

(3) Where after its incorporation, a company enters into a contract in the same terms as or in substitution for, a pre-incorporation contract (not being a contract ratified by the company under section 23), the liability of a person under subsection (1) shall be discharged.

25. Where a company has acquired property pursuant to a pre-incorporation contract that has not been ratified by the company after its incorporation, a court may on an application made in that behalf by the party from whom the property was acquired, make an order —

Failure to ratify.

- (a) directing the company to return property acquired under the pre-incorporation contract, to that party;
- (b) validating the contract in whole or in part; or
- (c) granting any other relief in favour of that party relating to that property acquired.

AUTHENTICATION OF DOCUMENTS BY COMPANY

26. A document or record of proceedings requiring authentication by a company shall be signed by a director, secretary, or other authorised officer of the company.

Authentication of documents by company.

PART II

PRIVATE COMPANIES

27. The articles of a private company shall include provisions which—

Articles of a private company.

- (a) prohibit the company from offering shares or other securities issued by the company to the public; and
- (b) limit the number of its shareholders to fifty, not including shareholders who are—
 - (i) employees of the company; or

- (ii) former employees of the company who became shareholders of the company while being employees of such company and who have continued to be shareholders after ceasing to be employees of the company.

Company
ceasing to be a
private
company.

28. (1) If a private company alters its articles in such a way that the articles no longer comply with the requirements of section 27—

- (a) the company shall cease to be a private company;
- (b) provisions of sections 30 and 31 shall cease to apply to that company; and
- (c) the company shall be deemed to have changed its name in accordance with section 11.

(2) If a private company fails to comply with the requirements specified in section 27—

- (a) the company shall cease to be a private company;
- (b) provisions of sections 30 and 31 shall cease to apply to that company; and
- (c) the company shall be deemed to have changed its name in accordance with section 11.

(3) The court may determine that provisions of subsection (2) shall not apply in respect of failure by a private company, where it is satisfied that—

- (a) the failure to comply was due to inadvertence;
- (b) the failure to comply has been rectified; or
- (c) in all the circumstances of the case it is just and equitable to reach such determination.

29. Where a limited company alters its articles so that the articles comply with the requirement of section 27—

Company may become a private company.

- (a) the company shall become a private company; and
- (b) the company shall be deemed to have changed its name in accordance with the provisions of section 11.

30. (1) A private company may by unanimous resolution of its shareholders dispense with the keeping of an interests register, and while such a resolution is in force, no provision of this Act which requires any matter to be entered in the interests register of a company, shall apply to such private company.

Private companies need not keep interests register.

(2) A unanimous resolution under subsection (1) shall cease to have effect, if any shareholder gives notice in writing to the company, that he requires it to keep an interests register.

31. (1) Where all the shareholders of a private company agree in writing to any action which has been taken, or is to be taken by the company—

Unanimous agreement of shareholders.

- (a) the taking of that action is deemed to be validly authorised by the company, notwithstanding any provision in the articles of the company to the contrary; and
- (b) the provisions contained in the list of sections of this Act specified in the Second Schedule hereto, shall not apply to and in relation to that action.

(2) Without limiting the matters which may be agreed to under subsection (1), the provisions of that subsection shall apply where all the shareholders of a private company agree to or concur in —

- (a) the issue of shares by the company;

- (b) the making of a distribution by the company;
- (c) the repurchase or redemption of shares in the company;
- (d) the giving of financial assistance by a company for the purpose of or in connection with the purchase of shares in the company;
- (e) the payment of remuneration to a director, or the making of a loan to a director, or the conferment of any other benefit on a director; or
- (f) the entering into a contract between an interested director and the company.

(3) Where a distribution is made by a company under subsection (2) and as a consequence of making that distribution the company fails to satisfy the solvency test, such distribution shall be deemed not to have been made validly.

(4) A distribution to a shareholder which is deemed not to have been validly made under subsection (3) may be recovered by the company from such shareholder, unless —

- (a) the shareholder received the distribution in good faith and without knowledge of the company's failure to satisfy the solvency test;
- (b) the shareholder has altered his position relying on the validity of such distribution; and
- (c) it would be unreasonable in view of the circumstances, to require repayment in full or at all.

(5) Where reasonable grounds did not exist for believing that the company would be able to satisfy the solvency test

after the making of a distribution which is deemed not to have been validly made, each shareholder who agreed to the making of such distribution will be personally liable to the company, to repay to the company so much of the distribution which the company is not able to recover from the shareholders to whom the distribution was made.

(6) Where an action for recovery is brought against a shareholder under subsection (4) or (5), and the court is satisfied that the company could by making a distribution of a lesser amount have satisfied the solvency test, the court may —

- (a) permit the shareholder to retain; or
- (b) relieve the shareholder from liability in respect of,

an amount equal to the value of any distribution that the company could properly have made under the circumstances.

PART III

COMPANIES LIMITED BY GUARANTEE

32. Any two or more persons may apply to form a company limited by guarantee by making an application to the Registrar for the same in the prescribed form signed by each of the initial members, together with the following documents :—

Application for incorporation of a company limited by guarantee.

- (a) the articles of association of the company;
- (b) a consent under section 203 from each of the initial directors, to act as a director of the company; and
- (c) a consent under section 221 from the initial secretary, to act as secretary of the company.