



Companies (Consolidation) Act 1908

1908 CHAPTER 69 8 Edw 7

PART I

CONSTITUTION AND INCORPORATION.

Memorandum of Association.

2 Mode of forming incorporated company.

Any seven or more persons (or, where the company to be formed will be a private company within the meaning of this Act, any two or more persons) associated for any lawful purpose may, by subscribing their names to a memorandum of association and otherwise complying with the requirements of this Act in respect of registration, form an incorporated company, with or without limited liability (that is to say), either—

- (i) A company having the liability of its members limited by the memorandum to the amount, if any, unpaid on the shares respectively held by them (in this Act termed a company limited by shares); or
- (ii) A company having the liability of its members limited by the memorandum to such amount as the members may respectively thereby undertake to contribute to the assets of the company in the event of its being wound up (in this Act termed a company limited by guarantee); or
- (iii) A company not having any limit on the liability of its members (in this Act termed an unlimited company).

3 Memorandum of company limited by shares.

In the case of a company limited by shares—

- (1) The memorandum must state—
 - (i) The name of the company, with ". Limited " as the last word in its name ;
 - (ii) The part of the United Kingdom, whether England, Scotland, or Ireland, in which the registered office of the company is to be situate;
 - (iii) The objects of the company;

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- (iv) That the liability of the members is limited ;
- (v) The amount of share capital with which the company proposes to be registered, and the division thereof into shares of a fixed amount ;

(2) No subscriber of the memorandum may take less than one share :

(3) Each subscriber must write opposite to his name the number of shares he takes.

4 Memorandum of company limited by guarantee.

In the case of a company limited by guarantee—

(1) The memorandum must state—

- (i) The name of the company, with “Limited ” as the last word in its name ;
- (ii) The part of the United Kingdom, whether England, Scotland, or Ireland, in which the registered office of the company is to be situate ;
- (iii) The objects of the company ;
- (iv) That the liability of the members is limited;
- (v) That each member undertakes to contribute to the assets of the company in the event of its being wound up while he is a member, or within one year afterwards, for payment of the debts and liabilities of the company contracted before he ceases to be a member, and of the costs, charges, and expenses of winding up, and for adjustment of the rights of the contributories among themselves, such amount as may be required, not exceeding a specified amount.

(2) If the company has a share capital—

- (i) The memorandum must also state the amount of share capital with which the company proposes to be registered and the division thereof into shares of a fixed amount;
- (ii) No subscriber of the memorandum may take less than one share ;
- (iii) Each subscriber must write opposite to his name the number of shares he takes.

5 Memorandum of unlimited company.

In the case of an unlimited company—

(1) The memorandum must state—

- (i) The name of the company;
- (ii) The part of the United Kingdom, whether England, Scotland, or Ireland, in which the registered office of the company is to be situate ;
- (iii) The objects of the company.

(2) If the company has a share capital—

- (i) No subscriber of the memorandum may take less than one share ;
- (ii) Each subscriber must write opposite to his name the number of shares he takes.

6 Stamp and signature of memorandum.

The memorandum must bear the same stamp as if it were a deed, and must be signed by each subscriber in the presence of at least one witness who must attest the signature, and that attestation shall be sufficient in Scotland as well as in England and Ireland.

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7 Restriction on alteration of memorandum.

A company may not alter the conditions contained in its memorandum except in the cases and in the mode and to the extent for which express provision is made in this Act.

8 Name of company and change of name.

- (1) A company may not be registered by a name identical with that by which a company in existence is already registered, or so nearly resembling that name as to be calculated to deceive, except where the company in existence is in the course of being dissolved and signifies its consent in such manner as the registrar requires.
- (2) If a company, through inadvertence or otherwise, is, without such consent as aforesaid, registered by a name identical with that by which a company in existence is previously registered, or so nearly resembling it as to be calculated to deceive, the first-mentioned company may, with the sanction of the registrar, change its name.
- (3) Any company may, by special resolution and with the approval of the Board of Trade signified in writing, change its name.
- (4) Where a company changes its name, the registrar, shall enter the new name on the register in place of the former name, and shall issue a certificate of incorporation altered to meet the circumstances of the case.
- (5) The change of name shall not affect any rights or obligations of the company, or render defective any legal proceedings by or against the company, and any legal proceedings that might have been continued or commenced against it by its former name may be continued or commenced against it by its new name.

9 Alteration of objects of company.

- (1) Subject to the provisions of this section a company ' may, by special resolution, alter the provisions of its memorandum with respect to the objects of the company, so far as may be required to enable it—
 - (a) to carry on its business more economically or more efficiently ; or
 - (b) to attain its main purpose by new or improved means ; or
 - (c) to enlarge or change the local area of its operations ; or
 - (d) to carry on some business which under existing cir circumstances may conveniently or advantageously be combined with the business of the company ; or
 - (e) to restrict or abandon any of the objects specified in the memorandum.
- (2) The alteration shall not take effect until and except in so far as it is confirmed on petition by the court.
- (3) Before confirming the alteration the court must be satisfied—
 - (a) that sufficient notice has been given to every holder of debentures of the company, and to any persons or class of persons whose interests will, in the opinion of the court, be affected by the alteration ; and
 - (b) that, with respect to every creditor who in the opinion of the court is entitled to object, and who signifies his objection in manner directed by the court, either his consent to the alteration has been obtained or his debt or claim has been discharged or has been determined, or has been secured to the satisfaction of the court:

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Provided that the court may, in the case of any person or class, for special reasons, dispense with the notice required by this section.

- (4) The court may make an order confirming the alteration either wholly or in part, and on such terms and conditions as it thinks fit, and may make such order as to costs as it thinks proper.
- (5) The court shall, in exercising its discretion under this section, have regard to the rights and interests of the members of the company or of any class of them, as well as to the rights and interests of the creditors, and may, if it thinks fit, adjourn the proceedings in order that an arrangement may be made to the satisfaction of the court for the purchase of the interests of dissentient members ; and may give such directions and make such orders as it may think expedient for facilitating or carrying into effect any such arrangement: Provided that no part of the capital of the company may be expended in any such purchase.
- (6) An office copy of the order confirming the alteration, together with a printed copy of the memorandum as altered, shall, within fifteen days from the date of the order, be delivered by the company to the registrar of companies, and he shall register the same, and shall certify the registration under his hand, and the certificate shall be conclusive evidence that all the requirements of this Act with respect to the alteration and the confirmation thereof have been complied with, and thenceforth the memorandum so altered shall be the memorandum of the company.

The court may by order at any time extend the time for the delivery of documents to the registrar under this section for such period as the court may think proper.

- (7) If a company makes default in delivering to the registrar of companies any document required by this section to be delivered to him, the company shall be liable to a fine not exceeding ten pounds for every day during which it is in default.