



# Companies Act 1948

1948 CHAPTER 38 11 and 12 Geo 6

## PART I

INCORPORATION OF COMPANIES AND MATTERS INCIDENTAL THERETO.

*Memorandum of Association.*

### 1 Mode of forming incorporated company.

- (1) Any seven or more persons, or, where the company to be formed will be a private company, 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.
- (2) Such a company may be either—
  - (a) 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
  - (b) 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
  - (c) a company not having any limit on the liability of its members (in this Act termed “an unlimited company”).

### 2 Requirements with respect to memorandum.

- (1) The memorandum of every company must state—
  - (a) the name of the company, with “limited” as the last word of the name in the case of a company limited by shares or by guarantee;
  - (b) whether the registered office of the company is to be situate in England or in Scotland;

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- (c) the objects of the company.
- (2) The memorandum of a company limited by shares or by guarantee must also state that the liability of its members is limited.
- (3) The memorandum of a company limited by guarantee must also state 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 after he ceases to be a member, 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.
- (4) In the case of a company having a share capital—
  - (a) the memorandum must also, unless the company is an unlimited company, state the amount of share capital with which the company proposes to be registered and the division thereof into shares of a fixed amount;
  - (b) no subscriber of the memorandum may take less than one share;
  - (c) each subscriber must write opposite to his name the number of shares he takes.

### **3 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.

### **4 Restriction on alteration of memorandum.**

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

### **5 Mode in which and extent to which objects of company may be altered.**

- (1) 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 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; or
  - (f) to sell or dispose of the whole or any part of the undertaking of the company; or
  - (g) to amalgamate with any other company or body of persons:

Provided that if an application is made to the court in accordance with this section for the alteration to be cancelled, it shall not have effect except in so far as it is confirmed by the court.

- (2) An application under this section may be made—

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- (a) by the holders of not less in the aggregate than fifteen per cent. in nominal value of the company's issued share capital or any class thereof or, if the company is not limited by shares, not less than fifteen per cent. of the company's members; or
- (b) by the holders of not less than fifteen per cent. of the company's debentures entitling the holders to object to alterations of its objects:

Provided that an application shall not be made by any person who has consented to or voted in favour of the alteration.

- (3) An application under this section must be made within twenty-one days after the date on which the resolution altering the company's objects was passed, and may be made on behalf of the persons entitled to make the application by such one or more of their number as they may appoint in writing for the purpose.
- (4) On an application under this section 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, 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 shall be expended in any such purchase.

- (5) The debentures entitling the holders to object to alterations of a company's objects shall be any debentures secured by a floating charge which were issued or first issued before the first day of December, nineteen hundred and forty-seven, or form part of the same series as any debentures so issued, and a special resolution altering a company's objects shall require the same notice to the holders of any such debentures as to members of the company.

In default of any provisions regulating the giving of notice to any such debenture holders, the provisions of the company's articles regulating the giving of notice to members shall apply.

- (6) In the case of a company which is, by virtue of a licence from the Board of Trade, exempt from the obligation to use the word "limited" as part of its name, a resolution altering the company's objects shall also require the same notice to the Board of Trade as to members of the company.
- (7) Where a company passes a resolution altering its objects—
  - (a) if no application is made with respect thereto under this section, it shall within fifteen days from the end of the period for making such an application deliver to the registrar of companies a printed copy of its memorandum as altered; and
  - (b) if such an application is made it shall—
    - (i) forthwith give notice of that fact to the registrar; and
    - (ii) within fifteen days from the date of any order cancelling or confirming the alteration, deliver to the registrar an office copy of the order and, in the case of an order confirming the alteration, a printed copy of the memorandum as altered.

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

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- (8) If a company makes default in giving notice or delivering any document to the registrar of companies as required by the last foregoing subsection, the company and every officer of the company who is in default shall be liable to a default fine of ten pounds.
- (9) The validity of an alteration of the provisions of a company's memorandum with respect to the objects of the company shall not be questioned on the ground that it was not authorised by subsection (1) of this section except in proceedings taken for the purpose (whether under this section or otherwise) before the expiration of twenty-one days after the date of the resolution in that behalf; and where any such proceedings are taken otherwise than under this section the two last foregoing subsections shall apply in relation thereto as if they had been taken under this section and as if an order declaring the alteration invalid were an order cancelling it and as if an order dismissing the proceedings were an order confirming the alteration.
- (10) In relation to a resolution for altering the provisions of a company's memorandum with respect to the objects of the company passed before the first day of December, nineteen hundred and forty-seven, this section shall have effect as if, in lieu of the proviso to subsection (1) and subsections (2) to (9) thereof, there had been enacted therein the provisions of subsections (2) to (7) of section five of the Companies Act, 1929.