

**THE SHAREHOLDERS' AND DIRECTORS' LEGAL
COMPANION: A MANUAL OF EVERY DAY
LAW AND PRACTICE, FOR PROMOTERS,
SHAREHOLDERS, DIRECTORS, SECRETARIES,
CREDITORS, AND SOLICITORS OF COMPANIES,
UNDER THE COMPANIES ACTS, 1862 TO 1880**

Published @ 2017 Trieste Publishing Pty Ltd

ISBN 9780649703784

The Shareholders' and Directors' Legal Companion: A Manual of Every Day Law and Practice, for Promoters, Shareholders, Directors, Secretaries, Creditors, and Solicitors of Companies, under the Companies Acts, 1862 to 1880 by Francis B. Palmer

Except for use in any review, the reproduction or utilisation of this work in whole or in part in any form by any electronic, mechanical or other means, now known or hereafter invented, including xerography, photocopying and recording, or in any information storage or retrieval system, is forbidden without the permission of the publisher, Trieste Publishing Pty Ltd, PO Box 1576 Collingwood, Victoria 3066 Australia.

All rights reserved.

Edited by Trieste Publishing Pty Ltd.
Cover @ 2017

This book is sold subject to the condition that it shall not, by way of trade or otherwise, be lent, re-sold, hired out, or otherwise circulated without the publisher's prior consent in any form or binding or cover other than that in which it is published and without a similar condition including this condition being imposed on the subsequent purchaser.

www.triestepublishing.com

FRANCIS B. PALMER

**THE SHAREHOLDERS' AND DIRECTORS' LEGAL
COMPANION: A MANUAL OF EVERY DAY
LAW AND PRACTICE, FOR PROMOTERS,
SHAREHOLDERS, DIRECTORS, SECRETARIES,
CREDITORS, AND SOLICITORS OF COMPANIES,
UNDER THE COMPANIES ACTS, 1862 TO 1880**

THE
SHAREHOLDERS' AND DIRECTORS'
LEGAL COMPANION:

A MANUAL OF
EVERY DAY LAW AND PRACTICE,
FOR
PROMOTERS, SHAREHOLDERS, DIRECTORS, SECRETARIES,
CREDITORS, AND SOLICITORS OF COMPANIES,
Under the Companies Acts, 1862 to 1880.

WITH AN APPENDIX,
ON THE CONVERSION OF BUSINESS CONCERNS INTO PRIVATE
COMPANIES.

BY

FRANCIS B. PALMER,

OF THE INNER TEMPLE, ESQ., BARRISTER-AT-LAW, AUTHOR OF
"COMPANY PRECEDENTS."

THIRD EDITION.



LONDON:
STEVENS AND SONS, 119, CHANCERY LANE,
Law Publishers and Booksellers.
1882.

PREFACE TO THIRD EDITION.

THE object of this work, as may be gathered from the title page, is to supply promoters, shareholders, directors, secretaries, creditors, and others with information upon the many legal and practical questions which commonly arise in connection with companies.

In England alone there are many thousand companies formed under the Act of 1862, now carrying on business. The capital invested in these companies amounts to several hundred millions sterling,* and the number of such companies increases at the rate of more than a thousand per annum.

Moreover, Acts in terms almost identical with those of the Companies Act, 1862, are in force in India, Australia, New Zealand, and Canada, and large numbers of limited companies have been and are from time to time being formed under those Acts.

In these circumstances, it is obvious that the number of persons connected with and the interests involved in, such companies must be very large.

The Author has made extensive additions in the present edition. In particular an Appendix has been added on the conversion of business concerns into Private Companies; a subject which day by day is attracting more attention.

The following abbreviations are used;—

The Companies Act, 1862 (25 & 26 Vict. c. 89), is referred to as the Act of 1862.

The Companies Act, 1867 (30 & 31 Vict. c. 131), is referred to as the Act of 1867.

The Act 42 & 43 Vict. c. 76, is referred to as the Companies Act, 1879.

The Act 43 & 44 Vict. c. 19, is referred to as the Companies Act, 1880.

The second edition of the Author's work (intituled "Company Precedents for use in relation to companies under the Companies Acts, 1862 to 1880," is referred to as "Company Precedents."

FRANCIS B. PALMER.

5, NEW SQUARE, LINCOLN'S INN,
December, 1881.

* See Appendix to the Report of the Select Committee of the House of Commons on the Companies Acts, 1862, 1867, Session 1871.

TABLE OF CONTENTS.

	PAGE		PAGE
Preliminary	1	Audit	63
How a Person may become a Shareholder	3	Notices	63
Certificates of Title	5	Minutes of Proceedings	66
Liability of a Shareholder	6	Name	68
Transfer of Shares on Sale or otherwise	7	Seal	69
Mortgage of Shares	10	Registration Office	69
Share Warrants	11	Register of Members	71
Death of Shareholder	12	Books	73
Bankruptcy of Shareholder	13	Annual Returns to Regis- trar	74
Marriage of Female Share- holder	13	Formation of Companies under Part I. of the Act of 1862	78
Calls	15	Inducements to the For- mation of Companies	88
Forfeiture	16	Prospectuses	90
Lien	18	Promoters	92
Increase of Capital	18	Companies Limited by Guarantee	98
Stock	20	Omission of the Word "Limited"	95
Reduction of Capital	20	Unlimited Companies	97
Directors	22	Registration under Part VII. of the Act	98
Qualification of Directors	23	The Companies Act, 1879	98
Remuneration of Directors	24	Winding-up	99
Proceedings of Directors	24	Reconstruction	105
Powers of Directors	26	Amalgamation	106
Mode in which Directors exercise their Power	29	Arrangements with Credi- tors	107
Borrowing	30	Injunctions	108
Manager	31	Hints to Creditors and others	109
Committees	32	Company Stationers	115
Contracts	32	Table A	115
Bills and Notes, etc.	35		
Conveyances, Assignments, Leases, Releases, Deeds of Covenant, etc.	36	APPENDIX :—	
Bribes or Commissions	37	On the Conversion of Business Concerns into Private Companies.	
General Meetings	38	Ch. I. Inducements to Con- version	129
Requisition for General Meeting	42	Ch. II. Preliminary steps towards Conversion	145
Procedure at General Meetings	44	Ch. III. Conversion in ac- cordance with the old plan	147
Amendments	48	Ch. IV. Conversion in ac- cordance with the new plan	167
Polls	50	Index	177
Votes and Proxies	53		
Adjournment	55		
Special Resolutions	56		
Irregularities in Internal Matters	59		
Secretary	60		
Solicitor	61		
Reserve Fund	61		
Dividends	62		
Accounts	63		

THE
SHAREHOLDERS' AND DIRECTORS'
LEGAL COMPANION.

PRELIMINARY.

PART I. of the Companies Act, 1862, permits of the formation of companies of three kinds: (1) limited by shares, (2) limited by guarantee, (3) unlimited.*

In this work it is intended to deal for the most part with companies limited by shares, and accordingly in the following pages, except where otherwise expressed,

“a company” means *a company limited by shares.*

A company is a body corporate, *i.e.*, an artificial person created by law. It comes into existence upon the issue by the Registrar of Joint Stock Companies of a certificate stating its name, and that it is incorporated, and it continues to exist until it has been dissolved in accordance with the provisions of the Act of 1862.

Every company formed under the Act of 1862 has its “Memorandum of Association,” which upon its formation is registered with the Registrar of Joint Stock Companies, and remains in his custody: it states, among other things, the name of the company, its objects, and the amount of its capital.

* As to unlimited companies, see *infra*, p. 97. As to companies limited by guarantee, see *infra*, pp. 93, 95.

As to the registration of chambers of commerce, and social, charitable, and benevolent societies without the word “Limited,” see *infra*, p. 95.

As to the mode of forming a company under Part I. of the Act, see *infra*, p. 78.

As to the formation of a company by deed of settlement and registration under Part VII. of the Act, see *infra*, p. 167.

In addition to this document, most companies so formed have "Articles of Association" (also registered), which contain a series of rules for the regulation of the business, and the determination of the respective rights, duties, and powers of the shareholders, directors, and officers of the company. Those companies so formed which have not got articles of association are governed by the regulations contained in the Table marked A in the First Schedule to the Companies Act, 1862. A copy of Table A will be found *infra*, p. 115.

Where a company has articles of association, they generally contain a clause declaring that "Table A shall not apply to this company," and accordingly in such case Table A has no application. But in other cases the articles of association only contain a small number of rules, and provide, that subject to these rules Table A shall apply, or at any rate do not exclude Table A. In such cases the company is governed by its articles, so far as they go, and in other matters by Table A, for Table A applies so far as it is not expressly excluded. In the following pages the expression

"THE REGULATIONS"

of the company, means the regulations which in each case may happen to be applicable, whether the same are (1) articles of association entirely excluding Table A; or (2) the regulations contained in Table A, where that Table is not excluded; or (3) articles only in part excluding Table A, together with what is not excluded.

Sections 19 and 54 of the Act of 1862 require that a copy of the memorandum and articles of association, and of any special resolutions that may have been passed, shall be forwarded to every member at his request on payment of the sum of one shilling, or such less sum as may be prescribed by the company for each copy. In default, the company incurs a penalty for each offence, not exceeding one pound. Every shareholder ought to procure a copy of the memorandum and articles of association of his company, for in the words of the Master of the Rolls "he must be taken to have read them, and must be taken to have understood them."

As to altering the regulations, see *infra*, p. 58.

HOW A PERSON MAY BECOME A SHAREHOLDER.

The expressions "a shareholder in a company," and "a member of a company," are synonymous in the case of a company limited by shares. Every shareholder is a member, and *vice versa*.

A person may become a shareholder in three ways:—

1. By subscribing [*i.e.*, signing] the memorandum of association.

2. By agreeing with the company to take a share or shares.

3. By taking a transfer of a share or shares.

As to (1). A form of memorandum will be found *infra*, p. 153, and it will be seen that the subscribers agree to take the number of shares set opposite their respective names. This document having been registered, each of the subscribers is legally entitled to the number of shares set opposite his name, and he may call on the directors to issue to him certificates of title to such shares, and in the absence of an agreement to the contrary, duly filed with the Registrar [*supra*, p. 10] before the issue of the shares, he is bound to pay for the shares in cash when called on to do so.

As to (2). This is the mode in which most persons become shareholders. The agreement is generally come to as follows:—

(a) The applicant signs and sends a letter in these terms:—

To the directors of the — Company, Limited.

Gentlemen,—Having paid to the company's credit at the — Bank the sum of —, being a deposit of — per share on [10] shares in the above company, I hereby request you to allot me that number of shares; and I agree to accept the same or any less number that may be allotted to me.

(b) The company (*i.e.*, the directors acting on its behalf) allots shares in accordance with the application, and notice is sent as follows:—

The — Company, Limited.

Sir,—I am directed to inform you that in compliance with your application, dated, &c., 10 shares of £10 each in the above company have been allotted to you.

I am, &c.,

— Secretary.

Such letter requires a *ld.* impressed stamp.

The applicant is not bound until the letter giving him

notice of allotment is posted. Up to that time he may withdraw his application, and if he does he will be entitled to have the deposit returned.

This is not the only way in which the agreement may be come to, *e.g.* : If the secretary, or a director, or some other person authorised to act on behalf of the company, offers a person shares, and such person accepts the offer, he is bound.

As to (3). Many persons acquire shares by purchasing them from shareholders, either directly or through the intervention of a broker. In such case the vendor in due course executes a transfer of the shares to the purchaser. See form of such a document, Table A, cl. 9; and the transfer having been presented to the directors for registration will be registered by them, and the name of the transferee entered in the register of members as the holder of the shares specified in the transfer, and a certificate of title will be issued to him. The same course is taken where the transfer is made *gratis*. See, further, as to transfer, *infra*, p. 7, *et seq.*

Any person may become a shareholder, but the directors may refuse to admit a person of unsound mind, an infant, a married woman not contracting in respect of her separate estate, or a person otherwise incapacitated.

A married woman may, however, become a shareholder in her own right, so as to bind her separate estate, where the contract to take the shares is made on the credit of her separate estate, provided that the regulations do not exclude married women from being shareholders.

In such case, in the letter of application for the shares, the married woman should say, "I make this application upon the credit of and so as to bind my separate estate."

See also section 4 of the Married Women's Property Act, 1870 (33 & 34 Vict. c. 93), *infra*, p. 14.

A firm may become a member, and so may a company or other body corporate, provided the taking of shares is within its objects. In the case of a company under the Act of 1862, this depends on the objects clause of the memorandum. If that expressly or impliedly authorises the company to take and hold shares in another company, it will be legal so to do. See, further, Company Precedents, p. 107.