



# Companies Act 1985

## 1985 CHAPTER 6

### PART I

#### FORMATION AND REGISTRATION OF COMPANIES; JURIDICAL STATUS AND MEMBERSHIP

### CHAPTER I

#### COMPANY FORMATION

##### *Registration and its consequences*

#### **10 Documents to be sent to registrar.**

- (1) The company's memorandum and articles (if any) shall be delivered—
  - (a) to the registrar of companies for England and Wales, if the memorandum states that the registered office of the company is to be situated in England and Wales, or that it is to be situated in Wales; and
  - (b) to the registrar of companies for Scotland, if the memorandum states that the registered office of the company is to be situated in Scotland.
- (2) With the memorandum there shall be delivered a statement in the prescribed form containing the names and requisite particulars of—
  - (a) the person who is, or the persons who are, to be the first director or directors of the company; and
  - (b) the person who is, or the persons who are, to be the first secretary or joint secretaries of the company;and the requisite particulars in each case are those set out in Schedule 1.
- (3) The statement shall be signed by or on behalf of the subscribers of the memorandum and shall contain a consent signed by each of the persons named in it as a director, as secretary or as one of joint secretaries, to act in the relevant capacity.

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- (4) Where a memorandum is delivered by a person as agent for the subscribers, the statement shall specify that fact and the person's name and address.
- (5) An appointment by any articles delivered with the memorandum of a person as director or secretary of the company is void unless he is named as a director or secretary in the statement.
- (6) There shall in the statement be specified the intended situation of the company's registered office on incorporation.

## 11 Minimum authorised capital (public companies).

When a memorandum delivered to the registrar of companies under section 10 states that the association to be registered is to be a public company, the amount of the share capital stated in the memorandum to be that with which the company proposes to be registered must not be less than the authorised minimum (defined in section 118).

## 12 Duty of registrar.

- (1) The registrar of companies shall not register a company's memorandum delivered under section 10 unless he is satisfied that all the requirements of this Act in respect of registration and of matters precedent and incidental to it have been complied with.
- (2) Subject to this, the registrar shall retain and register the memorandum and articles (if any) delivered to him under that section.
- (3) A statutory declaration in the prescribed form by—
  - (a) a solicitor engaged in the formation of a company, or
  - (b) a person named as a director or secretary of the company in the statement delivered under section 10(2),

that those requirements have been complied with shall be delivered to the registrar of companies, and the registrar may accept such a declaration as sufficient evidence of compliance.

### Modifications etc. (not altering text)

C1 S. 12(2) modified (27.7.1999) by 1999 c. 20, s. 4(1) (with s. 15)

## 13 Effect of registration.

- (1) On the registration of a company's memorandum, the registrar of companies shall give a certificate that the company is incorporated and, in the case of a limited company, that it is limited.
- (2) The certificate may be signed by the registrar, or authenticated by his official seal.
- (3) From the date of incorporation mentioned in the certificate, the subscribers of the memorandum, together with such other persons as may from time to time become members of the company, shall be a body corporate by the name contained in the memorandum.
- (4) That body corporate is then capable forthwith of exercising all the functions of an incorporated company, but with such liability on the part of its members to contribute

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to its assets in the event of its being wound up as is provided by this Act [<sup>F1</sup>and the Insolvency Act].

This is subject, in the case of a public company, to section 117 (additional certificate as to amount of allotted share capital).

- (5) The persons named in the statement under section 10 as directors, secretary or joint secretaries are, on the company's incorporation, deemed to have been respectively appointed as its first directors, secretary or joint secretaries.
- (6) Where the registrar registers an association's memorandum which states that the association is to be a public company, the certificate of incorporation shall contain a statement that the company is a public company.
- (7) A certificate of incorporation given in respect of an association is conclusive evidence—
  - (a) that the requirements of this Act in respect of registration and of matters precedent and incidental to it have been complied with, and that the association is a company authorised to be registered, and is duly registered, under this Act, and
  - (b) if the certificate contains a statement that the company is a public company, that the company is such a company.

#### Textual Amendments

**F1** Words added by [Insolvency Act 1986 \(c. 45, SIF 66\)](#), s. 439(1), **Sch. 13 Pt. I**

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

**C2** [S. 13](#) excluded (8.10.2004) by [The European Public Limited-Liability Company Regulations 2004 \(S.I. 2004/2326\)](#), regs. 85, 88, **Sch. 4 para. 6** (with para. 11)

**C3** [S. 13](#) modified (1.7.2005) by [Companies \(Audit, Investigations and Community Enterprise\) Act 2004 \(c. 27\)](#), **ss. 36(8)**, 65; [S.I. 2004/3322](#), **art. 2(3)**, [Sch. 3](#) (subject to arts. 3-13)

## 14 Effect of memorandum and articles.

- (1) Subject to the provisions of this Act, the memorandum and articles, when registered, bind the company and its members to the same extent as if they respectively had been signed and sealed by each member, and contained covenants on the part of each member to observe all the provisions of the memorandum and of the articles.
- (2) Money payable by a member to the company under the memorandum or articles is a debt due from him to the company, and in England and Wales is of the nature of a speciality debt.

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

**C4** [S. 14](#) modified (12.2.1992) by [S.I. 1992/225](#), **regs. 1**, 119(1).

## 15 Memorandum and articles of company limited by guarantee.

- (1) In the case of a company limited by guarantee and not having a share capital, every provision in the memorandum or articles, or in any resolution of the company

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purporting to give any person a right to participate in the divisible profits of the company otherwise than as a member, is void.

- (2) For purposes of provisions of this Act relating to the memorandum of a company limited by guarantee, and for those of section 1(4) and this section, every provision in the memorandum or articles, or in any resolution, of a company so limited purporting to divide the company's undertaking into shares or interests is to be treated as a provision for a share capital, notwithstanding that the nominal amount or number of the shares or interests is not specified by the provision.

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

**C5** S. 15 excluded by [Companies Consolidation \(Consequential Provisions\) Act 1985 \(c.9, SIF 27\)](#), **s. 10**

**16 Effect of alteration on company's members.**

- (1) A member of a company is not bound by an alteration made in the memorandum or articles after the date on which he became a member, if and so far as the alteration—
- (a) requires him to take or subscribe for more shares than the number held by him at the date on which the alteration is made; or
  - (b) in any way increases his liability as at that date to contribute to the company's share capital or otherwise to pay money to the company.
- (2) Subsection (1) operates notwithstanding anything in the memorandum or articles; but it does not apply in a case where the member agrees in writing, either before or after the alteration is made, to be bound by the alteration.

**17 Conditions in memorandum which could have been in articles.**

- (1) A condition contained in a company's memorandum which could lawfully have been contained in articles of association instead of in the memorandum may be altered by the company by special resolution; but if an application is made to the court for the alteration to be cancelled, the alteration does not have effect except in so far as it is confirmed by the court.
- (2) This section—
- (a) is subject to section 16, and also to Part XVII (court order protecting minority), and
  - (b) does not apply where the memorandum itself provides for or prohibits the alteration of all or any of the conditions above referred to, and does not authorise any variation or abrogation of the special rights of any class of members.
- (3) Section 5 (except subsections (2)(b) and (8)) and section 6(1) to (3) apply in relation to any alteration and to any application made under this section as they apply in relation to alterations and applications under sections 4 to 6.

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

**C6** S. 17 extended (1.10.2009) by [Companies Act 2006 \(c. 46\)](#), **ss. 63(5)**, 1300; [S.I. 2008/2860](#), **art. 3(e)** (with [arts. 5, 7, 8](#), [Sch. 2](#))

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## 18 Amendments of memorandum or articles to be registered.

- (1) Where an alteration is made in a company's memorandum or articles by any statutory provision, whether contained in an Act of Parliament or in an instrument made under an Act, a printed copy of the Act or instrument shall, not later than 15 days after that provision comes into force, be forwarded to the registrar of companies and recorded by him.
- (2) Where a company is required (by this section or otherwise) to send to the registrar any document making or evidencing an alteration in the company's memorandum or articles (other than a special resolution under section 4), the company shall send with it a printed copy of the memorandum or articles as altered.
- (3) If a company fails to comply with this section, the company and any officer of it who is in default is liable to a fine and, for continued contravention, to a daily default fine.

### Modifications etc. (not altering text)

- C7 S. 18 applied with modifications by S.I. 1985/680, regs. 4–6, Sch.  
C8 S. 18(3) extended (12.2.1992) by S.I. 1992/225, regs. 1, 119(3).

## 19 Copies of memorandum and articles to be given to members.

- (1) A company shall, on being so required by any member, send to him a copy of the memorandum and of the articles (if any), and a copy of any Act of Parliament which alters the memorandum, subject to payment—
  - (a) in the case of a copy of the memorandum and of the articles, of 5 pence or such less sum as the company may prescribe, and
  - (b) in the case of a copy of an Act, of such sum not exceeding its published price as the company may require.
- (2) If a company makes default in complying with this section, the company and every officer of it who is in default is liable for each offence to a fine.

## 20 Issued copy of memorandum to embody alterations.

- (1) Where an alteration is made in a company's memorandum, every copy of the memorandum issued after the date of the alteration shall be in accordance with the alteration.
- (2) If, where any such alteration has been made, the company at any time after the date of the alteration issues any copies of the memorandum which are not in accordance with the alteration, it is liable to a fine, and so too is every officer of the company who is in default.

## 21 .....

F2 .....

### Textual Amendments

- F2 S. 21 repealed (1.2.1994) by 1993 c. 38, ss. 30(2), 35(1), Sch. 2; S.I. 1994/115, art. 2(2)

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