

Company Law in Great Britain

Dr PETER MEINHARDT
Barrister

with the assistance of

NIGEL DAVIS
Barrister



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Dr Peter Meinhardt
Barrister

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Nigel Davis
Barrister

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Company Law in Great Britain

Foreword

The publication of Dr Meinhardt's book on Company Law in Great Britain is most timely.

Over the past few years UK company law has become inordinately complex and difficult owing to a spate of legislation.

I have myself been closely concerned with amendments of these Acts during their passage through the House of Lords. I have no hesitation in saying that this book will be of great assistance to English-speaking lawyers, accountants and businessmen with no legal knowledge in all countries of the world in finding practical answers to their day-to-day problems.

The classification of the law such as is to be found in this book is of great importance for the furthering of international trade with British companies. This book contains concise summaries of and answers to basic practical questions. Dr Meinhardt is a distinguished lawyer with wide experience in a range of industrial and legal matters. He understands fully the needs of people of so many countries who are concerned with trading and investment in the UK.

Dr Meinhardt is to be congratulated on making such a useful contribution to the practice of company law.

The Lord Lloyd of Kilgerran,
CBE, QC, MA (Cantab), BSc (Lond)

Preface

Company Law in Great Britain is a companion volume to *Company Law in Europe*. Accordingly the structure and the Sequence of Headings follow the pattern adopted in that book so that comparison between English and Continental laws is facilitated. However, for Great Britain several new headings and a large number of new subheadings have been introduced and more detail is provided in the text. The law is stated as on 1 January 1982.

This book sets out the main features of British company law. The description is concentrated on the two kinds of company most frequently found in practice, namely the public limited company and the private limited company; the unlimited company is dealt with in less detail. Each topic is summarised illustrating the normal case: exceptions and moot points are disregarded. I have tried to be brief, but in view of the manner in which the latest British company legislation is drafted this has not always been easy; see for example the subject of loans to directors and substantial property transactions involving directors which in the Companies Act 1980 occupies about 8000 words. There are now five separate Companies Acts ranging from 1948 to 1981. Let us hope that the promised consolidation will make British company law shorter and clearer.

Nearly all the EEC Directives on Company Law have been enacted in Great Britain and most of the outstanding reform proposals have been dealt with. Calm can thus be expected in the field of British company law, which in spite of its defects of form is excellent in substance.

My thanks go to Nigel Davis for his assistance on the law, to Gower Publishing for their proposals on presentation and to my wife for her continued constructive criticism and practical advice.

Dr Peter Meinhardt

Sequence of Headings

The sequence of headings for Great Britain follows the system adopted for *Company Law in Europe*. However, since the law for Great Britain is dealt with in greater detail than that for continental countries several new headings and a large number of new subheadings have been introduced.

In order to preserve the system of numbering used in *Company Law in Europe* and thereby facilitate the search for a particular point, the new headings have been given 'A' numbers; for example, '13A Insider Dealing'.

For headings 12, 14 and 24, which are very long, the subheadings have been given decimal numbers in order to ease cross references and indexing.

The expression 'para.' used in the text refers to the headings (paragraphs) set forth below.

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1 BASIC LAW

Statutory Law

British company law is primarily contained in the Companies Acts 1948 to 1981. According to a definition in the 1981 Act s 119 these Acts comprise:

- 1 Companies Act 1948
- 2 Companies Act 1967 Parts I and III
- 3 Companies Act 1976
- 4 Companies Act 1980
- 5 Companies Act 1981

as well as:

- 6 Companies (Floating Charges and Receivers) (Scotland) Act 1972
- 7 European Communities Act 1972 s 9
- 8 Stock Exchange (Completion of Bargains) Act 1976
- 9 Insolvency Act 1976 s 9.

EEC

Several provisions of the 1980 Act implement the Second EEC Directive on Company Law of 1976, and several provisions of the 1981 Act implement the Fourth EEC Directive on Company Accounts of 1978.

Table A

Table A frequently referred to in the following text is the Table A set out in Schedule 1 of the 1948 Act as subsequently amended, particularly by the 1980 Act Schedule 3 paragraph 36. Table A contains a model form of articles for a company limited by shares (see also para. 2).

Other Statutes

Important statutes affecting the legal and financial aspect of the operation of companies include among others:

- 1 Borrowing (Control and Guarantees) Act 1946 (see para. 11)
- 2 Exchange Control Act 1947 (see para. 25)
- 3 Prevention of Fraud (Investments) Act 1958 (see para. 10)
- 4 Protection of Depositors Act 1963 (see para 10)
- 5 Stock Transfer Act 1963 (see para. 10)
- 6 Fair Trading Act 1973 (see para. 22 under "Mergers")
- 7 Industry Act 1975 (see para. 18)
- 8 Insolvency Act 1976 (other than s 9 referred to above) (see para. 23)
- 9 Employment Protection (Consolidation) Act 1978 (see para. 16).

Insurance companies, which are not dealt with in this book, are regulated by the Insurance Companies Acts 1974 to 1981.

Banking companies, which are not dealt with in this book, are regulated by the Banking Act 1979.

The taxation of companies, which with few exceptions is not dealt with in this book, is regulated by the Income and Corporation Taxes Act 1970 as amended by subsequent Finance Acts.

The stamping of documents affecting companies is regulated by the Stamp Act 1891 as amended in respect of capital duty by the Finance Act 1973 and generally by other Finance Acts.

Extra-Legal Control

Companies listed on the Stock Exchange are subject to the:
Admission of Securities to Listing Regulations (see para. 8)
City Code on Take-overs and Mergers as revised in February 1980 (see para. 22).

Case Law

Many fundamental principles as well as legal details of company law are not contained in the Companies Acts, but are based on case law (common law).

Territory

The Companies Acts apply to Great Britain, i.e. England, Wales and Scotland, but there are a number of special provisions for Scotland in the Acts.

Northern Ireland has its own Companies Act of 1960 as amended up to 1978.

The Republic of Ireland has its own Companies Act of 1963 as amended.

Jersey has its own Companies Act of 1861 as amended.

Guernsey has its own companies legislation.

The Isle of Man has its own Companies Act of 1931 as amended.

Legal Entity

A company is a legal entity (legal person, or body corporate) distinct from its shareholders who are its members.

Principal Types of Companies

The principal types of companies are:

- 1 Public company
- 2 Private company.

The Companies Acts apply to both, public and private companies.

The private company is dealt with in para. 24 of this book, but essential differences between the rules for public companies and private companies are noted in the respective paragraphs on public companies.

Another subdivision of companies is:

- 1 Companies limited by shares
- 2 Companies limited by guarantee
- 3 Unlimited companies.

In practice the company limited by shares is by far the most important company for industry and commerce. A company limited by shares obtains its working funds – other than money borrowed or earned – by the issue of shares.

A company limited by guarantee is suitable for non-profit making organisations, including professional bodies and associations for the promotion of commerce, trade, art, science, education, religion or charity. A company limited by guarantee obtains its funds by fees, endowments, subscriptions, and other charges. In a company limited by guarantee the liability of a member is limited to the amount he has undertaken to contribute, if necessary, on the winding up of the company. With some exceptions (see for example para. 4 on the name) the company limited by guarantee is not dealt with in this book.

The unlimited company is dealt with briefly in para. 25A.

Public companies limited by shares may or may not have their shares listed on the Stock Exchange (see para. 8).

Definitions of Companies

A public company is defined as (1980 Act s 1):

‘a company limited by shares or limited by guarantee and having a share capital, being a company

(a) the memorandum of which states that the company is to be a public company and

(b) in relation to which the provisions of the Companies Acts as to the registration or re-registration of a company as a public company have been complied with ...’

(On the re-registration of an old public company as a new public company see para. 22 on Conversions).

A private company is defined as (1980 Act s 1):

‘... a company that is not a public company’.

A company limited by shares is defined as (1948 Act s 1):

‘a company having the liability of its members limited by the memorandum to the amount, if any, unpaid on the shares respectively held by them’.

A company limited by guarantee is defined as (1948 Act s 1):

‘a company having the liability of its members limited by the memorandum to such amount as the members may respectively undertake to contribute to the assets of the company in the event of its being wound up’.

An unlimited company is defined as (1948 Act s 1):

‘a company not having any limit on the liability of its members’ (see para. 25A).

Other Types of Companies

Other companies or corporations comprise:

- 1 Joint stock companies registered under the older Companies Acts
- 2 Companies incorporated under a Royal Charter

- 3 Companies incorporated by letters patent
- 4 Companies incorporated by a special Act of Parliament
- 5 Oversea companies with an established place of business in Great Britain (see para. 25).

The rules on the question to what extent such companies or corporations are or are not governed by the Companies Acts will be found in the 1948 Act s 377 et seq. and s 406 et seq.

Most banks and insurance companies are governed by the Companies Acts, but in addition special legislation applies to them (see above under 'Statutory Law').

The following entities are not considered to be companies and are governed by special legislation:

- 1 Building Societies
- 2 Industrial, Provident and Friendly Societies
- 3 Unit Trusts
- 4 Co-operative Societies
- 5 Partnerships
- 6 Limited Partnerships.

2 FORMATION OF A LIMITED COMPANY

Essential Documents

The essential documents for the formation of a limited company are:

- 1 The memorandum of association (1948 Act s 1)
- 2 The articles of association (1948 Act s 6).

The memorandum contains the fundamental provisions of the company's constitution.

The articles contain the internal regulations for the management of the company. If a company adopts Table A of Schedule 1 of the 1948 Act in its entirety as its articles no separate document setting forth the articles will be required (1948 Act s 8).

The memorandum is the dominant instrument and the articles are subordinate to the memorandum; therefore any provisions in the articles which go beyond the memorandum or are inconsistent with the memorandum are void. Both the memorandum and the articles will, when registered, have the effect of binding the company and the members as if they had been signed and sealed by each member (1948 Act s 20).

Prescribed Contents of the Memorandum

The memorandum of a limited company must state (1948 Act s 2):

- 1 Name of the company (see para. 4)
- 2 Registered office (see para. 5)
- 3 Objects (see para. 6)
- 4 Limited liability (see para. 7)
- 5 Capital (see para. 8)
- 6 Division of capital into shares of a fixed amount (see para. 9)
- 7 Association of subscribers expressing the desire to be formed into a company.

In the case of a public company the memorandum must further state that the company is to be a public company (1980 Act s 1). The memorandum of a public company shall be in the form set out in Table B of Schedule 1 Part one of the 1980 Act or as near thereto as circumstances admit (1980 Act s 2).

Prescribed Contents of the Articles

The 1948 Act contains in Schedule 1 Table A a model form of articles for a company limited by shares. Table A applies both to a public company and to a private company (1980 Act Schedule 3 item 36).

A company may adopt Table A entirely or partly. To the extent that the articles do not exclude or modify Table A the provisions of the Table apply automatically (1948 Act ss 6, 8, 11 and 1980 Act Schedule 1 paragraph 36). As stated above, if a company is content to adopt Table A in its entirety no articles need be registered. In practice the articles frequently

consist of a short set of articles drafted to suit the particular requirements of the company, but otherwise leaving Table A to apply.

The principal provisions of the articles refer to:

- 1 Capital (see para. 8)
- 2 Shares (see para. 9)
- 3 Allotment and transfer of shares (see para. 10)
- 4 General meetings (see para. 12)
- 5 Directors (see para. 14)
- 6 Secretary (see para. 15)
- 7 Dividends and reserves (see para. 19)
- 8 Accounts (see para. 18)
- 9 Winding up (see para. 23).

Form of Memorandum

The memorandum must be printed. The registrar of companies may, however, at his discretion accept copies reproduced by some other process (see para. 3). The memorandum must be signed by each subscriber and their signatures must be attested by one witness (1948 Act s 3). Each subscriber must take at least one share and must write opposite to his name the number of shares he takes (1948 Act s 3). The memorandum must be in English, but if the registered office is in Wales it may be in the Welsh language with a certified English translation (1976 Act s 30).

Form of Articles

The articles must be printed (1948 Act s 9). The provisions on copies produced by some other process and on signatures and on the Welsh language are the same as for the memorandum (see above and para. 3).

Method of Formation

The Companies Acts contain provisions for the formation of a public company right from the start. These are complicated (see below under 'Commencement of Business'). Therefore in practice a limited company is usually formed initially as a private company and later, if desired, converted into a public company (see para. 22). The conversion frequently takes place when the shareholders want to sell some of their shares to the public and want the shares listed on the Stock Exchange.

Founders and Promoters

Legally the persons who form the company are the founders, in the Act called the 'subscribers to the memorandum' (1980 Act s 1). A person who takes a commercial or financial part in the formation of a limited company is known as a promoter; such a person has fiduciary duties to the company not to make a secret profit out of the promotion and to disclose to the company any interest he has in a transaction to be entered into by the company. A promoter who takes part in the issue of a prospectus containing untrue statements will incur liabilities (see also para. 8).