



# Companies Act 2006

## 2006 CHAPTER 46

### PART 4

#### A COMPANY'S CAPACITY AND RELATED MATTERS

##### *Capacity of company and power of directors to bind it*

#### **42 Constitutional limitations: companies that are charities**

- (1) Sections 39 and 40 (company's capacity and power of directors to bind company) do not apply to the acts of a company that is a charity except in favour of a person who—
- does not know at the time the act is done that the company is a charity, or
  - gives full consideration in money or money's worth in relation to the act in question and does not know (as the case may be)—
    - that the act is not permitted by the company's constitution, or
    - that the act is beyond the powers of the directors.
- (2) Where a company that is a charity purports to transfer or grant an interest in property, the fact that (as the case may be)—
- the act was not permitted by the company's constitution, or
  - 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) or (2) the burden of proving—
- that a person knew that the company was a charity, or
  - that a person knew that an act was not permitted by the company's constitution or was beyond the powers of the directors,
- lies on the person asserting that fact.

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*Status: This is the original version (as it was originally enacted).*

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- (4) In the case of a company that is a charity the affirmation of a transaction to which section 41 applies (transactions with directors or their associates) is ineffective without the prior written consent of—
- (a) in England and Wales, the Charity Commission;
  - (b) in Northern Ireland, the Department for Social Development.
- (5) This section does not extend to Scotland (but see section 112 of the Companies Act [1989 \(c. 40\)](#)).