c. 10, [ss. 65\(1\)](#), 99(1)

#### [<sup>F17</sup>**35B** No duty to enquire as to capacity of company or authority of directors.

A party to a transaction with a company is not bound to enquire as to whether it is permitted by the company's memorandum or as to any limitation on the powers of the board of directors to bind the company or authorise others to do so.]

#### **Textual Amendments**

- F17** [Ss. 35, 35A, 35B](#) substituted (4.2.1991) for s. 35 (subject to the transitional and savings provisions in [S.I. 1990/2569](#), [art. 7](#)) by [Companies Act 1989 \(c. 40, SIF 27\)](#), [ss. 108\(1\)](#), 213(2)

#### **Modifications etc. (not altering text)**

- C43** S. 35B applied with modifications by [S.I. 1985/680](#), [arts. 4–6](#), [Sch.](#) as amended (4.2.1991) by [S.I. 1990/2571](#), [reg. 2\(a\)\(b\)](#)  
 S. 35B applied (with modifications) by [S.S.I. 2001/128](#), [reg. 3](#), [Sch. 1](#)

#### [<sup>F18</sup>**36** Company contracts: England and Wales.

Under the law of England and Wales a contract may be made—

- (a) by a company, by writing under its common seal, or
- (b) on behalf of a company, by any person acting under its authority, express or implied;

and any formalities required by law in the case of a contract made by an individual also apply, unless a contrary intention appears, to a contract made by or on behalf of a company.]

#### **Textual Amendments**

- F18** S. 36 substituted by [Companies Act 1989 \(c. 40, SIF 27\)](#), [ss. 130\(1\)](#), 213(2)

#### **Modifications etc. (not altering text)**

- C44** S. 36: power to apply conferred by [Companies Act 1989 \(c. 40, SIF 27\)](#), [ss. 130\(6\)](#), 213(2)
- C45** [Ss. 36-36C](#) applied (with modifications) (16.5.1994) by [S.I. 1994/950](#), [regs. 2-6](#)  
 S. 36 applied (with modifications) (6.4.2001) by [S.I. 2001/1090](#), [reg. 4](#), [Sch. 2 Pt. I](#)

#### [<sup>F19</sup>**36A** Execution of documents: England and Wales.

- (1) Under the law of England and Wales the following provisions have effect with respect to the execution of documents by a company.



*Status:* Point in time view as at 02/12/1996. This version of this part contains provisions that are not valid for this point in time.

*Changes to legislation:* There are currently no known outstanding effects for the Companies Act 1985, Part I. (See end of Document for details)

- (2) A document is executed by a company by the affixing of its common seal.
- (3) A company need not have a common seal, however, and the following subsections apply whether it does or not.
- (4) A document signed by a director and the secretary of a company, or by two directors of a company, and expressed (in whatever form of words) to be executed by the company has the same effect as if executed under the common seal of the company.
- (5) A document executed by a company which makes it clear on its face that it is intended by the person or persons making it to be a deed has effect, upon delivery, as a deed; and it shall be presumed, unless a contrary intention is proved, to be delivered upon its being so executed.
- (6) In favour of a purchaser a document shall be deemed to have been duly executed by a company if it purports to be signed by a director and the secretary of the company, or by two directors of the company, and, where it makes it clear on its face that it is intended by the person or persons making it to be a deed, to have been delivered upon its being executed.

A “purchaser” means a purchaser in good faith for valuable consideration and includes a lessee, mortgagee or other person who for valuable consideration acquires an interest in property.]

#### Textual Amendments

**F19** S. 36A inserted by Companies Act 1989 (c. 40, SIF 27), ss. 130(2), 213(2)

#### Modifications etc. (not altering text)

**C46** S. 36A: power to apply conferred by Companies Act 1989 (c. 40, SIF 27), ss. 130(6), 213(2)

**C47** S. 36A applied with modifications by S.I. 1985/680, arts. 4–6, Sch. as amended by S.I. 1990/1394, reg. 2

**C48** S. 36A applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, Sch. 2 Pt. I

**C49** Ss. 36-36C applied (with modifications) (16.5.1994) by S.I. 1994/950, regs. 2-6

**C50** S. 36A(6) modified (13.10.2003) by Land Registration Act 2002 (c. 9), ss. 91(9), 136(2) (with s. 129); S.I. 2003/1725, art. 2(1)

VALID FROM 15/09/2005

#### 36AA Execution of deeds: England and Wales

- (1) A document is validly executed by a company as a deed for the purposes of section 1(2)(b) of the Law of Property (Miscellaneous Provisions) Act 1989, if and only if—
  - (a) it is duly executed by the company, and
  - (b) it is delivered as a deed.
- (2) A document shall be presumed to be delivered for the purposes of subsection (1)(b) upon its being executed, unless a contrary intention is proved.

*Status: Point in time view as at 02/12/1996. This version of this part contains provisions that are not valid for this point in time.*

*Changes to legislation: There are currently no known outstanding effects  
 for the Companies Act 1985, Part I. (See end of Document for details)*

### [<sup>F20</sup>36B Execution of documents by companies.

- (1) Notwithstanding the provisions of any enactment, a company need not have a company seal.
- (2) For the purposes of any enactment—
  - (a) providing for a document to be executed by a company by affixing its common seal; or
  - (b) referring (in whatever terms) to a document so executed,
 a document signed or subscribed by or on behalf of the company in accordance with the provisions of the Requirements of Writing (Scotland) Act 1995 shall have effect as if so executed.
- (3) In this section “enactment” includes an enactment contained in a statutory instrument.]

#### Textual Amendments

**F20** S. 36B substituted (S.) (1.8.1995) by 1995 c. 7, ss. 14(1), 15(2), **Sch. 4 para. 51** (with ss. 9(3)(5)(7), 13, 14(3))

#### Modifications etc. (not altering text)

**C51** S. 36B applied (with modifications) (S.) (6.4.2001) by S.S.I. 2001/128, reg. 3, **Sch. 1**

**C52** S. 36B(2) applied (6.4.2006) by The Energy Administration (Scotland) Rules 2006 (S.I. 2006/772), **rule 67(2)** (with rule 67(3))

### [<sup>F21</sup>36C Pre-incorporation contracts, deeds and obligations.

- (1) A contract which purports to be made by or on behalf of a company at a time when the company has not been formed has effect, subject to any agreement to the contrary, as one made with the person purporting to act for the company or as agent for it, and he is personally liable on the contract accordingly.
- (2) Subsection (1) applies—
  - (a) to the making of a deed under the law of England and Wales, and
  - (b) to the undertaking of an obligation under the law of Scotland,
 as it applies to the making of a contract.]

#### Textual Amendments

**F21** S. 36C inserted by Companies Act 1989 (c. 40, SIF 27), **ss. 130(4), 213(2)**

#### Modifications etc. (not altering text)

**C53** S. 36C: power to apply conferred by Companies Act 1989 (c. 40, SIF 27), **ss. 130(6), 213(2)**

**C54** S. 36C applied with modifications by S.I. 1985/680, arts. 4–6, **Sch.** (as amended by S.I. 1990/1394, **reg. 2**)

**C55** Ss. 36-36C applied (with modifications) (16.5.1994) by S.I. 1994/950, **regs. 2-6**  
 S. 36C applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, **Sch. 2 Pt. I**

*Status:* Point in time view as at 02/12/1996. This version of this part contains provisions that are not valid for this point in time.

*Changes to legislation:* There are currently no known outstanding effects for the Companies Act 1985, Part 1. (See end of Document for details)

### 37 Bills of exchange and promissory notes.

A bill of exchange or promissory note is 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 a person acting under its authority.

#### Modifications etc. (not altering text)

C56 S. 37 applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, Sch. 2 Pt. I

### 38 Execution of deeds abroad.

(1) A company may . . . <sup>F22</sup>, 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 elsewhere than in the United Kingdom.

[<sup>F23</sup>(2) A deed executed by such an attorney on behalf of the company has the same effect as if it were executed under the company's common seal.]

[<sup>F24</sup>(3) This section does not extend to Scotland.]

#### Textual Amendments

F22 Words inserted by Companies Act 1989 (c. 40, SIF 27), ss. 130(7), 213(2), Sch. 17 para. 1(2) and repealed by Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40, SIF 27), s. 74(1)(2), Sch. 8 para. 33(2), Sch. 9

F23 S. 38(2) substituted by Companies Act 1989 (c. 40, SIF 27), ss. 130(7), 213(2), Sch. 17 para. 1(3)

F24 S. 38(3) added (S.) (1.8.1995) by 1995 c. 7, ss. 14(1), 15(2), Sch. 4 para. 52 (with ss. 9(3)(5)(7), 13, 14(3))

#### Modifications etc. (not altering text)

C57 S. 38 applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, Sch. 2 Pt. I

### 39 Power of company to have official seal for use abroad.

(1) A company [<sup>F25</sup>which has a common seal] 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 elsewhere than in the United Kingdom, an official seal, which shall be a facsimile of [<sup>F26</sup>its common seal], with the addition on its face of the name of every territory, district or place where it is to be used.

[<sup>F27</sup>(2) The official seal when duly affixed to a document has the same effect as the company's common seal.]

[<sup>F28</sup>(2A) Subsection (2) does not extend to Scotland.]

(3) A company having an official seal for use in any such territory, district or place may, by writing under its common seal [<sup>F29</sup>or as respects Scotland by writing subscribed in accordance with the Requirements of Writing (Scotland) Act 1995] . . . <sup>F30</sup>, 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.

*Status: Point in time view as at 02/12/1996. This version of this part contains provisions that are not valid for this point in time.*

*Changes to legislation: There are currently no known outstanding effects  
for the Companies Act 1985, Part I. (See end of Document for details)*

- (4) As between the company and a person dealing with such an agent, the agent’s authority continues 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 the official seal shall certify in writing on the deed or other instrument to which the seal is affixed the date on which and the place at which it is affixed.

#### Textual Amendments

- F25** Words inserted by [Companies Act 1989 \(c. 40, SIF 27\)](#), ss. 130(7), 213(2), **Sch. 17 para. 2(2)**
- F26** Words substituted by [Companies Act 1989 \(c. 40, SIF 27\)](#), ss. 130(7), 213(2), **Sch. 17 para. 2(2)**
- F27** [S. 39\(2\)](#) substituted by [Companies Act 1989 \(c. 40, SIF 27\)](#), ss. 130(7), 213(2), **Sch. 17 para. 2(3)**
- F28** [S. 39\(2A\)](#) inserted (1.8.1995) by [1995 c. 7](#), ss. 14(1), 15(2), **Sch. 4 para. 53(a)** (with ss. 9(3)(5)(7), 13, 14(3))
- F29** Words in [s. 39\(3\)](#) inserted (S.) (1.8.1995) by [1995 c. 7](#), ss. 14(1), 15(2), **Sch. 4 para. 53(b)** (with ss. 9(3)(5)(7), 13, 14(3))(with ss. 9(3)(5)(7), 13, 14(3))
- F30** Words inserted by [Companies Act 1989 \(c. 40, SIF 27\)](#), ss. 130(7), 213(2), **Sch. 17 para. 2(4)** and repealed by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1990 \(c. 40, SIF 27\)](#), s. 74(1)(2), **Sch. 8 para. 33(3)**, **Sch. 9**

#### Modifications etc. (not altering text)

- C58** [S. 39](#) applied (with modifications) (6.4.2001) by [S.I. 2001/1090](#), reg. 4, **Sch. 2 Pt. I**

#### [<sup>F31</sup>40 Official seal for share certificates, etc.

- (1) A company [<sup>F32</sup>which has a common seal] may have, for use for sealing securities issued by the company and for sealing documents creating or evidencing securities so issued, an official seal which is a facsimile of [<sup>F33</sup>its common seal] with the addition on its face of the word “Securities”. [<sup>F34</sup>The official seal when duly affixed to a document has the same effect as the company’s common seal.]]

[<sup>F35</sup>(2) Nothing in this section shall affect the right of a company registered in Scotland to subscribe such securities and documents in accordance with the Requirements of Writing (Scotland) Act 1995.]

#### Textual Amendments

- F31** [S. 40](#) renumbered as [s. 40\(1\)](#) (1.8.1995) by [1995 c. 7](#), ss. 14(1), 15(2), **Sch. 4 para. 54** (with ss. 9(3)(5)(7), 13, 14(3))
- F32** Words inserted by [Companies Act 1989 \(c. 40, SIF 27\)](#), ss. 130(7), 213(2), **Sch. 17 para. 3(2)**
- F33** Words substituted by [Companies Act 1989 \(c. 40, SIF 27\)](#), ss. 130(7), 213(2), **Sch. 17 para. 3(2)**
- F34** Words inserted by [Companies Act 1989 \(c. 40, SIF 27\)](#), ss. 130(7), 213(2), **Sch. 17 para. 3(3)**
- F35** [S. 40\(2\)](#) added (1.8.1995) by [1995 c. 7](#), ss. 14(1), 15(2), **Sch. 4 para. 54** (with ss. 9(3)(5)(7), 13, 14(3))

#### Modifications etc. (not altering text)

- C59** [S. 40](#) applied with modifications by [S.I. 1985/680](#), regs. 4–6, **Sch.**

*Status:* Point in time view as at 02/12/1996. This version of this part contains provisions that are not valid for this point in time.

*Changes to legislation:* There are currently no known outstanding effects for the Companies Act 1985, Part I. (See end of Document for details)

#### 41 Authentication of documents.

A document or proceeding requiring authentication by a company [<sup>F36</sup>is sufficiently authenticated for the purposes of the law of England and Wales by the signature of a director, secretary or other authorised officer of the company.]

##### Textual Amendments

**F36** Words substituted by Companies Act 1989 (c. 40, SIF 27), ss. 130(7), 213(2), Sch. 17 para. 4

##### Modifications etc. (not altering text)

**C60** S. 41 applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, Sch. 2 Pt. I

#### 42 Events affecting a company’s status.

(1) A company is not entitled to rely against other persons on the happening of any of the following events—

- (a) the making of a winding-up order in respect of the company, or the appointment of a liquidator in a voluntary winding up of the company, or
- (b) any alteration of the company’s memorandum or articles, or
- (c) any change among the company’s directors, or
- (d) (as regards service of any document on the company) any change in the situation of the company’s registered office,

if the event had not been officially notified at the material time and is not shown by the company to have been known at that time to the person concerned, or if the material time fell on or before the 15th day after the date of official notification (or, where the 15th day was a non-business day, on or before the next day that was not) and it is shown that the person concerned was unavoidably prevented from knowing of the event at that time.

(2) In subsection (1)—

- (a) “official notification” and “officially notified” have the meanings given by section 711(2) (registrar of companies to give public notice of the issue or receipt by him of certain documents), and
- (b) “non-business day” means a Saturday or Sunday, Christmas Day, Good Friday and any other day which is a bank holiday in the part of Great Britain where the company is registered.

##### Modifications etc. (not altering text)

**C61** S. 42 applied with modifications by S.I. 1985/680, regs. 4–6, Sch.

**C62** S. 42 applied (with modifications) by S.I. 2001/1090, reg. 4, Sch. 2 Pt. I

**Status:**

Point in time view as at 02/12/1996. This version of this part contains provisions that are not valid for this point in time.

**Changes to legislation:**

There are currently no known outstanding effects for the Companies Act 1985, Part I.