



# Companies Act 1985

## 1985 CHAPTER 6

### PART XXV

#### MISCELLANEOUS AND SUPPLEMENTARY PROVISIONS

#### **716 Prohibition of partnerships with more than 20 members**

- (1) No company, association or partnership consisting of more than 20 persons shall be formed for the purpose of carrying on any business that has for its object the acquisition of gain by the company, association or partnership, or by its individual members, unless it is registered as a company under this Act, or is formed in pursuance of some other Act of Parliament, or of letters patent.
- (2) However, this does not prohibit the formation—
  - (a) for the purpose of carrying on practice as solicitors, of a partnership consisting of persons each of whom is a solicitor;
  - (b) for the purpose of carrying on practice as accountants, of a partnership consisting of persons each of whom falls within either paragraph (a) or (b) of section 389(1) (qualifications of company auditors);
  - (c) for the purpose of carrying on business as members of a recognised stock exchange, of a partnership consisting of persons each of whom is a member of that stock exchange.
- (3) The Secretary of State may by regulations in a statutory instrument provide that subsection (1) shall not apply to the formation (otherwise than as permitted by subsection (2)), for a purpose specified in the regulations, of a partnership of a description so specified.
- (4) In this section "solicitor"—
  - (a) in relation to England and Wales, means solicitor of the Supreme Court, and
  - (b) in relation to Scotland, means a person enrolled or deemed enrolled as a solicitor in pursuance of the Solicitors (Scotland) Act 1980.
- (5) Subsection (1) does not apply in relation to any body of persons for the time being approved for the purposes of the Marine and Aviation Insurance (War Risks) Act 1952

---

*Status: This is the original version (as it was originally enacted).*

---

by the Secretary of State, being a body the objects of which are or include the carrying on of business by way of the re-insurance of risks which may be re-insured under any agreement for the purpose mentioned in section 1(1)(b) of that Act.

#### **717 Limited partnerships: limit on number of members**

- (1) So much of the Limited Partnerships Act 1907 as provides that a limited partnership shall not consist of more than 20 persons does not apply—
  - (a) to a partnership carrying on practice as solicitors and consisting of persons each of whom is a solicitor.
  - (b) to a partnership carrying on practice as accountants and consisting of persons each of whom falls within either paragraph (a) or (b) of section 389(1) of this Act (qualification of company auditors),
  - (c) to a partnership carrying on business as members of a recognised stock exchange and consisting of persons each of whom is a member of that exchange.
- (2) The Secretary of State may by regulations in a statutory instrument provide that so much of section 4(2) of the Act of 1907 as provides that a limited partnership shall not consist of more than 20 persons shall not apply to a partnership (other than one permitted by subsection (1) of this section) carrying on business of a description specified in the regulations, being a partnership of a description so specified.
- (3) In this section " solicitor" means the same as in section 716.

#### **718 Unregistered companies**

- (1) The provisions of this Act specified in the first column of Schedule 22 (relating respectively to the matters specified in the second column of the Schedule) apply to all bodies corporate incorporated in and having a principal place of business in Great Britain, other than those mentioned in subsection (2) below, as if they were companies registered under this Act, but subject to any limitations mentioned in relation to those provisions respectively in the third column and to such adaptations and modifications (if any) as may be specified by regulations made by the Secretary of State.
- (2) Those provisions of this Act do not apply by virtue of this section to any of the following—
  - (a) any body incorporated by or registered under any public general Act of Parliament,
  - (b) any body not formed for the purpose of carrying on a business which has for its object the acquisition of gain by the body or its individual members,
  - (c) any body for the time being exempted by direction of the Secretary of State (or before him by the Board of Trade).
- (3) Where against any provision of this Act specified in the first column of Schedule 22 there appears in the third column the entry "Subject to section 718(3)", it means that the provision is to apply by virtue of this section so far only as may be specified by regulations made by the Secretary of State and to such bodies corporate as may be so specified.
- (4) The provisions specified in the first column of the Schedule also apply in like manner in relation to any unincorporated body of persons entitled by virtue of letters patent to any of the privileges conferred by the Chartered Companies Act 1837 and not

registered under any other public general Act of Parliament, but subject to the like exceptions as are provided for in the case of bodies corporate by paragraphs (b) and (c) of subsection (2).

- (5) This section does not repeal or revoke in whole or in part any enactment, royal charter or other instrument constituting or regulating any body in relation to which those provisions are applied by virtue of this section, or restrict the power of Her Majesty to grant a charter in lieu of or supplementary to any such charter as above mentioned ; but, in relation to any such body, the operation of any such enactment, charter or instrument is suspended in so far as it is inconsistent with any of those provisions as they apply for the time being to that body.
- (6) The power to make regulations conferred by this section (whether regulations under subsection (1) or subsection (3)) is exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

#### **719 Power of company to provide for employees on cessation or transfer of business**

- (1) The powers of a company include (if they would not otherwise do so apart from this section) power to make the following provision for the benefit of persons employed or formerly employed by the company or any of its subsidiaries, that is to say, provision in connection with the cessation or the transfer to any person of the whole or part of the undertaking of the company or that subsidiary.
- (2) The power conferred by subsection (1) is exercisable notwithstanding that its exercise is not in the best interests of the company.
- (3) The power which a company may exercise by virtue only of subsection (1) shall only be exercised by the company if sanctioned—
  - (a) in a case not falling within paragraph (b) or (c) below, by an ordinary resolution of the company, or
  - (b) if so authorised by the memorandum or articles, a resolution of the directors, or
  - (c) if the memorandum or articles require the exercise of the power to be sanctioned by a resolution of the company of some other description for which more than a simple majority of the members voting is necessary, with the sanction of a resolution of that description ;and in any case after compliance with any other requirements of the memorandum or articles applicable to its exercise.
- (4) Any payment which may be made by a company under this section may, if made before the commencement of any winding up of the company, be made out of profits of the company which are available for dividend.

#### **720 Certain companies to publish periodical statement**

- (1) Every company, being an insurance company or a deposit, provident or benefit society, shall before it commences business, and also on the first Monday in February and the first Tuesday in August in every year during which it carries on business, make a statement in the form set out in Schedule 23, or as near to it as circumstances admit.
- (2) A copy of the statement shall be put up in a conspicuous place in the company's registered office, and in every branch office or place where the business of the company is carried on.

---

*Status: This is the original version (as it was originally enacted).*

---

- (3) Every member and every creditor of the company is entitled to a copy of the statement, on payment of a sum not exceeding 2 1/2 pence.
- (4) If default is made in complying with this section, 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.
- (5) For purposes of this Act, a company which carries on the business of insurance in common with any other business or businesses is deemed an insurance company.
- (6) In the case of an insurance company to which Part II of the Insurance Companies Act 1982 applies, this section does not apply if the company complies with provisions of that Act as to the accounts and balance sheet to be prepared annually and deposited by such a company.
- (7) The Secretary of State may, by regulations in a statutory instrument (subject to annulment in pursuance of a resolution of either House of Parliament), alter the form in Schedule 23.

## **721 Production and inspection of books where offence suspected**

- (1) The following applies if on an application made—
  - (a) in England and Wales, to a judge of the High Court by the Director of Public Prosecutions, the Secretary of State or a chief officer of police, or
  - (b) in Scotland, to one of the Lords Commissioners of Justiciary by the Lord Advocate,

there is shown to be reasonable cause to believe that any person has, while an officer of a company, committed an offence in connection with the management of the company's affairs and that evidence of the commission of the offence is to be found in any books or papers of or under the control of the company.
- (2) An order may be made—
  - (a) authorising any person named in it to inspect the books or papers in question, or any of them, for the purpose of investigating and obtaining evidence of the offence, or
  - (b) requiring the secretary of the company or such other officer of it as may be named in the order to produce the books or papers (or any of them) to a person named in the order at a place so named.
- (3) The above applies also in relation to any books or papers of a person carrying on the business of banking so far as they relate to the company's affairs, as it applies to any books or papers of or under the control of the company, except that no such order as is referred to in subsection (2)(b) shall be made by virtue of this subsection.
- (4) The decision of a judge of the High Court or of any of the Lords Commissioners of Justiciary on an application under this section is not appealable.

## **722 Form of company registers, etc.**

- (1) Any register, index, minute book or accounting records required by the Companies Acts to be kept by a company may be kept either by making entries in bound books or by recording the matters in question in any other manner.

- (2) Where any such register, index, minute book or accounting record is not kept by making entries in a bound book, but by some other means, adequate precautions shall be taken for guarding against falsification and facilitating its discovery.
- (3) If default is made in complying with subsection (2), 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.

### **723 Use of computers for company records**

- (1) The power conferred on a company by section 722(1) to keep a register or other record by recording the matters in question otherwise than by making entries in bound books includes power to keep the register or other record by recording those matters otherwise than in a legible form, so long as the recording is capable of being reproduced in a legible form.
- (2) Any provision of an instrument made by a company before 12th February 1979 which requires a register of holders of the company's debentures to be kept in a legible form is to be read as requiring the register to be kept in a legible or non-legible form.
- (3) If any such register or other record of a company as is mentioned in section 722(1), or a register of holders of a company's debentures, is kept by the company by recording the matters in question otherwise than in a legible form, any duty imposed on the company by this Act to allow inspection of, or to furnish a copy of, the register or other record or any part of it is to be treated as a duty to allow inspection of, or to furnish, a reproduction of the recording or of the relevant part of it in a legible form.
- (4) The Secretary of State may by regulations in a statutory instrument make such provision in addition to subsection (3) as he considers appropriate in connection with such registers or other records as are mentioned in that subsection, and are kept as so mentioned ; and the regulations may make modifications of provisions of this Act relating to such registers or other records.
- (5) A statutory instrument under subsection (4) is subject to annulment in pursuance of a resolution of either House of Parliament.

### **724 Cross-border operation of receivership provisions**

- (1) A receiver appointed under the law of either part of Great Britain in respect of the whole or any part of any property or undertaking of a company and in consequence of the company having created a charge which, as created, was a floating charge may exercise his powers in the other part of Great Britain so far as their exercise is not inconsistent with the law applicable there.
- (2) In subsection (1) "receiver" includes a manager and a person who is appointed both receiver and manager.

### **725 Service of documents**

- (1) A document may be served on a company by leaving it at, or sending it by post to, the company's registered office.
- (2) Where a company registered in Scotland carries on business in England and Wales, the process of any court in England and Wales may be served on the company by leaving

---

*Status: This is the original version (as it was originally enacted).*

---

it at, or sending it by post to, the company's principal place of business in England and Wales, addressed to the manager or other head officer in England and Wales of the company.

- (3) Where process is served on a company under subsection (2), the person issuing out the process shall send a copy of it by post to the company's registered office.

#### **726 Costs and expenses in actions by certain limited companies**

- (1) Where in England and Wales a limited company is plaintiff in an action or other legal proceeding, the court having jurisdiction in the matter may, if it appears by credible testimony that there is reason to believe that the company will be unable to pay the defendant's costs if successful in his defence, require sufficient security to be given for those costs, and may stay all proceedings until the security is given.
- (2) Where in Scotland a limited company is pursuer in an action or other legal proceeding, the court having jurisdiction in the matter may, if it appears by credible testimony that there is reason to believe that the company will be unable to pay the defender's expenses if successful in his defence, order the company to find caution and sist the proceedings until caution is found.

#### **727 Power of court to grant relief in certain cases**

- (1) If in any proceedings for negligence, default, breach of duty or breach of trust against an officer of a company or a person employed by a company as auditor (whether he is or is not an officer of the company) it appears to the court hearing the case that that officer or person is or may be liable in respect of the negligence, default, breach of duty or breach of trust, but that he has acted honestly and reasonably, and that having regard to all the circumstances of the case (including those connected with his appointment) he ought fairly to be excused for the negligence, default, breach of duty or breach of trust, that court may relieve him, either wholly or partly, from his liability on such terms as it thinks fit.
- (2) If any such officer or person as above-mentioned has reason to apprehend that any claim will or might be made against him in respect of any negligence, default, breach of duty or breach of trust, he may apply to the court for relief; and the court on the application has the same power to relieve him as under this section it would have had if it had been a court before which proceedings against that person for negligence, default, breach of duty or breach of trust had been brought.
- (3) Where a case to which subsection (1) applies is being tried by a judge with a jury, the judge, after hearing the evidence, may, if he is satisfied that the defendant or defender ought in pursuance of that subsection to be relieved either in whole or in part from the liability sought to be enforced against him, withdraw the case in whole or in part from the jury and forthwith direct judgment to be entered for the defendant or defender on such terms as to costs or otherwise as the judge may think proper.

#### **728 Enforcement of High Court orders**

Orders made by the High Court under this Act may be enforced in the same manner as orders made in an action pending in that court.

## **729 Annual report by Secretary of State**

The Secretary of State shall cause a general annual report of matters within the Companies Acts to be prepared and laid before both Houses of Parliament.

## **730 Punishment of offences**

- (1) Schedule 24 to this Act has effect with respect to the way in which offences under this Act are punishable on conviction.
- (2) In relation to an offence under a provision of this Act specified in the first column of the Schedule (the general nature of the offence being described in the second column), the third column shows whether the offence is punishable on conviction on indictment, or on summary conviction, or either in the one way or the other.
- (3) The fourth column of the Schedule shows, in relation to an offence, the maximum punishment by way of fine or imprisonment under this Act which may be imposed on a person convicted of the offence in the way specified in relation to it in the third column (that is to say, on indictment or summarily), a reference to a period of years or months being to a term of imprisonment of that duration.
- (4) The fifth column shows (in relation to an offence for which there is an entry in that column) that a person convicted of the offence after continued contravention is liable to a daily default fine ; that is to say, he is liable on a second or subsequent summary conviction of the offence to the fine specified in that column for each day on which the contravention is continued (instead of the penalty specified for the offence in the fourth column of the Schedule).
- (5) For the purpose of any enactment in the Companies Acts which provides that an officer of a company who is in default is liable to a fine or penalty, the expression " officer who is in default" means any officer of the company who knowingly and wilfully authorises or permits the default, refusal or contravention mentioned in the enactment.

## **731 Summary proceedings**

- (1) Summary proceedings for any offence under the Companies Acts may (without prejudice to any jurisdiction exercisable apart from this subsection) be taken against a body corporate at any place at which the body has a place of business, and against any other person at any place at which he is for the time being.
- (2) Notwithstanding anything in section 127(1) of the Magistrates' Courts Act 1980, an information relating to an offence under the Companies Acts which is triable by a magistrates' court in England and Wales may be so tried if it is laid at any time within 3 years after the commission of the offence and within 12 months after the date on which evidence sufficient in the opinion of the Director of Public Prosecutions or the Secretary of State (as the case may be) to justify the proceedings comes to his knowledge.
- (3) Summary proceedings in Scotland for an offence under the Companies Acts shall not be commenced after the expiration of 3 years from the commission of the offence.

Subject to this (and notwithstanding anything in section 331 of the Criminal Procedure (Scotland) Act 1975), such proceedings may (in Scotland) be commenced at any time within 12 months after the date on which evidence sufficient in the Lord Advocate's opinion to justify the proceedings came to his knowledge or, where such evidence was

---

*Status: This is the original version (as it was originally enacted).*

---

reported to him by the Secretary of State, within 12 months after the date on which it came to the knowledge of the latter; and subsection (3) of that section applies for the purpose of this subsection as it applies for the purpose of that section.

- (4) For purposes of this section, a certificate of the Director of Public Prosecutions, the Lord Advocate or the Secretary of State (as the case may be) as to the date on which such evidence as is referred to above came to his knowledge is conclusive evidence.

### **732 Prosecution by public authorities**

- (1) In respect of an offence under any of sections 210, 324, 329, 447 to 451 and 455, proceedings shall not, in England and Wales, be instituted except by or with the consent of the appropriate authority.
- (2) That authority is—
- (a) for an offence under any of sections 210, 324 and 329, the Secretary of State or the Director of Public Prosecutions,
  - (b) for an offence under any of sections 447 to 451, either one of those two persons or the Industrial Assurance Commissioner, and
  - (c) for an offence under section 455, the Secretary of State.
- (3) Where proceedings are instituted under the Companies Acts against any person by the Director of Public Prosecutions or by or on behalf of the Secretary of State or the Lord Advocate, nothing in those Acts is to be taken to require any person to disclose any information which he is entitled to refuse to disclose on grounds of legal professional privilege.

### **733 Offences by bodies corporate**

- (1) The following applies to offences under any of sections 210, 216(3) and 447 to 451.
- (2) Where a body corporate is guilty of such an offence and it is proved that the offence occurred with the consent or connivance of, or was attributable to any neglect on the part of any director, manager, secretary or other similar officer of the body, or any person who was purporting to act in any such capacity, he as well as the body corporate is guilty of that offence and is liable to be proceeded against and punished accordingly.
- (3) Where the affairs of a body corporate are managed by its members, then in the case of an offence under section 210 or 216(3), subsection (2) above applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.
- (4) In this section "director", in relation to an offence under any of sections 447 to 451, includes a shadow director.

### **734 Criminal proceedings against unincorporated bodies**

- (1) Proceedings for an offence alleged to have been committed under any of sections 447 to 451 by an unincorporated body shall be brought in the name of that body (and not in that of any of its members), and for the purposes of any such proceedings, any rules of court relating to the service of documents apply as if that body were a corporation.
- (2) A fine imposed on an unincorporated body on its conviction of such an offence shall be paid out of the funds of that body.



---

*Status: This is the original version (as it was originally enacted).*

---

- (3) In a case in which an unincorporated body is charged in England and Wales with such an offence, section 33 of the Criminal Justice Act 1925 and Schedule 3 to the Magistrates' Courts Act 1980 (procedure on charge of an offence against a corporation) have effect in like manner as in the case of a corporation so charged.
- (4) In relation to proceedings on indictment in Scotland for such an offence alleged to have been committed by an unincorporated body, section 74 of the Criminal Procedure (Scotland) Act 1975 (proceedings on indictment against bodies corporate) has effect as if that body were a body corporate.