



# Companies Act 1985

## 1985 CHAPTER 6

### PART I

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

#### CHAPTER III

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

**[<sup>F1</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>F2</sup>section 65(1) of the Charities Act 1993] and section 112(3) of the <sup>M1</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.

*Status: Point in time view as at 28/02/1994. This version of this chapter 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, Chapter III. (See end of Document for details)

#### Textual Amendments

- F1** 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)
- F2** 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)

- C1** 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
- 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)
- C2** 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)
- C3** 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

- M1** 1989 c. 40

### [<sup>F3</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.

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- (6) The operation of this section is restricted by [<sup>F4</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**

- F3** 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)
- F4** Words in s. 35A(6) substituted (1.8.1993) by 1993 c. 10, ss. 98(1), 99(1), Sch. 6 para. 20(2)

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

- C4** 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)
- C5** S. 35A excluded (S.) (4.2.1992) by Companies Act 1989 (c. 40, SIF 27), ss. 112(3), 213(2)
- C6** S. 35A excluded by S.I. 1990/2569, art. 7(2)
- C7** 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>F5</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**

- F5** 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)**

- C8** 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>F6</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.]

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#### Textual Amendments

**F6** S. 36 substituted by Companies Act 1989 (c. 40, SIF 27), ss. 130(1), 213(2)

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

- C9** S. 36: power to apply conferred by Companies Act 1989 (c. 40, SIF 27), ss. 130(6), 213(2)  
**C10** 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>F7</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.
- (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

**F7** S. 36A inserted by Companies Act 1989 (c. 40, SIF 27), ss. 130(2), 213(2)

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

- C11** S. 36A: power to apply conferred by Companies Act 1989 (c. 40, SIF 27), ss. 130(6), 213(2)  
**C12** S. 36A applied with modifications by S.I. 1985/680, arts. 4–6, Sch. as amended by S.I. 1990/1394, reg. 2  
**C13** S. 36A applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, Sch. 2 Pt. I  
**C14** Ss. 36-36C applied (with modifications) (16.5.1994) by S.I. 1994/950, regs. 2-6  
**C15** 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)

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### **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.

### **[<sup>F8</sup>36B Execution of documents: Scotland.**

- (1) This section has effect in relation to the execution of any document by a company under the law of Scotland on or after 31 July 1990.
- (2) For any purpose other than those mentioned in subsection (3) below, a document is validly executed by a company if it is signed on behalf of the company by a director or the secretary of the company or by a person authorised to sign the document on its behalf.
- (3) For the purposes of any enactment or rule of law relating to the authentication of documents under the law of Scotland, a document is validly executed by a company if it is subscribed on behalf of the company by—
  - (a) two of the directors of the company;
  - (b) a director and the secretary of the company; or
  - (c) two persons authorised to subscribe the document on behalf of the company, notwithstanding that such subscription is not attested by witnesses and the document is not sealed with the company's common seal.
- (4) A document which bears to be executed by a company in accordance with subsection (3) above is, in relation to such execution, a probative document.
- (5) Notwithstanding the provisions of any enactment (including an enactment contained in this section) a company need not have a common seal.
- (6) For the purposes of any enactment providing for a document to be executed by a company by affixing its common seal or referring (in whatever terms) to a document so executed, a document signed or subscribed on behalf of the company by—
  - (a) two directors of the company;
  - (b) a director and the secretary of the company; or
  - (c) two persons authorised to sign or subscribe the document on behalf of the company,shall have effect as if executed under the common seal of the company.
- (7) In this section “enactment” includes an enactment contained in a statutory instrument.
- (8) Subsections (2) and (3) above are—

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- (a) without prejudice to any other method of execution of documents by companies permitted by any enactment or rule of law; and
- (b) subject to any other enactment making express provision, in relation to companies, as to the execution of a particular type of document.]

#### Textual Amendments

**F8** S. 36B inserted by Companies Act 1989 (c. 40, SIF 27), **ss. 130(3)**, 213(2) and substituted (with saving) by Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40, SIF 27), **s. 72(1)–(4)**

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

- C16** S. 36B: power to apply conferred by Companies Act 1989 (c. 40, SIF 27), **ss. 130(6)**, 213(2)
- C17** S. 36B applied with modifications by S.I. 1985/680, arts. 4–6, **Sch.** (as amended by S.I. 1990/1394, **reg. 2**)
- C18** S. 36B extended by Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40, SIF 27), **s. 72(2)**
- C19** Ss. 36-36C applied (with modifications) (16.5.1994) by S.I. 1994/950, **regs. 2-6**
- C20** S. 36B(2) extended by Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40, SIF 27), **s. 72(3)(4)**
- C21** S. 36B(3)(4) applied by Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40, SIF 27), **s. 72(3)**

### [<sup>F9</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

**F9** S. 36C inserted by Companies Act 1989 (c. 40, SIF 27), **ss. 130(4)**, 213(2)

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

- C22** S. 36C: power to apply conferred by Companies Act 1989 (c. 40, SIF 27), **ss. 130(6)**, 213(2)
- C23** S. 36C applied with modifications by S.I. 1985/680, arts. 4–6, **Sch.** (as amended by S.I. 1990/1394, **reg. 2**)
- C24** 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**

### 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.

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

**C25** 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>F10</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>F11</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.]

**Textual Amendments**

- F10** 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
- F11** S. 38(2) substituted by [Companies Act 1989 \(c. 40, SIF 27\)](#), ss. 130(7), 213(2), **Sch. 17 para. 1(3)**

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

- (1) A company [<sup>F12</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>F13</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>F14</sup>(2) The official seal when duly affixed to a document has the same effect as the company's common seal.]
- (3) A company having an official seal for use in any such territory, district or place may, by writing under its common seal . . . <sup>F15</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.
- (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**

- F12** Words inserted by [Companies Act 1989 \(c. 40, SIF 27\)](#), ss. 130(7), 213(2), **Sch. 17 para. 2(2)**
- F13** Words substituted by [Companies Act 1989 \(c. 40, SIF 27\)](#), ss. 130(7), 213(2), **Sch. 17 para. 2(2)**
- F14** S. 39(2) substituted by [Companies Act 1989 \(c. 40, SIF 27\)](#), ss. 130(7), 213(2), **Sch. 17 para. 2(3)**

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**F15** 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](#)

#### 40 Official seal for share certificates, etc.

A company [<sup>F16</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>F17</sup>its common seal] with the addition on its face of the word "Securities".

[<sup>F18</sup>The official seal when duly affixed to a document has the same effect as the company's common seal.]

##### Textual Amendments

- F16** Words inserted by [Companies Act 1989 \(c. 40, SIF 27\)](#), ss. 130(7), 213(2), [Sch. 17 para. 3\(2\)](#)  
**F17** Words substituted by [Companies Act 1989 \(c. 40, SIF 27\)](#), ss. 130(7), 213(2), [Sch. 17 para. 3\(2\)](#)  
**F18** Words inserted by [Companies Act 1989 \(c. 40, SIF 27\)](#), ss. 130(7), 213(2), [Sch. 17 para. 3\(3\)](#)

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

- C26** [S. 40](#) applied with modifications by [S.I. 1985/680](#), regs. 4–6, [Sch.](#)

#### 41 Authentication of documents.

A document or proceeding requiring authentication by a company [<sup>F19</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

- F19** Words substituted by [Companies Act 1989 \(c. 40, SIF 27\)](#), ss. 130(7), 213(2), [Sch. 17 para. 4](#)

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

- C27** [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



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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.

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

**C28** S. 42 applied with modifications by S.I. 1985/680, regs. 4–6, **Sch.**

**C29** S. 42 applied (with modifications) by S.I. 2001/1090, reg. 4, **Sch. 2 Pt. I**

**Status:**

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**Changes to legislation:**

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