



# Companies Act 1948

1948 CHAPTER 38 11 and 12 Geo 6

## PART IV

MANAGEMENT AND ADMINISTRATION.

### *Annual Return.*

#### **124 Annual return to be made by company having a share capital.**

- (1) Every company having a share capital shall, once at least in every year, make a return containing with respect to the registered office of the company, registers of members and debenture holders, shares and debentures, indebtedness, past and present members and directors and secretary, the matters specified in Part I of the Sixth Schedule to this Act, and the said return shall be in the form set out in Part II of that Schedule or as near thereto as circumstances admit:

Provided that—

- (a) a company need not make a return under this subsection either in the year of its incorporation or, if it is not required by section one hundred and thirty-one of this Act to hold an annual general meeting during the following year, in that year;
- (b) where the company has converted any of its shares into stock and given notice of the conversion to the registrar of companies, the list referred to in paragraph 5 of Part I of the said Sixth Schedule must state the amount of stock held by each of the existing members instead of the amount of shares and the particulars relating to shares required by that paragraph ;
- (c) the return may, in any year, if the return for either of the two immediately preceding years has given as at the date of that return the full particulars required by the said paragraph 5, give only such of the particulars required by that paragraph as relate to persons ceasing to be or becoming members since the date of the last return and to shares transferred since that date or to changes as compared with that date in the amount of stock held by a member; and

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- (d) the annual return of a company made next after the expiry of paragraph (1) of regulation three of the Defence (Companies) Regulations, 1940 (under which the annual return of a company having a share capital need not contain any list of members, except in the case of a company's first annual return or of a private company), need not, if that paragraph applied to the annual return last made by the company, give the particulars required by the said paragraph 5 as to past members of the company or as to shares transferred.
- (2) In the case of a company keeping a dominion register—
- (a) references in proviso (c) to the foregoing subsection to the particulars required by the said paragraph 5 shall be taken as not including any such particulars contained in the dominion register, in so far as copies of the entries containing those particulars are not received at the registered office of the company before the date when the return in question is made; and
  - (b) where an annual return is made between the date when any entries are made in the dominion register and the date when copies of those entries are received at the registered office of the company, the particulars contained in those entries, so far as relevant to an annual return, shall be included in the next or a subsequent annual return as may be appropriate having regard to the particulars included in that return with respect to the company's register of members.
- (3) If a company fails to comply with this section, the company and every officer of the company who is in default shall be liable to a default fine.
- (4) For the purposes of this section and of Part I of the Sixth Schedule to this Act the expressions “director ” and “officer ” shall include any person in accordance with whose directions or instructions the directors of the company are accustomed to act.

## **125 Annual return to be made by company not having a share capital.**

- (1) Every company not having a share capital shall once at least in every calendar year make a return stating—
- (a) the address of the registered office of the company;
  - (b) in a case in which the register of members is, under the provisions of this Act, kept elsewhere than at that office, the address of the place where it is kept;
  - (c) in a case in which any register of holders of debentures of the company or any duplicate of any such register or part of any such register is, under the provisions of this Act, kept, in England in the case of a company registered in England or in Scotland in the case of a company registered in Scotland, elsewhere than at the registered office of the company, the address of the place where it is kept;
  - (d) all such particulars with respect to the persons who at the date of the return are the directors of the company and any person who at that date is secretary of the company as are by this Act required to be contained with respect to directors and the secretary respectively in the register, of directors and secretaries of a company:

Provided that a company need not make a return under this subsection either in the year of its incorporation or, if it is not required by section one hundred and thirty-one of this Act to hold an annual general meeting during the following year, in that year.

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- (2) There shall be annexed to the return a statement containing particulars of the total amount of the indebtedness of the company in respect of all mortgages and charges which are required (or, in the case of a company registered in Scotland, which, if the company had been registered in England, would be required) to be registered with the registrar of companies under this Act, or which would have been required so to be registered if created after the first day of July, nineteen hundred and eight. .
- (3) If a company fails to comply with this section, the company and every officer of the company who is in default shall be liable to a default fine.
- (4) For the purposes of this section the expressions “officer ” and “director ” shall include any person in accordance with whose directions or instructions the directors of the company are accustomed to act.

#### **126 Time for completion of annual return.**

- (1) The annual return must be completed within forty-two days after the annual general meeting for the year, whether or not that meeting is the first or only ordinary general meeting, or the first or only general meeting, of the company in the year, and the company must forthwith forward to the registrar of companies a copy signed both by a director and by the secretary of the company.
- (2) If a company fails to comply with this section, the company and every officer of the company who is in default shall be liable to a default fine.

For the purposes of this subsection the expression “officer ” shall include any person in accordance with whose directions or instructions the directors of the company are accustomed to act.

#### **127 Documents to be annexed to annual return.**

- (1) Subject to the provisions of this Act, there shall be annexed to the annual return—
  - (a) a written copy, certified both by a director and by the secretary of the company to be a true copy, of every balance sheet laid before the company in general meeting during the period to which the return relates (including every document required by law to be annexed to the balance sheet); and
  - (b) a copy, certified as aforesaid, of the report of the auditors on, and of the report of the directors accompanying, each such balance sheet;

and where any such balance sheet or document required by law to be annexed thereto is in a foreign language, there shall be annexed to that balance sheet a translation in English of the balance sheet or document certified in the prescribed manner to be a correct translation.

- (2) If any such balance sheet as aforesaid or document required by law to be annexed thereto did not comply with the requirements of the law as in force at the date of the audit with respect to the form of balance sheets or documents aforesaid, as the case may be, there shall be made such additions to and corrections in the copy as would have been required to be made in the balance sheet or document in order to make it comply with the said requirements, and -the fact that the copy has been so amended shall be stated thereon.
- (3) If a company fails to comply with this section, the company and every-officer of the company who is in default shall be liable to a default fine.

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For the purposes of this subsection, the expression “officer” shall include any person in accordance with whose directions or instructions the directors of the company are accustomed to act.

- (4) This section shall not apply to an assurance company which has complied with the provisions of subsection (4) of section seven of the Assurance Companies Act, 1909.

**128 Certificates to be sent by private company with annual return.**

A private company shall send with the annual return required by section one hundred and twenty-four of this Act a certificate signed both by a director and by the secretary of the company that the company has not, since the date of the last return, or, in the case of a first return, since the date of the incorporation of the company, issued any invitation to the public to subscribe for any shares or debentures of the company, and, where the annual return discloses the fact that the number of members of the company exceeds fifty, also a certificate so signed that the excess consists wholly of persons who under paragraph (b) of subsection (1) of section twenty-eight of this Act are not to be included in reckoning the number of fifty.

**129 Exemption, in certain cases, of private companies from requirements of s.127.**

- (1) A private company shall be excepted from the requirements imposed by section one hundred and twenty-seven of this Act if, but only if,—
- (a) the conditions mentioned in the next following subsection are satisfied at the date of the return and have been satisfied at all times since the commencement of this Act; and
  - (b) there is sent with the return a certificate, signed by the persons signing the certificates required to be so sent by the last foregoing section, that to the best of their knowledge and belief the said conditions are and have been satisfied as aforesaid:

Provided that if at any time it is shown that the said conditions are then satisfied in the case of any private company, the Board of Trade may on the application of the company's directors direct that, in relation to any subsequent annual returns of the company, it shall not be necessary for the said conditions to have been satisfied before that time, and the certificates sent with those returns shall in that event relate only to the period since that time.

- (2) The said conditions are—
- (a) that the conditions contained in the Seventh Schedule to this Act are satisfied as to the persons interested in the company's shares and debentures; and
  - (b) that the number of persons holding debentures of the company is not more than fifty (joint holders being treated as a single person); and
  - (c) that no body corporate is a director of the company and neither the company nor any of the directors is party or privy to any arrangement whereby the policy of the company is capable of being determined by persons other than the directors, members and debenture holders or trustees for debenture holders.
- (3) A prosecution shall not be instituted in England in respect of any failure of a private company to comply with section one hundred and twenty-seven of this Act except by or with the consent of the Board of Trade.

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- (4) Any reference in this Act to an exempt private company shall be construed as referring to a company with respect to which the conditions mentioned in subsection (2) of this section are satisfied and have been satisfied at all times since the commencement of this Act or since the giving by the Board of Trade of a direction under the proviso to subsection (1) of this section.
- (5) References in this section to the said conditions having been satisfied since the commencement of this Act shall, in relation to a company first registered after the commencement of this Act, be construed as referring to the conditions having been satisfied since the company's registration.