



Companies (Consolidation) Act 1908

1908 CHAPTER 69 8 Edw 7

PART VII

COMPANIES AUTHORISED TO REGISTER UNDER THIS ACT.

249 Companies capable of being registered.

- (1) With the exceptions and subject to the provisions mentioned and contained in this section,—
- (i) any company consisting of seven or more members, which was in existence on the second day of November eighteen hundred and sixty-two, including any company registered under the Joint Stock Companies Acts; and
 - (ii) any company formed after the date aforesaid, whether before or after the commencement of this Act, in pursuance of any Act of Parliament other than this Act, or of letters patent, or being a company within the stannaries, or being otherwise duly constituted by law, and consisting of seven or more members; may at any time register under this Act as an unlimited company, or as a company limited by shares, or as a company limited by guarantee; and the registration shall not be invalid by reason that it has taken place with a view to the company being wound up.
- (2) Provided as follows :—
- (a) A company having the liability of its members limited by Act of Parliament or letters patent, and not being a joint stock company as herein-after defined shall not register in pursuance of this section :
 - (b) , A company having the liability of its members limited by Act of Parliament or letters patent shall not register in pursuance of this section as an unlimited company or as a company limited by guarantee:
 - (c) . A company that is not a joint stock company as herein-after defined shall not register in pursuance of this section as a company limited by shares;
 - (d) A company shall not register in pursuance of this section without the assent of a majority of such of its members as are present in person or by proxy in

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cases where proxies are allowed by the regulations of the company at a general meeting summoned for the purpose

- (e) Where a company not having the liability of its members limited by Act of Parliament or letters patent is about to register as a limited company, the majority required to assent as aforesaid shall consist of not less than three-fourths of the members present in person or by proxy at the meeting
 - (f) Where a company is about to register as a company limited by guarantee, the assent to its being so registered shall be accompanied by a resolution declaring 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 ceased to be a member, and of the costs and expenses of winding up, and for the adjustment of the rights of the contributories among themselves, such amount as may be required, not exceeding a specified amount.
- (3) In computing any majority under this section when a poll is demanded regard shall be had to the number of votes to which each member is entitled according to the regulations of the company.
- (4) A company registered under the Companies Act, 1862, shall not be registered, in pursuance of this section.

250 Definition of joint stock company.

For the purposes of this Part of this Act, as far as relates to registration of companies as companies limited by shares, a joint stock company means a company having a permanent paid-up or nominal share capital of fixed amount divided into shares, also of fixed amount, or held and transferable as stock, or divided and held partly in one way and partly in the other, and formed on the principle of having for its members the holders of those shares or that stock, and no other persons; and such a company when registered with limited-liability under this Act shall be deemed to be a company limited by shares.

251 Liability of bank of issue unlimited in respect of notes.

- (1) A bank of issue registered under this Act as a limited company shall not be entitled to limited liability in respect of its notes ; and the members. thereof shall be liable in respect of its notes in the same manner as if it had been registered as unlimited; but if, in the event of the company being wound up, the general assets are insufficient to satisfy the claims of both the note-holders and the general creditors, then the members, after satisfying the remaining demands of the note-holders, shall be liable to contribute towards payment of the debts of the general creditors a sum equal to the amount received by the note-holders, out of the general assets.
- (2) For the purposes of this section the expression "the general assets" means the funds available for payment of the general creditor as well as the note-holder,
- (3) Any bank of issue registered under this Act as a limited company may state on its notes that the limited liability does not extend to its notes, and that the members of the company are liable in respect of its notes in the same manner as if it had been registered as an unlimited company.

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252 Requirements for registration by joint stock companies.

Before the registration in pursuance of this Part of this Act of a joint stock company there shall be delivered to the registrar the following documents (that is to say) :—

- (1) A list showing the names, addresses, and occupations of all persons who on a day named in the list, not being more than six clear days before the day of registration, were members of the company, with the addition of the shares or stock held by them respectively, distinguishing, in cases where the shares are numbered, each share by its number ;
- (2) A copy of any Act of Parliament, royal charter, letters patents, deed of settlement, contract of copartnery, cost book regulations, or other instrument constituting or regulating the company ; and
- (3) If the company is intended to be registered as a limited company, a statement specifying the following particulars (that is to say):—
 - (a) The nominal share capital of the company and the number of shares into which it is divided, or the amount of stock of which it consists ;
 - (b) The number of shares taken and the amount paid on each share ;
 - (c) The name of the company, with the addition of the word “limited ” as the last word thereof ; and
 - (d) In the case of a company intended to be registered as a company limited by guarantee, the resolution declaring the amount of the guarantee.

253 Requirements for registration by other than joint stock companies.

Before the registration in pursuance of this Part of this Act of any company not being a joint stock company, there shall be delivered to the registrar—

- (1) A list showing the names, addresses, and occupations of the directors or other managers (if any) of the company; and
- (2) A copy of any Act of Parliament, letters patent, deed of settlement, contract of copartnery, cost book regulations, or other instrument constituting or regulating the company; and
- (3) In the case of a company intended to be registered as a company limited by guarantee, a copy of the resolution . declaring the amount of the guarantee.

254 Authentication of statements of existing companies.

The lists of members and directors and any other particulars relating to the company required to be delivered to the registrar shall be verified by a statutory declaration of any two or more directors or other principal officers of the company.

255 Registrar may require evidence as to nature of company.

The registrar may require such evidence as he thinks necessary for the purpose of satisfying himself whether any company proposing to be registered is or is not a joint stock company as hereinbefore defined.

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256 On registration of banking company with limited liability, notice to be given to customers.

- (1) Where a banking company which was in existence on the seventh day of August eighteen hundred and sixty-two proposes to register as a limited company, it shall, at least thirty days before so registering, give notice of its intention so to register to every person who has a banking account with the company, either by delivery of the notice to him, or by posting it to him at, or delivering it at, his last known address.
- (2) If the company omits to give the notice required by this section, then as between the company and the person for the time being interested in the account in respect of which the notice ought to have been given, and so far as respects the account down to the time at which notice is given, but not further or otherwise, the certificate of registration with limited liability shall have no operation.

257 Exemption of certain companies from payment of fees.

No fees shall be charged in respect of the registration in pursuance of this Part of this Act of a company if it is not registered as a limited company, or if before its registration as a limited company the liability of the shareholders was limited by some other Act of Parliament or by letters patent.

258 Addition of “limited ” to name.

When a company registers in pursuance of this Part of this Act with limited liability, the word “limited ” shall form and be registered as part of its name.

259 Certificate of registration of existing companies.

On compliance with the requirements of this Part of this Act with respect to registration, and on payment of such fees, if any, as are payable under Table B. in the First Schedule to this Act, the registrar shall certify under his hand that the company applying for registration is incorporated as a company under this Act, and in the case of a limited company that it is limited, and thereupon the company shall be incorporated, and shall have perpetual succession and a common seal, with power to hold lands ; and any banking company in Scotland so incorporated shall be deemed to be a bank incorporated, constituted, or established by or under Act of Parliament.

260 Vesting of property on registration.

All property, real and personal (including things in action), belonging to or vested in a company at the date of its registration in pursuance of this part of this Act, shall on registration pass to and vest in the company as incorporated under this Act for all the estate and interest of the company therein.

261 Saving for existing liabilities.

Registration of a company in pursuance of this Part of this Act shall not affect the rights or liabilities of the company in respect of any debt or obligation incurred, or any contract entered into, by, to, with, or on behalf of, the company before registration.

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262 Continuation of existing actions.

All actions and other legal proceedings which at the time of the registration of a company in pursuance of this Part of this- Act are pending by or against; the company, or the public officer or any member thereof, may be continued in the same manner as if the registration had not taken place.; nevertheless execution shall not issue against the effects of any individual member of the company on any judgment, decree, or order obtained in any such action or proceeding; but, in the event of the property and effects of the company being insufficient to satisfy the judgment, decree, or order, an order may be obtained for winding up the company.

263 Effect of registration under Act.

When a company is registered in pursuance of this Part of this Act—

- (i) All provisions contained in any Act of Parliament, deed of settlement, contract of copartnery, cost book regulations, letters patent, or other instrument constituting or regulating the company, including, in the case of a company registered as a company limited by guarantee, the resolution declaring the amount of the guarantee, shall be deemed to be conditions and regulations of the company, in the same manner and with the same incidents as if so much thereof as would, if the company had been formed under this Act, have been required to be inserted in the memorandum, were contained in a registered memorandum, and the residue thereof were contained in registered articles :
- (ii) All the provisions of this Act shall apply to the company, and the members, contributories, and creditors thereof, in the same manner in all respects as if it had been formed under this Act, subject as follows (that is to say) :—
 - (a) The regulations in Table A. in the First Schedule to this Act shall not apply unless adopted by special resolution ;
 - (b) The provisions of this Act relating to the numbering of shares shall not apply to any joint stock company whose shares are not numbered ;
 - (c) Subject to the provisions of this section the company shall not have power to alter any provision contained in any Act of Parliament relating to the company;
 - (d) Subject to the provisions of this section the company shall not have power, without the sanction of the Board of Trade, to alter any provision contained in any letters patent relating to the company ;
 - (e) The company shall not have power to alter any provision contained in a royal charter or letters patent with respect to the objects of the company ;
 - (f) In the event of the company being wound up, every person shall be a contributory, in respect of the debts and liabilities of the company contracted before registration, who is liable to pay or contribute to the payment of. any debt or liability of the company contracted before registration, or to pay or contribute to. the payment of any sum for. the adjustment of the rights of the members among themselves in respect, of any such debt or liability ; or to pay or contribute to the payment of the costs and expenses of winding up. the company, so .far as relates, to such debts or liabilities as aforesaid ; and every contributory shall be liable to contribute to the assets of the company, in the course of the winding up, . all sums due from him in respect of any such liability as, aforesaid ; and, in the event of the death, bankruptcy or insolvency, of any contributory, or marriage of any female contributory,

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the provisions of. this Act with respect to the personal representatives, heirs, and devisees of deceased contributories, to the trustees of bankrupt or insolvent contributories, and to the liabilities of husbands and wives respectively, shall apply :

- (iii) The provisions of this Act with respect to—
- (a) the registration of an unlimited company as limited ;
 - (b) the powers of an unlimited company on registration as a limited company to increase the nominal amount of its share capital and to provide that a portion of its share capital shall not be capable of being called up except in the event of winding up ;
 - (c) the power of a limited company to determine that a portion of its share capital shall not be capable of being called up except in the event of winding up ;

shall apply notwithstanding any provisions contained in any Act of Parliament, royal charter, deed of settlement, contract of copartnership, cost book regulations, letters patent, or other instrument constituting or regulating the company :

- (iv) Nothing in this section shall authorise the company to alter any such provisions contained in any deed of settlement, contract of copartnership, cost book regulations, letters patent, or other instrument constituting or regulating the company, as would, if the company had originally been formed under this Act, have been required to be contained in the memorandum and are not authorised to be altered by this Act:
- (v) Nothing in this Act shall derogate from any power of altering its constitution or regulations which may by virtue of any Act of Parliament, deed of settlement, contract of copartnership, letters patent, or other instrument constituting or regulating the company, be vested in the company.

264 Power to substitute memorandum and articles for deed of settlement.

- (1) Subject to the provisions of this section, a company registered in pursuance of this Part of this Act may by special resolution alter the form of its constitution by substituting a memorandum and articles for a deed of settlement.
- (2) The provisions of this Act with respect to confirmation by the court and registration of an alteration of the objects of a company shall so far as applicable apply to an alteration under this section with the following modifications :—
 - (a) There shall be substituted for the printed copy of the altered memorandum required to be delivered to the-registrar of companies a printed copy of the substituted memorandum and articles ; and
 - (b) On the registration of the alteration being certified by the registrar the substituted memorandum and articles shall apply to the company in the same manner as if it were a company registered under this Act with that memorandum and those articles, and the company's deed of settlement shall cease to apply to the company.
- (3) An alteration under this section may be made either with or without any alteration of the objects of the company under this Act.
- (4) In this section the expression “deed of settlement” includes any contract of copartnership or other instrument constituting or regulating the company, not being an Act of Parliament, a royal charter, or letters patent.

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265 Power of court to stay or restrain proceedings.

The provisions of this Act with respect to staying and restraining actions and proceedings against a company at any time after the presentation of a petition for winding up and before the making of a winding-up order shall, in the case of a company registered in pursuance of this Part of this Act, where the application to stay or restrain is by a creditor, extend to actions and proceedings against any contributory of the company.

266 Actions stayed on winding-up order.

Where an order has been made for winding up a company registered in pursuance of this Part of this Act no-action or proceeding shall be commenced or proceeded with against the company or any contributory of the company in respect of any debt of the company, except by leave of the court, and subject to such terms as the court may impose.