



Companies Act 2006

2006 CHAPTER 46

PART 4

A COMPANY'S CAPACITY AND RELATED MATTERS

Capacity of company and power of directors to bind it

39 A company's capacity

- (1) The validity of an act done by a company shall not be called into question on the ground of lack of capacity by reason of anything in the company's constitution.
- (2) This section has effect subject to section 42 (companies that are charities).

40 Power of directors to bind the company

- (1) In favour of a person dealing with a company in good faith, the power of the directors to bind the company, or authorise others to do so, is deemed to be free of any limitation under the company's constitution.
- (2) For this purpose—
 - (a) a person "deals with" a company if he is a party to any transaction or other act to which the company is a party,
 - (b) a person dealing with a company—
 - (i) is not bound to enquire as to any limitation on the powers of the directors to bind the company or authorise others to do so,
 - (ii) is presumed to have acted in good faith unless the contrary is proved, and
 - (iii) is not to be regarded as acting in bad faith by reason only of his knowing that an act is beyond the powers of the directors under the company's constitution.
- (3) The references above to limitations on the directors' powers under the company's constitution include limitations deriving—

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- (a) from a resolution of the company or of any class of shareholders, or
 - (b) from any agreement between the members of the company or of any class of shareholders.
- (4) This section does not affect any right of a member of the company to bring proceedings to restrain the doing of an action that is beyond the powers of the directors.
- But no such proceedings lie in respect of an act to be done in fulfilment of a legal obligation arising from a previous act of the company.
- (5) This section does not affect any liability incurred by the directors, or any other person, by reason of the directors' exceeding their powers.
- (6) This section has effect subject to—
- section 41 (transactions with directors or their associates), and
 - section 42 (companies that are charities).

41 Constitutional limitations: transactions involving directors or their associates

- (1) This section applies to a transaction if or to the extent that its validity depends on section 40 (power of directors deemed to be free of limitations under company's constitution in favour of person dealing with company in good faith).
- Nothing in this section shall be read as excluding the operation of any other enactment or rule of law by virtue of which the transaction may be called in question or any liability to the company may arise.
- (2) Where—
- (a) a company enters into such a transaction, and
 - (b) the parties to the transaction include—
 - (i) a director of the company or of its holding company, or
 - (ii) a person connected with any such director,
- the transaction is voidable at the instance of the company.
- (3) Whether or not it is avoided, any such party to the transaction as is mentioned in subsection (2)(b)(i) or (ii), and any director of the company who authorised the transaction, is liable—
- (a) to account to the company for any gain he has made directly or indirectly by the transaction, and
 - (b) to indemnify the company for any loss or damage resulting from the transaction.
- (4) The transaction ceases to be voidable if—
- (a) restitution of any money or other asset which was the subject matter of the transaction is no longer possible, or
 - (b) the company is indemnified for any loss or damage resulting from the transaction, or
 - (c) rights acquired bona fide for value and without actual notice of the directors' exceeding their powers by a person who is not party to the transaction would be affected by the avoidance, or
 - (d) the transaction is affirmed by the company.

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(5) A person other than a director of the company is not liable under subsection (3) if he shows that at the time the transaction was entered into he did not know that the directors were exceeding their powers.

(6) Nothing in the preceding provisions of this section affects the rights of any party to the transaction not within subsection (2)(b)(i) or (ii).

But the court may, on the application of the company or any such party, make an order affirming, severing or setting aside the transaction on such terms as appear to the court to be just.

(7) In this section—

- (a) “transaction” includes any act; and
- (b) the reference to a person connected with a director has the same meaning as in Part 10 (company directors).

42 Constitutional limitations: companies that are charities

(1) Sections 39 and 40 (company's capacity and power of directors to bind company) do not apply to the acts of a company that is a charity except in favour of a person who—

- (a) does not know at the time the act is done that the company is a charity, or
- (b) gives full consideration in money or money's worth in relation to the act in question and does not know (as the case may be)—
 - (i) that the act is not permitted by the company's constitution, or
 - (ii) that the act is beyond the powers of the directors.

(2) Where a company that is a charity purports to transfer or grant an interest in property, the fact that (as the case may be)—

- (a) the act was not permitted by the company's constitution, or
- (b) the directors in connection with the act exceeded any limitation on their powers under the company's constitution,

does not affect the title of a person who subsequently acquires the property or any interest in it for full consideration without actual notice of any such circumstances affecting the validity of the company's act.

(3) In any proceedings arising out of subsection (1) or (2) the burden of proving—

- (a) that a person knew that the company was a charity, or
- (b) that a person knew that an act was not permitted by the company's constitution or was beyond the powers of the directors,

lies on the person asserting that fact.

(4) In the case of a company that is a charity the affirmation of a transaction to which section 41 applies (transactions with directors or their associates) is ineffective without the prior written consent of—

- (a) in England and Wales, the Charity Commission;
- (b) in Northern Ireland, the Department for Social Development.

(5) This section does not extend to Scotland (but see section 112 of the Companies Act 1989 (c. 40)).

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Formalities of doing business under the law of England and Wales or Northern Ireland

43 Company contracts

- (1) Under the law of England and Wales or Northern Ireland a contract may be made—
 - (a) by a company, by writing under its common seal, or
 - (b) on behalf of a company, by a person acting under its authority, express or implied.
- (2) Any formalities required by law in the case of a contract made by an individual also apply, unless a contrary intention appears, to a contract made by or on behalf of a company.

44 Execution of documents

- (1) Under the law of England and Wales or Northern Ireland a document is executed by a company—
 - (a) by the affixing of its common seal, or
 - (b) by signature in accordance with the following provisions.
- (2) A document is validly executed by a company if it is signed on behalf of the company—
 - (a) by two authorised signatories, or
 - (b) by a director of the company in the presence of a witness who attests the signature.
- (3) The following are “authorised signatories” for the purposes of subsection (2)—
 - (a) every director of the company, and
 - (b) in the case of a private company with a secretary or a public company, the secretary (or any joint secretary) of the company.
- (4) A document signed in accordance with subsection (2) and expressed, in whatever words, to be executed by the company has the same effect as if executed under the common seal of the company.
- (5) In favour of a purchaser a document is deemed to have been duly executed by a company if it purports to be signed in accordance with subsection (2).

A “purchaser” means a purchaser in good faith for valuable consideration and includes a lessee, mortgagee or other person who for valuable consideration acquires an interest in property.

- (6) Where a document is to be signed by a person on behalf of more than one company, it is not duly signed by that person for the purposes of this section unless he signs it separately in each capacity.
- (7) References in this section to a document being (or purporting to be) signed by a director or secretary are to be read, in a case where that office is held by a firm, as references to its being (or purporting to be) signed by an individual authorised by the firm to sign on its behalf.
- (8) This section applies to a document that is (or purports to be) executed by a company in the name of or on behalf of another person whether or not that person is also a company.

45 Common seal

- (1) A company may have a common seal, but need not have one.
- (2) A company which has a common seal shall have its name engraved in legible characters on the seal.
- (3) If a company fails to comply with subsection (2) an offence is committed by—
 - (a) the company, and
 - (b) every officer of the company who is in default.
- (4) An officer of a company, or a person acting on behalf of a company, commits an offence if he uses, or authorises the use of, a seal purporting to be a seal of the company on which its name is not engraved as required by subsection (2).
- (5) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (6) This section does not form part of the law of Scotland.

46 Execution of deeds

- (1) A document is validly executed by a company as a deed for the purposes of section 1(2)(b) of the Law of Property (Miscellaneous Provisions) Act 1989 (c. 34) and for the purposes of the law of Northern Ireland if, and only if—
 - (a) it is duly executed by the company, and
 - (b) it is delivered as a deed.
- (2) For the purposes of subsection (1)(b) a document is presumed to be delivered upon its being executed, unless a contrary intention is proved.

47 Execution of deeds or other documents by attorney

- (1) Under the law of England and Wales or Northern Ireland a company may, by instrument executed as a deed, empower a person, either generally or in respect of specified matters, as its attorney to execute deeds or other documents on its behalf.
- (2) A deed or other document so executed, whether in the United Kingdom or elsewhere, has effect as if executed by the company.

Formalities of doing business under the law of Scotland

48 Execution of documents by companies

- (1) The following provisions form part of the law of Scotland only.
- (2) Notwithstanding the provisions of any enactment, a company need not have a company seal.
- (3) For the purposes of any enactment—
 - (a) providing for a document to be executed by a company by affixing its common seal, or
 - (b) referring (in whatever terms) to a document so executed,

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a document signed or subscribed by or on behalf of the company in accordance with the provisions of the Requirements of Writing (Scotland) Act 1995 (c. 7) has effect as if so executed.

Other matters

49 Official seal for use abroad

- (1) A company that has a common seal may have an official seal for use outside the United Kingdom.
- (2) The official seal must be a facsimile of the company's common seal, with the addition on its face of the place or places where it is to be used.
- (3) The official seal when duly affixed to a document has the same effect as the company's common seal.

This subsection does not extend to Scotland.

- (4) A company having an official seal for use outside the United Kingdom may—
 - (a) by writing under its common seal, or
 - (b) as respects Scotland, by writing subscribed in accordance with the Requirements of Writing (Scotland) Act 1995,authorise any person appointed for the purpose to affix the official seal to any deed or other document to which the company is party.
- (5) As between the company and a person dealing with such an agent, the agent's authority continues—
 - (a) during the period mentioned in the instrument conferring the authority, or
 - (b) if no period is mentioned, until notice of the revocation or termination of the agent's authority has been given to the person dealing with him.
- (6) The person affixing the official seal must certify in writing on the deed or other document to which the seal is affixed the date on which, and place at which, it is affixed.

50 Official seal for share certificates etc

- (1) A company that has a common seal may have an official seal for use—
 - (a) for sealing securities issued by the company, or
 - (b) for sealing documents creating or evidencing securities so issued.
- (2) The official seal—
 - (a) must be a facsimile of the company's common seal, with the addition on its face of the word "Securities", and
 - (b) when duly affixed to the document has the same effect as the company's common seal.

51 Pre-incorporation contracts, deeds and obligations

- (1) A contract that purports to be made by or on behalf of a company at a time when the company has not been formed has effect, subject to any agreement to the contrary, as

one made with the person purporting to act for the company or as agent for it, and he is personally liable on the contract accordingly.

(2) Subsection (1) applies—

- (a) to the making of a deed under the law of England and Wales or Northern Ireland, and
- (b) to the undertaking of an obligation under the law of Scotland, as it applies to the making of a contract.

52 Bills of exchange and promissory notes

A bill of exchange or promissory note is deemed to have been made, accepted or endorsed on behalf of a company if made, accepted or endorsed in the name of, or by or on behalf or on account of, the company by a person acting under its authority.