



Companies Act 1948

1948 CHAPTER 38 11 and 12 Geo 6

PART I

INCORPORATION OF COMPANIES AND MATTERS INCIDENTAL THERETO.

Private Companies.

28 Meaning of “private company”.

- (1) For the purposes of this Act, the expression “private company ” means a company which by its articles—
- (a) restricts the right to transfer its shares; and
 - (b) limits the number of its members to fifty, not including persons who are in the employment of the company and persons who, having been formerly in the employment of the company, were while in that employment, and have continued after the determination of that employment to be, members of the company; and
 - (c) prohibits any invitation to the public to subscribe for any shares or debentures of the company.
- (2) Where two or more persons hold one or more shares in a company jointly, they shall, for the purposes of this section, be treated as a single member.

29 Consequences of default in complying with conditions constituting a company a private company.

Where the articles of a company include the provisions which, under the last foregoing section, are required to be included in the articles of a company in order to constitute it a private company but default is made in complying with any of those provisions, the company shall cease to be entitled to the privileges and exemptions conferred on private companies under the provisions contained in section thirty-one, subsection (1) of section one hundred and twenty-nine, paragraph (d) of section two hundred and twenty-two and paragraph (i) of proviso (a) to subsection (1) of section two hundred

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and twenty-four of this Act, and thereupon the provisions contained in the first, third and fourth of those enactments shall apply to the company as if it were not a private company and the provisions contained in the second of those enactments shall cease to apply to the company:

Provided that the court, on being satisfied that the failure to comply with the conditions was accidental or due to inadvertence or to some other sufficient cause, or that on other grounds it is just and equitable to grant relief, may, on the application of the company or any other person interested and on such terms and conditions as seem to the court just and expedient, order that the company be relieved from such consequences as aforesaid.

30 Statement in lieu of prospectus to be delivered to registrar by company on ceasing to be private company.

- (1) If a company, being a private company, alters its articles in such manner that they no longer include the provisions which, under section twenty-eight of this Act, are required to be included in the articles of a company in order to constitute it a private company, the company shall, as on the date of the alteration, cease to be a private company and shall, within a period of fourteen days after the said date, deliver to the registrar of companies for registration a statement in lieu of prospectus in the form and containing the particulars set out in Part I of the Third Schedule to this Act and, in the cases mentioned in Part II of that Schedule, setting out the reports specified therein, and the said Parts I and II shall have effect subject to the provisions contained in Part III of that Schedule:

Provided that a statement in lieu of prospectus need not be delivered under this subsection if within the said period of fourteen days a prospectus relating to the company which complies, or is deemed by virtue of a certificate of exemption under section thirty-nine of this Act to comply, with the Fourth Schedule to this Act, is issued and is delivered to the registrar of companies as required by section forty-one of this Act.

- (2) Every statement in lieu of prospectus delivered under the foregoing subsection shall, where the persons making any such report as aforesaid have made therein or have, without giving the reasons, indicated therein any such adjustments as are mentioned in paragraph 5 of the said Third Schedule, have endorsed thereon or attached thereto a written statement signed by those persons setting out the adjustments and giving the reasons therefor.
- (3) If default is made in complying with subsection (1) or (2) of this section, the company and every officer of the company who is in default shall be liable to a default fine of fifty pounds.
- (4) Where a statement in lieu of prospectus delivered to the registrar of companies under subsection (1) of this section includes any untrue statement, any person who authorised the delivery of the statement in lieu of prospectus for registration shall be liable—
- (a) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine not exceeding five hundred pounds, or both; or
 - (b) on summary conviction, to imprisonment for a term not exceeding three months or a fine not exceeding one hundred pounds, or both;

unless he proves either that the untrue statement was immaterial or that he had reasonable ground to believe and did up to the time of the delivery for registration of the statement in lieu of prospectus believe that the untrue statement was true.

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(5) For the purposes of this section—

- (a) a statement included in a statement in lieu of prospectus shall be deemed to be untrue if it is misleading in the form and context in which it is included; and
- (b) a statement shall be deemed to be included in a statement in lieu of prospectus if it is contained therein or in any report or memorandum appearing on the face thereof or by reference incorporated therein.