



# Companies Act 1985

## 1985 CHAPTER 6

### PART XXVI

#### INTERPRETATION

#### **735 " Company ", etc.**

(1) In this Act—

- (a) "company" means a company formed and registered under this Act, or an existing company;
- (b) "existing company" means a company formed and registered under the former Companies Acts, but does not include a company registered under the Joint Stock Companies Acts, the Companies Act 1862 or the Companies (Consolidation) Act 1908 in what was then Ireland ;
- (c) "the former Companies Acts" means the Joint Stock Companies Acts, the Companies Act 1862, the Companies (Consolidation) Act 1908, the Companies Act 1929 and the Companies Acts 1948 to 1983.

(2) "Public company" and "private company" have the meanings given by section 1(3).

(3) "The Joint Stock Companies Acts" means the Joint Stock Companies Act 1856, the Joint Stock Companies Acts 1856, 1857, the Joint Stock Banking Companies Act 1857 and the Act to enable Joint Stock Banking Companies to be formed on the principle of limited liability, or any one or more of those Acts (as the case may require), but does not include the Joint Stock Companies Act 1844.

(4) The definitions in this section apply unless the contrary intention appears.

#### **736 " Holding company ", " subsidiary " and " wholly-owned subsidiary "**

(1) For the purposes of this Act, a company is deemed to be a subsidiary of another if (but only if)—

- (a) that other either—

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- (i) is a member of it and controls the composition of its board of directors,  
or
  - (ii) holds more than half in nominal value of its equity share capital, or
- (b) the first-mentioned company is a subsidiary of any company which is that other's subsidiary.

The above is subject to subsection (4) below in this section.

- (2) For purposes of subsection (1), the composition of a company's board of directors is deemed to be controlled by another company if (but only if) that other company by the exercise of some power exercisable by it without the consent or concurrence of any other person can appoint or remove the holders of all or a majority of the directorships.
- (3) For purposes of this last provision, the other company is deemed to have power to appoint to a directorship with respect to which any of the following conditions is satisfied—
- (a) that a person cannot be appointed to it without the exercise in his favour by the other company of such a power as is mentioned above, or
  - (b) that a person's appointment to the directorship follows necessarily from his "appointment as director of the other company, or
  - (c) that the directorship is held by the other company itself or by a subsidiary of it.
- (4) In determining whether one company is a subsidiary of another—
- (a) any shares held or power exercisable by the other in a fiduciary capacity are to be treated as not held or exercisable by it,
  - (b) subject to the two following paragraphs, any shares held or power exercisable—
    - (i) by any person as nominee for the other (except where the other is concerned only in a fiduciary capacity), or
    - (ii) by, or by a nominee for, a subsidiary of the other (not being a subsidiary which is concerned only in a fiduciary capacity),are to be treated as held or exercisable by the other,
  - (c) any shares held or power exercisable by any person by virtue of the provisions of any debentures of the first-mentioned company or of a trust deed for securing any issue of such debentures are to be disregarded,
  - (d) any shares held or power exercisable by, or by a nominee for, the other or its subsidiary (not being held or exercisable as mentioned in paragraph (c)) are to be treated as not held or exercisable by the other if the ordinary business of the other or its subsidiary (as the case may be) includes the lending of money and the shares are held or the power is exercisable as above mentioned by way of security only for the purposes of a transaction entered into in the ordinary course of that business.
- (5) For purposes of this Act—
- (a) a company is deemed to be another's holding company if (but only if) the other is its subsidiary, and
  - (b) a body corporate is deemed the wholly-owned subsidiary of another if it has no members except that other and that other's wholly-owned subsidiaries and its or their nominees.
- (6) In this section " company " includes any body corporate.

**737 " Called-up share capital "**

- (1) In this Act, " called-up share capital", in relation to a company, means so much of its share capital as equals the aggregate amount of the calls made on its shares (whether or not those calls have been paid), together with any share capital paid up without being called and any share capital to be paid on a specified future date under the articles, the terms of allotment of the relevant shares or any other arrangements for payment of those shares.
- (2) " Uncalled share capital " is to be construed accordingly.
- (3) The definitions in this section apply unless the contrary intention appears.

**738 " Allotment " and " paid up "**

- (1) In relation to an allotment of shares in a company, the shares are to be taken for the purposes of this Act to be allotted when a person acquires the unconditional right to be included in the company's register of members in respect of those shares.
- (2) For purposes of this Act, a share in a company is deemed paid up (as to its nominal value or any premium on it) in cash, or allotted for cash, if the consideration for the allotment or payment up is cash received by the company, or is a cheque received by it in good faith which the directors have no reason for suspecting will not be paid, or is a release of a liability of the company for a liquidated sum, or is an undertaking to pay cash to the company at a future date.
- (3) In relation to the allotment or payment up of any shares in a company, references in this Act (except sections 89 to 94) to consideration other than cash and to the payment up of shares and premiums on shares otherwise than in cash include the payment of, or any undertaking to pay, cash to any person other than the company.
- (4) For the purpose of determining whether a share is or is to be allotted for cash, or paid up in cash, " cash" includes foreign currency.

**739 " Non-cash asset "**

- (1) In this Act "non-cash asset" means any property or interest in property other than cash; and for this purpose " cash " includes foreign currency.
- (2) A reference to the transfer or acquisition of a non-cash asset includes the creation or extinction of an estate or interest in, or a right over, any property and also the discharge of any person's liability, other than a liability for a liquidated sum.

**740 " Body corporate " and " corporation "**

References in this Act to a body corporate or to a corporation do not include a corporation sole, but include a company incorporated elsewhere than in Great Britain.

Such references to a body corporate do not include a Scottish firm.

**741 " Director " and " shadow director "**

- (1) In this Act, \*' director " includes any person occupying the position of director, by whatever name called.

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- (2) In relation to a company, "shadow director" means a person in accordance with whose directions or instructions the directors of the company are accustomed to act.

However, a person is not deemed a shadow director by reason only that the directors act on advice given by him in a professional capacity.

- (3) For the purposes of the following provisions of this Act, namely—  
 section 309 (directors' duty to have regard to interests of employees),  
 section 319 (directors' long-term contracts of employment),  
 sections 320 to 322 (substantial property transactions involving directors), and  
 sections 330 to 346 (general restrictions on power of companies to make loans, etc., to directors and others connected with them),  
 (being provisions under which shadow directors are treated as directors), a body corporate is not to be treated as a shadow director of any of its subsidiary companies by reason only that the directors of the subsidiary are accustomed to act in accordance with its directions or instructions.

#### **742 Expressions used in connection with accounts**

- (1) In this Act, unless the contrary intention appears—
- (a) "accounting reference period" has the meaning given by sections 224 to 226 ;
  - (b) "accounts" includes a company's group accounts (within the meaning of section 229), whether prepared in the form of accounts or not;
  - (c) "balance sheet date", in relation to a balance sheet, means the date as at which the balance sheet was prepared;
  - (d) "financial year"—
    - (i) in relation to a body corporate to which Part VII applies, means a period in respect of which a profit and loss account under section 227 in that Part is made up, and
    - (ii) in relation to any other body corporate, means a period in respect of which a profit and loss account of the body laid before it in general meeting is made up,
 (whether, in either case, that period is a year or not);
  - (e) any reference to a profit and loss account, in the case of a company not trading for profit, is to its income and expenditure account, and references to profit or loss and, if the company has subsidiaries, references to a consolidated profit and loss account are to be construed accordingly.
- (2) Except in relation to special category accounts, any reference to a balance sheet or profit and loss account includes any notes to the account in question giving information which is required by any provision of this Act, and required or allowed by any such provision to be given in a note to company accounts.
- (3) In relation to special category accounts, any reference to a balance sheet or profit and loss account includes any notes thereon or document annexed thereto giving information which is required by this Act and is thereby allowed to be so given.
- (4) References to special category companies and special category accounts are to be construed in accordance with Chapter II of Part VII.
- (5) For the purposes of Part VII, a body corporate is to be regarded as publishing any balance sheet or other account if it publishes, issues or circulates it or otherwise makes

it available for public inspection in a manner calculated to invite members of the public generally, or any class of members of the public, to read it.

- (6) Expressions which, when used in Schedule 4, fall to be construed in accordance with any provision of Part VII of that Schedule have the same meaning (unless the contrary intention appears) when used in any provision of this Act.

#### **743 " Employees' share scheme "**

For purposes of this Act, an employees' share scheme is a scheme for encouraging or facilitating the holding of shares or debentures in a company by or for the benefit of—

- (a) the bona fide employees or former employees of the company, the company's subsidiary or holding company or a subsidiary of the company's holding company, or
- (b) the wives, husbands, widows, widowers or children or step-children under the age of 18 of such employees or former employees.

#### **744 Expressions used generally in this Act**

In this Act, unless the contrary intention appears, the following definitions apply—

" agent " does not include a person's counsel acting as such;

" annual return " means the return to be made by a company under section 363 or 364 (as the case may be);

" articles " means, in relation to a company, its articles of association, as originally framed or as altered by resolution, including (so far as applicable to the company) regulations contained in or annexed to any enactment relating to companies passed before this Act, as altered by or under any such enactment;

" authorised minimum " has the meaning given by section 118;

" bank holiday " means a holiday under the Banking and Financial Dealings Act 1971 ;

" books and papers " and " books or papers " include accounts, deeds, writings and documents ;

" the Companies Acts " means this Act, the Insider Dealing Act and the Consequential Provisions Act;

" the Consequential Provisions Act " means the Companies Consolidation (Consequential Provisions) Act 1985 ;

" the court ", in relation to a company, means the court having jurisdiction to wind up the company;

" debenture " includes debenture stock, bonds and any other securities of a company, whether constituting a charge on the assets of the company or not;

" document " includes summons, notice, order, and other legal process, and registers;

" equity share capital " means, in relation to a company, its issued share capital excluding any part of that capital which, neither as respects dividends nor as respects capital, carries any right to participate beyond a specified amount in a distribution ;

" expert " has the meaning given by section 62 ;

" floating charge " includes a floating charge within the meaning given by section 462 ;

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" the Gazette " means, as respects companies registered in England and Wales, the London Gazette and, as respects companies registered in Scotland, the Edinburgh Gazette;

" general rules " means general rules made under section 663, and includes forms;

" hire-purchase agreement" has the same meaning as in the Consumer Credit Act 1974 ;

" the Insider Dealing Act" means the Company Securities (Insider Dealing) Act 1985 ;

" insurance company " means the same as in the Insurance Companies Act 1982;

"joint stock company " has the meaning given by section 683;

" memorandum", in relation to a company, means its memorandum of association, as originally framed or as altered in pursuance of any enactment;

" number ", in relation to shares, includes amount, where the context admits of the reference to shares being construed to include stock;

" officer ", in relation to a body corporate, includes a director, manager or secretary;

" official seal", in relation to the registrar of companies, means a seal prepared under section 704(4) for the authentication of documents required for or in connection with the registration of companies;

" oversea company " means—

- (a) a company incorporated elsewhere than in Great Britain which, after the commencement of this Act, establishes a place of business in Great Britain, and
- (b) a company so incorporated which has, before that commencement, established a place of business and continues to have an established place of business in Great Britain at that commencement;

" place of business" includes a share transfer or share registration office;

" prescribed " means—

- (a) as respects provisions of this Act relating to winding up, prescribed by general rules under section 663, and
- (b) otherwise, prescribed by statutory instrument made by the Secretary of State ;

" prospectus" means any prospectus, notice, circular, advertisement, or other invitation, offering to the public for subscription or purchase any shares in or debentures of a company;

" prospectus issued generally " means a prospectus issued to persons who are not existing members of the company or holders of its debentures ;

" recognised bank " means a company which is recognised as a bank for the purposes of the Banking Act 1979;

" recognised stock exchange " means any body of persons which is for the time being a recognised stock exchange for the purposes of the Prevention of Fraud (Investments) Act 1958;

" the registrar of companies " and " the registrar" mean the registrar or other officer performing under this Act the duty of registration of companies in England and Wales or in Scotland, as the case may require;

" share " means share in the share capital of a company, and includes stock (except where a distinction between shares and stock is express or implied); and

" undistributable reserves" has the meaning given by section 264(3).