



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).

Modifications etc. (not altering text)

- C1** S. 39 applied (with modifications) (1.10.2009) by [The Unregistered Companies Regulations 2009 \(S.I. 2009/2436\)](#), regs. 3-5, [Sch. 1 para. 3\(a\)](#) (with transitional provisions and savings in [regs. 7, 9, Sch. 2](#))

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,

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- (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—
- (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).

Modifications etc. (not altering text)

C2 S. 40 applied (with modifications) (1.10.2009) by [The Unregistered Companies Regulations 2009 \(S.I. 2009/2436\)](#), regs. 3-5, [Sch. 1 para. 3\(a\)](#) (with transitional provisions and savings in [regs. 7, 9, Sch. 2](#))

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

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- (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.
- (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).

Modifications etc. (not altering text)

C3 S. 41 applied (with modifications) (1.10.2009) by [The Unregistered Companies Regulations 2009 \(S.I. 2009/2436\)](#), regs. 3-5, **Sch. 1 para. 3(b)** (with transitional provisions and savings in [regs. 7, 9, Sch. 2](#))

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,

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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)).

Modifications etc. (not altering text)

- C4** S. 42 applied (with modifications) (1.10.2009) by [The Unregistered Companies Regulations 2009 \(S.I. 2009/2436\)](#), [regs. 3-5](#), [Sch. 1 para. 3\(c\)](#) (with transitional provisions and savings in [regs. 7, 9](#), [Sch. 2](#))
- C5** S. 42(4) applied (1.10.2009) by [The Companies Act 2006 \(Consequential Amendments, Transitional Provisions and Savings\) Order 2009 \(S.I. 2009/1941\)](#), [art. 6\(1\)](#) (with [art. 10](#))
- C6** S. 42(4)(b): transfer of functions (N.I.) (19.1.2013) by [Charities Act \(Northern Ireland\) 2013 \(c. 3 \(N.I.\)\)](#), [ss. 5\(2\), 10\(1\)](#) (with [s. 6](#))

Changes to legislation:

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

- Act amendment to earlier affecting provision S.I. 1989/638, Sch. 4 by [S.I. 2024/410 Sch. 2 para. 1](#)
- Act amendment to earlier affecting provision S.I. 2008/373 reg. 11(1) by [S.I. 2013/1971 reg. 9\(a\)](#) (This amendment not applied to legislation.gov.uk. Amending Regulations revoked (1.10.2013) without ever being in force by S.I. 2013/2224, reg. 2)
- Act amendment to earlier affecting provision S.I. 2008/373 reg. 3(4) by [S.I. 2013/1971 reg. 4](#) (This amendment not applied to legislation.gov.uk. Amending Regulations revoked (1.10.2013) without ever being in force by S.I. 2013/2224, reg. 2)

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 156A-156C inserted by [2015 c. 26 s. 87\(4\)](#)
- s. 156B(5) omitted by [2023 c. 56 Sch. 2 para. 26](#)
- s. 156C(2) words substituted by [2023 c. 56 s. 41\(2\)\(a\)](#)
- s. 156C(2A) inserted by [2023 c. 56 s. 41\(2\)\(b\)](#)
- s. 156C(3) substituted for s. 156C(3)-(5) by [2023 c. 56 Sch. 2 para. 27](#)
- s. 479A(2)(c)(zi) inserted by [S.I. 2019/177 reg. 4\(b\)\(i\)](#) (This amendment not applied to legislation.gov.uk. Reg. 4 substituted by regs. 4, 4A immediately before IP completion day by S.I. 2019/1392, regs. 1(2), 4)
- s. 1047(4)(i)(j) inserted by [2023 c. 56 s. 21\(2\)](#)
- s. 1087(da) substituted by [2023 c. 56 s. 52\(2\)](#)
- s. 1087A-1807C applied by S.I. 2009/2436, Sch. 1 para. 20(1)(ca) (as substituted) by [S.I. 2024/410 Sch. 2 para. 5\(d\)\(ii\)](#)
- s. 1110E-110G applied by S.I. 2009/1804, reg. 60 (as amended) by [S.I. 2024/234 reg. 26](#)
- s. 11989A applied (with modifications) by S.I. 2009/1804, reg. 79A (as inserted) by [S.I. 2024/234 reg. 46](#)
- Sch. 10 para. 6(2D) inserted by [S.I. 2019/177 reg. 28\(e\)](#) (This amendment not applied to legislation.gov.uk. Reg. 28(e) omitted immediately before IP completion day by virtue of S.I. 2020/523, regs. 1(2), 14(e)(iv))
- Sch. 10 para. 7(2A) inserted by [S.I. 2019/177 reg. 29\(b\)](#) (This amendment not applied to legislation.gov.uk. Reg. 29 substituted immediately before IP completion day by S.I. 2020/523, regs. 1(2), 14(f))