



# Companies Clauses Act 1863

## 1863 CHAPTER 118 26 and 27 Vict

An Act for consolidating in One Act certain Provisions frequently inserted in Acts relating to the Constitution and Management of Companies incorporated for carrying on Undertakings of a public Nature. [28th July 1863]

<sup>MIM2</sup>Whereas the Companies Clauses Consolidation Act 1845 and the Companies Clauses Consolidation (Scotland) Act 1845 respectively, were passed in order to comprise in one general Act such provisions relating to the constitution and management of joint stock companies incorporated for the purpose of carrying on undertakings of a public nature in England or Ireland, or in Scotland, respectively, as were at the times of the passing of those Acts usually introduced into Acts of Parliament relating to such companies:

And whereas sundry provisions of the like nature, but not comprised in the said general Acts respectively, are now frequently introduced into Acts of Parliament relating to such companies; and it is expedient to comprise such last-mentioned provisions also in one general Act, such Act to be applicable to England or Ireland, or to Scotland, as the case may require, and that as well for the purpose of avoiding the necessity of repeating such provisions in the Acts relating to such undertakings, as for ensuring greater uniformity in the provisions themselves:

### Modifications etc. (not altering text)

- C1 This Act is not necessarily in the form in which it has effect in Northern Ireland
- C2 Act excluded (27.4.2017) by [Faversham Oyster Fishery Company Act 2017 \(c. i\)](#), s. 5 (with ss. 17, 18, 20(8))

### Marginal Citations

- M1 1845 c. 16.
- M2 1845 c. 17.

## 1 Short title.

This Act may be cited as the Companies Clauses Act 1863.

*Status: Point in time view as at 27/04/2017.*

*Changes to legislation: There are currently no known outstanding effects for the Companies Clauses Act 1863. (See end of Document for details)*

F12 .....

**Textual Amendments**  
F1 S. 2 repealed (5.11.1993) by 1993 c. 50, s. 1(1), Sch. 1, Pt. V.

**PART I**

CANCELLATION AND SURRENDER OF SHARES

**Modifications etc. (not altering text)**  
C3 Pt. I incorporated in part (5.7.1994) by 1994 c. viii, s. 4(1)(b)

**3 Application of Part I.**

This part of this Act shall apply to every company incorporated either before or after the passing of this Act which obtains a special Act incorporating this part of this Act.

**4 Power to company to cancel forfeited shares.**

Where any share of the capital of the company is after the passing of this Act declared forfeited under and in pursuance of the provisions with respect to the forfeiture of shares for nonpayment of calls contained in the <sup>M3</sup>Companies Clauses Consolidation Act 1845 and the <sup>M4</sup>Companies Clauses Consolidation (Scotland) Act 1845 respectively, and the forfeiture is confirmed by a meeting in accordance with the same provisions respectively, and notice of the forfeiture has been given,—then and in every such case, if the directors of the company are unable to sell the share for a sum equal to the arrears of calls and interest and expenses due in respect thereof, the company at any general meeting held not less than two months after such notice is given may, in case payment of the arrears of calls, interest, and expenses due in respect thereof is not made by the registered holder of the share before the meeting is held, resolve that the share instead of being sold, shall be cancelled; and the share shall thereupon be cancelled accordingly.

**Marginal Citations**  
M3 1845 c. 16.  
M4 1845 c. 17.

**5 Evidence for cancellation of forfeited shares.**

A declaration in writing made by some credible person, in England or Ireland before a justice, and in Scotland before any sheriff or justice, stating that a sum of money sufficient to pay the arrears of calls, interest, and expenses due in respect of the share, could not at the time of the cancellation of the share be obtained for the same upon the Stock Exchange prescribed in the special Act, and, if no Stock Exchange is prescribed, then upon the Stock Exchange, as to England, of the City of London, and

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as to Scotland, of the City of Edinburgh, and as to Ireland, of the City of Dublin, shall be sufficient evidence of the fact so declared.

**Modifications etc. (not altering text)**

- C4** Reference to Ireland to be construed as exclusive of Republic of Ireland: S.R. & O. 1923/405 (Rev. X, p. 298: 1923, p. 400), art. 2

**6 Payment of calls in arrear notwithstanding cancellation.**

Where it is so resolved that any share shall be cancelled, the holder thereof shall from and after the passing of the resolution be precluded from all right and interest therein and in respect thereof; but the cancellation shall not affect the liability of the last registered holder of the share to pay to the company all arrears of calls, interest, and expenses due in respect of the share at the time of the cancellation, or the power of the company to enforce payment thereof by action or otherwise.

**7 Value of forfeited shares to be deducted from amount due in respect thereof.**

Provided always, that if the company enforces the payment of the arrears of calls, interest, and expenses under the last preceding provision, the value of the share at the time of the cancellation thereof shall be deducted from the amount so then due; provided also, that if payment of all arrears of calls, interest, and expenses is made before such meeting as aforesaid is held, the share shall revert to the person to whom it belonged at the time of forfeiture, and shall be re-entered on the company's register accordingly.

**8 Company may cancel forfeited shares with consent of holders.**

Where any share is declared forfeited, or where any sum payable on any share remains unpaid, the company, with the consent in writing of the registered holder of the share, and with the sanction of a general meeting, may resolve that the share shall be cancelled; and immediately thereupon the share shall be cancelled, and all liabilities and rights with respect to the share shall thereupon be absolutely extinguished.

**9 As to surrender of shares.**

The company may from time to time accept, on such terms as they think fit, surrenders of any shares which have not been fully paid up.

**10 No money to be paid for cancellation or surrender.**

The company shall not pay or refund to any shareholder any sum of money for or in respect of the cancellation or surrender of any share.

**11 Power to create shares in lieu of cancelled forfeited, &c., shares.**

The company may from time to time, in lieu of any shares that have been cancelled or surrendered, issue new shares of such amounts as will allow the same to be conveniently apportioned or disposed of according to the resolution of any ordinary or extraordinary meeting of the company, and may from time to time fix the amounts

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and times of payment of the calls on any such new shares, and dispose thereof on such terms and conditions as may be so resolved upon: Provided, that the aggregate nominal amount of the new shares shall not exceed the aggregate nominal amount of the shares in lieu of which the new shares are issued, after deducting the amount actually paid up in respect of the shares cancelled or surrendered.

## PART II

### ADDITIONAL CAPITAL

#### Modifications etc. (not altering text)

C5 Pt. II incorporated in part (5.7.1994) by 1994 c. viii, s. 4(1)(b)(iii)

#### *New Ordinary Shares or Stock*

### 12 Regulations as to creation and issue of ordinary shares or new ordinary stock.

Where any company, incorporated either before or after the passing of this Act for the purpose of carrying on any undertaking, is authorized by any special Act hereafter passed, and incorporating this part of this Act, to raise any additional sum or sums by the issue of new ordinary shares, or by the issue of new ordinary stock, or (at the option of the company) by either of those modes,—then and in every such case the company, with the sanction of such proportion of the votes of the shareholders and stockholders entitled to vote in that behalf at meetings of the company, present (personally or by proxy) at a meeting of the company specially convened for the purpose, as is prescribed in the special Act, and, if no proportion is prescribed, then of three fifths of such votes, may, for the purpose of raising the additional sum or sums, from time to time create and issue (according as the authority given by the special Act extends to shares only, or to stock only, or to both) such new ordinary shares, of such nominal amount, and subject to the payment of calls of such amounts and at such times, as the company thinks fit, or such new ordinary stock as the company thinks fit.

#### *Preference Shares or Stock*

### 13 Regulations as to creation and issue of new preference shares or new preference stock. Saving rights of preference shareholders.

Where any such company is authorized by any special Act hereafter passed and incorporating this part of this Act to raise any additional sum or sums by the issue of new preference shares, or by the issue of new preference stock, or (at the option of the company) by either of those modes,—then and in every such case the company, with the like sanction as aforesaid, may for the purpose of raising such additional sum or sums from time to time create and issue, (according as the authority given by the special Act extends to shares only, or to stock only, or to both,) such new shares or new stock, either ordinary or preference, and either of one class and with like privileges, or of several classes and with different privileges, and of the same or different amounts, and respectively with any fixed, fluctuating, contingent, preferential, perpetual, terminable, deferred, or other dividend, or interest, not exceeding the rate prescribed in the special Act, and if no rate is prescribed, then

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not exceeding the rate of five pounds per centum per annum, and subject (as to any such new shares) to the payment of calls of such amounts and at such times, as the company from time to time thinks fit:

Provided always, that any preference assigned to any shares or stock so issued under the special Act shall not affect any guarantee or any preference or priority in the payment of dividend or interest on any shares or stock, that may have been granted by the company under or confirmed by any previous Act, or that may be otherwise lawfully subsisting.

**14 Preference shares to be entitled to dividends only out of the profits of each year.**

The preference shares or preference stock so issued shall be entitled to the preferential dividend or interest assigned thereto, out of the profits of each year, in priority to the ordinary shares and ordinary stock of the company; but if in any year ending on the day prescribed in the special Act, and, if no day is prescribed, then on the thirty-first day of December, there are not profits available for the payment of the full amount of preferential dividend or interest for that year, no part of the deficiency shall be made good out of the profits of any subsequent year, or out of any other funds of the company.

**15 Terms, &c. to be stated on certificates.**

The terms and conditions to which any preference share or preference stock is subject shall be clearly stated on the certificate of that preference share or portion of preference stock.

*General Provisions as to new Shares or Stock*

**16 Unissued shares and stock may be cancelled.**

If, after having created new shares or new stock, the company determines not to issue the whole of the new shares or new stock, they may cancel the unissued new shares or new stock.

**17 If ordinary stock or shares at a premium, new shares or stock to be offered to existing ordinary shareholders.**

If, at the time of the issue of new shares or new stock, the ordinary shares or ordinary stock of the company are or is at a premium, then, unless the company before the issue of the new shares or new stock otherwise determines, the new shares or new stock then issued shall be of such amount as will conveniently allow the same to be apportioned among the then holders of the ordinary stock and ordinary shares, respectively, in proportion, as nearly as conveniently may be, to the ordinary shares and ordinary stock held by them respectively, and shall be offered to them at par in that proportion: Provided, that it shall not be obligatory on the company so to apportion or offer any new shares or new stock unless the amount of every new share or portion of new stock to be so offered would, if so apportioned, be at least the sum prescribed in the special Act, and, if no sum is prescribed, then at least ten pounds.

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## 18 Offer to be made by letter.

The offer of new shares or new stock shall be made by letter under the hand of the treasurer or secretary of the company given to every such shareholder or stockholder, as aforesaid, or sent by post addressed to him according to his address in the shareholders or stockholders address book, or left for him at his usual or then last known place of abode in England, Scotland, or Ireland (as the case may require); and every such offer made by letter sent by post shall be considered as made on the day on which the letter in due course of delivery ought to be delivered at the place to which it is addressed.

## 19 New shares or stock to vest on acceptance.

The new shares or portions of new stock so offered shall vest in and belong to the shareholders or stockholders who accept the same or their nominees.

## 20 As to disposal of new shares or stock to others. Power to enlarge time for accepting new shares or stock.

If any shareholder or stockholder fails for the time prescribed in the special Act, and, if no time is prescribed, then for one month, after the offer to him of new shares or new stock, to signify his acceptance of the same or any part thereof, then and in every such case at the expiration of that period he shall be deemed to have declined the offer of such new shares or new stock or such part thereof as aforesaid, and the same may be disposed of by the company as herein-after provided:

Provided, that, where a shareholder or stockholder, from absence abroad or other cause satisfactory to the directors of the company, omits to signify within the time aforesaid his acceptance of the new shares or new stock offered to him, the directors, if they think proper, may permit him to accept the same, notwithstanding that such time has elapsed.

## 21 General power to dispose of unappropriated new shares and stock.

Subject to the foregoing provisions, the company may from time to time dispose of new shares and new stock at such times, to such persons, on such terms and conditions, and in such manner, as the directors think advantageous to the company, . . . <sup>F2</sup>

### Textual Amendments

**F2** Words repealed by [Companies Clauses Act 1869 \(c. 48\)](#), [s. 5](#), and [Statute Law Revision Act 1875 \(c. 66\)](#)

## PART III

### DEBENTURE STOCK

### Modifications etc. (not altering text)

**C6** [Pt. III \(ss. 22-35\)](#) excluded (5.7.1994) by [1994 c. viii, s. 11](#)  
[Pt. III \(ss. 22-35\)](#) incorporated in part (5.7.1994) by [1994 c. viii, s. 4\(1\)\(b\)\(v\)](#)

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## 22 Regulations as to creation and issue of debenture stock.

Where any company, incorporated either before or after the passing of this Act for the purpose of carrying on any undertaking, is authorized by any special Act hereafter passed, and incorporating this part of this Act, to create and issue debenture stock,— then and in every such case the company, with the sanction of such proportion of the votes of the shareholders and stockholders entitled to vote in that behalf at meetings of the company, present (personally or by proxy) at a meeting of the company specially convened for the purpose, as is prescribed in the special Act, and, if no proportion is prescribed, then of three fifths of such votes, may from time to time raise all or any part of the money which for the time being they have raised, or are authorized to raise, on mortgage or bond, by the creation and issue, at such times, in such amounts and manner, on such terms, subject to such conditions, and with such rights and privileges, as the company thinks fit, of stock to be called debenture stock, instead of and to the same amount as the whole or part of the money which may for the time being be owing by the company on mortgage or bond, or which they may from time to time have power to raise on mortgage or bond, and may attach to the stock so created such fixed and perpetual preferential interest . . . <sup>F3</sup>, payable half-yearly or otherwise, and commencing at once, or at any future time or times, when and as the debenture stock is issued, or otherwise, as the company thinks fit.

### Textual Amendments

**F3** Words repealed by [Statute Law Revision Act 1875 \(c.66\)](#)

## 23 Debenture stock to be a prior charge.

Debenture stock, with the interest thereon, shall be a charge upon the undertaking of the company, prior to all shares or stock of the company, and shall be transmissible and transferable in the same manner and according to the same regulations and provisions as other stock of the company, and shall in all other respects have the incidents of personal estate.

## 24 Interest on debenture stock to be a primary charge.

The interest on debenture stock shall have priority of payment over all dividends or interest on any shares or stock of the company, whether ordinary or preference or guaranteed, and shall rank next to the interest payable on the mortgages or bonds for the time being of the company legally granted before the creation of such stock; but the holders of debenture stock shall not, as among themselves, be entitled to any preference or priority.

## 25 Payment of arrears may be enforced by appointment of Receiver or Judicial Factor.

If within thirty days after the interest on any such debenture stock is payable the same is not paid, any one or more of the holders of the debenture stock holding, individually or collectively, the sum in nominal amount thereof prescribed in the special Act, and if no sum is prescribed, then a sum equal to one tenth of the aggregate amount which the company is for the time being authorized to raise by mortgage, by bond, and by debenture stock, or the sum of ten thousand pounds, whichever of the two last-mentioned sums is the smaller sum, may (without prejudice to the right to sue in any

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court of competent jurisdiction for the interest in arrear) require the appointment in England or Ireland of a receiver, and in Scotland of a judicial factor.

## **26 Mode of appointing Receiver or Judicial Factor.**

Every such application for a receiver shall be made to two justices, and every such application for a judicial factor shall be made to the Court of Session; and on any such application the justices or court (as the case may be), by order in writing, after hearing the parties, may appoint some person to receive the whole or a competent part of the tolls or sums liable to the payment of the interest, until all the arrears of interest then due on the debenture stock, with all costs, including the charges of receiving the tolls or sums, are fully paid; and upon such appointment being made all such tolls or sums shall be paid to and received by the person so appointed; and all money so received shall be deemed so much money received by or to the use of the several persons interested in the same, according to their several priorities.

The receiver or judicial factor shall distribute rateably and without priority, among all the proprietors of debenture stock to whom interest is in arrear, the money which so comes to his hands, after applying a sufficient part thereof in or towards satisfaction of the interest on the mortgages and bonds of the company.

As soon as the full amount of interest and costs has been so received, the power of the receiver or judicial factor shall cease; and he shall be bound to account to the company for his acts or intrusions or the sums received by him, and to pay over to the company any balance that may be in his hands.

## **27 Arrears may be recovered by action or suit.**

If the interest on debenture stock is in arrear for thirty days next after any of the respective days whereon the same is payable, the holder for the time being thereof may (without prejudice to his power to apply for the appointment of a receiver or judicial factor) recover the arrears with costs by action or suit against the company in any court of competent jurisdiction.

## **28 Debenture stock to be registered.**

The company shall cause entries of the debenture stock from time to time created to be made in a register to be kept for that purpose, wherein they shall enter the names and addresses of the several persons and corporations from time to time entitled to debenture stock, with the respective amounts of the stock to which they are respectively entitled; and the register shall be accessible for inspection and perusal at all reasonable times to every mortgagee, bondholder, debenture stockholder, shareholder, and stockholder of the company, without the payment of any fee or charge.

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### **Modifications etc. (not altering text)**

C7 S. 28 excluded (5.7.1994) by 1994 c. viii, s. 23



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**29 Company to deliver certificate to holders of debenture stock.**

The company shall deliver to every holder of debenture stock a certificate stating the amount of debenture stock held by him; and all regulations or provisions for the time being applicable to certificates of shares in the capital of the company shall apply, mutatis mutandis, to certificates of debenture stock.

**30 Mortgages, not affected by this Act.**

Nothing herein or in the special Act authorizing the issue of debenture stock contained shall in any way affect any mortgage or bond at any time legally granted by the company before the creation of such stock, or any power of the company to raise money on mortgage or bond; but the holders of all such mortgages and bonds shall, during the continuance thereof respectively, be entitled to the same priorities, rights, and privileges in all respects as they would have been entitled to if the special Act authorizing the issue of debenture stock had not been passed.

**31 Holders of debenture stock not to vote.**

Debenture stock shall not entitle the holders thereof to be present or vote at any meeting of the company, or confer any qualification, but shall, in all respects not otherwise by or under this Act or the special Act provided for, be considered as entitling the holders to the rights and powers of mortgagees of the undertaking other than the right to require repayment of the principal money paid up in respect of the debenture stock.

**32 Application of money raised.**

Money raised by debenture stock shall be applied exclusively either in paying off money due by the company on mortgage or bond, or else for the purposes to which the same money would be applicable if it were raised on mortgage or bond instead of on debenture stock.

**33 Separate accounts of debenture stock.**

Separate and distinct accounts shall be kept by the company, showing how much money has been received for or on account of debenture stock, and how much money borrowed or owing on mortgage or bond, or which they have power so to borrow, has been paid off by debenture stock, or raised thereby, instead of being borrowed on mortgage or bond.

**34 Borrowing powers extinguished to extent of debenture stock.**

The powers of borrowing and re-borrowing by the company shall, to the extent of the money raised by the issue of debenture stock, be extinguished.

**35 Application of Part III. to mortgage preference stock, and funded debt.**

The provisions of this part of this Act shall be deemed to apply to mortgage preference stock, and to funded debt, as the case may require, in all respects as if mortgage preference stock or funded debt were mentioned throughout this part of this Act wherever debenture stock is mentioned therein.

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## PART IV

### CHANGE OF NAME

#### 36 Continuation of powers.

Where by any special Act hereafter passed and incorporating this part of this Act the name of any company incorporated either before or after the passing of this Act for the purpose of carrying on any undertaking is changed,—then and in every such case from the passing of the special Act the company by their new name shall have and may exercise the powers then vested in the company by their original name; and all Acts relating to the company by their original name shall be read and interpreted as if throughout those Acts, whenever the original name of the company or any reference to the company by their original name occurs, the new name of the company or a reference to the company by their new name were substituted.

#### 37 Actions, &c. not to abate.

No action, suit, bill, process, writ, indictment, information, or other proceeding, whether civil or criminal, which at or immediately before the passing of the special Act is commenced and is then pending,—either at the suit or instance of the company, by their original name, against any other corporation or any person, or at the suit or instance of any other corporation or any person against the company, by their original name,—shall abate, determine, or be otherwise impeached or affected for or by reason of the change of the name of the company; nor shall any notice, tender, requisition, warrant, summons, pleading, civil or criminal writ or other process, record, deed, contract, agreement, writing, or instrument then or thereafter to be made, issued, written, or commenced, be deemed to be vacated, discharged, invalidated, prejudiced, or affected by reason of the company or their undertaking being therein respectively called by the original name of the company or undertaking; and it shall not be necessary in any bill, suit, indictment, information, proceeding, notice, tender, requisition, warrant, summons, pleading, civil or criminal writ, or other process, or in any record, deed, contract, agreement, writing, or other instrument or matter, to aver that the company had been called or known for any period by the original name of the company, or that their undertaking had been called or known within that period by the original name of the undertaking, and that by the special Act effecting the change the names of the company and their undertaking were changed, and that after the passing of that special Act the company had been called or known by their new name, and their undertaking by its new name; but it shall be deemed true, lawful, and sufficient therein to aver the style and describe the company by their new name, and their undertaking by its new name, in the same manner as if the company had been originally incorporated, called, or known by their new name, and as if their undertaking had been originally called or known by its new name.

#### 38 General saving of rights.

Notwithstanding the change of the name of the company, everything before the passing of the special Act effecting the change done, suffered, or confirmed under or by virtue of any other Act shall be as valid as if the special Act effecting the change were not passed; and the change of name and last-mentioned special Act respectively shall accordingly be subject and without prejudice to everything so done, suffered, or confirmed before the passing of the last-mentioned special Act, and to all rights,

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liabilities, claims, and demands, then present or future, which, if the change of name had not happened and such last-mentioned special Act had not been passed, would be incident to or consequent on anything so done, suffered, or confirmed.

### **39 Contracts, &c. preserved.**

Notwithstanding the change of the name of the company, all deeds, instruments, purchases, sales, securities, and contracts before the passing of the special Act effecting the change made under any other Act, or with reference to the purposes thereof, shall be as effectual to all intents in favour of, against, and with respect to the company as if the name of the company had remained unchanged.

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