

GENERAL INTRODUCTORY PROVISIONS

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Companies Act 2006

PART 1

GENERAL INTRODUCTORY PROVISIONS

Companies and Companies Acts

1 Companies

- (1) In the Companies Acts, unless the context otherwise requires— ‘company’ means a company formed and registered under this Act, that is—
- (a) a company so formed and registered after the commencement of this Part, or
 - (b) a company that immediately before the commencement of this Part—
 - (i) was formed and registered under the Companies Act 1985 (c. 6) or the Companies (Northern Ireland) Order 1986 (S.I. 1986/1032 (N.I. 6)), or
 - (ii) was an existing company for the purposes of that Act or that Order, (which is to be treated on commencement as if formed and registered under this Act),
 - (iii) was an existing company for the purposes of that Act or that Order, (which is to be treated on commencement as if formed and registered under this Act).
- (2) Certain provisions of the Companies Acts apply to—
- (a) companies registered, but not formed, under this Act (see Chapter 1 of Part 33), and
 - (b) bodies incorporated in the United Kingdom but not registered under this Act (see Chapter 2 of that Part).
- (3) For provisions applying to companies incorporated outside the United Kingdom, see Part 34 (overseas companies).

1.1.01

COMMENCEMENT DATE 1 October 2009¹

This section defines the ‘companies’ to which the legislation applies. The ‘Companies Acts’ are defined in section 2. In previous Companies Acts the definition appeared towards the end of the statute,² but it does seem more helpful to commence the legislation in this way. The wording of the section does not exactly follow that of its predecessors, which applied the new legislation to what were defined as ‘existing companies’, that is companies registered under a previous Act. The drafting here refers to companies existing at the time of the 1985 Act or its Northern Irish equivalent as well as companies formed and registered under that legislation, but it deems them on commencement of Part 1 of this Act to be treated as if formed and registered under it. This form of drafting was no doubt adopted to facilitate the application of this Act to the many companies that will have been formed before commencement.³ In this regard, a general savings provision⁴ expressly provides that nothing in the Act affects the registration or reregistration of a company under the former Companies Acts or the

1.1.02

¹ Companies Act 2006 (Commencement No 8, Transitional Provisions and Savings) Order 2008, SI 2008/2860, art 3(a).

² Eg s 735 in the 1985 Act.

³ Note that the ‘former Companies Acts’ are defined in s 1171 to include all the Acts since the Joint Stock Companies Act 1856, although this definition is not needed for the purposes of s 1. It is referred to in s 4 and is made use of in transitional provisions and savings, for example in the text immediately following.

⁴ Companies Act 2006 (Commencement No 8, Transitional Provisions and Savings) Order 2008, SI 2008/2860, Sch 2, para 1(1).

continued existence of a company by virtue of such registration or reregistration. For the first time, a Companies Act passed by the UK Parliament includes companies registered in Northern Ireland.⁵

- 1.1.03** The reference in subsection (1)(a) to a company formed and registered after the commencement of Part 1 is to be read as a reference to a company formed and registered on an application received by the registrar on or after 1 October 2009.⁶ The reference in subsection (1)(b)(i) to a company formed and registered under the 1985 Act or 1986 Order immediately before the commencement of Part 1 includes a company formed and registered on an application received by the registrar and meeting the requirements as to registration before 1 October 2009.⁷
- 1.1.04** Subsection (2)(a) refers to joint stock companies (see further section 1040 and the commentary thereto) and subsection (2)(b) to unregistered companies (see further section 1043 and the commentary thereto). As is made clear by subsection (3), the provisions applying to overseas companies are in Part 34.

2 The Companies Acts

- 1.2.01** (1) In this Act ‘the Companies Acts’ means—
- (a) the company law provisions of this Act,
 - (b) Part 2 of the Companies (Audit, Investigations and Community Enterprise) Act 2004 (c. 27) (community interest companies), and
 - (c) the provisions of the Companies Act 1985 (c. 6) and the Companies Consolidation (Consequential Provisions) Act 1985 (c. 9) that remain in force.
- (2) The company law provisions of this Act are—
- (a) the provisions of Parts 1 to 39 of this Act, and
 - (b) the provisions of Parts 45 to 47 of this Act so far as they apply for the purposes of those Parts.

COMMENCEMENT DATE 6 April 2007⁸

- 1.2.02** When the Bill that became this Act was going through Parliament, the government bowed to pressure and took the opportunity to make the Act not just a reforming measure, but also a virtually complete restatement of the statutory law applicable to registered and other companies. In the result, a few sections of the Companies Act 1985 remain on the statute book,⁹ as well as a number of provisions of the Companies Act 1989 and Part 2 of the Companies (Audit, Investigations and Community Enterprise) Act 2004 regarding community interest companies.¹⁰ Apart from the special provisions relating to community interest companies, the surviving provisions are almost exclusively concerned with the powers of inspection vested in the Secretary of State.¹¹
- 1.2.03** It was thus necessary to define in section 2(1) the ‘Companies Acts’ as including the surviving provisions of these other Acts as well as the company law provisions of this Act. Note that Parts 40 to 44 of this Act are not within the meaning of the company law provisions.

Types of company

3 Limited and unlimited companies

- 1.3.01** (1) A company is a ‘limited company’ if the liability of its members is limited by its constitution. It may be limited by shares or limited by guarantee.
- (2) If their liability is limited to the amount, if any, unpaid on the shares held by them, the company is ‘limited by shares’.
- (3) If their liability is limited to such amount as the members undertake to contribute to the assets of the company in the event of its being wound up, the company is ‘limited by guarantee’.

⁵ See s 1299, discussed in Chapter 47.

⁶ Companies Act 2006 (Commencement No 8, Transitional Provisions and Savings) Order 2008, SI 2008/2860, Sch 2, para 2(6)(a).

⁷ Companies Act 2006 (Commencement No 8, Transitional Provisions and Savings) Order 2008, SI 2008/2860, Sch 2, para 2(6)(b).

⁸ Companies Act 2006 (Commencement No 2, Consequential Amendments, Transitional Provisions and Savings) Order 2007, SI 2007/1093, art 2.

⁹ Schedule 16 contains the repeals. Note that this does not repeal any of the Companies Consolidation (Consequential Provisions) Act 1985, but this was effected, with effect from 1 October 2009, by the Companies Act 2006 (Commencement No 8, Transitional Provisions and Savings) Order 2008, SI 2008/2860, Sch 1.

¹⁰ See s 6.

¹¹ See Chapter 32. These will probably be consolidated separately at some time.

(4) If there is no limit on the liability of its members, the company is an 'unlimited company'.

COMMENCEMENT DATE 1 October 2009¹²

This section provides for the same types of company as did section 1(2) of the Companies Act 1985, namely companies limited by shares, companies limited by guarantee and unlimited companies. The only substantive change is the removal of the requirement for limits on the liability of members to be stated in the memorandum of association, because the importance of that document has been substantially reduced.¹³ Instead the limit must be in the constitution, defined in section 17,¹⁴ but which essentially for this purpose means the articles of association. **1.3.02**

4 Private and public companies

(1) A 'private company' is any company that is not a public company. **1.4.01**

(2) A 'public company' is a company limited by shares or limited by guarantee and having a share capital—

(a) whose certificate of incorporation states that it is a public company, and

(b) in relation to which the requirements of this Act, or the former Companies Acts, as to registration or re-registration as a public company have been complied with on or after the relevant date.

(3) For the purposes of subsection (2)(b) the relevant date is—

(a) in relation to registration or re-registration in Great Britain, 22nd December 1980;

(b) in relation to registration or re-registration in Northern Ireland, 1st July 1983.

(4) For the two major differences between private and public companies, see Part 20.

COMMENCEMENT DATE 1 October 2009¹⁵

This section re-enacts the legal distinction between private and public companies that was formerly in section 1(3) of the Companies Act 1985, although the order is recast so that the private company appears clearly as the default type of company. The two major differences referred to in section 4(4) as covered in Part 20 are that a private company may not offer its shares to the public and a public company must have a minimum allotted share capital of £50,000 or the euro equivalent.¹⁶ It is the latter requirement that dictates the special requirements for registration or re-registration referred to in subsection (2)(b). The former Companies Acts referred to in subsection (2)(b) are defined in section 1171. **1.4.02**

A company can be a public company only if it has a share capital and, since the dates in 1980 or 1983 in subsection (3),¹⁷ it has not been possible to form a guarantee company with a share capital, so that only such guarantee companies, if any, that were registered before then can be public companies. **1.4.03**

This Act does not contain any provisions relating to 'old public companies', that is public companies existing before the modern system of classification was introduced by the Companies Act 1980. The relevant provisions were previously in the Companies Consolidation (Consequential Provisions) Act 1985. They have been re-enacted, in the event of there being any such companies still in existence, in article 12 of and Schedule 3 to the Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009.¹⁸ **1.4.04**

5 Companies limited by guarantee and having share capital

(1) A company cannot be formed as, or become, a company limited by guarantee with a share capital. **1.5.01**

(2) Provision to this effect has been in force—

(a) in Great Britain since 22nd December 1980, and

(b) in Northern Ireland since 1st July 1983.

¹² Companies Act 2006 (Commencement No 8, Transitional Provisions and Savings) Order 2008, SI 2008/2860, art 3(a).

¹³ See Chapter 2.

¹⁴ See Chapter 3.

¹⁵ Companies Act 2006 (Commencement No 8, Transitional Provisions and Savings) Order 2008, SI 2008/2860, art 3(a).

¹⁶ As to these, see Chapter 20.

¹⁷ Depending on whether the company is registered in Great Britain or Northern Ireland; see s 5.

¹⁸ SI 2009/1941.

- (3) Any provision in the constitution of a company limited by guarantee that purports to divide the company's undertaking into shares or interests is a provision for a share capital. This applies whether or not the nominal value or number of the shares or interests is specified by the provision.

COMMENCEMENT DATE 1 October 2009¹⁹

- 1.5.02** Section 5(1) and (2) replaces section 1(4) of the Companies Act 1985 and the corresponding provision in the Northern Irish legislation. The section thus ensures that it has not been possible to form a company limited by guarantee with a share capital since the dates in subsection (2). The effect of subsection (3), which was previously in section 15(2) of the Companies Act 1985, is that a company that purports to be a guarantee company, but which provides in its constitution for the division of the company's undertaking into shares or interests, is treated as a company limited by shares. For this purpose, it is not necessary that each share or interest has a nominal value or number, which would otherwise be required by section 10.

6 Community interest companies

- 1.6.01** (1) In accordance with Part 2 of the Companies (Audit, Investigations and Community Enterprise) Act 2004 (c. 27)—
- (a) a company limited by shares or a company limited by guarantee and not having a share capital may be formed as or become a community interest company, and
 - (b) a company limited by guarantee and having a share capital may become a community interest company.
- (2) The other provisions of the Companies Acts have effect subject to that Part.

COMMENCEMENT DATE 1 October 2009²⁰

- 1.6.02** Rather than enacting any specific requirements, this section acts as a signpost to Part 2 of the 2004 Act, which created the concept of the community interest company and which was not included in the general consolidation under this Act. A community interest company is a company formed, for use by social enterprises, in the same way as other limited companies, but with additional formal and regulatory requirements under Part 2 of the 2004 Act. By subsection (2), the general provisions of the Companies Acts have effect subject to Part 2 of the 2004 Act.
- 1.6.03** It should be noted that, as well as companies limited by shares or limited by guarantee having the option to form as or become community interest companies, any surviving guarantee companies with a share capital, that is those existing before section 5 or its predecessors came into force, may become such companies.

¹⁹ Companies Act 2006 (Commencement No 8, Transitional Provisions and Savings) Order 2008, SI 2008/2860, art 3(a).

²⁰ Companies Act 2006 (Commencement No 8, Transitional Provisions and Savings) Order 2008, SI 2008/2860, art 3(a).