

SCHEDULE

Regulation 2

AMENDMENTS TO THE COMPANIES ACT 1985 AND THE INSOLVENCY ACT 1986

Formation

1. In section 1 of the Companies Act 1985 (mode of forming incorporated company), after subsection (3) insert—

“(3A) Notwithstanding subsection (1), one person may, for a lawful purpose, by subscribing his name to a memorandum of association and otherwise complying with the requirements of this Act in respect of registration, form an incorporated company being a private company limited by shares or by guarantee.”.

Minimum membership for carrying on business

2. In section 24 of the Companies Act 1985 (minimum membership for carrying on business), after “company” where it first occurs insert “, other than a private company limited by shares or by guarantee,”.

Contracts with sole members

3.—(1) In Part X of the Companies Act 1985, after section 322A(1) insert—

“Contracts with sole members who are directors

322B.—(1) Subject to subsection (2), where a private company limited by shares or by guarantee having only one member enters into a contract with the sole member of the company and the sole member is also a director of the company, the company shall, unless the contract is in writing, ensure that the terms of the contract are either set out in a written memorandum or are recorded in the minutes of the first meeting of the directors of the company following the making of the contract.

(2) Subsection (1) shall not apply to contracts entered into in the ordinary course of the company’s business.

(3) For the purposes of this section a sole member who is a shadow director is treated as a director.

(4) If a company fails to comply with subsection (1), the company and every officer of it who is in default is liable to a fine.

(5) Subject to subsection (6), nothing in this section shall be construed as excluding the operation of any other enactment or rule of law applying to contracts between a company and a director of that company.

(6) Failure to comply with subsection (1) with respect to a contract shall not affect the validity of that contract.”.

(2) In section 741 of the Companies Act 1985 (“director” and “shadow director”), in subsection (3) after “sections 320 to 322 (substantial property transactions involving directors),” delete “and” and insert “section 322B (contracts with sole members who are directors), and”.

(3) In Schedule 24 to the Companies Act 1985 (punishment of offences), after the entry relating to section 318(8) insert—

(1) Section 322A was inserted into the Companies Act 1985 by section 109 of the Companies Act 1989 (c. 40).

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

“322B(4)	Terms of unwritten contract between sole member of a private company limited by shares or by guarantee and the company not set out in a written memorandum or recorded in minutes of a directors' meeting	Summary	Level 5 on the standard scale.”.
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Statement that company has only one member

4.—(1) In Chapter II of Part XI of the Companies Act 1985, after section 352 insert—

“Statement that company has only one member

352A.—(1) If the number of members of a private company limited by shares or by guarantee falls to one there shall upon the occurrence of that event be entered in the company’s register of members with the name and address of the sole member—

- (i) a statement that the company has only one member, and
- (ii) the date on which the company became a company having only one member.

(2) If the membership of a private company limited by shares or by guarantee increases from one to two or more members there shall upon the occurrence of that event be entered in the company’s register of members, with the name and address of the person who was formerly the sole member, a statement that the company has ceased to have only one member together with the date on which that event occurred.

(3) If a company makes default in complying with this section, the company and every officer of it who is in default is liable to a fine and, for continued contravention, to a daily default fine.”.

(2) In Schedule 24 to the Companies Act 1985 (punishment of offences), after the entry relating to section 352(5) insert—

“352A(3)	Company default in complying with section 352A (statement that company has only one member)	Summary	Level 2 on the standard scale	One-tenth of level 2 on the standard scale.”.
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Meetings

5. In Chapter IV of Part XI of the Companies Act 1985, after section 370 insert—

“Quorum at meetings of the sole member

370A. Notwithstanding any provision to the contrary in the articles of a private company limited by shares or by guarantee having only one member, one member present in person or by proxy shall be a quorum.”.

Recording of decisions by the sole member

6.—(1) In Chapter IV of Part XI of the Companies Act 1985, after section 382A(2) insert—

“Recording of decisions by the sole member

382B.—(1) Where a private company limited by shares or by guarantee has only one member and he takes any decision which may be taken by the company in general meeting and which has effect as if agreed by the company in general meeting, he shall (unless that decision is taken by way of a written resolution) provide the company with a written record of that decision.

(2) If the sole member fails to comply with subsection (1) he shall be liable to a fine.

(3) Failure by the sole member to comply with subsection (1) shall not affect the validity of any decision referred to in that subsection.”.

(2) In Schedule 24 to the Companies Act 1985 (punishment of offences), after the entry relating to section 382(5) insert—

“382B(2)	Failure of sole member to provide the company with a written record of decision	Summary	Level 2 on the standard scale.”.
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Registration of single member companies

7. In section 680 of the Companies Act 1985 (companies capable of being registered under Chapter II of Part XXII), after subsection (1) insert—

“(1A) A company shall not be prevented from registering under this Act as a private company limited by shares or by guarantee solely because it has only one member.”.

Amendment of the Insolvency Act 1986

8. In section 122 of the Insolvency Act 1986 (circumstances in which company may be wound up by the court), in subsection (1)(e) at the beginning insert “except in the case of a private company limited by shares or by guarantee.”.

(2) Section 382A was inserted by section 113 of the Companies Act 1989.