

Blackstone's

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DEREK FRENCH

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COMPANY LAW

2000/2001

4th Edition

Edited by

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EDITOR'S PREFACE

This book provides the text of the main statutes and statutory instruments concerning company law in England and Wales. The selection should provide all the legislation that is required for degree-level courses in company law, including courses that cover company insolvency. To keep the book to a handy size, provisions relating only to banking, insurance and overseas companies have been omitted, and there is only a representative sample from the detailed schedules on accounting requirements.

The text of all legislation incorporates all amendments and repeals in force on 20 July 2000. At the end of the book there is a list of sources of amendments so that the legislative history of any provision can be investigated if necessary.

Enactments which had not been brought into force by 20 July 2000 are printed in italics. Where a provision is subject to an amendment or repeal that has not been brought into force (or is only in force for certain purposes), the text of the provision currently in force is printed, accompanied by a note of relevant amendments and repeals. The Department of Trade and Industry has indicated that several amendments made by the Companies Act 1989 will not be brought into force. The text of those amendments is set out under the heading 'Companies Act 1989'.

This edition includes the text of relevant provisions of the Financial Services Act 1986 as well as the replacement provisions enacted in the Financial Services and Markets Act 2000, which have not yet been brought into force. This edition also includes the text of the Limited Liability Partnerships Act 2000.

The legislation on companies has been attacked for its length and complexity. One of the tasks of the long review of company law announced by the Department of Trade and Industry in March 1998 is to consider the structure and drafting of this legislation. However, that review is not expected to result in a new Companies Act until 2002 at the earliest. It is easy to be impatient with the tedious length of the present companies legislation, but my own view is that nearly all of it is clearly and accurately expressed, within the style of legislative drafting generally used in this country. There are, though, occasional lapses into unintelligibility through excessive compression, such as the second sentence of the Companies Act 1985, s. 44(5), and note 10 to the balance sheet formats in sch. 4 to that Act. There are also some minor drafting anomalies, which are indicated in notes at appropriate points in this book and have been communicated to the Department of Trade and Industry.

An interesting glimpse of what companies legislation could look like if drafted in a different style is provided in appendix B to the Law Commissions' joint consultation paper, *Company Directors: Regulating Conflicts of Interest and Formulating a Statement of Duties* (Law Commission Consultation Paper No. 153) (London: Stationery Office, 1998). Here the provisions currently in the Companies Act 1985, ss. 330 to 344, are redrafted using the plain language and readers' aids which are currently being applied by the Tax Law Rewrite Project to the statute law on direct taxes.

If there are any errors in this edition, I must take the blame for not noticing them, but the praise for the accuracy of the text must go to the marvellous typesetting of Linda Murdoch.

Derek French
31 July 2000

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PART I STATUTES

PARTNERSHIP ACT 1890 (53 & 54 Vict., c. 39)

An Act to declare and amend the Law of Partnership.

[14 August 1890]

Nature of Partnership

1. Definition of partnership.

(1) Partnership is the relation which subsists between persons carrying on a business in common with a view of profit.

(2) But the relation between members of any company or association which is—

(a) Registered as a company under the Companies Act 1862, or any other Act of Parliament for the time being in force and relating to the registration of joint stock companies; or

(b) Formed or incorporated by or in pursuance of any other Act of Parliament or letters patent, or Royal Charter:

is not a partnership within the meaning of this Act.

2. Rules for determining existence of partnership.

In determining whether a partnership does or does not exist, regard shall be had to the following rules:

(1) Joint tenancy, tenancy in common, joint property, common property, or part ownership does not of itself create a partnership as to anything so held or owned, whether the tenants or owners do or do not share any profits made by the use thereof.

(2) The sharing of gross returns does not of itself create a partnership, whether the persons sharing such returns have or have not a joint or common right or interest in any property from which or from the use of which the returns are derived.

(3) The receipt by a person of a share of the profits of a business is *prima facie* evidence that he is a partner in the business, but the receipt of such a share, or of a payment contingent on or varying with the profits of a business, does not of itself make him a partner in the business; and in particular—

(a) The receipt by a person of a debt or other liquidated amount by instalments or otherwise out of the accruing profits of a business does not of itself make him a partner in the business or liable as such:

(b) A contract for the remuneration of a servant or agent of a person engaged in a business by a share of the profits of the business does not of itself make the servant or agent a partner in the business or liable as such:

(c) A person being the widow or child of a deceased partner, and receiving by way of annuity a portion of the profits made in the business in which the deceased person was a partner, is not by reason only of such receipt a partner in the business or liable as such:

(d) The advance of money by way of loan to a person engaged or about to engage in any business on a contract with that person that the lender shall receive a rate of

interest varying with the profits, or shall receive a share of the profits arising from carrying on the business, does not of itself make the lender a partner with the person or persons carrying on the business or liable as such. Provided that the contract is in writing, and signed by or on behalf of all the parties thereto:

(e) A person receiving by way of annuity or otherwise a portion of the profits of a business in consideration of the sale by him of the goodwill of the business is not by reason only of such receipt a partner in the business or liable as such.

3. Postponement of rights of person lending or selling in consideration of share of profits in case of insolvency.

In the event of any person to whom money has been advanced by way of loan upon such a contract as is mentioned in the last foregoing section, or of any buyer of a goodwill in consideration of a share of the profits of the business, being adjudged a bankrupt, entering into an arrangement to pay his creditors less than [100p] in the pound, or dying in insolvent circumstances, the lender of the loan shall not be entitled to recover anything in respect of his loan, and the seller of the goodwill shall not be entitled to recover anything in respect of the share of profits contracted for, until the claims of the other creditors of the borrower or buyer for valuable consideration in money or money's worth have been satisfied.

4. Meaning of firm.

(1) Persons who have entered into partnership with one another are for the purposes of this Act called collectively a firm, and the name under which their business is carried on is called the firm-name.

(2) In Scotland a firm is a legal person distinct from the partners of whom it is composed, but an individual partner may be charged on a decree or diligence directed against the firm, and on payment of the debts is entitled to relief pro rata from the firm and its other members.

Relations of Partners to persons dealing with them

5. Power of partner to bind the firm.

Every partner is an agent of the firm and his other partners for the purpose of the business of the partnership; and the acts of every partner who does any act for carrying on in the usual way business of the kind carried on by the firm of which he is a member bind the firm and his partners, unless the partner so acting has in fact no authority to act for the firm in the particular matter, and the person with whom he is dealing either knows that he has no authority, or does not know or believe him to be a partner.

6. Partners bound by acts on behalf of firm.

An act or instrument relating to the business of the firm and done or executed in the firm-name, or in any other manner showing an intention to bind the firm, by any person thereto authorised, whether a partner or not, is binding on the firm and all the partners.

Provided that this section shall not affect any general rule of law relating to the execution of deeds or negotiable instruments.

7. Partner using credit of firm for private purposes.

Where one partner pledges the credit of the firm for a purpose apparently not connected with the firm's ordinary course of business, the firm is not bound, unless he is in fact specially authorised by the other partners; but this section does not affect any personal liability incurred by an individual partner.

8. Effect of notice that firm will not be bound by acts of partner.

If it has been agreed between the partners that any restriction shall be placed on the power of any one or more of them to bind the firm, no act done in contravention of the agreement is binding on the firm with respect to persons having notice of the agreement.

9. Liability of partners.

Every partner in a firm is liable jointly with the other partners, and in Scotland severally also, for all debts and obligations of the firm incurred while he is a partner; and after his death his estate is also severally liable in a due course of administration for such debts and obligations, so far as they remain unsatisfied, but subject in England or [Northern Ireland] to the prior payment of his separate debts.

10. Liability of the firm for wrongs.

Where, by any wrongful act or omission of any partner acting in the ordinary course of the business of the firm, or with the authority of his co-partners, loss or injury is caused to any person not being a partner in the firm, or any penalty is incurred, the firm is liable therefor to the same extent as the partner so acting or omitting to act.

11. Misapplication of money or property received for or in custody of the firm.

In the following cases; namely—

(a) Where one partner acting within the scope of his apparent authority receives the money or property of a third person and misapplies it; and

(b) Where a firm in the course of its business receives money or property of a third person, and the money or property so received is misapplied by one or more of the partners while it is in the custody of the firm;
the firm is liable to make good the loss.

12. Liability for wrongs joint and several.

Every partner is liable jointly with his co-partners and also severally for everything for which the firm while he is a partner therein becomes liable under either of the two last preceding sections.

13. Improper employment of trust-property for partnership purposes.

If a partner, being a trustee, improperly employs trust-property in the business or on the account of the partnership, no other partner is liable for the trust-property to the persons beneficially interested therein.

Provided as follows:—

(1) This section shall not affect any liability incurred by any partner by reason of his having notice of a breach of trust; and

(2) Nothing in this section shall prevent trust money from being followed and recovered from the firm if still in its possession or under its control.

14. Persons liable by ‘holding out’.

(1) Every one who by words spoken or written or by conduct represents himself, or who knowingly suffers himself to be represented, as a partner in a particular firm, is liable as a partner to any one who has on the faith of any such representation given credit to the firm, whether the representation has or has not been made or communicated to the person so giving credit by or with the knowledge of the apparent partner making the representation or suffering it to be made.

(2) Provided that where after a partner’s death the partnership business is continued in the old firm-name, the continued use of that name or of the deceased partner’s name as part thereof shall not of itself make his executors or administrators estate or effects liable for any partnership debts contracted after his death.

15. Admissions and representations of partners.

An admission or representation made by any partner concerning the partnership affairs, and in the ordinary course of its business, is evidence against the firm.

16. Notice to acting partner to be notice to the firm.

Notice to any partner who habitually acts in the partnership business of any matter relating to partnership affairs operates as notice to the firm, except in the case of a fraud on the firm committed by or with the consent of that partner.

17. Liabilities of incoming and outgoing partners.

(1) A person who is admitted as a partner into an existing firm does not thereby become liable to the creditors of the firm for anything done before he became a partner.

(2) A partner who retires from a firm does not thereby cease to be liable for partnership debts or obligations incurred before his retirement.

(3) A retiring partner may be discharged from any existing liabilities, by an agreement to that effect between himself and the members of the firm as newly constituted and the creditors, and this agreement may be either express or inferred as a fact from the course of dealing between the creditors and the firm as newly constituted.

18. Revocation of continuing guaranty by change in firm.

A continuing guaranty or cautionary obligation given either to a firm or to a third person in respect of the transactions of a firm is, in the absence of agreement to the contrary, revoked as to future transactions by any change in the constitution of the firm to which, or of the firm in respect of the transactions of which, the guaranty or obligation was given.

*Relations of Partners to one another***19. Variation by consent of terms of partnership.**

The mutual rights and duties of partners, whether ascertained by agreement or defined by this Act, may be varied by the consent of all the partners, and such consent may be either express or inferred from a course of dealing.

20. Partnership property.

(1) All property and rights and interests in property originally brought into the partnership stock or acquired, whether by purchase or otherwise, on account of the firm, or for the purposes and in the course of the partnership business, are called in this Act partnership property, and must be held and applied by the partners exclusively for the purposes of the partnership and in accordance with the partnership agreement.

(2) Provided that the legal estate or interest in any land, or in Scotland the title to and interest in any heritable estate, which belongs to the partnership shall devolve according to the nature and tenure thereof, and the general rules of law thereto applicable, but in trust, so far as necessary, for the persons beneficially interested in the land under this section.

(3) Where co-owners of an estate or interest in any land, or in Scotland of any heritable estate, not being itself partnership property, are partners as to profits made by the use of that land or estate, and purchase other land or estate out of the profits to be used in like manner, the land or estate so purchased belongs to them, in the absence of an agreement to the contrary, not as partners, but as co-owners for the same respective estates and interests as are held by them in the land or estate first mentioned at the date of the purchase.

21. Property bought with partnership money.

Unless the contrary intention appears, property bought with money belonging to the firm is deemed to have been bought on account of the firm.

23. Procedure against partnership property for a partner's separate judgment debt.

(1) A writ of execution shall not issue against any partnership property except on a judgment against the firm.

(2) The High Court, or a judge thereof, or a county court, may, on the application by summons of any judgment creditor of a partner, make an order charging that partner's interest in the partnership property and profits with payment of the amount of the judgment debt and interest thereon, and may by the same or a subsequent order appoint a receiver of that partner's share of profits (whether already declared or accruing), and of any other money which may be coming to him in respect of the partnership, and direct all accounts and inquiries, and give all other orders and directions which might have been directed or given if the charge had been made in favour of the judgment creditor by the partner, or which the circumstances of the case may require.

(3) The other partner or partners shall be at liberty at any time to redeem the interest charged, or in case of a sale being directed, to purchase the same.

[Subsection (4) has been repealed.]

(5) This section shall not apply to Scotland.

24. Rules as to interests and duties of partners subject to special agreement.

The interests of partners in the partnership property and their rights and duties in relation to the partnership shall be determined, subject to any agreement express or implied between the partners, by the following rules:

(1) All the partners are entitled to share equally in the capital and profits of the business, and must contribute equally towards the losses whether of capital or otherwise sustained by the firm.

(2) The firm must indemnify every partner in respect of payments made and personal liabilities incurred by him—

(a) In the ordinary and proper conduct of the business of the firm; or,

(b) In or about anything necessarily done for the preservation of the business or property of the firm.

(3) A partner making, for the purpose of the partnership, any actual payment or advance beyond the amount of capital which he has agreed to subscribe, is entitled to interest at the rate of five per cent per annum from the date of the payment or advance.

(4) A partner is not entitled, before the ascertainment of profits, to interest on the capital subscribed by him.

(5) Every partner may take part in the management of the partnership business.

(6) No partner shall be entitled to remuneration for acting in the partnership business.

(7) No person may be introduced as a partner without the consent of all existing partners.

(8) Any difference arising as to ordinary matters connected with the partnership business may be decided by a majority of the partners, but no change may be made in the nature of the partnership business without the consent of all existing partners.

(9) The partnership books are to be kept at the place of business of the partnership (or the principal place, if there is more than one), and every partner may, when he thinks fit, have access to and inspect and copy any of them.

25. Expulsion of partner.

No majority of the partners can expel any partner unless a power to do so has been conferred by express agreement between the partners.

26. Retirement from partnership at will.

(1) Where no fixed term has been agreed upon for the duration of the partnership, any partner may determine the partnership at any time on giving notice of his intention so to do to all the other partners.

(2) Where the partnership has originally been constituted by deed, a notice in writing, signed by the partner giving it, shall be sufficient for this purpose.

27. Where partnership for term is continued over, continuance on old terms presumed.

(1) Where a partnership entered into for a fixed term is continued after the term has expired, and without any express new agreement, the rights and duties of the partners remain the same as they were at the expiration of the term, so far as is consistent with the incidents of a partnership at will.

(2) A continuance of the business by the partners or such of them as habitually acted therein during the term, without any settlement or liquidation of the partnership affairs, is presumed to be a continuance of the partnership.

28. Duty of partners to render accounts, &c.

Partners are bound to render true accounts and full information of all things affecting the partnership to any partner or his legal representatives.

29. Accountability of partners for private profits.

(1) Every partner must account to the firm for any benefit derived by him without the consent of the other partners from any transaction concerning the partnership, or from any use by him of the partnership property name or business connection.

(2) This section applies also to transactions undertaken after a partnership has been dissolved by the death of a partner, and before the affairs thereof have been completely wound up, either by any surviving partner or by the representatives of the deceased partner.

30. Duty of partner not to compete with firm.

If a partner, without the consent of the other partners, carries on any business of the same nature as and competing with that of the firm, he must account for and pay over to the firm all profits made by him in that business.

31. Rights of assignee of share in partnership.

(1) An assignment by any partner of his share in the partnership, either absolute or by way of mortgage or redeemable charge, does not, as against the other partners, entitle the assignee, during the continuance of the partnership, to interfere in the management or administration of the partnership business or affairs, or to require any accounts of the partnership transactions, or to inspect the partnership books, but entitles the assignee only to receive the share of profits to which the assigning partner would otherwise be entitled, and the assignee must accept the account of profits agreed to by the partners.

(2) In case of a dissolution of the partnership, whether as respects all the partners or as respects the assigning partner, the assignee is entitled to receive the share of the partnership assets to which the assigning partner is entitled as between himself and the other partners, and, for the purpose of ascertaining that share, to an account as from the date of the dissolution.

Dissolution of Partnership, and its consequences

32. Dissolution by expiration or notice.

Subject to any agreement between the partners, a partnership is dissolved—

(a) If entered into for a fixed term, by the expiration of that term:

(b) If entered into for a single adventure or undertaking, by the termination of that adventure or undertaking:

(c) If entered into for an undefined time, by any partner giving notice to the other or others of his intention to dissolve the partnership.

In the last-mentioned case the partnership is dissolved as from the date mentioned in the notice as the date of dissolution, or, if no date is so mentioned, as from the date of the communication of the notice.

33. Dissolution by bankruptcy, death, or charge.

(1) Subject to any agreement between the partners, every partnership is dissolved as regards all the partners by the death or bankruptcy of any partner.

(2) A partnership may, at the option of the other partners, be dissolved if any partner suffers his share of the partnership property to be charged under this Act for his separate debt.

34. Dissolution by illegality of partnership.

A partnership is in every case dissolved by the happening of any event which makes it unlawful for the business of the firm to be carried on or for the members of the firm to carry it on in partnership.

35. Dissolution by the Court.

On application by a partner the Court may decree a dissolution of the partnership in any of the following cases:

(b) When a partner, other than the partner suing, becomes in any other way permanently incapable of performing his part of the partnership contract:

(c) When a partner, other than the partner suing, has been guilty of such conduct as, in the opinion of the Court, regard being had to the nature of the business, is calculated to prejudicially affect the carrying on of the business:

(d) When a partner, other than the partner suing, wilfully or persistently commits a breach of the partnership agreement, or otherwise so conducts himself in matters relating to the partnership business that it is not reasonably practicable for the other partner or partners to carry on the business in partnership with him:

(e) When the business of the partnership can only be carried on at a loss:

(f) Whenever in any case circumstances have arisen which, in the opinion of the Court, render it just and equitable that the partnership be dissolved.

36. Rights of persons dealing with firm against apparent members of firm.

(1) Where a person deals with a firm after a change in its constitution he is entitled to treat all apparent members of the old firm as still being members of the firm until he has notice of the change.

(2) An advertisement in the London Gazette as to a firm whose principal place of business is in England or Wales, in the Edinburgh Gazette as to a firm whose principal place of business is in Scotland, and in the [Belfast Gazette] as to a firm whose principal place of business is in [Northern Ireland], shall be notice as to persons who had not dealings with the firm before the date of the dissolution or change so advertised.

(3) The estate of a partner who dies, or who becomes bankrupt, or of a partner who, not having been known to the person dealing with the firm to be a partner, retires from the firm, is not liable for partnership debts contracted after the date of the death, bankruptcy, or retirement respectively.

37. Right of partners to notify dissolution.

On the dissolution of a partnership or retirement of a partner any partner may publicly notify the same, and may require the other partner or partners to concur for that purpose in all necessary or proper acts, if any, which cannot be done without his or their concurrence.

38. Continuing authority of partners for purposes of winding up.

After the dissolution of a partnership the authority of each partner to bind the firm, and the other rights and obligations of the partners, continue notwithstanding the dissolution so far as may be necessary to wind up the affairs of the partnership, and to complete transactions begun but unfinished at the time of the dissolution, but not otherwise.

Provided that the firm is in no case bound by the acts of a partner who has become bankrupt; but this proviso does not affect the liability of any person who has after the bankruptcy represented himself or knowingly suffered himself to be represented as a partner of the bankrupt.

39. Rights of partners as to application of partnership property.

On the dissolution of a partnership every partner is entitled, as against the other partners in the firm, and all persons claiming through them in respect of their interests as partners, to have the property of the partnership applied in payment of the debts and liabilities of the firm, and to have the surplus assets after such payment applied in payment of what may be due to the partners respectively after deducting what may be due from them as partners to the firm; and for that purpose any partner or his representatives may on the termination of the partnership apply to the Court to wind up the business and affairs of the firm.

40. Apportionment of premium where partnership prematurely dissolved.

Where one partner has paid a premium to another on entering into a partnership for a fixed term, and the partnership is dissolved before the expiration of that term otherwise than by the death of a partner, the Court may order the repayment of the premium, or of such part thereof as it thinks just, having regard to the terms of the partnership contract and to the length of time during which the partnership has continued; unless

(a) the dissolution is, in the judgment of the Court, wholly or chiefly due to the misconduct of the partner who paid the premium, or

(b) the partnership has been dissolved by an agreement containing no provision for a return of any part of the premium.

41. Rights where partnership dissolved for fraud or misrepresentation.

Where a partnership contract is rescinded on the ground of the fraud or misrepresentation of one of the parties thereto, the party entitled to rescind is, without prejudice to any other right, entitled—

(a) to a lien on, or right of retention of, the surplus of the partnership assets, after satisfying the partnership liabilities, for any sum of money paid by him for the purchase of a share in the partnership and for any capital contributed by him, and is

(b) to stand in the place of the creditors of the firm for any payments made by him in respect of the partnership liabilities, and

(c) to be indemnified by the person guilty of the fraud or making the representation against all the debts and liabilities of the firm.

42. Right of outgoing partner in certain cases to share profits made after dissolution.

(1) Where any member of a firm has died or otherwise ceased to be a partner, and the surviving or continuing partners carry on the business of the firm with its capital or assets without any final settlement of accounts as between the firm and the outgoing partner or his estate, then, in the absence of any agreement to the contrary, the outgoing partner or his estate is entitled at the option of himself or his representatives to such share of the profits made since the dissolution as the Court may find to be attributable to the use of his share of the partnership assets, or to interest at the rate of five per cent per annum on the amount of his share of the partnership assets.

(2) Provided that where by the partnership contract an option is given to surviving or continuing partners to purchase the interest of a deceased or outgoing partner, and that option is duly exercised, the estate of the deceased partner, or the outgoing partner or his estate, as the case may be, is not entitled to any further or other share of profits; but if any partner assuming to act in exercise of the option does not in all material respects comply with the terms thereof, he is liable to account under the foregoing provisions of this section.

43. Retiring or deceased partner's share to be a debt.

Subject to any agreement between the partners, the amount due from surviving or continuing partners to an outgoing partner or the representatives of a deceased partner in respect of the outgoing or deceased partner's share is a debt accruing at the date of the dissolution or death.

44. Rule for distribution of assets on final settlement of accounts.

In settling accounts between the partners after a dissolution of partnership, the following rules shall, subject to any agreement, be observed:

(a) Losses, including losses and deficiencies of capital, shall be paid first out of profits, next out of capital, and lastly, if necessary, by the partners individually in the proportion in which they were entitled to share profits:

(b) The assets of the firm including the sums, if any, contributed by the partners to make up losses or deficiencies of capital, shall be applied in the following manner and order:

1. In paying the debts and liabilities of the firm to persons who are not partners therein:
2. In paying to each partner rateably what is due from the firm to him for advances as distinguished from capital:
3. In paying to each partner rateably what is due from the firm to him in respect of capital:
4. The ultimate residue, if any, shall be divided among the partners in the proportion in which profits are divisible.

*Supplemental***45. Definitions of 'court' and 'business'.**

In this Act, unless the contrary intention appears,—

The expression 'court' includes every court and judge having jurisdiction in the case;

The expression 'business' includes every trade, occupation, or profession.

46. Saving for rules of equity and common law.

The rules of equity and of common law applicable to partnership shall continue in force except so far as they are inconsistent with the express provisions of this Act.

50. Short title.

This Act may be cited as the Partnership Act 1890.

STOCK TRANSFER ACT 1963

(1963, c. 18)

An Act to amend the law with respect to the transfer of securities.

[10 July 1963]

1. Simplified transfer of securities.

(1) Registered securities to which this section applies may be transferred by means of an instrument under hand in the form set out in Schedule 1 to this Act (in this Act referred to as a stock transfer), executed by the transferor only and specifying (in addition to the particulars of the consideration, of the description and number or amount of the securities, and of the person by whom the transfer is made) the full name and address of the transferee.

(2) The execution of a stock transfer need not be attested; and where such a transfer has been executed for the purpose of a stock exchange transaction, the particulars of the consideration and of the transferee may either be inserted in that transfer or, as the case may require, supplied by means of separate instruments in the form set out in Schedule 2 to this Act (in this Act referred to as brokers transfers), identifying the stock transfer and specifying the securities to which each such instrument relates and the consideration paid for those securities.

(3) Nothing in this section shall be construed as affecting the validity of any instrument which would be effective to transfer securities apart from this section; and any instrument purporting to be made in any form which was common or usual before the commencement of this Act, or in any other form authorised or required for that purpose apart from this section, shall be sufficient, whether or not it is completed in accordance with the form, if it complies with the requirements as to execution and contents which apply to a stock transfer.

(4) This section applies to fully paid up registered securities of any description, being—

(a) securities issued by any company within the meaning of the Companies Act 1985 except a company limited by guarantee or an unlimited company;

...

2. Supplementary provisions as to simplified transfer.

(1) Section 1 of this Act shall have effect in relation to the transfer of any securities to which that section applies notwithstanding anything to the contrary in any enactment or instrument relating to the transfer of those securities; but nothing in that section affects—

(a) any right to refuse to register a person as the holder of any securities on any ground other than the form in which those securities purport to be transferred to him: or

(b) any enactment or rule of law regulating the execution of documents by companies or other bodies corporate, or any articles of association or other instrument regulating the execution of documents by any particular company or body corporate.

(2) Subject to the provisions of this section, any enactment or instrument relating to the transfer of securities to which section 1 of this Act applies shall, with any necessary modifications, apply in relation to an instrument of transfer authorised by that section as it applies in relation to an instrument of transfer to which it applies apart from this subsection; and without prejudice to the generality of the foregoing provision, the reference in section 184 of the Companies Act 1985 (certification of transfers) to any instrument of transfer shall be construed as including a reference to a brokers transfer.

(3) In relation to the transfer of securities by means of a stock transfer and a brokers transfer—

(a) any reference in any enactment or instrument (including in particular section 183(1) and (2) of the Companies Act 1985 and *section 56(4) of the Finance Act 1946*) to the delivery or lodging of an instrument (or proper instrument) of transfer shall be construed as a reference to the delivery or lodging of the stock transfer and the brokers transfer;

(b) any such reference to the date on which an instrument of transfer is delivered or lodged shall be construed as a reference to the date by which the later of those transfers to be delivered or lodged has been delivered or lodged; and

(c) *subject to the foregoing provisions of this subsection, the brokers transfer (and not the stock transfer) shall be deemed to be the conveyance or transfer for the purposes of the enactments relating to stamp duty.*

...

[The words in italics will be repealed when the relevant provisions of the Finance Act 1990, sch. 19, part VI, are brought into force.]

3. Additional provisions as to transfer forms.

(1) References in this Act to the forms set out in Schedule 1 and Schedule 2 include references to forms substantially corresponding to those forms respectively.

(2) The Treasury may by order amend the said Schedules either by altering the forms set out therein or by substituting different forms for those forms or by the addition of forms for use as alternatives to those forms; and references in this Act to the forms set out in those Schedules (including references in this section) shall be construed accordingly.

(3) Any order under subsection (2) of this section which substitutes a different form for a form set out in Schedule 1 to this Act may direct that subsection (3) of section 1 of this Act shall apply, with any necessary modifications, in relation to the form for which that form is substituted as it applies to any form which was common or usual before the commencement of this Act.

(4) Any order of the Treasury under this section shall be made by statutory instrument, and may be varied or revoked by a subsequent order; and any statutory instrument made by virtue of this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(5) An order under subsection (2) of this section may—

(a) provide for forms on which some of the particulars mentioned in subsection (1) of section 1 of this Act are not required to be specified;

(b) provide for that section to have effect, in relation to such forms as are mentioned in the preceding paragraph or other forms specified in the order, subject to such amendments as are so specified (which may include an amendment of the reference in subsection (1) of that section to an instrument under hand);

(c) provide for all or any of the provisions of the order to have effect in such cases only as are specified in the order.

4. Interpretation.

(1) In this Act the following expressions have the meanings hereby respectively assigned to them, that is to say—

...

‘registered securities’ means transferable securities the holders of which are entered in a register (whether maintained in Great Britain or not);

‘securities’ means shares, stock, debentures, debenture stock, loan stock, bonds, units of a collective investment scheme within the meaning of the Financial Services Act 1986, and other securities of any description;

‘stock exchange transaction’ means a sale and purchase of securities in which each of the parties is a member of a stock exchange acting in the ordinary course of his business as such or is acting through the agency of such a member;

‘stock exchange’ means the Stock Exchange, London, and any other stock exchange (whether in Great Britain or not) which is declared by order of the Treasury to be a recognised stock exchange for the purposes of this Act.

(2) Any order of the Treasury under this section shall be made by statutory instrument, and may be varied or revoked by a subsequent order.

6. Short title and commencement.

(1) This Act may be cited as the Stock Transfer Act 1963.

...

COMPANIES ACT 1985 (1985, c. 6)

An Act to consolidate the greater part of the Companies Acts

[11 March 1985]

PART I FORMATION AND REGISTRATION OF COMPANIES; JURIDICAL STATUS AND MEMBERSHIP

CHAPTER I COMPANY FORMATION

Memorandum of association

1. Mode of forming incorporated company.

(1) Any two or more persons associated for a lawful purpose may, by subscribing their names to a memorandum of association and otherwise complying with the

requirements of this Act in respect of registration, form an incorporated company, with or without limited liability.

(2) A company so formed may be either—

(a) 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 shares');

(b) a company having the liability of its members limited by the memorandum to such amount as the members may respectively thereby undertake to contribute to the assets of the company in the event of its being wound up ('a company limited by guarantee'); or

(c) a company not having any limit on the liability of its members ('an unlimited company').

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

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

(b) in relation to which the provisions of this Act or the former Companies Acts as to the registration or re-registration of a company as a public company have been complied with on or after 22 December 1980;

and a 'private company' is a company that is not a public company.

(3A) Notwithstanding subsection (1), one person may, for a lawful purpose, by subscribing his name to a memorandum of association and otherwise complying with the requirements of this Act in respect of registration, form an incorporated company being a private company limited by shares or by guarantee.

(4) With effect from 22 December 1980, a company cannot be formed as, or become, a company limited by guarantee with a share capital.

2. Requirements with respect to memorandum.

(1) The memorandum of every company must state—

(a) the name of the company;

(b) whether the registered office of the company is to be situated in England and Wales, or in Scotland;

(c) the objects of the company.

(2) Alternatively to subsection (1)(b), the memorandum may contain a statement that the company's registered office is to be situated in Wales; and a company whose registered office is situated in Wales may by special resolution alter its memorandum so as to provide that its registered office is to be so situated.

(3) The memorandum of a company limited by shares or by guarantee must also state that the liability of its members is limited.

(4) The memorandum of a company limited by guarantee must also state that each member undertakes to contribute to the assets of the company if it should be wound up while he is a member, or within one year after he ceases to be a member, for payment of the debts and liabilities of the company contracted before he ceases to be a member, and of the costs, charges and expenses of winding up, and for adjustment of the rights of the contributories among themselves, such amount as may be required, not exceeding a specified amount.

(5) In the case of a company having a share capital—

(a) the memorandum must also (unless it is an unlimited company) state the amount of the share capital with which the company proposes to be registered and the division of the share capital into shares of a fixed amount;

(b) no subscriber of the memorandum may take less than one share; and

(c) there must be shown in the memorandum against the name of each subscriber the number of shares he takes.

(6) The memorandum must be signed by each subscriber in the presence of at least one witness, who must attest the signature....