



Companies Act 1948

1948 CHAPTER 38 11 and 12 Geo 6

PART VIII

COMPANIES NOT FORMED UNDER THIS ACT AUTHORISED TO REGISTER UNDER THIS ACT.

382 Companies capable of being registered.

- (1) With the exceptions and subject to the provisions contained in this section,—
- (a) 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
 - (b) 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 according to 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's being wound up

Provided that—

- (i) a company registered in any part of the United Kingdom under the Companies Act, 1862, the Companies (Consolidation) Act, 1908, or the Companies Act, 1929, shall not register in pursuance of this section;
- (ii) a company having the liability of its members limited by Act of Parliament or letters patent, and not being a joint stock company as hereinafter defined, shall not register in pursuance of this section;
- (iii) 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;
- (iv) a company that is not a joint stock company as hereinafter defined shall not register in pursuance of this section as a company limited by shares;

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- (v) 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 cases where proxies are allowed) at a general meeting summoned for the purpose;
 - (vi) 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;
 - (vii) 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 after he ceases to be a member, 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.
- (2) 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.

383 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.

384 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:—

- (a) 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;
- (b) a copy of any Act of Parliament, royal charter, letters patent, deed of settlement, contract of copartnership, cost-book regulations or other instrument constituting or regulating the company; and
- (c) if the company is intended to be registered as a limited company, a statement specifying the following particulars:—
 - (i) 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;
 - (ii) the number of shares taken and the amount paid on each share;
 - (iii) the name of the company, with the addition of the word “limited ” as the last word thereof; and

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- (iv) in the case of a company intended to be registered as a company limited by guarantee, the resolution declaring the amount of the guarantee.

385 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—

- (a) a list showing the names, addresses, and occupations of the directors or other managers (if any) of the company; and
- (b) a copy of any Act of Parliament, letters patent, deed of settlement, contract of copartnership, cost book regulations or other instrument constituting or regulating the company; and
- (c) 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.

386 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.

387 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.

388 Change of name for purposes of registration.

Where the name of a company seeking registration under this Part of this Act is one by which it may not be so registered by reason of the name being in the opinion of the Board of Trade undesirable, it may, with the approval of the Board of Trade signified in writing change its name with effect from its registration as aforesaid:

Provided that the like assent of the members of the company shall be required to the change as is by section three hundred and eighty-two of this Act required to the registration under this Act.

389 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:

Provided that this section shall not be taken as excluding the operation of section nineteen of this Act.

390 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 the following provisions of this Act, the registrar shall certify" under his hand that the company

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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 so incorporated, 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.

391 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.

392 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.

393 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:

Provided that 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.

394 Effect of registration under Part VIII.

- (1) When a company is registered in pursuance of this Part of this Act, the following provisions of this section shall have effect.
- (2) All provisions contained in any Act of Parliament 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.
- (3) 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:—
 - (a) Table A 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;

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- (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;
 - (g) in the event of the company being wound up, 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, the provisions of this Act with respect to the personal representatives, to the heirs and legatees of heritage of the heritable estate in Scotland of deceased contributories, to the trustees of bankrupt or insolvent contributories, and to the liabilities of husbands and wives respectively, shall apply.
- (4) 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 or other instrument constituting or regulating the company.
- (5) Nothing in this section shall authorise the company to alter any such provisions contained in any 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.
- (6) None of the provisions of this Act (apart from those of subsection (3) of section two hundred and ten thereof) shall derogate from any power of altering its constitution or regulations which may, by virtue of any Act of Parliament or other instrument constituting or regulating the company, be vested in the company.
- (7) In this section the expression “instrument ” includes deed of settlement, contract of copartnery, cost-book regulations and letters patent.

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395 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 section five of this Act with respect to applications to the court for cancellation of alterations of the objects of a company and matters consequential on the passing of resolutions for such alterations 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 delivery to the registrar of a printed copy of the substituted memorandum and articles or the date when the alteration is no longer liable to be cancelled by order of the court, whichever last occurs, 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.

396 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.

397 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.