



Companies Consolidation (Consequential Provisions) Act 1985

1985 CHAPTER 9

Miscellaneous savings

10 Pre-1901 companies limited by guarantee

Section 15 of the principal Act does not apply in the case of companies registered before 1st January 1901.

11 Company official seal

- (1) A company which was incorporated before 12th February 1979 and which has such an official seal as is mentioned in section 40 of the principal Act may use the seal for sealing such securities and documents as are there mentioned, notwithstanding anything in any instrument constituting or regulating the company or in any instrument made before that date which relates to any securities issued by the company.
- (2) Any provision of such an instrument which requires any such securities or documents to be signed shall not apply to the securities or documents if they are sealed with that seal.

12 Share premiums: retrospective relief

- (1) The relief given by this section (being a replacement of section 39 of the Companies Act 1981) applies only where a company has issued shares in circumstances to which this section applies before 4th February 1981.
- (2) Subject as follows, this section applies where the issuing company (that is, the company issuing shares as mentioned in section 130 of the principal Act) has issued at a premium shares which were allotted in pursuance of any arrangement providing for the allotment of shares in the issuing company on terms that the consideration for the shares allotted was to be provided by the issue or transfer to the issuing company of

shares in another company or by the cancellation of any shares in that other company not held by the issuing company.

- (3) The other company in question must either have been at the time of the arrangement a subsidiary of the issuing company or of any company which was then the issuing company's holding company or have become such a subsidiary on the acquisition or cancellation of its shares in pursuance of the arrangement
- (4) Any part of the premiums on the shares so issued which was not transferred to the company's share premium account in accordance with section 56 of the Act of 1948 shall be treated as if that section had never applied to those premiums (and may accordingly be disregarded in determining the sum to be included in the company's share premium account).
- (5) Section 133(2) and (3) of the principal Act apply for the interpretation of this section; and for the purposes of this section—
 - (a) " company" (except in references to the issuing company) includes any body corporate, and
 - (b) the definition of "arrangement" in section 131(7) of the principal Act applies.
- (6) This section is deemed included in Chapter III of Part V of the principal Act for the purpose of the Secretary of State's power under section 134 of that Act to make regulations in respect of relief from the requirements of section 130 of that Act.

13 Saving, in case of re-issued debentures, of rights of certain mortgagees

Whereas by section 104 of the Companies (Consolidation) Act 1908 it was provided that, upon the re-issue of redeemed debentures, the person entitled to the debentures should have the same rights and priorities as if the debentures had not previously been issued:

And whereas section 45 of the Companies Act 1928 amended section 104 of the Act of 1908 so as to provide (among other things) that the said person should have the same priorities as if the debentures had never been redeemed, but saved, in the case of debentures redeemed before, but re-issued after, 1st November 1929, the rights and priorities of persons under mortgages and charges created before that date:

Now, therefore, where any debentures which were redeemed before the date last mentioned have been re-issued after that date and before the commencement of the Act of 1948 (1st July 1948), or are or have been re-issued after that commencement, the re-issue of the debentures does not prejudice, and is deemed never to have prejudiced, any right or priority which any person would have had under or by virtue of any such mortgage or charge as above referred to if section 104 of the Act of 1908, as originally enacted, had been enacted in the Act of 1948 instead of section 90 of that Act, and in the principal Act instead of section 194 of that Act.

14 Removal of directors appointed for life pre-1945

Section 303(1) of the principal Act does not, in the case of a private company, authorise the removal of a director holding office for life on 18th July 1945, whether or not subject to retirement under an age limit by virtue of the articles or otherwise.

15 Tax-free payments to directors

Section 311(1) of the principal Act does not apply to remuneration under a contract which was in force on 18th July 1945 and provides expressly (and not by reference to the articles) for payment of remuneration as mentioned in that subsection; and section 311(2) does not apply to any provision contained in such a contract.

16 Statutory declaration of solvency in voluntary winding up

In relation to a winding up commenced before 22nd December 1981, section 577 of the principal Act applies in the form of section 283 of the Act of 1948, without the amendment of that section made by section 105 of the Act of 1981.

17 Court's power to control proceedings

Nothing in section 603 of the principal Act affects the practice or powers of the court as existing immediately before 1st November 1929, with respect to the staying of proceedings against a company registered in England and Wales and in course of being wound up.

18 Effect of floating charge in winding up

In relation to a charge created on or before 31st December 1947, section 617(1) of the principal Act has effect with the substitution of " 6 months " for " 12 months ".

19 Saving from s. 649 of principal Act

Nothing in section 649 of the principal Act affects the practice or powers of the court as existing immediately before 1st November 1929, with respect to the costs of an application for leave to proceed with an action or proceeding against a company which is being wound up in England and Wales.

20 Continued application of certain provisions of 1963 c. 16

- (1) The repeal by the Banking Act 1979 (" the 1979 Act") of the Protection of Depositors Act 1963 ("the 1963 Act") shall not affect, and shall be deemed never to have affected, the application of the following provisions of the 1963 Act to unexempted companies on and after the commencement of Parts I and III of the 1979 Act, that is to say—
 - (a) sections 6 to 17, and
 - (b) so far as relevant to the operation of those sections, sections 5 and 22 to 27.
- (2) In this section " unexempted company " means any company within the meaning of the 1963 Act which is not excepted by section 2(1) of the 1979 Act from the prohibition on the acceptance of deposits imposed by section 1 of the latter Act

21 Priority of old debts in winding up

Nothing in this Act affects the priority to which any person may have been entitled under section 319 of the 1948 Act in respect of a debt of any of the descriptions specified in paragraph (a)(ii) of subsection (1) of that section (which included references to profits tax and excess profits tax), or in paragraph (f) or (g) of that subsection (old workmen's compensation cases).

22 Saving as to certain old liquidations

- (1) The provisions of the principal Act with respect to winding up (other than sections 635, 658 and 620 as applied for the purposes of section 620 and subsection (2) below) shall not apply to any company of which the winding up commenced before 1st November 1929; but every such company shall be wound up in the same manner and with the same incidents as if the Companies Act 1929, the Act of 1948 and the principal Act (apart from the sections above-mentioned) had not passed; and, for the purposes of the winding up, the Act or Acts under which the winding up commenced shall be deemed to remain in full force.
- (2) A copy of every order staying or sisting the proceedings in a winding up commenced as above shall forthwith be forwarded by the company, or otherwise as may be prescribed, to the registrar of companies, who shall enter the order in his records relating to the company.

23 Restrictions on shares imposed pre-1982

Where before 3rd December 1981 shares in a company were directed by order of the Secretary of State to be subject to the restrictions imposed by section 174 of the Act of 1948, and the order remains in force at the commencement date, nothing in this Act prevents the continued application of the order with such effect as it had immediately before the repeal of section 174 took effect.

24 Saving for conversion of winding up under 1981 s. 107

- (1) The repeal of section 107 of the 1981 Act (conversion of creditors' winding up into members' voluntary winding up, due to circumstances arising in the period April to August 1981) does not affect the enablement for such a conversion by means of a statutory declaration (complying with subsection (2) of the section) delivered to the registrar of companies after the commencement date.
- (2) For the purposes of sections 577(4) and 583 of the principal Act (consequences of actual or prospective failure to pay debts in full within the period stated by the directors in the declaration of solvency), the period stated in the declaration in the case of a winding up converted under section 107 is taken to have been 12 months from the commencement of the winding up, unless the contrary is shown.