



# Companies Act 2006

## 2006 CHAPTER 46

### PART 2

#### COMPANY FORMATION

##### Annotations:

##### Modifications etc. (not altering text)

- C1** Pts. 1-39 (except for Pt. 7 and ss. 662-669), 45-47 extended (12.5.2011) by [The Companies Act 2006 \(Consequential Amendments and Transitional Provisions\) Order 2011 \(S.I. 2011/1265\)](#), art. 5(1), [Sch. 1 para. 2](#)

#### *General*

### **7 Method of forming company**

- (1) A company is formed under this Act by one or more persons—
  - (a) subscribing their names to a memorandum of association (see section 8), and
  - (b) complying with the requirements of this Act as to registration (see sections 9 to 13).
- (2) A company may not be so formed for an unlawful purpose.

### **8 Memorandum of association**

- (1) A memorandum of association is a memorandum stating that the subscribers—
  - (a) wish to form a company under this Act, and
  - (b) agree to become members of the company and, in the case of a company that is to have a share capital, to take at least one share each.
- (2) The memorandum must be in the prescribed form and must be authenticated by each subscriber.

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#### Annotations:

#### Commencement Information

- II** S. 8 wholly in force at 1.10.2009; s. 8 not in force at Royal Assent, see s. 1300; s. 8 in force for specified purposes at 20.1.2007 by S.I. 2006/3428, **art. 3(3)** (subject to **art. 5, Sch. 1** and with **arts. 6, 8, Sch. 5**); s. 8 in force at 1.10.2009 in so far as not already in force by S.I. 2008/2860, **art. 3(b)** (with **arts. 5, 7, 8, Sch. 2**) (as amended by S.I. 2009/1802, **art. 18**)

### *Requirements for registration*

## 9 Registration documents

- (1) The memorandum of association must be delivered to the registrar together with an application for registration of the company, the documents required by this section and a statement of compliance.
  - (2) The application for registration must state—
    - (a) the company's proposed name,
    - (b) whether the company's registered office is to be situated in England and Wales (or in Wales), in Scotland or in Northern Ireland,
    - (c) whether the liability of the members of the company is to be limited, and if so whether it is to be limited by shares or by guarantee, and
    - (d) whether the company is to be a private or a public company.
  - (3) If the application is delivered by a person as agent for the subscribers to the memorandum of association, it must state his name and address.
  - (4) The application must contain—
    - (a) in the case of a company that is to have a share capital, a statement of capital and initial shareholdings (see section 10);
    - (b) in the case of a company that is to be limited by guarantee, a statement of guarantee (see section 11);
    - (c) a statement of the company's proposed officers (see section 12)<sup>[F1]</sup>;
    - (d) a statement of initial significant control (see section 12A).]
  - (5) The application must also contain—
    - (a) a statement of the intended address of the company's registered office; <sup>F2</sup>...
    - (b) a copy of any proposed articles of association (to the extent that these are not supplied by the default application of model articles: see section 20)<sup>[F3]</sup>; and
    - (c) a statement of the type of company it is to be and its intended principal business activities.]
- <sup>[F4]</sup>(5A) The information as to the company's type must be given by reference to the classification scheme prescribed for the purposes of this section.
- (5B) The information as to the company's intended principal business activities may be given by reference to one or more categories of any prescribed system of classifying business activities.]
- (6) The application must be delivered—

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- (a) to the registrar of companies for England and Wales, if the registered office of the company is to be situated in England and Wales (or in Wales);
- (b) to the registrar of companies for Scotland, if the registered office of the company is to be situated in Scotland;
- (c) to the registrar of companies for Northern Ireland, if the registered office of the company is to be situated in Northern Ireland.

**Annotations:**

**Amendments (Textual)**

- F1** S. 9(4)(d) inserted (26.5.2015 for specified purposes, 30.6.2016 in so far as not already in force) by [Small Business, Enterprise and Employment Act 2015 \(c. 26\)](#), s. 164(1), [Sch. 3 para. 4](#); S.I. 2015/1329, reg. 3(a); S.I. 2015/2029, reg. 5(b)
- F2** Word in s. 9(5) omitted (30.6.2016) by virtue of [Small Business, Enterprise and Employment Act 2015 \(c. 26\)](#), [ss. 93\(2\)\(a\)](#), 164(1); S.I. 2016/321, reg. 6(b)
- F3** S. 9(5)(c) and word inserted (30.6.2016) by [Small Business, Enterprise and Employment Act 2015 \(c. 26\)](#), [ss. 93\(2\)\(b\)](#), 164(1); S.I. 2016/321, reg. 6(b)
- F4** S. 9(5A)(5B) inserted (1.1.2016 for specified purposes, 30.6.2016 in so far as not already in force) by [Small Business, Enterprise and Employment Act 2015 \(c. 26\)](#), [ss. 93\(3\)](#), 164(1); S.I. 2015/2029, reg. 3(b); S.I. 2016/321, reg. 6(b)

## 10 Statement of capital and initial shareholdings

- (1) The statement of capital and initial shareholdings required to be delivered in the case of a company that is to have a share capital must comply with this section.
- (2) It must state—
  - (a) the total number of shares of the company to be taken on formation by the subscribers to the memorandum of association,
  - (b) the aggregate nominal value of those shares,
  - [<sup>F5</sup>(ba) the aggregate amount (if any) to be unpaid on those shares (whether on account of their nominal value or by way of premium), and]
  - (c) for each class of shares—
    - (i) prescribed particulars of the rights attached to the shares,
    - (ii) the total number of shares of that class, and
    - (iii) the aggregate nominal value of shares of that class, <sup>F6</sup>...
  - (d) .....
- (3) It must contain such information as may be prescribed for the purpose of identifying the subscribers to the memorandum of association.
- (4) It must state, with respect to each subscriber to the memorandum—
  - (a) the number, nominal value (of each share) and class of shares to be taken by him on formation, and
  - (b) the amount to be paid up and the amount (if any) to be unpaid on each share (whether on account of the nominal value of the share or by way of premium).
- (5) Where a subscriber to the memorandum is to take shares of more than one class, the information required under subsection (4)(a) is required for each class.

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#### Annotations:

#### Amendments (Textual)

- F5** S. 10(2)(ba) inserted (30.6.2016) by [Small Business, Enterprise and Employment Act 2015 \(c. 26\)](#), s. 164(1), [Sch. 6 para. 2\(a\)](#); S.I. 2016/321, reg. 6(e)
- F6** S. 10(2)(d) and word omitted (30.6.2016) by virtue of [Small Business, Enterprise and Employment Act 2015 \(c. 26\)](#), s. 164(1), [Sch. 6 para. 2\(b\)](#); S.I. 2016/321, reg. 6(e)

#### Commencement Information

- I2** S. 10 wholly in force at 1.10.2009; s. 10 not in force at Royal Assent, see s. 1300; s. 10 in force for specified purposes at 20.1.2007 by [S.I. 2006/3428](#), [art. 3\(3\)](#) (subject to [art. 5](#), [Sch. 1](#) and with [arts. 6, 8](#), [Sch. 5](#)); s. 10 in force at 1.10.2009 in so far as not already in force by [S.I. 2008/2860](#), [art. 3\(b\)](#)

## 11 Statement of guarantee

- (1) The statement of guarantee required to be delivered in the case of a company that is to be limited by guarantee must comply with this section.
- (2) It must contain such information as may be prescribed for the purpose of identifying the subscribers to the memorandum of association.
- (3) It must state that each member undertakes that, if the company is wound up while he is a member, or within one year after he ceases to be a member, he will contribute to the assets of the company such amount as may be required for—
  - (a) payment of the debts and liabilities of the company contracted before he ceases to be a member,
  - (b) payment of the costs, charges and expenses of winding up, and
  - (c) adjustment of the rights of the contributories among themselves,
 not exceeding a specified amount.

#### Annotations:

#### Commencement Information

- I3** S. 11 wholly in force at 1.10.2009; s. 11 not in force at Royal Assent, see s. 1300; s. 11 in force for specified purposes at 20.1.2007 by [S.I. 2006/3428](#), [art. 3\(3\)](#) (subject to [art. 5](#), [Sch. 1](#) and with [arts. 6, 8](#), [Sch. 5](#)); s. 11 in force at 1.10.2009 in so far as not already in force by [S.I. 2009/2860](#), [art. 3\(b\)](#)

## 12 Statement of proposed officers

- (1) The statement of the company's proposed officers required to be delivered to the registrar must contain the required particulars of—
  - (a) the person who is, or persons who are, to be the first director or directors of the company;
  - (b) in the case of a company that is to be a private company, any person who is (or any persons who are) to be the first secretary (or joint secretaries) of the company;
  - (c) in the case of a company that is to be a public company, the person who is (or the persons who are) to be the first secretary (or joint secretaries) of the company.

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- (2) The required particulars are the particulars that will be required<sup>[F7]</sup>(or, in the absence of an election under section 167A or 279A, would be required)] to be stated—
- (a) in the case of a director, in the company's register of directors and register of directors' residential addresses (see sections 162 to 166);
  - (b) in the case of a secretary, in the company's register of secretaries (see sections 277 to 279).

- <sup>[F8]</sup>(3) Where an election under section 128B is in force in respect of a company—
- (a) the requirement in subsection (1) to enter particulars of members in the company's register of members does not apply, and
  - (b) subsection (2) has effect as if the reference to a person whose name is entered in the company's register of members were a reference to a person with respect to whom the following steps have been taken—
    - (i) the person's name has been delivered to the registrar under section 128E, and
    - (ii) the document containing that information has been registered by the registrar.]

- (3) <sup>[F9]</sup>The statement must also include a statement by the subscribers to the memorandum of association that each of the persons named as a director, as secretary or as one of the joint secretaries has consented to act in the relevant capacity.]

If all the partners in a firm are to be joint secretaries, consent may be given by one partner on behalf of all of them.

**Annotations:**

**Amendments (Textual)**

- F7** Words in s. 12(2) inserted (30.6.2016) by [Small Business, Enterprise and Employment Act 2015](#) (c. 26), s. 164(1), [Sch. 5 para. 12](#); S.I. 2016/321, reg. 6(c)
- F8** S. 12(3) inserted (30.6.2016) by [Small Business, Enterprise and Employment Act 2015](#) (c. 26), s. 164(1), [Sch. 5 para. 13](#); S.I. 2016/321, reg. 6(c)
- F9** Words in s. 12(3) substituted (10.10.2015) by [Small Business, Enterprise and Employment Act 2015](#) (c. 26), [ss. 100\(2\)](#), 164(1) (with s. 100(6)); S.I. 2015/1689, reg. 4(b)

**<sup>[F10]</sup> 12A Statement of initial significant control**

- (1) The statement of initial significant control required to be delivered to the registrar must—
- (a) state whether, on incorporation, there will be anyone who will count for the purposes of section 790M (register of people with significant control over a company) as either a registrable person or a registrable relevant legal entity in relation to the company,
  - (b) include the required particulars of anyone who will count as such, and
  - (c) include any other matters that on incorporation will be required (or, in the absence of an election under section 790X, would be required) to be entered in the company's PSC register by virtue of section 790M.
- (2) It is not necessary to include under subsection (1)(b) the date on which someone becomes a registrable person or a registrable relevant legal entity in relation to the company.

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- (3) If the statement includes required particulars of an individual, it must also contain a statement that those particulars are included with the knowledge of that individual.
- (4) “Registrable person”, “registrable relevant legal entity” and “required particulars” have the meanings given in Part 21A (see sections 790C and 790K).]

**Annotations:**

**Amendments (Textual)**

- F10** S. 12A inserted (26.5.2015 for specified purposes, 30.6.2016 in so far as not already in force) by [Small Business, Enterprise and Employment Act 2015 \(c. 26\), s. 164\(1\), Sch. 3 para. 5](#); S.I. 2015/1329, reg. 3(a); S.I. 2015/2029, reg. 5(b)

**Modifications etc. (not altering text)**

- C2** S. 12A modified (30.6.2016) by [The European Public Limited-Liability Company \(Register of People with Significant Control\) Regulations 2016 \(S.I. 2016/375\), regs. 1\(2\), 4](#)
- C3** S. 12A applied (with modifications) by S.I. 2009/1804, reg. 3A (as inserted (30.6.2016) by [The Limited Liability Partnerships \(Register of People with Significant Control\) Regulations 2016 \(S.I. 2016/340\), reg. 1\(2\)\(c\), Sch. 3 para. 3](#))

### 13 Statement of compliance

- (1) The statement of compliance required to be delivered to the registrar is a statement that the requirements of this Act as to registration have been complied with.
- (2) The registrar may accept the statement of compliance as sufficient evidence of compliance.

*Registration and its effect*

### 14 Registration

If the registrar is satisfied that the requirements of this Act as to registration are complied with, he shall register the documents delivered to him.

**Annotations:**

**Modifications etc. (not altering text)**

- C4** S. 14 applied (with modifications) by S.I. 2004/2326 reg. 87(1) (as substituted (1.10.2014) by [The European Economic Interest Grouping and European Public Limited-Liability Company \(Amendment\) Regulations 2014 \(S.I. 2014/2382\), regs. 1, 32](#))

### 15 Issue of certificate of incorporation

- (1) On the registration of a company, the registrar of companies shall give a certificate that the company is incorporated.
- (2) The certificate must state—
- (a) the name and registered number of the company,
  - (b) the date of its incorporation,

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- (c) whether it is a limited or unlimited company, and if it is limited whether it is limited by shares or limited by guarantee,
  - (d) whether it is a private or a public company, and
  - (e) whether the company's registered office is situated in England and Wales (or in Wales), in Scotland or in Northern Ireland.
- (3) The certificate must be signed by the registrar or authenticated by the registrar's official seal.
- (4) The certificate is conclusive evidence that the requirements of this Act as to registration have been complied with and that the company is duly registered under this Act.

## 16 Effect of registration

- (1) The registration of a company has the following effects as from the date of incorporation.
- (2) The subscribers to the memorandum, together with such other persons as may from time to time become members of the company, are a body corporate by the name stated in the certificate of incorporation.
- (3) That body corporate is capable of exercising all the functions of an incorporated company.
- (4) The status and registered office of the company are as stated in, or in connection with, the application for registration.
- (5) In the case of a company having a share capital, the subscribers to the memorandum become holders of the shares specified in the statement of capital and initial shareholdings.
- (6) The persons named in the statement of proposed officers—
- (a) as director, or
  - (b) as secretary or joint secretary of the company,
- are deemed to have been appointed to that office.

### Annotations:

#### Modifications etc. (not altering text)

- C5** S. 16 excluded by [The European Public Limited-Liability Company Regulations 2004 \(S.I. 2004/2326\)](#), [Sch. 4 para. 6](#) (as amended (1.10.2009) by [The European Public Limited-Liability Company \(Amendment\) Regulations 2009 \(S.I. 2009/2400\)](#), reg. {40(6)})

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

- Act amendment to earlier affecting provision S.I. 2008/373 reg. 11(1) by [S.I. 2013/1971 reg. 9\(a\)](#) (This amendment not applied to legislation.gov.uk. Amending Regulations revoked (1.10.2013) without ever being in force by S.I. 2013/2224, reg. 2)
- Act amendment to earlier affecting provision S.I. 2008/373 reg. 3(4) by [S.I. 2013/1971 reg. 4](#) (This amendment not applied to legislation.gov.uk. Amending Regulations revoked (1.10.2013) without ever being in force by S.I. 2013/2224, reg. 2)

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 156A-156C inserted by [2015 c. 26 s. 87\(4\)](#)