

*These notes refer to the Companies Act 2006 (c.46)
which received Royal Assent on 8 November 2006*

COMPANIES ACT 2006

EXPLANATORY NOTES

TERRITORIAL EXTENT AND DEVOLUTION

Chapter 2: Register of Members

Section 113: Register of members

240. This section restates section 352(1) to (5) of the 1985 Act. The only new provision is *subsection (5)* which makes it clear that, for the purposes of this Chapter, joint holders of a share fall to be treated as a single member, so the register need only show a single address although all their names must be stated in the register.

Section 114: Register to be kept available for inspection

241. This section replaces section 353 of the 1985 Act. Currently, the register of members is required to be kept at the registered office of the company, except that if the company has appointed a third party to maintain or update the register, it may be kept at the office where that work is done, subject to that office being in the jurisdiction where the company is registered. Under the Act, it is immaterial where the work of compiling or updating the register is carried out. *Subsection (1)* provides that the register must be kept available for inspection either at the company's registered office or at a place permitted under regulations made under section 1136.

Section 115: Index of members

242. This section replaces section 354 of the 1985 Act. There is no change in the obligation of a company with more than 50 members to maintain an index of the names of the members (which the company is obliged to do unless the register itself is kept in such a form as to constitute an index).

Section 116: Rights to inspect and require copies

243. This section replaces section 356 of the 1985 Act. Under section 356, the obligation to make the register available for inspection is subject to an exception when the register is closed under section 358 of the 1985 Act. The power to close the register has not been carried forward in the Act and so the obligation in *subsection (1)* is absolute. The CLR recommended that information in a company's register of members should be made available only for certain specified purposes (Final Report, paragraph 11.44). This section follows this recommendation. It modifies the rights of inspection and to be provided with copies of the register of members and its index. (Section 1137 provides power for the Secretary of State to make regulations about the inspection of records and provision of copies and to set fees.) *Subsections (3) and (4)*, which are new, require those seeking to inspect or to be provided with a copy of the register of members to provide their names and addresses, the purpose for which the information will be used, and, if the access is sought on behalf of others, similar information for them.

Section 117: Register of members: response to request for inspection or copy

244. This is a new provision. This section provides a procedure by which the company can refer the matter to the court if it thinks that the request may not be for a proper purpose. It replaces the 10-day deadline for compliance with a request with a 5-day period within which the company must either comply with the request or apply to the court for relief from the obligation. If the company opts for the latter, then *subsections (3), (4) and (5)* apply. Under subsection (3), if the court is satisfied that the access to the register of members is not sought for a proper purpose, it will require the company of the obligation not to comply with the request and may require that the person who made the request pay the company's costs. Under subsection (4), the court may also require the company not to comply with other requests made requests for similar purposes. If the court does not make an order under subsection (3), or the proceedings are discontinued, then, under subsection (5), the company must immediately comply with the request.

Section 118: Register of members: refusal of inspection or default in providing copy

245. This section replaces section 356(5) and (6) of and Schedule 24 to the 1985 Act. It retains the existing sanctions for the company's failure to comply with a request. They do not apply if the court has directed that the company need not comply with the request.

Section 119: Register of members: offences in connection with request for or disclosure of information.

246. This is a new provision. It creates two offences. First, in relation to the new requirement in section 116 to provide information in a request for access, it is an offence knowingly or recklessly to make a statement that is misleading, false or deceptive in a material particular. Second, it is an offence for a person to disclose to another person information from a company's register of members obtained under section 116 knowing or having reason to suspect that the other person may use the information for a purpose that is not a proper purpose.

Section 120: Information as to state of register and index

247. This is a new provision. It implements the CLR recommendation that companies be required to advise anyone exercising their right of inspection or right to demand a copy of the register or index whether the information is up-to-date and, if not, the date to which it has been made up (Final Report, paragraph 11.43). Failure to provide this information renders the company and any officer in default liable to a fine.

Section 121: Removal of entries relating to former members

248. This section replaces section 352(6) of the 1985 Act. Based on a recommendation by the CLR (Final Report, paragraph 11.40), it reduces the period for which the entry of a past member must be kept on the register from 20 years to 10 years.

Section 122: Share warrants

249. This section replaces section 355 of the 1985 Act and implements the CLR recommendation (Completing the Structure, paragraph 5.41) in making clear that shares need not first be issued in registered form, but can be issued directly in warrant to bearer form.

Section 123: Single member companies

250. This section replaces section 352A of the 1985 Act, which implements the Twelfth Company Law Directive (89/667/EEC) on single member private limited liability companies. This section requires a statement to be entered in a company's register of members that it has only one member if that is the case on incorporation or at a later date – if the latter, the date on which it so became must also be entered. It also requires

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a statement that the company has ceased to have only one member together with the date of the increase. Section 352A of the 1985 Act applies to private companies alone, but this section applies to both private and public companies.

Section 124: Company holding its own shares as treasury shares

251. This section replaces section 352(3A) as regards the entries required to be made in the register of members where a company holds treasury shares. The effect of that provision is unchanged.

Section 125: Power of court to rectify register

Section 126: Trusts not to be entered on register

Section 127: Register to be evidence

252. These sections restate sections 359, 360 and 361 of the 1985 Act.

Section 128: Time limit for claims arising from entry in register

253. This section replaces section 352(7) of the 1985 Act. Based on a recommendation by the CLR (Final Report, paragraph 11.40), it reduces the time limit for claims relating to entries in the register from 20 years to 10 years.