

**THE SHAREHOLDERS', DIRECTORS, AND  
VOLUNTARY LIQUIDATORS' LEGAL  
COMPANION: A MANUAL OF EVERY-  
DAY LAW AND PRACTICE. THE  
COMPANIES ACT, 1862, 1867 AND 1877**

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The Shareholders', Directors, and Voluntary Liquidators' Legal Companion: A Manual of Every-Day Law and Practice. The Companies Act, 1862, 1867 and 1877 by Francis B. Palmer

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**FRANCIS B. PALMER**

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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, 1867, AND 1877.

By FRANCIS B. PALMER,  
OF THE INNER TEMPLE, ESQ., BARRISTER-AT-LAW,  
AUTHOR OF "COMPANY PRECEDENTS," AND "PRIVATE COMPANIES."



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## PREFACE.

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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.

No apology therefore seems necessary for the publication of a work which seeks to convey to such persons practical information in a concise and intelligible form.

The following abbreviations are used:—

The Companies Act, 1862 (25 & 26 Vic. c. 89) is referred to as "the Act of 1862." The Companies Act, 1867 (30 & 31 Vic. c. 131) is referred to as "the Act of 1867."

The Author's work on Company Forms and Precedents is referred to as "Company Precedents."

FRANCIS B. PALMER.

5, NEW SQUARE, LINCOLN'S INN.  
*April, 1878.*

\* See Appendix to the Report of the Select Committee on the Companies Acts 1862 and 1867. Session 1877.

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THE  
SHAREHOLDERS' AND DIRECTORS'  
LEGAL COMPANION.

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PRELIMINARY.

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 exclusively with companies limited by shares, and accordingly in the following pages the expression

"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 con-

\* Unlimited companies are rarely formed. Companies limited by guarantee seldom average more than two or three per cent. of those formed each year. Those that are formed are generally law societies, chambers of commerce, trade protection societies, and other similar associations intended to be supported by the annual subscription of members. Such societies can, and usually do, procure a licence from the Board of Trade (sec. 23 of the Act of 1867) to register without using the word limited. Thus, a law society will register as "The Incorporated Law Society of Middlemarch." For memoranda and articles of association of such societies, and information as to the formation thereof and the mode of securing the Board of Trade's licence, see "Company Precedents." Since the decision in *Ex parte Hargrove*, 10 Ch. 542, that mutual insurance associations consisting of more than twenty persons are illegal unless registered, a considerable number of such associations have been registered as companies limited by guarantee, and a few as unlimited companies.

† For full particulars as to the mode of forming a company, see *infra*, p. 69, *et seq.*

tinues to exist until it has been dissolved in accordance with the provisions of the Act of 1862.

Every company 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 (*inter alia*) the name of the company, its objects, and the amount of its capital. A company exists only for the objects set forth in its memorandum of association.

In addition to this document most companies 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 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. 93.

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 articles of association entirely excluding Table A, or Table A, or articles only in part excluding Table A.

Section 19 of the Act of 1862 provides that: A copy of the memorandum of association having annexed thereto the articles of association, if any, 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.

## 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. 73, 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 agreement to the contrary 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 1*d.* impressed stamp.