
STATUTORY INSTRUMENTS

1990 No. 1504

The Companies (No. 2) (Northern Ireland) Order 1990

PART IV

OTHER AMENDMENTS OF COMPANY LAW

A company's capacity and related matters

A company's capacity and the power of the directors to bind it

44.—(1) In Chapter III of Part II of the Companies Order (a company's capacity; formalities of carrying on business), for Article 45 substitute—

“A company's capacity not limited by its memorandum

45.—(1) The validity of an act done by a company shall not be called into question on the ground of lack of capacity by reason of anything in the company's memorandum.

(2) A member of a company may bring proceedings to restrain the doing of an act which but for paragraph (1) would be beyond the company's capacity; but no such proceedings shall lie in respect of an act to be done in fulfilment of a legal obligation arising from a previous act of the company.

(3) It remains the duty of the directors to observe any limitations on their powers flowing from the company's memorandum; and action by the directors which but for paragraph (1) would be beyond the company's capacity may only be ratified by the company by special resolution.

A resolution ratifying such action shall not affect any liability incurred by the directors or any other person; relief from any such liability must be agreed to separately by special resolution.

(4) The operation of this Article is restricted by Article 9A of the Charities (Northern Ireland) Order 1987 in relation to companies which are charities; and Article 330A below (invalidity of certain transactions to which directors or their associates are parties) has effect notwithstanding this Article.

Power of directors to bind the company

45A.—(1) In favour of a person dealing with a company in good faith, the power of the board of directors to bind the company, or authorise others to do so, shall be deemed to be free of any limitation under the company's constitution.

(2) For this purpose—

- (a) a person “deals with” a company if he is a party to any transaction or other act to which the company is a party;

- (b) a person shall not be regarded as acting in bad faith by reason only of his knowing that an act is beyond the powers of the directors under the company's constitution; and
 - (c) a person shall be presumed to have acted in good faith unless the contrary is proved.
- (3) The references above to limitations on the directors' powers under the company's constitution include limitations deriving—
- (a) from a resolution of the company in general meeting or a meeting of any class of shareholders, or
 - (b) from any agreement between the members of the company or of any class of shareholders.
- (4) Paragraph (1) does not affect any right of a member of the company to bring proceedings to restrain the doing of an act which is beyond the powers of the directors; but no such proceedings shall lie in respect of an act to be done in fulfilment of a legal obligation arising from a previous act of the company.
- (5) Nor does that paragraph affect any liability incurred by the directors, or any other person, by reason of the directors' exceeding their powers.
- (6) The operation of this Article is restricted by Article 9A of the Charities (Northern Ireland) Order 1987 in relation to companies which are charities; and Article 330A below (invalidity of certain transactions to which directors or their associates are parties) has effect notwithstanding this Article.

No duty to enquire as to capacity of company or authority of directors

45B. A party to a transaction with a company is not bound to enquire as to whether it is permitted by the company's memorandum or as to any limitation on the powers of the board of directors to bind the company or authorise others to do so."

(2) In Schedule 20 to the Companies Order (effect of registration of companies not formed under that Order), in paragraph 6 (general application of provisions of Order), after sub-paragraph (5) insert—

"(6) Where by virtue of sub-paragraph (4) or (5) a company does not have power to alter a provision, it does not have power to ratify acts of the directors in contravention of the provision."

(3) In Schedule 21 to the Companies Order (provisions applying to unregistered companies), in the entries relating to Part II, in the first column for "Article 45" substitute "Articles 45 to 45B".

Invalidity of certain transactions involving directors

45.—(1) In Part XI of the Companies Order (enforcement of fair dealing by directors), after Article 330 insert—

"Invalidity of certain transactions involving directors, etc.

330A.—(1) This Article applies where a company enters into a transaction to which the parties include—

- (a) a director of the company or of its holding company, or
- (b) a person connected with such a director or a company with whom such a director is associated,

and the board of directors, in connection with the transaction, exceed any limitation on their powers under the company's constitution.

(2) The transaction is voidable at the instance of the company.

(3) Whether or not it is avoided, any such party to the transaction as is mentioned in paragraph (1)(a) or (b), and any director of the company who authorised the transaction, is liable—

- (a) to account to the company for any gain which he has made directly or indirectly by the transaction, and
- (b) to indemnify the company for any loss or damage resulting from the transaction.

(4) Nothing in the above provisions shall be construed as excluding the operation of any other statutory provision or rule of law by virtue of which the transaction may be called in question or any liability to the company may arise.

(5) The transaction ceases to be voidable if—

- (a) restitution of any money or other asset which was the subject-matter of the transaction is no longer possible, or
- (b) the company is indemnified for any loss or damage resulting from the transaction, or
- (c) rights acquired bona fide for value and without actual notice of the directors' exceeding their powers by a person who is not party to the transaction would be affected by the avoidance, or
- (d) the transaction is ratified by the company in general meeting, by ordinary or special resolution or otherwise as the case may require.

(6) A person other than a director of the company is not liable under paragraph (3) if he shows that at the time the transaction was entered into he did not know that the directors were exceeding their powers.

(7) This Article does not affect the operation of Article 45A in relation to any party to the transaction not within paragraph (1)(a) or (b).

But where a transaction is voidable by virtue of this Article and valid by virtue of that Article in favour of such a person, the court may, on the application of that person or of the company, make such order affirming, severing or setting aside the transaction, on such terms, as appear to the court to be just.

(8) In this Article “transaction” includes any act; and the reference in paragraph (1) to limitations under the company’s constitution includes limitations deriving—

- (a) from a resolution of the company in general meeting or a meeting of any class of shareholders, or
- (b) from any agreement between the members of the company or of any class of shareholders.”.

(2) In Schedule 21 to the Companies Order (provisions applying to unregistered companies), in the entries relating to Part XI, insert—

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| “Article 330A. | Invalidity of certain transactions involving directors, etc. | Subject to Article 667(3).”. |
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Statement of company’s objects

46.—(1) In Chapter I of Part II of the Companies Order (company formation), after Article 14 (forms of memorandum) insert—

“Statement of company’s objects: general commercial company

14A. Where the company’s memorandum states that the object of the company is to carry on business as a general commercial company—

- (a) the object of the company is to carry on any trade or business whatsoever, and
 - (b) the company has power to do all such things as are incidental or conducive to the carrying on of any trade or business by it.”.
- (2) In the same Chapter, for Article 15 (resolution to alter objects) substitute—

“Resolution to alter objects

15.—(1) A company may by special resolution alter its memorandum with respect to the statement of the company’s objects.

(2) If an application is made under Article 16, an alteration does not have effect except in so far as it is confirmed by the court.”.

Charitable companies

47.—(1) In the Charities (Northern Ireland) Order 1987(1) for Article 9 (charitable companies) substitute—

“Charitable companies: alteration of objects clause

9.—(1) Where a charity is a company or other body corporate having power to alter the instruments establishing or regulating it as a body corporate, no exercise of that power which has the effect of the body ceasing to be a charity shall be valid so as to affect the application of—

- (a) any property acquired under any disposition or agreement previously made otherwise than for full consideration in money or money’s worth, or any property representing property so acquired,
- (b) any property representing income which has accrued before the alteration is made, or
- (c) the income from any such property as aforesaid.

(2) Where a charity is a company, any alteration by it of the objects clause in its memorandum of association is ineffective without the prior written consent of the Department; and it shall deliver a copy of that consent to the registrar of companies under Article 17(1)(a) or (b) of the Companies Order along with the printed copy of the memorandum as altered.

(3) Article 17(3) of that Order (offences) applies in relation to a default in complying with paragraph (2) as regards the delivery of a copy of the Department’s consent.

Charitable companies: invalidity of certain transactions

9A.—(1) Articles 45 and 45A of the Companies Order (capacity of company not limited by its memorandum; power of directors to bind company) do not apply to the acts of a company which is a charity except in favour of a person who—

- (a) gives full consideration in money or money’s worth in relation to the act in question, and
- (b) does not know that the act is not permitted by the company’s memorandum or, as the case may be, is beyond the powers of the directors,

or who does not know at the time the act is done that the company is a charity.

(2) However, where such a company purports to transfer or grant an interest in property, the fact that the act was not permitted by the company’s memorandum or, as the case may be, that the directors in connection with the act exceeded any limitation on their powers under

the company's constitution, does not affect the title of a person who subsequently acquires the property or any interest in it for full consideration without actual notice of any such circumstances affecting the validity of the company's act.

(3) In any proceedings arising out of paragraph (1) the burden of proving—

(a) that a person knew that an act was not permitted by the company's memorandum or was beyond the powers of the directors, or

(b) that a person knew that the company was a charity,

lies on the person making that allegation.

(4) Where a company is a charity, the ratification of an act under Article 45(3) of the Companies Order, or the ratification of a transaction to which Article 330A of that Order applies (invalidity of certain transactions to which directors or their associates are parties), is ineffective without the prior written consent of the Department.

Charitable companies: status to appear on correspondence, etc.

9B.—(1) Where a company is a charity and its name does not include the word “charity” or the word “charitable”, the fact that the company is a charity shall be stated in English in legible characters—

(a) in all business letters of the company,

(b) in all its notices and other official publications,

(c) in all bills of exchange, promissory notes, endorsements, cheques and orders for money or goods purporting to be signed by or on behalf of the company,

(d) in all conveyances purporting to be executed by the company, and

(e) in all its bills of parcels, invoices, receipts and letters of credit.

(2) In paragraph (1)(d) “conveyance” means any instrument creating, transferring, varying or extinguishing an interest in land.

(3) Article 357(2) to (4) of the Companies Order (offences in connection with failure to include required particulars in business letters, &c.) apply in relation to a contravention of paragraph (1).”.

(2) In Article 2(2) of the Charities (Northern Ireland) Order 1987(2) (definitions), at the appropriate place insert—

““company” means a company formed and registered under the Companies Order, or to which the provisions of that Order apply as they apply to such a company;

“Companies Order” means the Companies (Northern Ireland) Order 1986;”.