



# Companies (Consolidation) Act 1908

1908 CHAPTER 69 8 Edw 7

## PART I

CONSTITUTION AND INCORPORATION.

*Prohibition of Large Partnerships.*

**1 Prohibition of partnerships exceeding certain number.**

- (1) No company, association, or partnership consisting of more than ten persons shall be formed for the purpose of carrying on the business of banking, 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) No company, association, or partnership consisting of more than twenty persons shall be formed for the purpose of carrying on any other business that has for its object the acquisition of gain by the company, association, or partnership, or by the individual members thereof, 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, or is a company engaged in working mines within the stannaries and subject to the jurisdiction of the court exercising the stannaries jurisdiction.

*Memorandum of Association.*

**2 Mode of forming incorporated company.**

Any seven or more persons (or, where the company to be formed will be a private company within the meaning of this Act, any two or more persons) associated for any lawful purpose may, by subscribing their names to a memorandum of association and otherwise complying with the requirements of this Act in respect of registration, form an incorporated company, with or without limited liability (that is to say), either—

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- (i) A company having the liability of its members limited by the memorandum to the amount, if any, unpaid on the shares respectively held by them (in this Act termed a company limited by shares); or
- (ii) A company having the liability of its members limited by the memorandum to such amount as the members may respectively thereby undertake to contribute to the assets of the company in the event of its being wound up (in this Act termed a company limited by guarantee); or
- (iii) A company not having any limit on the liability of its members (in this Act termed an unlimited company).

### **3 Memorandum of company limited by shares.**

In the case of a company limited by shares—

- (1) The memorandum must state—
  - (i) The name of the company, with ". Limited " as the last word in its name ;
  - (ii) The part of the United Kingdom, whether England, Scotland, or Ireland, in which the registered office of the company is to be situate;
  - (iii) The objects of the company;
  - (iv) That the liability of the members is limited ;
  - (v) The amount of share capital with which the company proposes to be registered, and the division thereof into shares of a fixed amount :
- (2) No subscriber of the memorandum may take less than one share :
- (3) Each subscriber must write opposite to his name the number of shares he takes.

### **4 Memorandum of company limited by guarantee.**

In the case of a company limited by guarantee—

- (1) The memorandum must state—
  - (i) The name of the company, with "Limited " as the last word in its name ;
  - (ii) The part of the United Kingdom, whether England, Scotland, or Ireland, in which the registered office of the company is to be situate ;
  - (iii) The objects of the company ;
  - (iv) That the liability of the members is limited;
  - (v) That each member undertakes to contribute to the assets of the company in the event of its being wound up while he is a member, or within one year afterwards, for payment of the debts and liabilities of the company contracted before he ceases to be a member, and of the costs, charges, and expenses of winding up, and for adjustment of the rights of the contributories among themselves, such amount as may be required, not exceeding a specified amount.
- (2) If the company has a share capital—
  - (i) The memorandum must also state the amount of share capital with which the company proposes to be registered and the division thereof into shares of a fixed amount;
  - (ii) No subscriber of the memorandum may take less than one share ;
  - (iii) Each subscriber must write opposite to his name the number of shares he takes.

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## **5 Memorandum of unlimited company.**

In the case of an unlimited company—

- (1) The memorandum must state—
  - (i) The name of the company;
  - (ii) The part of the United Kingdom, whether England, Scotland, or Ireland, in which the registered office of the company is to be situate ;
  - (iii) The objects of the company.
- (2) If the company has a share capital—
  - (i) No subscriber of the memorandum may take less than one share ;
  - (ii) Each subscriber must write opposite to his name the number of shares he takes.

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

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

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

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

## **8 Name of company and change of name.**

- (1) A company may not be registered by a name identical with that by which a company in existence is already registered, or so nearly resembling that name as to be calculated to deceive, except where the company in existence is in the course of being dissolved and signifies its consent in such manner as the registrar requires.
- (2) If a company, through inadvertence or otherwise, is, without such consent as aforesaid, registered by a name identical with that by which a company in existence is previously registered, or so nearly resembling it as to be calculated to deceive, the first-mentioned company may, with the sanction of the registrar, change its name.
- (3) Any company may, by special resolution and with the approval of the Board of Trade signified in writing, change its name.
- (4) Where a company changes its name, the registrar, shall enter the new name on the register in place of the former name, and shall issue a certificate of incorporation altered to meet the circumstances of the case.
- (5) The change of name shall not affect any rights or obligations of the company, or render defective any legal proceedings by or against the company, and any legal proceedings that might have been continued or commenced against it by its former name may be continued or commenced against it by its new name.

## **9 Alteration of objects of company.**

- (1) Subject to the provisions of this section a company ' may, by special resolution, alter the provisions of its memorandum with respect to the objects of the company, so far as may be required to enable it—

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- (a) to carry on its business more economically or more efficiently ; or
  - (b) to attain its main purpose by new or improved means ; or
  - (c) to enlarge or change the local area of its operations ; or
  - (d) to carry on some business which under existing cir circumstances may conveniently or advantageously be combined with the business of the company ; or
  - (e) to restrict or abandon any of the objects specified in the memorandum.
- (2) The alteration shall not take effect until and except in so far as it is confirmed on petition by the court.
- (3) Before confirming the alteration the court must be satisfied—
- (a) that sufficient notice has been given to every holder of debentures of the company, and to any persons or class of persons whose interests will, in the opinion of the court, be affected by the alteration ; and
  - (b) that, with respect to every creditor who in the opinion of the court is entitled to object, and who signifies his objection in manner directed by the court, either his consent to the alteration has been obtained or his debt or claim has been discharged or has determined, or has been secured to the satisfaction of the court:

Provided that the court may, in the case of any person or class, for special reasons, dispense with the notice required by this section.

- (4) The court may make an order confirming the alteration either wholly or in part, and on such terms and conditions as it thinks fit, and may make such order as to costs as it thinks proper.
- (5) The court shall, in exercising its discretion under this section, have regard to the rights and interests of the members of the company or of any class of them, as well as to the rights and interests of the creditors, and may, if it thinks fit, adjourn the proceedings in order that an arrangement may be made to the satisfaction of the court for the purchase of the interests of dissentient members ; and may give such directions and make such orders as it may think expedient for facilitating or carrying into effect any such arrangement: Provided that no part of the capital of the company may be expended in any such purchase.
- (6) An office copy of the order confirming the alteration, together with a printed copy of the memorandum as altered, shall, within fifteen days from the date of the order, be delivered by the company to the registrar of companies, and he shall register the same, and shall certify the registration under his hand, and the certificate shall be conclusive evidence that all the requirements of this Act with respect to the alteration and the confirmation thereof have been complied with, and thenceforth the memorandum so altered shall be the memorandum of the company.

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

- (7) If a company makes default in delivering to the registrar of companies any .document required by this section to be delivered to him, the company shall be liable to a fine not exceeding ten pounds for every day during which it is in default.

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### *Articles of Association.*

#### **10 Registration of articles.**

- (1) There may, in the case of a company limited by shares, and there shall in the case of a company limited by guarantee or unlimited, be registered with the memorandum articles of association signed by the subscribers to the memorandum and prescribing regulations for the company.
- (2) Articles of Association may adopt all or any of the regulations contained in Table A. in the First Schedule to this Act.
- (3) In the case of an unlimited company or a company limited by guarantee the articles, if the company has a share capital, must state the amount of share capital with which the company proposes to be registered.
- (4) In the case of an unlimited company or a company limited by guarantee, if the company has not a share capital, the articles must state the number of members with which the company proposes to be registered, for the purpose of enabling the registrar to determine the fees payable on registration.

#### **11 Application of Table A.**

In the case of a company limited by shares and registered after the commencement of this Act, if articles are not registered, or, if articles are registered, in so far as the articles do not exclude or modify the regulations in Table A. in the First Schedule to this Act, those regulations shall, so far as applicable, be the regulations of the company in the same manner and to the same extent as if they were contained in duly registered articles.

#### **12 Form stamp and signature of articles.**

Articles must—

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

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

- (1) Subject to the provisions of this Act and to the conditions contained in its memorandum, a company may by special resolution alter or add to its articles; and any alteration or addition so made shall be as valid as if originally contained in the articles, and be subject in like manner to alteration by special resolution.
- (2) The power of altering articles under this section shall, in the case of an unlimited company formed and registered under the Joint Stock Companies Acts, extend to altering any regulations relating to the amount of capital or its distribution into shares, notwithstanding that those regulations are contained in the memorandum.

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*General Provisions.*

**14 Effect of memorandum and articles.**

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

**15 Registration of memorandum and articles.**

The memorandum and the articles (if any) shall be delivered to the registrar of companies for that part of the United Kingdom in which the registered office of the company is stated by the memorandum to be situate, and he shall retain and register them.

**16 Effect of registration.**

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

**17 Conclusiveness of certificate of incorporation.**

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

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

- (1) Every company shall send to every member, at his request, and on payment of one shilling or such less sum as the company may prescribe, a copy of the memorandum and of the articles (if any).

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- (2) If a company makes default in complying with the requirements of this section, it shall be liable for each offence to a fine not exceeding one pound.

*Associations not for Profit.*

**19 Restriction on charitable and other companies holding land.**

A company formed for the purpose of promoting art, science, religion, charity, or any other like object, not involving the acquisition of gain by the company or by its individual members, shall not, without the licence of the Board of Trade, hold more than two acres of land ; but the Board may by licence empower any such company to hold lands in such quantity, and subject to such conditions, as the Board think fit.

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

- (1) Where it is proved to the satisfaction of the Board of Trade that an association about to be formed as a limited company is to be formed for promoting commerce, art, science, religion, charity, or any other useful object, and intends to apply its profits (if any) or other income in promoting its objects, and to prohibit the payment of any dividend to its members, the Board may by licence direct that the association be registered as a company with limited liability, without the addition of the word “Limited ” to its name, and the association may be registered accordingly.
- (2) A licence by the Board of Trade under this section may be granted on such conditions and subject to such regulations as the Board think fit, and those conditions and regulations shall be binding on the association, and shall, if the Board so direct, be inserted in the memorandum and articles, or in one of those documents.
- (3) The association shall on registration enjoy all the privileges of limited companies, and be subject to all their obligations, except those of using the word “Limited” as any part of its name, and of publishing its name, and of sending lists of members and directors and managers to the registrar of companies.
- (4) A licence-under this section may at any time be revoked by the Board of Trade, and upon revocation the registrar shall enter the word “Limited ” at the end of the name of the association upon the register, and the association shall cease to enjoy the exemptions and privileges granted by this section :

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

*Companies limited by Guarantee.*

**21 Provision as to companies limited by guarantee.**

- (1) In the case of a company limited by guarantee and not having a share capital, and registered on or after the first day of January, nineteen hundred and one, every provision in the memorandum or articles or in any resolution of the company purporting to give any person a right to participate in the divisible profits of the company otherwise than as a member shall be void.

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- (2) For the purpose of the provisions of this Act relating to the memorandum of a company limited by guarantee and of this section, every provision in the memorandum or articles, or in any resolution, of any company limited by guarantee and registered on or after the first day of January, nineteen hundred and one, purporting to divide the undertaking of the company into shares or interests shall be treated as a provision for a share capital, notwithstanding that the nominal amount or number of the shares or interests is not specified thereby.