



# Companies Act 1985

## 1985 CHAPTER 6

### PART XXVI

#### INTERPRETATION

#### 735 “Company”, etc.

(1) In this Act—

- (a) “company” means a company formed and registered under this Act, or an existing company;
- (b) “existing company” means a company formed and registered under the former Companies Acts, but does not include a company registered under the Joint Stock Companies Acts, the Companies Act 1862 or the Companies (Consolidation) Act 1908 in what was then Ireland;
- (c) “the former Companies Acts” means the Joint Stock Companies Acts, the Companies Act 1862, the Companies (Consolidation) Act 1908, the <sup>M1</sup>Companies Act 1929 and the Companies Acts 1948 to 1983.

(2) “Public company” and “private company” have the meanings given by section 1(3).

(3) “The Joint Stock Companies Acts” means the <sup>M2</sup>Joint Stock Companies Act 1856 the <sup>M3</sup>Joint Stock Companies Acts 1856, <sup>M4</sup>1857, the <sup>M5</sup>Joint Stock Banking Companies Act 1857 and the Act to enable Joint Stock Banking Companies to be formed on the principle of limited liability, or any one or more of those Acts (as the case may require), but does not include the Joint Stock Companies Act 1844

(4) The definitions in this section apply unless the contrary intention appears.

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

- C1 S. 735 modified (8.10.2004) by The European Public Limited-Liability Company Regulations 2004 (S.I. 2004/2326), regs. 85, 88, **Sch. 4 para. 5** (with Sch. 4 para. 11)

*Status: Point in time view as at 23/12/2005.*

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

### Marginal Citations

- M1** 1929 c. 23.
- M2** 1856 20 & 21 Vict. c. 14
- M3** 1856 20 & 21 Vict. c. 49
- M4** 1857 21 & 22 Vict. c. 91
- M5** 1844 7 & 8 Vict. c. 110

### [<sup>F1</sup>735A Relationship of this Act to Insolvency Act.

- (1) In this Act “the Insolvency Act” means the Insolvency Act 1986; and in the following provisions of this Act, namely, sections 375(1)(b), 425(6)(a), . . . <sup>F2</sup>, 460(2), 675, 676, 677, 699(1), 728 and Schedule 21, paragraph 6(1), the words “this Act” are to be read as including Parts I to VII of that Act, sections 411, 413, 414, 416 and 417 in Part XV of that Act, and also the Company Directors Disqualification Act 1986.
- (2) In sections [<sup>F3</sup>Sections704(5),(7) and (8)] 706(1), [<sup>F4</sup>707B(1)], [<sup>F5</sup>707A(1),] 708(1) (a) and (4) [<sup>F5</sup>709(1) and (3),][<sup>F6</sup>710A], 713(1), 729 and 732(3) references to the Companies Acts include Parts I to VII of the Insolvency Act, sections 411, 413, 414, 416 and 417 in Part XV of that Act, and also the Company Directors Disqualification Act 1986.
- (3) Subsections (1) and (2) apply unless the contrary intention appears.]

### Textual Amendments

- F1** Part XXVI s. 735A inserted by Insolvency Act 1986 (c. 45, SIF 66), s. 493(1), **Sch. 13 Pt. II**
- F2** Words repealed by Companies Act 1989 (c. 40, SIF 27), ss. 212, 213(2), **Sch. 24**
- F3** Words in s. 735A(2) substituted (3.1.1995) by 1994 c. 40, ss. 76, 81(2)(f), **Sch. 16 para. 9**
- F4** Words in s. 735A(2) substituted (22.12.2000) by S.I. 2000/3373, **art. 31(4)(b)**
- F5** Words in 735A inserted (1.7.1991) by Companies Act 1989 (c. 40, SIF 27), **ss. 127(5)**, 213(2), 215(2); S.I. 1991/488, **art. 2(1)**
- F6** Word in S.735A substituted (1.7.1991) by Companies Act 1989 (c. 40, SIF 27), **ss. 127(5)(c)**, 213(2); S.I. 1991/488, **art. 2(1)**

### Modifications etc. (not altering text)

- C2** S. 735A applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, **Sch. 2 Pt. I**

### [<sup>F7</sup>735B Relationship of this Act to Parts IV and V of the Financial Services Act 1986.

In [<sup>F8</sup>sections 704(5), (7) and (8)]706(1), 707(1), 707A(1), 708(1)(a) and (4), 709(1) and (3), 710A and 713(1) references to the Companies Acts include [<sup>F9</sup>Part 6 of the Financial Services and Markets Act 2000].]

### Textual Amendments

- F7** S. 735B inserted (1.7.1991) by Companies Act 1989 (c. 40, SIF 27), **ss. 127(6)**, 213(2), 215(2); S.I. 1991/488, **art. 2(1)**
- F8** Words in s. 735B substituted (3.1.1995) by 1994 c. 40, ss. 76, 81(2)(f), **Sch. 16 para. 10**
- F9** Words in s. 735B substituted (1.12.2001) by S.I. 2001/3649, **arts. 1, 28**

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**[<sup>F10</sup>736 “Subsidiary”, “holding company” and “wholly-owned subsidiary”.**

- (1) A company is a “subsidiary” of another company, its “holding company”, if that other company—
  - (a) holds a majority of the voting rights in it, or
  - (b) is a member of it and has the right to appoint or remove a majority of its board of directors, or
  - (c) is a member of it and controls alone, pursuant to an agreement with other shareholders or members, a majority of the voting rights in it,or if it is a subsidiary of a company which is itself a subsidiary of that other company.
- (2) A company is a “wholly-owned subsidiary” of another company if it has no members except that other and that other’s wholly-owned subsidiaries or persons acting on behalf of that other or its wholly-owned subsidiaries.
- (3) In this section “company” includes any body corporate.]

**Textual Amendments**

**F10** S. 736, 736A substituted (subject to the transitional provisions in S.I. 1990/1392, art. 6, and see also next two following entries) by Companies Act 1989 (c. 40, SIF 27), ss. 144(1), 213(2)

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

- C3** S. 736 applied by Financial Services Act 1986 (c. 60, SIF 69) s. 207(8) and Banking Act 1987 (c. 22, SIF 10), s. 106(2)
- C4** S. 736 excluded by S.I. 1990/1392, art. 6
- C5** S. 736: definition of “subsidiary” applied by Heathrow Express Railway (No. 2) Act 1991 (c. ix), s. 2
- C6** S. 736: definition of “subsidiary” applied by Heathrow Express Railway Act 1991 (c. vii), ss. 2(1), 40(1)
- C7** S. 736: definitions of “subsidiary” and “wholly owned subsidiary” applied by Ports Act 1991 (c. 52, SIF 58), s. 40(1)
- C8** S. 736 applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, Sch. 2 Pt. I
- C9** S. 736 applied (20.6.2003) by Enterprise Act 2002 (c. 40), ss. {79(9)}, 279; S.I. 2003/1397, art. 2, Sch.
- C10** S. 736 power to apply (with modifications ) conferred (10.2.2005 for certain purposes and 6.4.2005 in so far as not already in force) by Pensions Act 2004 (c. 35), ss. 57(2)(d), 322 (with s. 313); S.I. 2005/275, art. 2(3), Sch. Pt. 3
- C11** S. 736(2): definition applied by Standard Life Assurance Company Act 1991 (c. iii), s. 14, Sch. reg. 93(4) (with s. 21(2)).

**[<sup>F11</sup>736A Provisions supplementing s. 736.**

- (1) The provisions of this section explain expressions used in section 736 and otherwise supplement that section.
- (2) In section 736(1)(a) and (c) the references to the voting rights in a company are to the rights conferred on shareholders in respect of their shares or, in the case of a company not having a share capital, on members, to vote at general meetings of the company on all, or substantially all, matters.
- (3) In section 736(1)(b) the reference to the right to appoint or remove a majority of the board of directors is to the right to appoint or remove directors holding a majority of

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the voting rights at meetings of the board on all, or substantially all, matters; and for the purposes of that provision—

- (a) a company shall be treated as having the right to appoint to a directorship if—
    - (i) a person’s appointment to it follows necessarily from his appointment as director of the company, or
    - (ii) the directorship is held by the company itself; and
  - (b) a right to appoint or remove which is exercisable only with the consent or concurrence of another person shall be left out of account unless no other person has a right to appoint or, as the case may be, remove in relation to that directorship.
- (4) Rights which are exercisable only in certain circumstances shall be taken into account only—
- (a) when the circumstances have arisen, and for so long as they continue to obtain, or
  - (b) when the circumstances are within the control of the person having the rights; and rights which are normally exercisable but are temporarily incapable of exercise shall continue to be taken into account.
- (5) Rights held by a person in a fiduciary capacity shall be treated as not held by him.
- (6) Rights held by a person as nominee for another shall be treated as held by the other; and rights shall be regarded as held as nominee for another if they are exercisable only on his instructions or with his consent or concurrence.
- (7) Rights attached to shares held by way of security shall be treated as held by the person providing the security—
- (a) where apart from the right to exercise them for the purpose of preserving the value of the security, or of realising it, the rights are exercisable only in accordance with his instructions;
  - (b) where the shares are held in connection with the granting of loans as part of normal business activities and apart from the right to exercise them for the purpose of preserving the value of the security, or of realising it, the rights are exercisable only in his interests.
- (8) Rights shall be treated as held by a company if they are held by any of its subsidiaries; and nothing in subsection (6) or (7) shall be construed as requiring rights held by a company to be treated as held by any of its subsidiaries.
- (9) For the purposes of subsection (7) rights shall be treated as being exercisable in accordance with the instructions or in the interests of a company if they are exercisable in accordance with the instructions of or, as the case may be, in the interests of—
- (a) any subsidiary or holding company of that company, or
  - (b) any subsidiary of a holding company of that company.
- (10) The voting rights in a company shall be reduced by any rights held by the company itself.
- (11) References in any provision of subsections (5) to (10) to rights held by a person include rights falling to be treated as held by him by virtue of any other provision of those subsections but not rights which by virtue of any such provision are to be treated as not held by him.
- (12) In this section “company” includes any body corporate.]

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#### Textual Amendments

- F11** S. 736, 736A substituted (subject to the transitional provisions in S.I. 1990/1392, **art. 6**, and see also next two following entries) by [Companies Act 1989 \(c. 40, SIF 27\)](#), **ss. 144(1), 213(2)**

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

- C12** S. 736A applied (with modifications) (6.4.2001) by S.I. 2001/1090, **reg. 4, Sch. 2 Pt. I**
- C13** S. 736A applied (20.6.2003) by [Enterprise Act 2002 \(c. 40\)](#), **ss. {79(9)}, 279**; S.I. 2003/1397, **art. 2**, **Sch.**
- S. 736A applied (24.8.2004 for certain purposes and 5.10.2004 in so far as not already in force) by [Energy Act 2004 \(c. 20\)](#), **ss. 37(5), 198(2)**; S.I. 2004/2184, **art. 2(1)**, **Sch. 1**; S.I. 2004/2575, **art. 2(1)**, **Sch. 1**
- C14** S. 736A(2)–(4) applied by [Electricity Act 1989 \(c. 29, SIF 44:1\)](#), **ss. 104, 105, 112(3)**, **Sch. 14 para. 4, Sch. 15 para. 4(2), Sch. 17 para. 35(1)**
- C15** S. 736A(3)–(12) modified (E.W.) (16.1.1990 to the extent mentioned in S.I. 1990/2445, **art. 4** otherwise 7.10.1993) by [Local Government and Housing Act 1989 \(c. 42, SIF 81:1\)](#), **s. 68(4)**; S.I. 1993/2410, **art.3**

#### [<sup>F12</sup>736B Power to amend ss. 736 and 736A.

- (1) The Secretary of State may by regulations amend sections 736 and 736A so as to alter the meaning of the expressions “holding company”, “subsidiary” or “wholly-owned subsidiary”.
- (2) The regulations may make different provision for different cases or classes of case and may contain such incidental and supplementary provisions as the Secretary of State thinks fit.
- (3) 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.
- (4) Any amendment made by regulations under this section does not apply for the purposes of enactments outside the Companies Acts unless the regulations so provide.
- (5) So much of section 23(3) of the Interpretation Act <sup>M6</sup>1978 as applies section 17(2)(a) of that Act (effect of repeal and re-enactment) to deeds, instruments and documents other than enactments shall not apply in relation to any repeal and re-enactment effected by regulations made under this section.]

#### Textual Amendments

- F12** S. 736B inserted (subject to the transitional provisions in S.I. 1990/1392, **art. 6**) by [Companies Act 1989 \(c. 40, SIF 27\)](#), **ss. 144(3), 213(2)**

#### Marginal Citations

- M6** 1978 c.30 (115:1).

#### 737 “Called-up share capital”.

- (1) In this Act, “called-up share capital”, in relation to a company, means so much of its share capital as equals the aggregate amount of the calls made on its shares (whether or not those calls have been paid), together with any share capital paid up without being

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called and any share capital to be paid on a specified future date under the articles, the terms of allotment of the relevant shares or any other arrangements for payment of those shares.

- (2) “Uncalled share capital” is to be construed accordingly.
- (3) The definitions in this section apply unless the contrary intention appears.

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

- C16** S. 737 extended (21.8.2002) by S.I. 2001/1060, art. 5A(2) (as inserted by S.I. 2002/2157, art. 8(2))  
S. 737 extended (21.8.2002) by S.I. 2001/1335, art. 8A(2) (as inserted by S.I. 2002/2157, art. 3(2))
- C17** S. 737 modified (1.7.2005) by The Financial Services and Markets Act 2000 (Financial Promotion) Order 2005 (S.I. 2005/1529), art. 8A(2) (with art. 10)

**738 “Allotment” and “paid up”.**

- (1) In relation to an allotment of shares in a company, the shares are to be taken for the purposes of this Act to be allotted when a person acquires the unconditional right to be included in the company’s register of members in respect of those shares.
- (2) For purposes of this Act, a share in a company is deemed paid up (as to its nominal value or any premium on it) in cash, or allotted for cash, if the consideration for the allotment or payment up is cash received by the company, or is a cheque received by it in good faith which the directors have no reason for suspecting will not be paid, or is a release of a liability of the company for a liquidated sum, or is an undertaking to pay cash to the company at a future date.
- (3) In relation to the allotment or payment up of any shares in a company, references in this Act (except sections 89 to 94) to consideration other than cash and to the payment up of shares and premiums on shares otherwise than in cash include the payment of, or any undertaking to pay, cash to any person other than the company.
- (4) For the purpose of determining whether a share is or is to be allotted for cash, or paid up in cash, “cash” includes foreign currency.

**739 “Non-cash asset”.**

- (1) In this Act “non-cash asset” means any property or interest in property other than cash; and for this purpose “cash” includes foreign currency.
- (2) A reference to the transfer or acquisition of a non-cash asset includes the creation or extinction of an estate or interest in, or a right over, any property and also the discharge of any person’s liability, other than a liability for a liquidated sum.

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

- C18** S. 739 applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, Sch. 2 Pt. I

**740 “Body corporate” and “corporation”.**

References in this Act to a body corporate or to a corporation do not include a corporation sole, but include a company incorporated elsewhere than in Great Britain.

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Such references to a body corporate do not include a Scottish firm.

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

**C19** S. 740 applied by [Company Directors Disqualification Act 1986 \(c. 46, SIF 27\)](#), s. 22(6)

**C20** S. 740 applied (with modifications) (6.4.2001) by [S.I. 2001/1090, reg. 4, Sch. 2 Pt. I](#)

**741 “Director” and “shadow director”.**

- (1) In this Act, “director” includes any person occupying the position of director, by whatever name called.
- (2) In relation to a company, “shadow director” means a person in accordance with whose directions or instructions the directors of the company are accustomed to act.

However, a person is not deemed a shadow director by reason only that the directors act on advice given by him in a professional capacity.

- (3) For the purposes of the following provisions of this Act, namely—  
section 309 (directors’ duty to have regard to interests of employees),  
section 319 (directors’ long-term contracts of employment),  
sections 320 to 322 (substantial property transactions involving directors),<sup>F13</sup>  
[<sup>F14</sup>section 322B (contracts with sole members who are directors), and]  
sections 330 to 346 (general restrictions on power of companies to make loans, etc., to directors and others connected with them), (being provisions under which shadow directors are treated as directors), a body corporate is not to be treated as a shadow director of any of its subsidiary companies by reason only that the directors of the subsidiary are accustomed to act in accordance with its directions or instructions.

**Textual Amendments**

**F13** Word "and" in s. 741(3) deleted (15.7.1992) by [S.I. 1992/1699, reg. 2, Sch. para. 3\(2\)](#).

**F14** Words in s. 741(3) inserted (15.7.1992) by [S.I. 1992/1699, reg. 2, Sch. para. 3\(2\)](#).

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

**C21** S. 741 applied (with modifications) (6.4.2001) by [S.I. 2001/1090, reg. 4, Sch. 2 Pt. I](#)

**[<sup>F15</sup>742 Expressions used in connection with accounts.**

- (1) In this Act, unless a contrary intention appears, the following expressions have the same meaning as in Part VII (accounts)—  
“annual accounts”,  
“accounting reference date” and “accounting reference period”,  
“balance sheet” and “balance sheet date”,  
[<sup>F16</sup>“Companies Act accounts”]  
[<sup>F17</sup>“Companies Act individual accounts”]  
“current assets”,  
“financial year”, in relation to a company,



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“fixed assets”,  
 [F18“IAS accounts”]  
 [F19“IAS individual accounts”]  
 “parent company” and “parent undertaking”,  
 “profit and loss account”, and  
 “subsidiary undertaking”.

(2) References in this Act to “realised profits” and “realised losses”, in relation to a company’s accounts, shall be construed in accordance with section 262(3).]

[F20(2A) References in this Act to sending or sending out copies of any of the documents referred to in section 238(1) include sending or sending out such copies in accordance with section 238(4A) or (4B).]

#### Textual Amendments

- F15** S. 742 substituted (subject to the transitional and saving provisions in S.I. 1990/355, arts. 6–9, **Sch. 3 para. 1**) by *Companies Act 1989* (c. 40, SIF 27), ss. 23, 213(2), **Sch. 10 para. 15**
- F16** S. 742(1): accounts expression inserted (12.11.2004 with effect as mentioned in reg. 1(2) of the amending S.I.) by *The Companies Act 1985 (International Accounting Standards and Other Accounting Amendments) Regulations 2004* (S.I. 2004/2947), reg. 3, **Sch. 1 para. 29**
- F17** S. 742(1): accounts expression inserted (12.11.2004 with effect as mentioned in reg. 1(2) of the amending S.I.) by *The Companies Act 1985 (International Accounting Standards and Other Accounting Amendments) Regulations 2004* (S.I. 2004/2947), reg. 3, **Sch. 1 para. 29**
- F18** S. 742(1): accounts expression inserted (12.11.2004 with effect as mentioned in reg. 1(2) of the amending S.I.) by *The Companies Act 1985 (International Accounting Standards and Other Accounting Amendments) Regulations 2004* (S.I. 2004/2947), reg. 3, **Sch. 1 para. 29**
- F19** S. 742(1): accounts expression inserted (12.11.2004 with effect as mentioned in reg. 1(2) of the amending S.I.) by *The Companies Act 1985 (International Accounting Standards and Other Accounting Amendments) Regulations 2004* (S.I. 2004/2947), reg. 3, **Sch. 1 para. 29**
- F20** S. 742(2A) inserted (22.12.2000) by S.I. 2000/3373, **art. 28**

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

- C22** S. 742 applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, **Sch. 2 Pt. I**

#### [F21]742A Meaning of “offer to the public”

- (1) Any reference in Part IV (allotment of shares and debentures) [F22, Part 7 (accounts) or section 744 (general interpretation)] to offering shares or debentures to the public is to be read as including a reference to offering them to any section of the public, however selected.
- (2) This section does not require an offer to be treated as made to the public if it can properly be regarded, in all the circumstances—
- as not being calculated to result, directly or indirectly, in the shares or debentures becoming available for subscription or purchase by persons other than those receiving the offer; or
  - as being a domestic concern of the persons receiving and making it.
- (3) An offer of shares in or debentures of a private company (other than an offer to which subsection (5) applies) is to be regarded (unless the contrary is proved) as being a domestic concern of the persons making and receiving it if—



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- (a) it is made to—
    - (i) an existing member of the company making the offer,
    - (ii) an existing employee of that company,
    - (iii) the widow or widower [<sup>F23</sup>or surviving civil partner] of a person who was a member or employee of that company,
    - (iv) a member of the family of a person who is or was a member or employee of that company, or
    - (v) an existing debenture holder; or
  - (b) it is an offer to subscribe for shares or debentures to be held under an employee's share scheme.
- (4) Subsection (5) applies to an offer—
- (a) which falls within paragraph (a) or (b) of subsection (3); but
  - (b) which is made on terms which permit the person to whom it is made to renounce his right to the allotment of shares or issue of debentures.
- (5) The offer is to be regarded (unless the contrary is proved) as being a domestic concern of the persons making and receiving it if the terms are such that the right may be renounced only in favour—
- (a) of any person mentioned in subsection (3)(a); or
  - (b) in the case of an employee's share scheme, of a person entitled to hold shares or debentures under the scheme.
- (6) For the purposes of subsection (3)(a)(iv), the members of a person's family are—
- (a) the person's spouse [<sup>F24</sup>or civil partner] and children (including step-children) and their descendants, and
  - (b) any trustee (acting in his capacity as such) of a trust the principal beneficiary of which is the person him or herself or of any of those relatives.
- (7) Where an application has been made to the competent authority in any EEA State for the admission of any securities to official listing, then an offer of those securities for subscription or sale to a person whose ordinary business it is to buy or sell shares or debentures (whether as principal or agent) is not to be regarded as an offer to the public for the purposes of this Part.
- (8) For the purposes of subsection (7)—
- (a) “competent authority” means a competent authority appointed for the purposes of the Council Directive of 28 May 2001 on the admission of securities to official stock exchange listing and on information to be published on those securities; and
  - (b) “official listing” means official listing pursuant to that directive.]

#### Textual Amendments

**F21** Ss. 742A-C inserted (1.12.2001) by S.I. 2001/3649, arts. 1, 29

**F22** Words in s. 742A(1) substituted (4.3.2004) by The Financial Services and Markets Act 2000 (Consequential Amendments) Order 2004 (S.I. 2004/355), art. 2(3)

**F23** Words in s. 742A(1) inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 261(1), 263, Sch. 27 para. 104(2); S.I. 2005/3175, art. 2(2)

**F24** Words in s. 742A(6) inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 261(1), 263, Sch. 27 para. 104(3); S.I. 2005/3175, art. 2(2)

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### **F25 742B Meaning of “banking company”**

- (1) Subject to subsection (2), “banking company” means a person who has permission under Part 4 of the Financial Services and Markets Act 2000 to accept deposits.
- (2) A banking company does not include—
  - (a) a person who is not a company, and
  - (b) a person who has permission to accept deposits only for the purpose of carrying on another regulated activity in accordance with that permission.
- (3) This section must be read with—
  - (a) section 22 of the Financial Services and Markets Act 2000;
  - (b) any relevant order under that section; and
  - (c) Schedule 2 to that Act.

#### **Textual Amendments**

**F25** Ss. 742A-C inserted (1.12.2001) by S.I. 2001/3649, arts. 1, 29

### **F26 742C Meaning of “insurance company” and “authorised insurance company”**

- (1) For the purposes of this Act, “insurance company” has the meaning given in subsection (2) and “authorised insurance company” has the meaning given in subsection (4).
- (2) Subject to subsection (3), “insurance company” means a person (whether incorporated or not)—
  - (a) who has permission under Part 4 of the Financial Services and Markets Act 2000 to effect or carry out contracts of insurance; or
  - (b) who carries on insurance market activity; or
  - (c) who may effect or carry out contracts of insurance under which the benefits provided by that person are exclusively or primarily benefits in kind in the event of accident to or breakdown of a vehicle, and does not fall within paragraph (a).
- (3) An insurance company does not include a friendly society, within the meaning of section 116 of the Friendly Societies Act 1992.
- (4) An “authorised insurance company” means a person falling within paragraph (a) of subsection (2).
- (5) References in this section to contracts of insurance and the effecting or carrying out of such contracts must be read with -
  - (a) section 22 of the Financial Services and Markets Act 2000;
  - (b) any relevant order under that section; and
  - (c) Schedule 2 to that Act.

#### **Textual Amendments**

**F26** Ss. 742A-C inserted (1.12.2001) by S.I. 2001/3649, arts. 1, 29

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### 743 “Employees’ share scheme”.

For purposes of this Act, an employees’ share scheme is a scheme for encouraging or facilitating the holding of shares or debentures in a company by or for the benefit of—

- (a) the bona fide employees or former employees of the company, the company’s subsidiary or holding company or a subsidiary of the company’s holding company, or
- (b) the [<sup>F27</sup>spouses, civil partners, surviving spouses, surviving civil partners] or children or step-children under the age of 18 of such employees or former employees.

#### Textual Amendments

**F27** Words in s. 743(b) substituted (23.12.2005) by [The Civil Partnership Act 2004 \(International Immunities and Privileges, Companies and Adoption\) Order 2005 \(S.I. 2005/3542\)](#), [art. 3\(2\)](#)

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

**C23** S. 743 modified (subject to the transitional provisions in [S.I. 1990/1392](#), [art. 6](#)) by [Companies Act 1989 \(c. 40, SIF 27\)](#), [ss. 144\(4\), 213\(2\)](#), [Sch. 18 para. 37](#)

### [<sup>F28</sup>743A Meaning of “office copy” in Scotland.

References in this Act to an office copy of a court order shall be construed, as respects Scotland, as references to a certified copy interlocutor.]

#### Textual Amendments

**F28** S. 743A inserted by [Companies Act 1989 \(c. 40, SIF 27\)](#), [ss. 145, 213\(2\)](#), [Sch. 19 para. 19](#)

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

**C24** S. 743A applied (with modifications) (6.4.2001) by [S.I. 2001/1090](#), [reg. 4](#), [Sch. 2 Pt. I](#)

### 744 Expressions used generally in this Act.

In this Act, unless the contrary intention appears, the following definitions apply—

“agent” does not include a person’s counsel acting as such;

<sup>F29</sup>  
.....

“articles” means, in relation to a company, its articles of association, as originally framed or as altered by resolution, including (so far as applicable to the company) regulations contained in or annexed to any enactment relating to companies passed before this Act, as altered by or under any such enactment;

<sup>F30</sup>  
.....

[<sup>F31</sup>“authorised minimum” has the meaning given by section 118;]

“bank holiday” means a holiday under the <sup>M7</sup>Banking and Financial Dealings Act 1971;

<sup>F32</sup>  
.....

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

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[<sup>F33</sup>“communication” means the same as in the Electronic Communications Act 2000;

“the Companies Acts” means this Act, the [<sup>F34</sup>insider dealing legislation] and the Consequential Provisions Act;

“the Consequential Provisions Act” means the <sup>M8</sup>Companies Consolidation (Consequential Provisions) Act 1985;

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

“debenture” includes debenture stock, bonds and any other securities of a company, whether constituting a charge on the assets of the company or not;

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

[<sup>F35</sup>EEA State’ means a State which is a Contracting Party to the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 <sup>M9</sup> as adjusted by the Protocol signed at Brussels on 17th March 1993 <sup>M10</sup>.

[<sup>F36</sup>“electronic communication” means the same as in the Electronic Communications Act 2000;

“equity share capital” means, in relation to a company, its issued share capital excluding any part of that capital which, neither as respects dividends nor as respects capital, carries any right to participate beyond a specified amount in a distribution;

[<sup>F37</sup>“expert” has the meaning given by section 62;]

[<sup>F38</sup>“floating charge” includes a floating charge within the meaning given by section 462;]

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

<sup>F39</sup>,

“hire-purchase agreement” has the same meaning as in the <sup>M11</sup>Consumer Credit Act 1974;

[<sup>F40</sup>“the insider dealing legislation” means Part V of the Criminal Justice Act 1993 (insider dealing).

[<sup>F41</sup>“insurance market activity” has the meaning given in section 316(3) of the Financial Services and Markets Act 2000;

<sup>F32</sup>

[<sup>F42</sup>“joint stock company” has the meaning given by section 683;]

“memorandum”, in relation to a company, means its memorandum of association, as originally framed or as altered in pursuance of any enactment;

“number”, in relation to shares, includes amount, where the context admits of the reference to shares being construed to include stock;

“officer”, in relation to a body corporate, includes a director, manager or secretary;

“official seal”, in relation to the registrar of companies, means a seal prepared under section 704(4) for the authentication of documents required for or in connection with the registration of companies;

“oversea company” means—

- (a) a company incorporated elsewhere than in Great Britain which, after the commencement of this Act, establishes a place of business in Great Britain, and

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(b) a company so incorporated which has, before than commencement, established a place of business and continues to have an established place of business in Great Britain at that commencement;

“place of business” includes a share transfer or share registration office;

“prescribed” means—

(a) as respects provisions of this Act relating to winding up, prescribed by general rules . . . <sup>F43</sup>, and

(b) otherwise, prescribed by statutory instrument made by the Secretary of State;

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

..... <sup>F44</sup>,  
..... <sup>F45</sup>,  
..... <sup>F46</sup>,

[<sup>F47</sup>“regulated activity” has the meaning given in section 22 of the Financial Services and Markets Act 2000;

“the registrar of companies” and “the registrar” means the registrar or other officer performing under this Act the duty of registration of companies in England and Wales or in Scotland, as the case may require;

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

[<sup>F48</sup>“undistributable reserves” has the meaning given by section 264(3).]]]]]]]]

#### Textual Amendments

- F29** Definition in s. 744 repealed (3.7.1995) by [Companies Act 1989 \(c. 40, SIF 27\)](#), ss. 212, 213(2), 215(2), [Sch. 24](#); [S.I. 1995/1352](#), [art. 3\(1\)](#)
- F30** Definition of “authorised institution” inserted by [Banking Act 1987 \(c. 22, SIF 10\)](#), s. 108(1), [Sch. 6 para. 18\(8\)](#) and is repealed (subject to the transitional and saving provisions in [S.I. 1990/355](#), arts. 5–9, [Sch. 3 para. 1](#)) by [Companies Act 1989 \(c. 40, SIF 27\)](#), ss. 23, 212, 213(2), [Sch. 10 para. 16](#), [Sch. 24](#)
- F31** Definition repealed (*prosp.*) by [Companies Act 1989 \(c.40, SIF 27\)](#), ss. 212, 213(2), 215(2), [Sch. 24](#)
- F32** Definitions of “banking company” and “insurance company” in s. 744 repealed (1.12.2001) by [S.I. 2001/3649](#), [arts. 1, 30\(a\)](#)
- F33** [S. 744](#): definition of “communication” inserted (22.12.2000) by [S.I. 2000/3373](#), [art. 29](#)
- F34** Words in s. 744 substituted (1.3.1994) by [1993 c. 36](#), s. 79(13), [Sch. 5 para. 4\(2\)](#); [S.I. 1994/242](#), [arts. 2, 3](#)
- F35** Definition of “EEA State” in [S. 744](#) inserted (20.10.1997) by [S.I. 1997/2306](#), [reg. 4\(1\)](#)
- F36** [S. 744](#): definition of “electrical communication” inserted (22.12.2000) by [S.I. 2000/3373](#), [art. 29](#)
- F37** Definition repealed (*prosp.*) by [Companies Act 1989 \(c. 40, SIF 27\)](#), ss. 212, 213(2), 215(2), [Sch. 24](#)
- F38** Definition repealed (*prosp.*) by [Companies Act 1989 \(c. 40, SIF 27\)](#), ss. 212, 213(2), 215(2), [Sch. 24](#)
- F39** Definition of “general rules” repealed by [Insolvency Act 1985 \(c. 65, SIF 66\)](#), s. 235, [Sch. 10 Pt. II](#)
- F40** Definition in s. 744 substituted (1.3.1994) by [1993 c. 36](#), ss. 79(13), [Sch. 5 para. 4\(1\)](#); [S.I. 1994/242](#), [arts. 2, 3](#)
- F41** Definition of “insurance market activity” in s. 744 inserted (1.12.2001) by [S.I. 2001/3649](#), [arts. 1, 30\(b\)](#)
- F42** Definition repealed (*prosp.*) by [Companies Act 1989 \(c. 40, SIF 27\)](#), ss. 212, 213(2), 215(2), [Sch. 24](#)
- F43** Words repealed by [Insolvency Act 1985 \(c. 65, SIF 66\)](#), s. 235, [Sch. 10 Pt. II](#)

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- F44** Definition of “prospectus issued generally” repealed (29.4.1988 except as mentioned in S.I. 1988/740, art. 2, **Sch.**) by **Financial Services Act 1986** (c. 60, SIF 69), s. 212(3), **Sch. 17 Pt. I**
- F45** Definition of “recognised bank” repealed by **Banking Act 1987** (c. 22, SIF 10), s. 108(1)(2), Sch. 6, para. 18(8), **Sch. 7 Pt. I**
- F46** Definition of “recognised stock exchange” repealed by **Financial Services Act 1986** (c. 60, SIF 69), s. 212(3), **Sch. 17 Pt. I**
- F47** Definition of “regulated activity” in s. 744 inserted (1.12.2001) by S.I. 2001/3649, **arts. 1, 30(c)**
- F48** Definition repealed (*prosp.*) by **Companies Act 1989** (c. 40, SIF 27), ss. 212, 213(2), 215(2), **Sch. 24**

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

- C25** S. 744 applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, **Sch. 2 Pt. I**
- C26** S. 744: definition of “equity share capital” applied by **Ports Act 1991** (c. 52, SIF 58), s. 40(1)
- C27** S. 744 amended (7.6.1992) by S.I. 1992/1315, art. 10(1), **Sch. 4 para. 2.**

#### Marginal Citations

- M7** 1971 c. 80.
- M8** 1985 c. 9.
- M9** O.J. L1, 3.1.94, p. 3.
- M10** O.J. L1, 3.1.94, p. 571.
- M11** 1974 c. 39.

#### [<sup>F49</sup>744A] Index of defined expressions.

The following Table shows provisions defining or otherwise explaining expressions for the purposes of this Act generally—

|  |                                    |
|--|------------------------------------|
| accounting reference date, accounting reference period | sections 224 and 742(1)            |
| acquisition (in relation to a non-cash asset)          | section 739(2)                     |
| agent  | section 744                        |
| allotment (and related expressions)                    | section 738                        |
| annual accounts  | sections 261(2), 262(1) and 742(1) |
| annual general meeting                                 | section 366                        |
| annual return  | section 363                        |
| articles   | section 744                        |
| [ <sup>F50</sup> authorised insurance company          | section 742C]                      |
| authorised minimum                                     | section 118                        |
| balance sheet and balance sheet date                   | sections 261(2), 262(1) and 742(1) |
| bank holiday   | section 744                        |
| banking company  | [ <sup>F51</sup> section 7 42B]    |
| body corporate   | section 740                        |
| books and papers, books or papers                      | section 744                        |
| called-up share capital                                | section 737(1)                     |

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|  |                                      |
|--|--------------------------------------|
| capital redemption reserve                         | section 170(1)                       |
| [ <sup>F52</sup> “communication”                   | <sup>F52</sup> section 744]          |
| [ <sup>F53</sup> Companies Act accounts            | Sections 262(1) and 742(1)]          |
| [ <sup>F54</sup> Companies Act individual accounts | Sections 226(2), 255(4A) and 742(1)] |
| Company Acts                                       | section 744                          |
| companies charges register                         | section 397                          |
| company  | section 735(1)                       |
| the Consequential Provisions Act                   | section 744                          |
| corporation  | section 740                          |
| the court (in relation to a company)               | section 744                          |
| current assets                                     | sections 262(1) and 742(1)           |
| debenture  | section 744                          |
| director   | section 741(1)                       |
| document   | section 744                          |
| [ <sup>F55</sup> EEA State]                        | [ <sup>F55</sup> section 744]        |
| elective resolution                                | section 379A                         |
| [ <sup>F56</sup> “electronic communication”        | <sup>F56</sup> section 744]          |
| employees’ share scheme                            | section 743                          |
| equity share capital                               | section 744                          |
| existing company                                   | section 735(1)                       |
| extraordinary general meeting                      | section 368                          |
| extraordinary resolution                           | section 378(1)                       |
| financial year (of a company)                      | sections 223 and 742(1)              |
| fixed assets                                       | sections 262(1) and 742(1)           |
| floating charge (in Scotland)                      | section 462                          |
| the former Companies Acts                          | section 735(1)                       |
| the Gazette  | section 744                          |
| hire-purchase agreement                            | section 744                          |
| holding company                                    | section 736                          |
| [ <sup>F57</sup> IAS accounts                      | Sections 262(1) and 742(1)]          |
| [ <sup>F58</sup> IAS individual accounts           | Sections 226(2) and 742(1)]          |
| the Insider Dealing Act                            | section 744                          |
| the Insolvency Act                                 | section 735A(1)                      |
| insurance company                                  | [ <sup>F59</sup> section 742C]       |
| [ <sup>F60</sup> insurance market activity         | <sup>F60</sup> section 744]          |



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|   |  |
|---|--|
| the Joint Stock Companies Acts                            | section 735(3)                         |
| limited company   | section 1(2)                           |
| member (of a company)                                     | section 22                             |
| memorandum (in relation to a company)                     | section 744                            |
| non-cash asset  | section 739(1)                         |
| number (in relation to shares)                            | section 744                            |
| office copy (in relation to a court order in Scotland)    | section 743A                           |
| officer (in relation to a body corporate)                 | section 744                            |
| official seal (in relation to the registrar of companies) | section 744                            |
| oversea company   | section 744                            |
| overseas branch register                                  | section 362                            |
| paid up (and related expressions)                         | section 738                            |
| parent company and parent undertaking                     | sections 258 and 742(1)                |
| place of business   | section 744                            |
| prescribed  | section 744                            |
| private company   | section 1(3)                           |
| profit and loss account                                   | section [F61262(1) and (2)] and 742(1) |
| prospectus  | section 744                            |
| public company  | section 1(3)                           |
| realised profits or losses                                | sections 262(3) and 742(2)             |
| registered number (of a company)                          | section 705(1)                         |
| registered office (of a company)                          | section 287                            |
| registrar and registrar of companies                      | section 744                            |
| [F62regulated activity                                    | F62section 744]                        |
| resolution for reducing share capital                     | section 135(3)                         |
| shadow director   | section 741(2) and (3)                 |
| share   | section 744                            |
| share premium account                                     | section 130(1)                         |
| share warrant   | section 188                            |
| special notice (in relation to a resolution)              | section 379                            |
| special resolution  | section 378(2)                         |
| subsidiary  | section 736                            |
| subsidiary undertaking                                    | sections 258 and 742(1)                |
| transfer (in relation to a non-cash asset)                | section 739(2)                         |

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|                                  |                  |
|----------------------------------|------------------|
| [ <sup>F63</sup> treasury shares | section 162A(3)] |
| uncalled share capital           | section 737(2)   |
| undistributable reserves         | section 264(3)   |
| unlimited company                | section 1(2)     |
| unregistered company             | section 718      |
| wholly-owned subsidiary          | section 736(2)]  |

### Textual Amendments

- F49** S. 744A inserted (3.7.1995) by Companies Act 1989 (c. 40, SIF 27), ss. 145, 213(2), 215(2), **Sch. 19 para. 20**; S.I. 1995/1352, **art. 3(b)**
- F50** S. 744A: entry inserted (1.12.2001) by S.I. 2001/3649, **arts. 1, 31(a)**
- F51** S. 744A: words in entry relating to “banking company” substituted (1.12.2001) by S.I. 2001/3649, **arts. 1, 31(b)**
- F52** S. 744A: entry inserted (22.12.2000) by S.I. 2000/3373, **art. 30**
- F53** S. 744A: entry inserted (12.11.2004 with effect as mentioned in reg. 1(2) of the amending S.I.) by The Companies Act 1985 (International Accounting Standards and Other Accounting Amendments) Regulations 2004 (S.I. 2004/2947), reg. 3, **Sch. 1 para. 30(2)**
- F54** S. 744A: entry inserted (12.11.2004 with effect as mentioned in reg. 1(2) of the amending S.I.) by The Companies Act 1985 (International Accounting Standards and Other Accounting Amendments) Regulations 2004 (S.I. 2004/2947), reg. 3, **Sch. 1 para. 30(2)**
- F55** Entry in s. 744A inserted (20.10.1997) by S.I. 1997/2306, **reg. 4(3)**
- F56** S. 744A: entry inserted (22.12.2000) by S.I. 2000/3373, **art. 30**
- F57** S. 744A: entry inserted (12.11.2004 with effect as mentioned in reg. 1(2) of the amending S.I.) by The Companies Act 1985 (International Accounting Standards and Other Accounting Amendments) Regulations 2004 (S.I. 2004/2947), reg. 3, **Sch. 1 para. 30(2)**
- F58** S. 744A: entry inserted (12.11.2004 with effect as mentioned in reg. 1(2) of the amending S.I.) by The Companies Act 1985 (International Accounting Standards and Other Accounting Amendments) Regulations 2004 (S.I. 2004/2947), reg. 3, **Sch. 1 para. 30(2)**
- F59** S. 744A: words in entry relating to “insurance company” substituted (1.12.2001) by S.I. 2001/3649, **arts. 1, 31(c)**
- F60** S. 744A: entry inserted (1.12.2001) by S.I. 2001/3649, **arts. 1, 31(d)**
- F61** S. 744A: words in entry relating to “profit and loss account” substituted (12.11.2004 with effect as mentioned in reg. 1(2) of the amending S.I.) by The Companies Act 1985 (International Accounting Standards and Other Accounting Amendments) Regulations 2004 (S.I. 2004/2947), reg. 3, **Sch. 1 para. 30(3)**
- F62** S. 744A: entry inserted (1.12.2001) by S.I. 2001/3649, **arts. 1, 31(e)**
- F63** S. 744A: entry inserted (1.12.2003) by The Companies (Acquisition of Own Shares)(Treasury Shares) Regulations 2003 (S.I. 2003/1116), reg. 4, {Sch. para. 29}

### Modifications etc. (not altering text)

- C28** S. 744A applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, **Sch. 2 Pt. I**

**Status:**

Point in time view as at 23/12/2005.

**Changes to legislation:**

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