



Companies Act 1985

1985 CHAPTER 6

PART I

FORMATION AND REGISTRATION OF COMPANIES ; JURIDICAL STATUS AND MEMBERSHIP

CHAPTER I

COMPANY FORMATION

Memorandum of association

1 Mode of forming incorporated company

- (1) Any two or more persons associated for a 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.
- (2) A company so formed may be either—
 - (a) 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 ("a company limited by shares");
 - (b) 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 ("a company limited by guarantee"); or
 - (c) a company not having any limit on the liability of its members ("an unlimited company").
- (3) A "public company" is a company limited by shares or limited by guarantee and having a share capital, being a company—
 - (a) the memorandum of which states that it is to be a public company, and

Status: This is the original version (as it was originally enacted).

- (b) in relation to which the provisions of this Act or the former Companies Acts as to the registration or re-registration of a company as a public company have been complied with on or after 22nd December 1980;
- and a " private company " is a company that is not a public company.
- (4) With effect from 22nd December 1980, a company cannot be formed as, or become, a company limited by guarantee with a share capital.

2 Requirements with respect to memorandum

- (1) The memorandum of every company must state—
 - (a) the name of the company ;
 - (b) whether the registered office of the company is to be situated in England and Wales, or in Scotland ;
 - (c) the objects of the company.
- (2) Alternatively to subsection (1)(b), the memorandum may contain a statement that the company's registered office is to be situated in Wales; and a company whose registered office is situated in Wales may by special resolution alter its memorandum so as to provide that its registered office is to be so situated.
- (3) The memorandum of a company limited by shares or by guarantee must also state that the liability of its members is limited.
- (4) The memorandum of a company limited by guarantee must also state that each member undertakes to contribute to the assets of the company if it should be wound up while he is a member, or within one year after he ceases to be a member, 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.
- (5) In the case of a company having a share capital—
 - (a) the memorandum must also (unless it is an unlimited company) state the amount of the share capital with which the company proposes to be registered and the division of the share capital into shares of a fixed amount;
 - (b) no subscriber of the memorandum may take less than one share; and
 - (c) there must be shown in the memorandum against the name of each subscriber the number of shares he takes.
- (6) The memorandum must be signed by each subscriber in the presence of at least one witness, who must attest the signature ; and that attestation is sufficient in Scotland as well as in England and Wales.
- (7) A company may not alter the conditions contained in its memorandum except in the cases, in the mode and to the extent, for which express provision is made by this Act.

3 Forms of memorandum

- (1) Subject to the provisions of sections 1 and 2, the form of the memorandum of association of—
 - (a) a public company, being a company limited by shares,

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

- (b) a public company, being a company limited by guarantee and having a share capital,
- (c) a private company limited by shares,
- (d) a private company limited by guarantee and not having a share capital,
- (e) a private company limited by guarantee and having a share capital, and
- (f) an unlimited company having a share capital,

shall be as specified respectively for such companies by regulations made by the Secretary of State, or as near to that form as circumstances admit.

- (2) Regulations under this section shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

4 Resolution to alter objects

A company may by special resolution alter its memorandum with respect to the objects of the company, so far as may be required to enable it—

- (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 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; or
- (f) to sell or dispose of the whole or any part of the undertaking of the company ; or
- (g) to amalgamate with any other company or body of persons;

but if an application is made under the following section, the alteration does not have effect except in so far as it is confirmed by the court.

5 Procedure for objecting to alteration

- (1) Where a company's memorandum has been altered by special resolution under section 4, application may be made to the court for the alteration to be cancelled.

- (2) Such an application may be made—

- (a) by the holders of not less in the aggregate than 15 per cent, in nominal value of the company's issued share capital or any class of it or, if the company is not limited by shares, not less than 15 per cent, of the company's members; or
- (b) by the holders of not less than 15 per cent, of the company's debentures entitling the holders to object to an alteration of its objects ;

but an application shall not be made by any person who has consented to or voted in favour of the alteration.

- (3) The application must be made within 21 days after the date on which the resolution altering the company's objects was passed, and may be made on behalf of the persons entitled to make the application by such one or more of their number as they may appoint in writing for the purpose.

- (4) The court may on such an application make an order confirming the alteration either wholly or in part and on such terms and conditions as it thinks fit, and may—

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

- (a) if it thinks fit, adjourn the proceedings in order that an arrangement may be made to its satisfaction for the purchase of the interests of dissentient members, and
 - (b) give such directions and make such orders as it thinks expedient for facilitating or carrying into effect any such arrangement.
- (5) The court's order may (if the court thinks fit) provide for the purchase by the company of the shares of any members of the company, and for the reduction accordingly of its capital, and may make such alterations in the company's memorandum and articles as may be required in consequence of that provision.
- (6) If the court's order requires the company not to make any, or any specified, alteration in its memorandum or articles, the company does not then have power without the leave of the court to make any such alteration in breach of that requirement.
- (7) An alteration in the memorandum or articles of a company made by virtue of an order under this section, other than one made by resolution of the company, is of the same effect as if duly made by resolution; and this Act applies accordingly to the memorandum or articles as so altered.
- (8) The debentures entitling the holders to object to an alteration of a company's objects are any debentures secured by a floating charge which were issued or first issued before 1st December 1947 or form part of the same series as any debentures so issued; and a special resolution altering a company's objects requires the same notice to the holders of any such debentures as to members of the company. In the absence of provisions regulating the giving of notice to any such debenture holders, the provisions of the company's articles regulating the giving of notice to members apply.

6 Provisions supplementing ss. 4, 5

- (1) Where a company passes a resolution altering its objects, then—
 - (a) if with respect to the resolution no application is made under section 5, the company shall within 15 days from the end of the period for making such an application deliver to the registrar of companies a printed copy of its memorandum as altered ; and
 - (b) if such an application is made, the company shall—
 - (i) forthwith give notice (in the prescribed form) of that fact to the registrar, and
 - (ii) within 15 days from the date of any order cancelling or confirming the alteration, deliver to the registrar an office copy of the order and, in the case of an order confirming the alteration, a printed copy of the memorandum as altered.
- (2) The court may by order at any time extend the time for the delivery of documents to the registrar under subsection (1)(b) for such period as the court may think proper.
- (3) If a company makes default in giving notice or delivering any document to the registrar of companies as required by subsection (1), the company and every officer of it who is in default is liable to a fine and, for continued contravention, to a daily default fine.
- (4) The validity of an alteration of a company's memorandum with respect to the objects of the company shall not be questioned on the ground that it was not authorised by section 4, except in proceedings taken for the purpose (whether under section 5 or

otherwise) before the expiration of 21 days after the date of the resolution in that behalf.

- (5) Where such proceedings are taken otherwise than under section 5, subsections (1) to (3) above apply in relation to the proceedings as if they had been taken under that section, and as if an order declaring the alteration invalid were an order cancelling it, and as if an order dismissing the proceedings were an order confirming the alteration.

Articles of association

7 Articles prescribing regulations for companies

- (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) In the case of an unlimited company having a share capital, the articles must state the amount of share capital with which the company proposes to be registered.
- (3) Articles must—
- (a) be printed,
 - (b) be divided into paragraphs numbered consecutively, and
 - (c) be signed by each subscriber of the memorandum in the presence of at least one witness who must attest the signature (which attestation is sufficient in Scotland as well as in England and Wales).

8 Tables A, C, D and E

- (1) Table A is as prescribed by regulations made by the Secretary of State ; and a company may for its articles adopt the whole or any part of that Table.
- (2) In the case of a company limited by shares, if articles are not registered or, if articles are registered, in so far as they do not exclude or modify Table A, that Table (so far as applicable, and as in force at the date of the company's registration) constitutes the company's articles, in the same manner and to the same extent as if articles in the form of that Table had been duly registered.
- (3) If in consequence of regulations under this section Table A is altered, the alteration does not affect a company registered before the alteration takes effect, or repeal as respects that company any portion of the Table.
- (4) The form of the articles of association of—
- (a) a company limited by guarantee and not having a share capital,
 - (b) a company limited by guarantee and having a share capital, and
 - (c) an unlimited company having a share capital,
- shall be respectively in accordance with Table C, D or E prescribed by regulations made by the Secretary of State, or as near to that form as circumstances admit.
- (5) Regulations under this section shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

9 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 its articles.
- (2) Alterations so made in the articles are (subject to this Act) as valid as if originally contained in them, and are subject in like manner to alteration by special resolution.

Registration and its consequences

10 Documents to be sent to registrar

- (1) The company's memorandum and articles (if any) shall be delivered—
 - (a) to the registrar of companies for England and Wales, if the memorandum states that the registered office of the company is to be situated in England and Wales, or that it is to be situated in Wales ; and
 - (b) to the registrar of companies for Scotland, if the memorandum states that the registered office of the company is to be situated in Scotland.
- (2) With the memorandum there shall be delivered a statement in the prescribed form containing the names and requisite particulars of—
 - (a) the person who is, or the persons who are, to be the first director or directors of the company; and
 - (b) the person who is, or the persons who are, to be the first secretary or joint secretaries of the company;and the requisite particulars in each case are those set out in Schedule 1.
- (3) The statement shall be signed by or on behalf of the subscribers of the memorandum and shall contain a consent signed by each of the persons named in it as a director, as secretary or as one of joint secretaries, to act in the relevant capacity.
- (4) Where a memorandum is delivered by a person as agent for the subscribers, the statement shall specify that fact and the person's name and address.
- (5) An appointment by any articles delivered with the memorandum of a person as director or secretary of the company is void unless he is named as a director or secretary in the statement.
- (6) There shall in the statement be specified the intended situation of the company's registered office on incorporation.

11 Minimum authorised capital (public companies)

When a memorandum delivered to the registrar of companies under section 10 states that the association to be registered is to be a public company, the amount of the share capital stated in the memorandum to be that with which the company proposes to be registered must not be less than the authorised minimum (defined in section 118).

12 Duty of registrar

- (1) The registrar of companies shall not register a company's memorandum delivered under section 10 unless he is satisfied that all the requirements of this Act in respect of registration and of matters precedent and incidental to it have been complied with.

- (2) Subject to this, the registrar shall retain and register the memorandum and articles (if any) delivered to him under that section.
- (3) A statutory declaration in the prescribed form by—
 - (a) a solicitor engaged in the formation of a company, or
 - (b) a person named as a director or secretary of the company in the statement delivered under section 10(2),that those requirements have been complied with shall be delivered to the registrar of companies, and the registrar may accept such a declaration as sufficient evidence of compliance.

13 Effect of registration

- (1) On the registration of a company's memorandum, the registrar of companies shall give a certificate that the company is incorporated and, in the case of a limited company, that it is limited.
- (2) The certificate may be signed by the registrar, or authenticated by his official seal.
- (3) From the date of incorporation mentioned in the certificate, 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.
- (4) That body corporate is then capable forthwith of exercising all the functions of an incorporated company, but with such liability on the part of its members to contribute to its assets in the event of its being wound up as is provided by this Act.

This is subject, in the case of a public company, to section 117 (additional certificate as to amount of allotted share capital).
- (5) The persons named in the statement under section 10 as directors, secretary or joint secretaries are, on the company's incorporation, deemed to have been respectively appointed as its first directors, secretary or joint secretaries.
- (6) Where the registrar registers an association's memorandum which states that the association is to be a public company, the certificate of incorporation shall contain a statement that the company is a public company.
- (7) A certificate of incorporation given in respect of an association is conclusive evidence—
 - (a) that the requirements of this Act in respect of registration and of matters precedent and incidental to it have been complied with, and that the association is a company authorised to be registered, and is duly registered, under this Act, and
 - (b) if the certificate contains a statement that the company is a public company, that the company is such a company.

14 Effect of memorandum and articles

- (1) Subject to the provisions of this Act, the memorandum and articles, when registered, bind the company and its members 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 to observe all the provisions of the memorandum and of the articles.

- (2) Money payable by a member to the company under the memorandum or articles is a debt due from him to the company, and in England and Wales is of the nature of a specialty debt.

15 Memorandum and articles of company limited by guarantee

- (1) In the case of a company limited by guarantee and not having a share capital, 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, is void.
- (2) For purposes of provisions of this Act relating to the memorandum of a company limited by guarantee, and for those of section 1(4) and this section, every provision in the memorandum or articles, or in any resolution, of a company so limited purporting to divide the company's undertaking into shares or interests is to be treated as a provision for a share capital, notwithstanding that the nominal amount or number of the shares or interests is not specified by the provision.

16 Effect of alteration on company's members

- (1) A member of a company is not bound by an alteration made in the memorandum or articles after the date on which he became a member, if and so far as the alteration—
- (a) requires him to take or subscribe for more shares than the number held by him at the date on which the alteration is made; or
 - (b) in any way increases his liability as at that date to contribute to the company's share capital or otherwise to pay money to the company.
- (2) Subsection (1) operates notwithstanding anything in the memorandum or articles; but it does not apply in a case where the member agrees in writing, either before or after the alteration is made, to be bound by the alteration.

17 Conditions in memorandum which could have been in articles

- (1) A condition contained in a company's memorandum which could lawfully have been contained in articles of association instead of in the memorandum may be altered by the company by special resolution ; but if an application is made to the court for the alteration to be cancelled, the alteration does not have effect except in so far as it is confirmed by the court.
- (2) This section—
- (a) is subject to section 16, and also to Part XVII (court order protecting minority), and
 - (b) does not apply where the memorandum itself provides for or prohibits the alteration of all or any of the conditions above referred to, and does not authorise any variation or abrogation of the special rights of any class of members.
- (3) Section 5 (except subsections (2)(b) and (8)) and section 6(1) to (3) apply in relation to any alteration and to any application made under this section as they apply in relation to alterations and applications under sections 4 to 6.

18 Amendments of memorandum or articles to be registered

- (1) Where an alteration is made in a company's memorandum or articles by any statutory provision, whether contained in an Act of Parliament or in an instrument made under an Act, a printed copy of the Act or instrument shall, not later than 15 days after that provision comes into force, be forwarded to the registrar of companies and recorded by him.
- (2) Where a company is required (by this section or otherwise) to send to the registrar any document making or evidencing an alteration in the company's memorandum or articles (other than a special resolution under section 4), the company shall send with it a printed copy of the memorandum or articles as altered.
- (3) If a company fails to comply with this section, the company and any officer of it who is in default is liable to a fine and, for continued contravention, to a daily default fine.

19 Copies of memorandum and articles to be given to members

- (1) A company shall, on being so required by any member, send to him a copy of the memorandum and of the articles (if any), and a copy of any Act of Parliament which alters the memorandum, subject to payment—
 - (a) in the case of a copy of the memorandum and of the articles, of 5 pence or such less sum as the company may prescribe, and
 - (b) in the case of a copy of an Act, of such sum not exceeding its published price as the company may require.
- (2) If a company makes default in complying with this section, the company and every officer of it who is in default is liable for each offence to a fine.

20 Issued copy of memorandum to embody alterations

- (1) Where an alteration is made in a company's memorandum, every copy of the memorandum issued after the date of the alteration shall be in accordance with the alteration.
- (2) If, where any such alteration has been made, the company at any time after the date of the alteration issues any copies of the memorandum which are not in accordance with the alteration, it is liable to a fine, and so too is every officer of the company who is in default.

21 Registered documentation of Welsh companies

- (1) Where a company is to be registered with a memorandum stating that its registered office is to be situated in Wales, the memorandum and articles to be delivered for registration under section 10 may be in Welsh; but, if they are, they shall be accompanied by a certified translation into English.
- (2) Where a company whose registered office is situated in Wales has altered its memorandum as allowed by section 2(2), it may deliver to the registrar of companies for registration a certified translation into Welsh of its memorandum and articles.
- (3) A company whose memorandum states that its registered office is to be situated in Wales may comply with any provision of this Act requiring it to deliver any document to the registrar of companies by delivering to him that document in Welsh (or, if it

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

consists of a prescribed form, completed in Welsh), together with a certified translation into English.

But any document making or evidencing an alteration in the company's memorandum or articles, and any copy of a company's memorandum or articles as altered, shall be in the same language as the memorandum and articles originally registered and, if that language is Welsh, shall be accompanied by a certified translation into English.

- (4) Where a company has under subsection (2) delivered a translation into Welsh of its memorandum and articles, it may, when delivering to the registrar of companies a document making or evidencing an alteration in the memorandum or articles or a copy of the memorandum or articles as altered, deliver with it a certified translation into Welsh.
- (5) In this section " certified translation " means a translation certified in the prescribed manner to be a correct translation ; and a reference to delivering a document includes sending, forwarding, producing or (in the case of a notice) giving it.

A company's membership

22 Definition of " member "

- (1) The subscribers of a company's memorandum are deemed to have agreed to become members of the company, and on its registration shall be entered as such in its register of members.
- (2) Every other person who agrees to become a member of a company, and whose name is entered in its register of members, is a member of the company.

23 Membership of holding company

- (1) Except in the cases mentioned below in this section, a body corporate cannot be a member of a company which is its holding company ; and any allotment or transfer of shares in a company to its subsidiary is void.
- (2) This does not prevent a subsidiary which was, on 1st July 1948, a member of its holding company, from continuing to be a member; but (subject to subsection (4)) the subsidiary has no right to vote at meetings of the holding company or any class of its members.
- (3) Subject as follows, subsections (1) and (2) apply in relation to a nominee for a body corporate which is a subsidiary, as if references to such a body corporate included a nominee for it.
- (4) Nothing in this section applies where the subsidiary is concerned as personal representative, or where it is concerned as trustee, unless the holding company or a subsidiary of it is beneficially interested under the trust and is not so interested only by way of security for the purposes of a transaction entered into by it in the ordinary course of a business which includes the lending of money.

Schedule 2 has effect for the interpretation of the reference in this subsection to a company or its subsidiary being beneficially interested.

- (5) In relation to a company limited by guarantee or unlimited which is a holding company, the reference in subsection (1) to shares (whether or not the company has a share capital) includes the interest of its members as such, whatever the form of that interest

24 Minimum membership for carrying on business

If a company carries on business without having at least two members and does so for more than 6 months, a person who, for the whole or any part of the period that it so carries on business after those 6 months—

- (a) is a member of the company, and
- (b) knows that it is carrying on business with only one member,

is liable (jointly and severally with the company) for the payment of the company's debts contracted during the period or, as the case may be, that part of it.