



Dunham Bridge (Amendment) Act 1994

1994 CHAPTER viii

PART II

CONSTITUTION OF COMPANY

3 Company to continue

Notwithstanding the repeals effected by section 61 (Repeals and consequential amendments) of this Act the Company shall remain incorporated with the same name and, subject to section 21 (Missing shareholders) of this Act, the same share capital as immediately before the coming into force of this Act, but the affairs of the Company shall henceforth be managed in accordance with the provisions of this Act and accordingly—

- (a) the existing shares of the Company shall, subject to the said section 21, remain vested in the same persons as they were immediately before the coming into force of this Act but shall be deemed to have been issued under the provisions of this Act and any rights and liabilities previously attaching to those shares shall, so far as they are inconsistent with the provisions of this Act, cease to have effect;
- (b) those persons who comprised the Committee of Management of the Company immediately before the coming into force of this Act are hereby appointed the directors of the Company for the purposes of this Act;
- (c) all other officers of the Company shall continue in office as if they had been appointed by the directors of the Company under this Act until they are removed therefrom in accordance with the provisions of this Act;
- (d) things done by the Company under the Act of 1830 shall be deemed to have been done under the equivalent provision of this Act:

Provided that, subject to paragraphs (b) and (c) above, nothing in this Part shall affect the rights and liabilities of the Company in relation to any person who is not a member of the Company in respect of anything done before the coming into force of this Act.

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4 Incorporation of enactments

(1) Subject to the provisions of this Part the following enactments are incorporated with this Act:—

- (a) the Act of 1845, except sections 56 to 60 (which relate to the conversion of borrowed money into capital), section 80 (which relates to the manner of ascertaining a majority of votes), sections 85 and 86 (which relate to the qualifications and interests of directors), sections 101 to 119 (which relate to auditors and accounts), sections 124 to 127 (which relate to byelaws) and sections 142 to 156 (which relate to recovery of damages and penalties);
- (b) Part I (relating to cancellation and surrender of shares), Part II (relating to additional capital), except the provisions thereof which limit the rate of dividend or interest on preference capital, and Part III (relating to debenture stock) of the Act of 1863 except section 34 thereof:

Provided that—

- (i) section 90 of the Act of 1845 (which relates to the powers of the directors), as so incorporated, shall have effect as if at the end thereof there were added the following sentence: “A resolution passed at any such general meeting shall require a majority of not less than three quarters of such of the members of the Company as (being entitled to do so) vote (whether in person or by proxy) at the meeting”;
 - (ii) section 98 of the Act of 1845 (which requires proceedings to be entered in books), as so incorporated, shall have effect as if after the words “shall be signed by the chairman of such meeting” there were inserted the words “or of the next succeeding meeting”;
 - (iii) section 14 of the Act of 1863 (which relates to dividends on preference capital), as so incorporated, shall have effect as if—
 - (A) after the words “each year” there were inserted the words “or out of the unappropriated profits from previous years or partly out of the one and partly out of the other”; and
 - (B) before the words “profits available” there were inserted the word “such”;
 - (iv) section 122 of the Act of 1845 (which authorises the creation of a contingency fund), as so incorporated, shall have effect as if for the words from “as they” to the end of the section there were substituted the words “by way of reserve as they may think proper, and may divide the balance only among the shareholders”;
 - (v) section 22 of the Act of 1863 (which contains regulations as to the creation and issue of debenture stock), as so incorporated, shall have effect as if the words “and to the same amount as” were omitted.
- (2) In the construction of the enactments so incorporated with this Act the expression “the company” shall mean the Company.
- (3) Nothing in this section affects the operation of section 718 of the Companies Act 1985 (which applies certain provisions of that Act to unregistered companies).

5 Share capital

- (1) The Company may from time to time by ordinary resolution authorise any of the alterations in the share capital of the Company mentioned in subsection (2) below.

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- (2) The alterations referred to in subsection (1) above are—
- (a) any increase in the share capital of the Company by such sum to be divided into shares of such amount as the resolution prescribes;
 - (b) any consolidation and division of the share capital into shares of a greater nominal value;
 - (c) any sub-division of the share capital into shares of a smaller nominal value; and
 - (d) any cancellation of shares (being shares which, at the date of the passing of the resolution, have not been taken up or agreed to be taken up) together with the diminution of the share capital by the amount of the shares so cancelled.
- (3) Any resolution under subsection (1) above shall include provision as to the incidents attaching to the shares to which it relates and in particular shall, whenever appropriate, make provision as to the relative rights attaching on the one hand to those shares and on the other to the remaining shares in the Company.
- (4) If on an alteration of the sort mentioned in subsection (2)(b) or (c) above any fractions arise, they shall be dealt with in such way as the directors may determine including by way of sale of shares representing those fractions, the proceeds of such sale being distributed pro rata among those members of the Company who would otherwise have been entitled to the fractions.

6 Loan capital and borrowing powers

Subject to and in accordance with the provisions of this Act, the Company may from time to time raise by the creation and issue of loan capital or by borrowing, whether secured or unsecured, such sums as they may require for the purposes of the undertaking.

7 Purchase of own shares

- (1) The Company may, in accordance with the provisions of this section, purchase its own shares of any class (including any redeemable shares) at any price (whether at par or above or below par) and so that any shares to be so purchased may be selected in any manner whatsoever.
- (2) The powers of this section—
- (a) are subject to any relevant special rights attached to any class of shares; and
 - (b) shall be exercised in accordance with the provisions of Chapter VII of Part V of the Companies Act 1985 (which relate to the purchase of its own shares by a company registered under that Act).
- (3) In its application to the Company the said Chapter VII shall have effect as if—
- (a) reference to any account or reserve maintained by the Company included any equivalent account or reserve maintained by the Company pursuant to this Act;
 - (b) reference to any special resolution were to a special resolution of the Company as defined in section 2 (2) of this Act; and
 - (c) the Company were a private company limited by shares and registered under the said Act of 1985.

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8 Power to reduce capital

- (1) The Company may, in accordance with the provisions of this section, by special resolution reduce its share capital, any capital redemption reserve and any share premium account in any way.
- (2) The powers of this section shall be exercised in accordance with the provisions of Chapter IV of Part V of the Companies Act 1985 (which relate to the reduction of the share capital of companies registered under that Act).

9 Investment powers

The Company may (whether in the name of the Company or of any nominee for the Company) invest and deal with the monies of the Company not immediately required for the purposes of the undertaking in such manner as may from time to time be determined and may (whether in the name of the Company or of such nominee) hold or otherwise deal with any investments so made.

10 General powers of Company

In addition to powers conferred on the Company by any enactment (including this Act), the Company may do all such things as in the opinion of the directors are incidental to, or conducive to the attainment of, the profitable operation of the undertaking.

11 Debenture stock

Notwithstanding anything contained in the provisions of Part III of the Act of 1863, the interest on all debenture stock and on all mortgages at any time after the passing of this Act created and issued or granted by the Company under this or any subsequent Act shall, subject to the provisions of any subsequent Act, rank *pari passu* (without respect to the dates of the securities or of the Acts of Parliament or resolutions by which the stock and mortgages were authorised) and shall have priority over all principal monies secured by such mortgages. Notice of the effect of this enactment shall be endorsed on all mortgages and certificates of debenture stock issued after the passing of this Act.

12 Redeemable stock

- (1) The directors may from time to time by virtue of this Act and without further or other sanction or authority issue, so as to be redeemable at such times and in such manner and on and subject to such terms and conditions and to bear dividends or interest at such rate or rates as the directors at the time of the issue thereof determine, any preference shares or debenture stock (all of which are in this section referred to as and included in the expression “stock”) created by the Company under the powers conferred by this Act.
- (2) There shall be stated on each certificate of any such stock the time or times at which and the manner in which and the terms and conditions on and subject to which such stock is to be redeemed.
- (3) If it is so provided in the said terms and conditions the Company may—
 - (a) call in and pay off the stock or any part thereof at any time before the date fixed for redemption; and

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- (b) redeem the stock or any part thereof either by paying off the stock or by issuing to the holder of any stock (subject to his consent) other stock in substitution therefor.
- (4) For the purpose of providing money for paying off the stock or for the purpose of providing substituted stock, the Company may create and the directors may issue other stock (either redeemable or irredeemable) or the directors may re-issue any stock originally created and issued as aforesaid.
- (5) The Company shall not redeem out of revenue any stock created and issued as aforesaid.

13 Interim dividends

The directors may in any year without calling a meeting of the Company for the purpose declare and pay an interim half-yearly dividend.

14 Incidents of new capital

Any additional capital raised under the powers of this Act and the shares therein and the holders thereof respectively shall (except as may be otherwise expressly provided by the resolution creating the same) be subject and entitled to the same powers, provisions, liabilities, rights, privileges and incidents whatsoever in all respects as if that capital were part of the capital of the Company as existing immediately before the creation of the additional capital, of the same class or description and as if the new shares were shares in that previously existing capital. The additional capital shall form part of the capital of the Company.

15 Application of premiums

Any sum of money which may arise from the issue of any shares under the provisions of this Act by way of premium after deducting therefrom the expenses of and incident to such issue shall not be considered as profits of the Company but shall be expended only on purposes to which capital is properly applicable or in paying off money borrowed or owing on mortgage or redeemable debenture stock by the Company and shall not be considered as part of the capital of the Company entitled to dividend.

16 Priority of mortgages and debenture stock

All monies raised or to be raised by the Company on mortgage or by debenture stock under the Act of 1830 or this Act shall have priority against the Company and the property from time to time of the Company over all other claims on account of any debts incurred or engagements entered into by them after the passing of this Act.

17 Appointment of receiver

The mortgagees of the Company may enforce payment of arrears of interest or principal, or principal and interest, due on their mortgages by the appointment of a receiver:

Provided that in order to authorise the appointment of a receiver in respect of arrears of principal the amount owing to the mortgagees by whom the application for a receiver is made shall not be less than ten thousand pounds.

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18 Receipt in case of persons not sui juris

If any money is payable to a shareholder, debenture stockholder or mortgagee, being a minor or a person of unsound mind, the receipt of his guardian, receiver or duly appointed attorney or of the Court of Protection (as the case may be) shall be a sufficient discharge to the Company.

19 Company not bound to regard trusts

The Company shall not be bound to see to the execution of any trust, whether express, implied or constructive, to which any shares, debenture stock or mortgage may be subject and the provisions of section 20 of the Act of 1845 (which provides that the Company shall not be bound to regard trusts), shall extend and apply to any stock, debenture stock or mortgage of the Company as if the same were shares in the capital of the Company.

20 Joint holders

- (1) Notwithstanding anything in the Act of 1845, where several persons are jointly entitled to and registered as holders of any shares, any one of those persons may vote at any meeting at which holders of shares of the same class are entitled to vote either personally or by proxy in respect of the shares as if he were solely entitled thereto; but if more than one of the joint holders be present at any meeting personally or by proxy that one of the said persons so present whose name stands first on the register in respect of the shares shall alone be entitled to vote in respect thereof.
- (2) For the purposes of this section, executors or administrators of a deceased member in whose name any share in the capital of the Company stands shall be deemed joint holders thereof.

21 Missing shareholders

- (1) In this section “the missing shareholders” means the shareholders of the Company named in column (1) of Schedule 1 to this Act and registered as shareholders of the Company on the dates specified in column (2) of that Schedule and “the notification period” means the period commencing on the passing of this Act and terminating on a date 56 days after the first publication of the newspaper notice referred to in subsection (2) below.
- (2) As soon as reasonably practicable following the passing of this Act the Company shall publish in each of two successive weeks in a local newspaper circulating in the county of Nottinghamshire and a local newspaper circulating in the county of Lincolnshire a notice containing the names and addresses of the missing shareholders and an explanation of the effect of this section.
- (3) Any person may at any time before the expiry of the notification period serve written notice on the Company claiming that he is entitled to the interest of one or more of the missing shareholders in any shares and any such notice shall be accompanied by a £50 deposit payable to the Company which shall be returned to the claimant in the event that he succeeds in establishing his claim.
- (4) If any person, having duly served notice on the Company and paid a deposit in accordance with subsection (3) above within the notification period, establishes, within a further period of 56 days commencing on the expiry of the notification period,

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to the satisfaction of the Company in accordance with the provisions of the Act of 1845 that the interest of one or more of the missing shareholders in any shares has been transmitted to him the Company shall, subject to subsection (5) below, enter the name of such person in the register of shareholders and pay him so much of the arrears of dividend for the immediately preceding six years (which shall bear no interest) as are owing to him in respect of the shares to which he is entitled:

Provided that if it is necessary for a claimant to make any application for the purpose of establishing his claim to any shares the period for establishment of his claim shall be extended until the expiry of 30 days after proceedings on that application (including any proceedings on or in consequence of an appeal) have been determined and any time for appealing or further appealing has expired, or, as the case may be, until that application is abandoned or withdrawn.

- (5) Before entering any claimant in the register of shareholders or paying him any arrears of dividends the Company may require him to provide an indemnity in respect of any subsequent claims made against the Company in respect of that registration or that payment.
- (6) Any shares of the missing shareholders in respect of which notice and a deposit is not received in accordance with subsection (3) above before the expiry of the notification period, or in respect of which a claim is not established to the satisfaction of the company in accordance with subsection (4) above before the expiry of the further period referred to in that subsection, or in respect of which the claimant refuses to provide an indemnity in accordance with subsection (5) above, shall be cancelled and all rights and liabilities in, or arising from any entitlement to, those shares shall be extinguished.
- (7) A sum equivalent to the nominal value of such shares as are cancelled under subsection (6) above shall be held by the Company and applied only for the purposes for which premiums may be applied under section 15 (Application of premiums) of this Act.

22 Indemnity before issue of substituted certificates, etc

Notwithstanding anything in section 13 of the Act of 1845, the Company shall not be under any obligation to issue a new debenture or mortgage bond or a new certificate of any shares or debenture stock or a new warrant in respect of interest or dividend in lieu of any debenture, bond, certificate or warrant lost or destroyed, or alleged to be lost or destroyed, until they have received from the person to whom such new debenture, bond, certificate or warrant is to be issued such indemnity as the directors may require against any and every claim or expense which may be made against the Company or which the Company may incur in respect of such lost or destroyed debenture, bond, certificate or warrant or the debenture, mortgage, shares, debenture stock, dividend or interest represented thereby.

23 Register of transfers

Notwithstanding anything in sections 15 and 47 of the Act of 1845 and section 28 of the Act of 1863, the Company shall not be under any obligation to keep registers of transfers of ordinary shares, preference shares, debenture stock and mortgages respectively so long as the Company in lieu of those registers shall keep a file of all transfers and evidences of transmission of any ordinary shares, preference shares,

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debenture stock or mortgages of the Company which are sent to them for registration in accordance with the provisions of those Acts.

24 Closing of transfer books

- (1) The directors may close the register of transfers of ordinary shares and preference shares of any class and the register of transfers of debenture stock or mortgages for any time or times not exceeding in the case of each such register thirty days in each year and the directors may in any such case fix a day for the closing of any register which they are authorised to close under the provisions of this section.
- (2) Any transfer of any ordinary shares, preference shares or debenture stock or mortgages lodged for registration with the Company after the register of transfers relating to shares, debenture stock or mortgages of the same class has been so closed and before the next date of payment of any dividend, interim dividend or interest, as the case may be, thereon shall as between the Company and the persons claiming under the transfer (but not otherwise) be considered as made subsequently to the payment of such dividend, interim dividend or interest.
- (3) In this section the expression “register of transfers” includes any file of transfers kept by the Company in lieu of any such register.

25 Register of shareholders and shareholders' address book

- (1) Notwithstanding anything in sections 9, 10 and 63 of the Act of 1845, the Company shall not be under any obligation—
 - (a) to keep separately a register of shareholders and a shareholders' address book; or
 - (b) to authenticate by the affixing of their common seal or otherwise the register of shareholders or any register which the Company may keep in lieu thereof under the powers of this section.
- (2) If the Company do not keep separately a register of shareholders and a shareholders' address book they shall in lieu thereof keep one register only containing such particulars as are required by the said Act to be entered in the register of shareholders and the shareholders' address book respectively.

26 Substitution of card index for shareholders' address book

Notwithstanding anything in section 10 of the Act of 1845, the Company may substitute for the shareholders' address book provided under that section, or for the portion of any register which the Company may keep under section 25 (Register of shareholders and shareholders' address book) of this Act, containing such particulars as are required by the said Act of 1845 to be entered in the shareholders' address book, a card or other index (of a type to be approved by the auditors of the Company) containing the names and addresses of the several shareholders of the undertakers.

27 Ordinary meetings

Notwithstanding anything in section 66 of the Act of 1845, the ordinary general meeting of the Company shall be held in each year in the month of September or at such other time as the directors may appoint.

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28 Quorum for general meetings

The quorum of every general meeting of the Company, whether ordinary or extraordinary, shall be at least six shareholders present in person or by proxy holding in the aggregate not less than twenty-five per cent. of the capital of the Company.

29 Extraordinary meetings

The number of shareholders on whose requisition an extraordinary meeting of the Company may be required to be convened shall be not less than fifteen holding in the aggregate not less than one hundred shares of £50 each.

30 Notice of meetings

Notwithstanding anything in section 71 of the Act of 1845, notice of all meetings of the Company (whether ordinary or extraordinary) may (if the directors so determine) be given by letter sent by ordinary post to each shareholder instead of by public advertisement:

Provided that the letters giving the notice shall be directed to the registered address or other known address of each shareholder and posted not later than seven clear days before the date of the meeting. In proving that any such notice has been given it shall be sufficient to prove that the letter containing the notice was properly addressed and posted by ordinary first class post as a prepaid letter not later than the time hereby prescribed.

31 Notices, etc., to shareholders abroad

Members of the Company who have no registered address within the United Kingdom shall not be entitled to receive notices of meetings and accounts unless they shall have supplied to the Company an address within the United Kingdom for the giving of notices to them.

32 Voting rights

At all meetings of the Company every holder of ordinary shares shall be entitled to one vote for each share held by him.

33 Proof of majority of votes only required when poll demanded

At any meeting of the Company a majority of votes shall only be required to be proved if a poll be demanded at the meeting, and if a poll be not demanded at the meeting then a declaration by the chairman that the resolution has been carried and an entry to that effect in the book of proceedings of the Company shall be sufficient and conclusive evidence of the fact without proof of the number or proportion of votes recorded in favour of or against the resolution.

34 Voting at general meetings

Where a body corporate, being a holder of ordinary or preference capital to which voting rights are attached, is present at a meeting of the Company by a proxy who is

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not a holder of capital of the Company, such proxy shall be entitled to vote for such body on a show of hands.

35 Appointment of proxies

Notwithstanding anything in section 76 of the Act of 1845, the attorney of any member duly authorised in writing or, in case of a corporation, an officer or attorney so authorised may appoint a proxy to vote for and on behalf of the member and for that purpose may execute on behalf of the member the necessary form of proxy.

36 Number of directors

The number of directors shall be eight but the Company may at any time and from time to time vary the number provided that the number be not at any time more than sixteen nor less than four.

37 Powers of directors

(1) In addition to the powers of the directors under section 95 of the Act of 1845 (which authorises the appointment of committees exercising powers of the directors) the directors may delegate any of their powers to any director holding executive office, including any managing director appointed pursuant to section 39 (Appointment of managing director) of this Act.

(2) Any delegation under subsection (1) above may be made subject to such conditions as the directors may think fit and may from time to time be revoked, withdrawn, altered or varied.

(3) The directors may co-opt on to any committee appointed under the said section 95 persons other than directors (not exceeding half the total membership of the committee) who may enjoy voting rights in the committee:

Provided that a resolution of any such committee shall not be effective unless a majority of those present at the meeting of the committee at which the resolution is passed are directors.

(4) Subject to such conditions as may be imposed under subsection (2) above any recipient of delegated powers under the said section 95 or subsection (1) above may sub-delegate any of those powers to one or more directors (whether or not acting as a committee) or to any employee or agent of the Company.

38 Quorum of meeting of directors

A quorum of a meeting of directors shall be four.

39 Appointment of managing director

(1) The directors may appoint one or more of their body to be managing director or managing directors of the Company either for a fixed term or without any limitation as to time and may remove or dismiss him or them from office and appoint another or others in his or their place or places.

(2) A managing director shall not while holding that office be subject to retirement by rotation and shall not be taken into account in determining the rotation of retirement

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of directors but if he ceases to hold the office of director from any other cause he shall ipso facto immediately cease to be a managing director.

- (3) The remuneration of a managing director shall from time to time be fixed by the directors and may be by way of salary or commission or participation in profits or by any or all of those modes.

40 Power of directors to determine remuneration of secretary

In addition to the powers which the directors may exercise under the Act of 1845, the Act of 1863 or otherwise, they may from time to time determine the remuneration of the secretary of the Company.

41 Vacation of office of director

If any director shall be made bankrupt or shall become of unsound mind the office of such director shall become vacant and thenceforth he shall cease from voting or acting as a director.

42 Directors holding office under or contracting with Company

- (1) (a) In the case of a director being or becoming interested in any contract with the Company, whether such interest arises before or after his appointment as a director, the nature of his interest in the contract shall be disclosed by him at the meeting of the directors at which the contract is decided upon if his interest then exists or in any other case at the first meeting of the directors after the acquisition of his interest or after his appointment.
- (b) No director shall as a director vote in respect of any such contract and if he does so vote his vote shall not be counted, but this prohibition shall not apply to any contract by or on behalf of the Company to give to the directors or any of them any security by way of indemnity.
- (2) For the purposes of subsection (1)(a) above, a general notice given to the directors by one of them to the effect that he is a member of a specified company or firm and is to be regarded as interested in any contract which may after the date of the notice be made with that company or firm shall be deemed to be a sufficient declaration of interest in relation to any contract so made.

43 Alteration of constitution of Company

- (1) The Secretary of State may on the application of the Company by order authorise the alteration of the constitution of the Company and any such order may for that purpose add to, amend, repeal or replace any provision—
- (a) incorporated by subsection (1) of section 4 (Incorporation of enactments) of this Act; or
- (b) of this Part; or
- (c) of the Act of 1830.
- (2) Application for an order under this section shall be authorised by a special resolution of the Company and shall be accompanied by a draft of the order which the Company desire the Secretary of State to make.

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- (3) The Secretary of State may make an order in the terms of the draft submitted to him or in those terms as modified in such manner as he thinks fit.
- (4) The power to make orders under this section shall be exercisable by statutory instrument.