



Companies Act 1985

1985 CHAPTER 6

PART I

FORMATION AND REGISTRATION OF COMPANIES ; JURIDICAL STATUS AND MEMBERSHIP

CHAPTER III

A COMPANY'S CAPACITY ; FORMALITIES OF CARRYING ON BUSINESS

35 Company's capacity: power of directors to bind it

- (1) In favour of a person dealing with a company in good faith, any transaction decided on by the directors is deemed to be one which it is within the capacity of the company to enter into, and the power of the directors to bind the company is deemed to be free of any limitation under the memorandum or articles.
- (2) A party to a transaction so decided on is not bound to enquire as to the capacity of the company to enter into it or as to any such limitation on the powers of the directors, and is presumed to have acted in good faith unless the contrary is proved.

36 Form of company contracts

- (1) Contracts on behalf of a company may be made as follows—
 - (a) a contract which if made between private persons would be by law required to be in writing, and if made according to the law of England and Wales to be under seal, may be made on behalf of the company in writing under the company's common seal;
 - (b) a contract which if made between private persons would be by law required to be in writing, signed by the parties to be charged therewith, may be made on behalf of the company in writing signed by any person acting under its authority, express or implied;
 - (c) a contract which if made between private persons would by law be valid although made by parol only, and not reduced into writing, may be made

by parol on behalf of the company by any person acting under its authority, express or implied.

- (2) A contract made according to this section—
- (a) is effectual in law, and binds the company and its successors and all other parties to it;
 - (b) may be varied or discharged in the same manner in which it is authorised by this section to be made.
- (3) A deed to which a company is a party is held to be validly executed according to the law of Scotland on behalf of the company if it is executed in accordance with this Act or is sealed with the company's common seal and subscribed on behalf of the company by two of the directors, or by a director and the secretary; and such subscription on behalf of the company is binding whether attested by witnesses or not
- (4) Where a contract purports to be made by a company, or by a person as agent for a company, at a time when the company has not been formed, then subject to any agreement to the contrary the contract has effect as one entered into by the person purporting to act for the company or as agent for it, and he is personally liable on the contract accordingly.

37 Bills of exchange and promissory notes

A bill of exchange or promissory note is deemed to have been made, accepted or endorsed on behalf of a company if made, accepted or endorsed in the name of, or by or on behalf or on account of, the company by a person acting under its authority.

38 Execution of deeds abroad

- (1) A company may, by writing under its common seal, empower any person, either generally or in respect of any specified matters, as its attorney, to execute deeds on its behalf in any place elsewhere than in the United Kingdom.
- (2) A deed signed by such an attorney on behalf of the company and under his seal binds the company and has the same effect as if it were under the company's common seal.

39 Power of company to have official seal for use abroad

- (1) A company whose objects require or comprise the transaction of business in foreign countries may, if authorised by its articles, have for use in any territory, district or place elsewhere than in the United Kingdom, an official seal, which shall be a facsimile of the common seal of the company, with the addition on its face of the name of every territory, district or place where it is to be used.
- (2) A deed or other document to which the official seal is duly affixed binds the company as if it had been sealed with the company's common seal.
- (3) A company having an official seal for use in any such territory, district or place may, by writing under its common seal, authorise any person appointed for the purpose in that territory, district or place to affix the official seal to any deed or other document to which the company is party in that territory, district or place.
- (4) As between the company and a person dealing with such an agent, the agent's authority continues during the period (if any) mentioned in the instrument conferring the

authority, or if no period is there mentioned, then until notice of the revocation or determination of the agent's authority has been given to the person dealing with him.

- (5) The person affixing the official seal shall certify in writing on the deed or other instrument to which the seal is affixed the date on which and the place at which it is affixed.

40 Official seal for share certificates, etc.

A company may have, for use for sealing securities issued by the company and for sealing documents creating or evidencing securities so issued, an official seal which is a facsimile of the company's common seal with the addition on its face of the word " Securities ".

41 Authentication of documents

A document or proceeding requiring authentication by a company may be signed by a director, secretary or other authorised officer of the company, and need not be under the company's common seal.

42 Events affecting a company's status

- (1) A company is not entitled to rely against other persons on the happening of any of the following events—
- (a) the making of a winding-up order in respect of the company, or the appointment of a liquidator in a voluntary winding up of the company, or
 - (b) any alteration of the company's memorandum or articles, or
 - (c) any change among the company's directors, or
 - (d) (as regards service of any document on the company) any change in the situation of the company's registered office,

if the event had not been officially notified at the material time and is not shown by the company to have been known at that time to the person concerned, or if the material time fell on or before the 15th day after the date of official notification (or, where the 15th day was a non-business day, on or before the next day that was not) and it is shown that the person concerned was unavoidably prevented from knowing of the event at that time.

- (2) In subsection (1)—
- (a) " official notification " and " officially notified " have the meanings given by section 711(2) (registrar of companies to give public notice of the issue or receipt by him of certain documents), and
 - (b) " non-business day " means a Saturday or Sunday, Christmas Day, Good Friday and any other day which is a bank holiday in the part of Great Britain where the company is registered.