



Companies Act 1989

1989 CHAPTER 40

PART V

OTHER AMENDMENTS OF COMPANY LAW

A company's capacity and related matters

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

- (1) In Chapter III of Part I of the Companies Act 1985 (a company's capacity; formalities of carrying on business), for section 35 substitute—

“35 A company's capacity not limited by its memorandum

- (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 subsection (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 subsection (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 section is restricted by section 30B(1) of the Charities Act 1960 and section 112(3) of the Companies Act 1989 in relation to companies which are charities; and section 322A below (invalidity of certain

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transactions to which directors or their associates are parties) has effect notwithstanding this section.

35A Power of directors to bind the company

- (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) Subsection (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 subsection affect any liability incurred by the directors, or any other person, by reason of the directors' exceeding their powers.
- (6) The operation of this section is restricted by section 30B(1) of the Charities Act 1960 and section 112(3) of the Companies Act 1989 in relation to companies which are charities; and section 322A below (invalidity of certain transactions to which directors or their associates are parties) has effect notwithstanding this section.

35B No duty to enquire as to capacity of company or authority of directors

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 21 to the Companies Act 1985 (effect of registration of companies not formed under that Act), in paragraph 6 (general application of provisions of Act), 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 22 to the Companies Act 1985 (provisions applying to unregistered companies), in the entries relating to Part I, in the first column for “section 35” substitute “sections 35 to 35B”.

109 Invalidity of certain transactions involving directors

- (1) In Part X of the Companies Act 1985 (enforcement of fair dealing by directors), after section 322 insert—

“322A Invalidity of certain transactions involving directors, etc

- (1) This section 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 subsection (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 enactment 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 subsection (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 section does not affect the operation of section 35A in relation to any party to the transaction not within subsection (1)(a) or (b).

But where a transaction is voidable by virtue of this section and valid by virtue of that section in favour of such a person, the court may, on the application of

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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 section “transaction” includes any act; and the reference in subsection (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 22 to the Companies Act 1985 (provisions applying to unregistered companies), in the entries relating to Part X, insert—

“section 322A	Invalidity of certain transactions involving directors, etc.	Subject to section 718(3).”
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110 Statement of company’s objects

In Chapter I of Part I of the Companies Act 1985 (company formation), after section 3 (forms of memorandum) insert—

“3A Statement of company’s objects: general commercial company

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 section 4 (resolution to alter objects) substitute—

“4 Resolution to alter objects

- (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 the following section, an alteration does not have effect except in so far as it is confirmed by the court.”.

111 Charitable companies

(1) In the Charities Act 1960, for section 30 (charitable companies) substitute—

“30 Charitable companies: winding up

Where a charity may be wound up by the High Court under the Insolvency Act 1986, a petition for it to be wound up under that Act by any court in England or Wales having jurisdiction may be presented by the Attorney General, as well as by any person authorised by that Act.

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30A Charitable companies: alteration of objects clause

- (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 Commissioners; and it shall deliver a copy of that consent to the registrar of companies under section 6(1)(a) or (b) of the Companies Act 1985 along with the printed copy of the memorandum as altered.
- (3) Section 6(3) of that Act (offences) applies in relation to a default in complying with subsection (2) as regards the delivery of a copy of the Commissioners' consent.

30B Charitable companies: invalidity of certain transactions

- (1) Sections 35 and 35A of the Companies Act 1985 (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 subsection (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 section 35(3) of the Companies Act 1985, or the ratification of a transaction to which

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section 322A of that Act applies (invalidity of certain transactions to which directors or their associates are parties), is ineffective without the prior written consent of the Commissioners.

30C Charitable companies: status to appear on correspondence, etc

- (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 subsection (1)(d) “conveyance” means any instrument creating, transferring, varying or extinguishing an interest in land.
- (3) Section 349(2) to (4) of the Companies Act 1985 (offences in connection with failure to include required particulars in business letters, &c.) apply in relation to a contravention of subsection (1) above.”.

- (2) In section 46 of the Charities Act 1960 (definitions), at the appropriate place insert—

““company” means a company formed and registered under the Companies Act 1985, or to which the provisions of that Act apply as they apply to such a company;”

112 Charitable companies (Scotland)

- (1) In the following provisions (which extend to Scotland only)—
 - (a) “company” means a company formed and registered under the Companies Act 1985, or to which the provisions of that Act apply as they apply to such a company; and
 - (b) “charity” means a body established for charitable purposes only (that expression having the same meaning as in the Income Tax Acts).
- (2) 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 by virtue of any transfer, contract or obligation previously effected 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.
- (3) Sections 35 and 35A of the Companies Act 1985 (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—

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- (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.
- (4) 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.
- (5) In any proceedings arising out of subsection (3) 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.
- (6) 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.
- (7) In subsection (6)(d) "conveyance" means any document for the creation, transfer, variation or extinction of an interest in land.
- (8) Section 349(2) to (4) of the Companies Act 1985 (offences in connection with failure to include required particulars in business letters, &c.) apply in relation to a contravention of subsection (6) above.