

*These notes refer to the Companies Act 2006 (c.46)  
which received Royal Assent on 8 November 2006*

# COMPANIES ACT 2006

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## EXPLANATORY NOTES

### TERRITORIAL EXTENT AND DEVOLUTION

#### **Part 4: a Company's Capacity and Related Matters**

##### *Section 40: Power of directors to bind the company*

125. This section provides safeguards for a person dealing with a company in good faith and restates section 35A and 35B of the 1985 Act. The power of the directors to bind the company, or authorise others to do so, is deemed not to be constrained by the company's constitution. This means that a third party dealing with a company in good faith need not concern itself about whether a company is acting within its constitution.
126. *Subsection (2)(b)(i)* of the section replaces part of section 35B of the 1985 Act: an external party is not bound to enquire whether there are any limitations on the power of the directors. The first limb of section 35B (which refers to the memorandum) has not been carried forward. This is concerned with restrictions in a company's constitution that limit a company's ability to act and consequently the powers of the directors to bind the company (the so called "ultra vires rule"). Under the Act, the objects no longer affect the company's capacity to act and so this limb is not necessary.