



Companies Act 1948

1948 CHAPTER 38 11 and 12 Geo 6

PART XIII

GENERAL.

Supplemental.

455 Interpretation.

(1) In this Act, unless the context otherwise requires, the following expressions have the meanings hereby assigned to them (that is to say):—

“accounts ” includes a company's group accounts, whether prepared in the form of accounts or not;

“agent ” does not include a person's counsel acting as such;

“annual return ” means the return required to be made, in the case of a company having a share capital, under section one hundred and twenty-four, and, in the case of a company not having a share capital, under section one hundred and twenty-five, of this Act;

“articles ” means the articles of association of a company, as originally framed or as altered by special resolution, including, so far as they apply to the company, the regulations contained (as the case may be) in Table B in the Schedule annexed to the Joint Stock Companies Act, 1856, or in Table A in the First Schedule annexed to the Companies Act, 1862, or in that Table as altered in pursuance of section seventy-one of the last-mentioned Act, or in Table A in the First Schedule to the Companies (Consolidation) Act, 1908, or in that Table as altered in pursuance of section one hundred and eighteen of the last-mentioned Act, or in Table A in the First Schedule to the Companies Act, 1929, or in Table A in the First Schedule to this Act;

“bank holiday ” means a day which is a bank holiday under the Bank Holidays Act, 1871:

“book and paper ” and “book or paper ” include accounts, deeds, writings, and documents;

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“company ” means a company formed and registered under this Act or an existing company;

“company limited by guarantee ” and “company limited by shares ” have the meanings assigned to them respectively by subsection (2) of section one of this Act;

“company within the stannaries ” means a company engaged in or formed for working mines within the stannaries;

“contributory ” has the meaning assigned to it by section, two hundred and thirteen of this Act;

“the court ”, used in relation to a company, means the court having jurisdiction to wind up the company;

“the court exercising the stannaries jurisdiction ”, used in relation to any proceedings, means the county court in which the jurisdiction formerly exercised by the court of the vice-warden of the stannaries in respect of those proceedings is for the time being vetted;

“creditors' voluntary winding up ” has the meaning assigned to it by subsection (4) of section two hundred and eighty-three of this Act;

“debenture ” includes debenture stock, bonds and any Other securities of a company whether constituting a charge on the assets of the company or not;

“director ” includes any person occupying the position of director by whatever name called;

“document ” includes summons, notice, order, and other legal process, and registers;

“dominion register ” has the meaning assigned to it by subsection (1) of section one hundred and nineteen of this Act;

“exempt private company ” means an exempt private company as defined by subsection (4) of section one hundred and twenty-nine of this Act;

“existing company ” means a company formed and registered under the Joint Stock Companies Acts, the Companies Act, 1862, the Companies (Consolidation) Act, 1908, or the Companies Act, 1929, but does not include a company registered under the said Acts, the said Act of 1862 or the said Act of 1908 in Northern Ireland or Eire;

“financial year ” means, in relation to any body corporate, the period in respect of which any profit and loss account of the body corporate laid before it in general meeting is made up, whether that period is a year or not;

“the Gazette ” means, as respects companies registered in England, the London Gazette and as respects companies registered in Scotland, the Edinburgh Gazette;

“general rules ” means general rules made under section three hundred and sixty-five of this Act, and includes forms;

“group accounts ” has the meaning assigned to it by subsection (1) of section one hundred and fifty of this Act;

“holding company ” means a holding company as defined by section one hundred and fifty-four of this Act;

“issued generally ” means, in relation to a prospectus, issued to persons who are not existing members or debenture holders of the company;

“Joint Stock Companies Acts ” means the Joint Stock Companies Act, 1856, the Joint Stock Companies Acts, 1856, 1857, the Joint Stock Banking Companies. Act, 1857, and the Act to enable Joint Stock Banking Companies

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to be formed on the principle of limited liability, or any one or more of those Acts, as the case may require, but does not include the Act 7 and 8 Victoria, chapter one hundred and ten;

" members' voluntary winding up " has the meaning assigned to it by subsection (4) of section two hundred and eighty-three of this Act;

"the minimum subscription " has the meaning assigned to it by subsection (2) of section forty-seven of this Act;

"memorandum " means the memorandum of association of a company, as originally framed or as altered in pursuance of any enactment;

"officer ", in relation to a body corporate, includes a director, manager or secretary;

"prescribed " means, as respects the provisions of this Act relating to the winding up of companies, prescribed by general rules, and as respects the other provisions of this Act, prescribed by statutory instrument made by the Board of Trade;

"private company " has the meaning assigned to it by subsection (1) of section twenty-eight of this Act;

"prospectus " means any prospectus, notice, circular, advertisement, or other invitation, offering to the public for subscription or purchase any shares or debentures of a company;

"real " and "personal ", as respects Scotland, mean respectively heritable and moveable;

"recognised stock exchange " means any body of persons which is for the time being a recognised stock exchange for the purposes of the Prevention of Fraud (Investments) Act, 1939;

"the registrar of companies ", or when used in relation to registration of companies, "the registrar ", means 'the registrar or other officer performing under this Act the duty of registration of companies in England or Scotland, or in the stannaries, as the case requires;

"resolution for reducing share capital " has the meaning assigned to it by subsection (2) of section sixty-six of this Act;

"a resolution for voluntary winding up " has the meaning assigned to it by subsection (2) of section two hundred and seventy-eight of this Act;

"share " means share in the share capital of a company, and includes stock except where a distinction between stock and shares is expressed or implied;

"share warrant " has the meaning assigned to it by subsection (2) of section eighty-three of this Act;

"statutory meeting " means the meeting required to be held by subsection (1) of section one hundred and thirty of this Act;

"statutory report " has the meaning assigned to it by subsection (2) of section one hundred and thirty of this Act;

"subsidiary " means a subsidiary as defined by section one hundred and fifty-four of this Act;

"Table A " means Table A in the First Schedule to this Act;

"the time of the opening of the subscription lists " has the meaning assigned to it by subsection (1) of section fifty of this Act;

"unlimited company " has the meaning assigned to it by subsection (2) of section one of this Act.

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- (2) A person shall not be deemed to be within the meaning of any provision in this Act a person in accordance with whose directions or instructions the directors of a company are accustomed to act, by reason only that the directors of the company act on advice given by him in a professional capacity.
- (3) References in this Act to a body corporate or to a corporation shall be construed as not including a corporation sole but as including a company incorporated outside Great Britain, and references therein to a body corporate shall be construed as not including a Scottish firm.
- (4) Any such provision of this Act overriding or interpreting a company's articles as is a re-enacted provision of the Companies Act, 1947, shall, except as provided by this Act, apply in relation to articles in force at the commencement of this Act, as well as to articles coming into force thereafter, and shall apply also in relation to a company's memorandum as it applies in relation to its articles.

456 Amendments of other Acts.

The Assurance Companies Acts, 1909 to 1946, sections two and-thirteen of the Prevention of Fraud (Investments) Act, 1939, and sections fifty-eight, one hundred and fifteen and one hundred and seventeen of the Companies Act, 1947, shall have effect subject to the amendments specified in the Sixteenth Schedule to this Act.

457 Construction of references in other Acts to subsidiary companies as defined by, and companies registered under, the Companies Act, 1929.

Notwithstanding subsection (1) of section thirty-eight of the Interpretation Act, 1889 (which provides that where an Act repeals and re-enacts, with or without modification, any provisions of a former Act, references in any other Act to the provisions so repealed shall, unless the contrary intention appears, be construed as references to the provisions so re-enacted),—

- (a) references, in whatever terms, in any Act other than this Act to a subsidiary company as defined by the Companies Act, 1929, shall be construed in like manner as if this Act had not passed;
- (b) references in any Act other than this Act to a company formed and registered, or registered, under the Companies Act, 1929, shall, unless the context otherwise requires, be construed as references to a company formed and registered, or registered, under that Act or this Act.

458 Effect of provisions of former Companies Acts as to registration of charges on land and keeping books of account.

- (1) Paragraph (d) of subsection (1) of section ten of the Companies Act, 1907, paragraph (d) of subsection (1) of section ninety-three of the Companies (Consolidation) Act, 1908, and paragraph (d) of subsection (2) of section seventy-nine of the Companies Act, 1929 (by virtue whereof charges created on land by a company required registration under those Acts respectively), shall be deemed never to have applied to a charge for any rent or other periodical sum issuing out of the land.
- (2) Subsection (1) of section two hundred and seventy-four of the Companies Act, 1929 (which penalised the persons responsible where proper books of account were not kept

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by a company throughout the two years immediately preceding the commencement of the winding up) shall be deemed always to have had effect—

- (a) as if after the words “the period of two years immediately preceding the commencement of the winding up” there had been inserted the words “or the period between the incorporation of the company and the commencement of the winding up, whichever is the shorter”; and
- (b) as if, in the phrase “unless he shows that he acted honestly or that in the circumstances in which the business of the company was carried on the default was excusable”, for the word “or” there had been substituted the word “and”.

459 Repeal and savings.

(1) The enactments mentioned in the first and second columns of Part I of the Seventeenth Schedule to this Act are hereby repealed to the extent specified in the third column of that Part of that Schedule, the provisions of the Companies Act, 1947, mentioned in the first column of Part II of that Schedule are, so far as they are not repealed by the foregoing provisions of this subsection, hereby repealed to the extent specified in the second column of that Part of that Schedule, and paragraph (2) of Regulation three of the Defence (Companies) Regulations, 1940, is hereby revoked.

(2) Nothing in this Act shall affect any Order in Council, order, rule, regulation, appointment, conveyance, mortgage, deed or agreement made, resolution passed, direction given, proceeding taken, instrument issued or thing done under any former enactment relating to companies, but any such Order in Council, order, rule, regulation, appointment, conveyance, mortgage, deed, agreement, resolution, direction, proceeding, instrument or thing shall, if in force, at the commencement of this Act, continue in force, and so far as it could have been made, passed, given, taken, issued or done under this Act shall have effect as if made, passed, given, taken, issued or done under this Act:

Provided that this subsection shall not apply to any such Order in Council, order or rule as is mentioned in any of the three next following subsections or to any regulation having effect by virtue of subsection (2) of section one hundred and twenty of the Companies Act, 1947.

(3) Any Order in Council under paragraph (e) of the proviso to subsection (1) of section fifty-four of the Companies Act, 1929, which is in force at the commencement of this Act shall have effect as if it were an order of the Treasury under paragraph (e) of the proviso to subsection (1) of section sixty-five of this Act.

(4) Any order prescribing fees for the purposes of Part III of the Companies Act, 1929, which is in force at the commencement of this Act shall have effect as if it were regulations under sections ninety-eight and one hundred and two of this Act.

(5) Any rule made with respect to procedure in the Court of Session or in a sheriff court (including appeals from the sheriff court), or with respect to costs and fees, under section three hundred and seventy-four of the Companies Act, 1929, which is in force at the commencement of this Act shall have effect as if it were contained in an Act of Sederunt under section sixteen of the Administration of Justice (Scotland) Act, or under section forty of the Sheriff Courts (Scotland) Act, 1907, as the case may be.

(6) Nothing in this Act shall affect the operation of section one hundred and thirty-seven of the Companies Act, 1929, as respects inspectors appointed before, or to continue an inspection begun by inspectors appointed before, the commencement of this Act, and

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section one hundred and seventy-one of this Act shall apply to a report of inspectors appointed under the said section one hundred and thirty-seven as it applies to a report of inspectors appointed under section one hundred and sixty-four of this Act.

- (7) An order made on an application under section two hundred and seventeen or subsection (4) of section two hundred and seventy-five of the Companies Act, 1929, which is in force at the commencement of this Act shall have effect as if it were an order under section one hundred and eighty-eight of this Act.
- (8) Nothing in this Act shall affect any prosecution by a liquidator instituted or ordered by the court to be instituted under section two hundred and seventy-seven of the Companies Act, 1929, and the Board of Trade shall have the same power of directing how any costs and expenses properly incurred by a liquidator in any such prosecution are to be defrayed as they would have had if this Act had not passed.
- (9) Nothing in this Act shall affect—
- (a) the power of a company to alter its memorandum under the provisions of section three of the Mortgage Debenture Act, 1865;
 - (b) the provisions of section five of the Trade Union Act, 1871 (which avoids the registration of a trade union under the enactments relating to companies);
 - (c) the provisions of subsection (4) of section fifty-four of the Finance Act, 1940 (which provides for payment in priority to other debts of duty payable by a company in respect of assets passing on a death by virtue of section forty-six of that Act), of any other enactment (not being one expressly repealed by this Act) relating to preferential payments or of regulations so relating having effect under any enactment;
 - (d) the provisions of subsection (2) of section eight of the Exchange Control Act, 1947 (which invalidates the subscription of the memorandum of association of a company by or on behalf of a person resident outside the scheduled territories as defined for the purposes of that Act, unless the subscription is with the permission of the Treasury);
 - (e) the provisions of any Regulation of the Defence (Recovery of Fines) Regulations, 1942, or the provisions of any other Defence Regulation so far as not expressly revoked by this Act;
 - (f) the enactments set out in the Eighteenth Schedule to this Act, being the enactments continued in force by section two hundred and five of the Companies Act, 1862;

or be construed as repealing any provision of the Assurance Companies Acts, 1909 to 1946:

Provided that, notwithstanding subsection (1) of section thirty-eight of the Interpretation Act, 1889, references in any such enactment or regulations as are mentioned in paragraph (c) of this subsection to provisions of section seventy-eight, two hundred and sixty-four or two hundred and ninety-eight of the Companies Act, 1929, shall be construed as referring both to those provisions and to the corresponding provisions of this Act.

- (10) Subject to the provisions of the last foregoing subsection, any document referring to any former enactment relating to companies shall be construed as referring to the corresponding enactment of this Act.
- (11) Any person appointed to any office under or by virtue of any former enactment relating to companies shall be deemed to have been appointed to that office under or by virtue of this Act.

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- (12) Any register kept under any former enactment relating to companies shall be deemed part of the register to be kept under the corresponding provisions of this Act.
- (13) All funds and accounts constituted under this Act shall be deemed to be in continuation of the corresponding funds and accounts constituted under the former enactments relating to companies.
- (14) Nothing in this Act shall affect—
- (a) the incorporation of any company registered under any enactment hereby repealed;
 - (b) Table B in the Schedule annexed to the Joint Stock Companies Act, 1856, or any part thereof, so far as the same applies to any company existing at the commencement of this Act;
 - (c) Table A in the First Schedule annexed to the Companies Act, 1862, or any part thereof, either as originally contained in that schedule or as altered in pursuance of section seventy-one of that Act, so far as the same applies to any company existing at the commencement of this Act;
 - (d) Table A in the First Schedule to the Companies (Consolidation) Act, 1908, or any part thereof, either as originally contained in that Schedule or as altered in pursuance of section one hundred and eighteen of that Act, so far as the same applies to any company existing at the commencement of this Act;
 - (e) Table A in the First Schedule to the Companies Act, 1929, or any part thereof, so far as the same applies to any company existing at the commencement of this Act.
- (15) Where any offence, being an offence for the continuance of which a penalty was provided, has been committed under any former enactment relating to companies, proceedings may be taken under this Act in respect of the continuance of the offence after the commencement of this Act, in the same manner as if the offence had been committed under the corresponding provisions of this Act.
- (16) Save to the extent to which it is otherwise provided by subsection (9) of this section, the mention of particular matters in this section shall be without prejudice to the general application of section thirty-eight of the Interpretation Act, 1889, with respect to the effect of repeals.
- (17) In this section the expression “former enactment relating to companies ” means the Companies Act, 1929, and any enactment repealed by that Act or by the Companies (Consolidation) Act, 1908.

460 Provisions as to winding-up proceedings commenced before 1st November, 1929.

- (1) The provisions of this Act with respect to winding up (other than sections three hundred and thirty-six, three hundred and fifty-six and three hundred and twenty-four as applied for the purposes of the last-mentioned section and subsection (2) of this section) shall not apply to any company of which the winding up commenced before the first day of November, nineteen hundred and twenty-nine, but every such company shall be wound up in the same manner and with the same incidents as if the Companies Act, 1929, and this Act (apart from the enactments aforesaid) had not passed, and, for the purposes of the winding up, the Act or Acts under which the winding up commenced shall be deemed to remain in full force.

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- (2) A copy of every order staying the proceedings in a winding up commenced as aforesaid shall forthwith be forwarded by the company, or otherwise as may be prescribed, to the registrar of companies, who shall make a minute of the order in his books relating to the company.

461 Application to Northern Ireland.

- (1) Nothing in this Act, except the provisions thereof which relate expressly to companies registered or incorporated in Northern Ireland or outside Great Britain, shall apply to or in relation to companies registered or incorporated in Northern Ireland.
- (2) Nothing in this Act, except where it is expressly provided to the contrary, shall affect the law in force in Northern Ireland at the commencement of this Act.

462 Short title and commencement.

- (1) This Act may be cited as the Companies Act, 1948.
- (2) This Act shall come into operation on the first day of July, nineteen hundred and forty-eight, being the day on which, by virtue of orders of the Board, of Trade under section one hundred and twenty-three of the Companies Act, 1947, all the provisions of that Act will first be in operation, and immediately after all those provisions are in operation.