



# Companies Act 2006

## 2006 CHAPTER 46

### PART 8

#### A COMPANY'S MEMBERS

##### Modifications etc. (not altering text)

- C1** Pts. 1-39 (except for Pt. 7 and ss. 662-669), 45-47 extended (12.5.2011) by [The Companies Act 2006 \(Consequential Amendments and Transitional Provisions\) Order 2011 \(S.I. 2011/1265\)](#), art. 5(1), [Sch. 1 para. 2](#)

### CHAPTER 1

#### THE MEMBERS OF A COMPANY

#### **112 The members of a company**

- (1) The subscribers of a company's memorandum are deemed to have agreed to become members of the company, and on its registration become members and must be entered as such in its register of members.
- (2) Every other person who agrees to become a member of a company, and whose name is entered in its register of members, is a member of the company.
- [<sup>F1</sup>(3) Where an election under section 128B is in force in respect of a company—
  - (a) the requirement in subsection (1) to enter particulars of members in the company's register of members does not apply, and
  - (b) subsection (2) has effect as if the reference to a person whose name is entered in the company's register of members were a reference to a person with respect to whom the following steps have been taken—
    - (i) the person's name has been delivered to the registrar under section 128E, and

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(ii) the document containing that information has been registered by the registrar.]

**Textual Amendments**

**F1** S. 112(3) inserted (30.6.2016) by [Small Business, Enterprise and Employment Act 2015 \(c. 26\)](#), s. 164(1), [Sch. 5 para. 13](#); S.I. 2016/321, [reg. 6\(c\)](#)

**Modifications etc. (not altering text)**

- C2** S. 112(1) applied by [Commonhold and Leasehold Reform Act 2002 \(c. 15\)](#), Sch. 3 para. 15(1) (as substituted) (1.10.2009) by [The Companies Act 2006 \(Consequential Amendments, Transitional Provisions and Savings\) Order 2009 \(S.I. 2009/1941\)](#), art. 2(1), [Sch. 1 para. 195\(11\)](#) (with art. 10))
- C3** S. 112(1) excluded by [The European Public Limited-Liability Company Regulations 2004 \(S.I. 2004/2326\)](#), [Sch. 4 para. 7](#) (as amended (1.10.2009) by [The European Public Limited-Liability Company \(Amendment\) Regulations 2009 \(S.I. 2009/2400\)](#), [reg. {40\(7\)}](#))
- C4** S. 112(2) excluded by [Commonhold and Leasehold Reform Act 2002 \(c. 15\)](#), Sch. 3 para. 15(2) (as substituted (1.10.2009) by [The Companies Act 2006 \(Consequential Amendments, Transitional Provisions and Savings\) Order 2009 \(S.I. 2009/1941\)](#), art. 2(1), [Sch. 1 para. 195\(11\)](#) (with art. 10))

## CHAPTER 2

### REGISTER OF MEMBERS

#### *General*

#### [<sup>F2</sup>112A Alternative method of record-keeping

This Chapter must be read with Chapter 2A (which allows for an alternative method of record-keeping in the case of private companies).]

**Textual Amendments**

**F2** S. 112A inserted (30.6.2016) by [Small Business, Enterprise and Employment Act 2015 \(c. 26\)](#), s. 164(1), [Sch. 5 para. 2](#); S.I. 2016/321, [reg. 6\(c\)](#)

### 113 Register of members

- (1) Every company must keep a register of its members.
- (2) There must be entered in the register—
  - (a) the names and addresses of the members,
  - (b) the date on which each person was registered as a member, and
  - (c) the date at which any person ceased to be a member.
- (3) In the case of a company having a share capital, there must be entered in the register, with the names and addresses of the members, a statement of—
  - (a) the shares held by each member, distinguishing each share—
    - (i) by its number (so long as the share has a number), and

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- (ii) where the company has more than one class of issued shares, by its class, and
  - (b) the amount paid or agreed to be considered as paid on the shares of each member.
- (4) If the company has converted any of its shares into stock, and given notice of the conversion to the registrar, the register of members must show the amount and class of stock held by each member instead of the amount of shares and the particulars relating to shares specified above.
- (5) In the case of joint holders of shares or stock in a company, the company's register of members must state the names of each joint holder.

In other respects joint holders are regarded for the purposes of this Chapter as a single member (so that the register must show a single address).
- (6) In the case of a company that does not have a share capital but has more than one class of members, there must be entered in the register, with the names and addresses of the members, a statement of the class to which each member belongs.
- (7) If a company makes default in complying with this section an offence is committed by—
  - (a) the company, and
  - (b) every officer of the company who is in default.
- (8) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.

#### **114 Register to be kept available for inspection**

- (1) A company's register of members must be kept available for inspection—
  - (a) at its registered office, or
  - (b) at a place specified in regulations under section 1136.
- (2) A company must give notice to the registrar of the place where its register of members is kept available for inspection and of any change in that place.
- (3) No such notice is required if the register has, at all times since it came into existence (or, in the case of a register in existence on the relevant date, at all times since then) been kept available for inspection at the company's registered office.
- (4) The relevant date for the purposes of subsection (3) is—
  - (a) 1st July 1948 in the case of a company registered in Great Britain, and
  - (b) 1st April 1961 in the case of a company registered in Northern Ireland.
- (5) If a company makes default for 14 days in complying with subsection (2), an offence is committed by—
  - (a) the company, and
  - (b) every officer of the company who is in default.
- (6) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.

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**Modifications etc. (not altering text)**

- C5** S. 114 modified (6.4.2016) by [The Companies \(Address of Registered Office\) Regulations 2016 \(S.I. 2016/423\)](#), regs. 1(1), **11(a)(i)**

**115 Index of members**

- (1) Every company having more than 50 members must keep an index of the names of the members of the company, unless the register of members is in such a form as to constitute in itself an index.
- (2) The company must make any necessary alteration in the index within 14 days after the date on which any alteration is made in the register of members.
- (3) The index must contain, in respect of each member, a sufficient indication to enable the account of that member in the register to be readily found.
- (4) The index must be at all times kept available for inspection at the same place as the register of members.
- (5) If default is made in complying with this section, an offence is committed by—
  - (a) the company, and
  - (b) every officer of the company who is in default.
- (6) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.

**116 Rights to inspect and require copies**

- (1) The register and the index of members' names must be open to the inspection—
  - (a) of any member of the company without charge, and
  - (b) of any other person on payment of such fee as may be prescribed.
- (2) Any person may require a copy of a company's register of members, or of any part of it, on payment of such fee as may be prescribed.
- (3) A person seeking to exercise either of the rights conferred by this section must make a request to the company to that effect.
- (4) The request must contain the following information—
  - (a) in the case of an individual, his name and address;
  - (b) in the case of an organisation, the name and address of an individual responsible for making the request on behalf of the organisation;
  - (c) the purpose for which the information is to be used; and
  - (d) whether the information will be disclosed to any other person, and if so—
    - (i) where that person is an individual, his name and address,
    - (ii) where that person is an organisation, the name and address of an individual responsible for receiving the information on its behalf, and
    - (iii) the purpose for which the information is to be used by that person.

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### Commencement Information

- II** S. 116 wholly in force at 1.10.2007; s. 116 not in force at Royal Assent, see s. 1300; s. 116 in force for specified purposes at 20.1.2007 by S.I. 2006/3428, **art. 3(3)** (subject to **art. 5, Sch. 1** and with **arts. 6, 8, Sch. 5**); s. 116 in force at 1.10.2007 by S.I. 2007/2194, **art. 2(1)(b)** (subject to transitional adaptations in **Sch. 1** and with savings in **art. 12** and transitional provisions and savings in **Sch. 3 para. 1**)

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

- (1) Where a company receives a request under section 116 (register of members: right to inspect and require copy), it must within five working days either—
  - (a) comply with the request, or
  - (b) apply to the court.
- (2) If it applies to the court it must notify the person making the request.
- (3) If on an application under this section the court is satisfied that the inspection or copy is not sought for a proper purpose—
  - (a) it shall direct the company not to comply with the request, and
  - (b) it may further order that the company's costs (in Scotland, expenses) on the application be paid in whole or in part by the person who made the request, even if he is not a party to the application.
- (4) If the court makes such a direction and it appears to the court that the company is or may be subject to other requests made for a similar purpose (whether made by the same person or different persons), it may direct that the company is not to comply with any such request.

The order must contain such provision as appears to the court appropriate to identify the requests to which it applies.
- (5) If on an application under this section the court does not direct the company not to comply with the request, the company must comply with the request immediately upon the court giving its decision or, as the case may be, the proceedings being discontinued.

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

- (1) If an inspection required under section 116 (register of members: right to inspect and require copy) is refused or default is made in providing a copy required under that section, otherwise than in accordance with an order of the court, an offence is committed by—
  - (a) the company, and
  - (b) every officer of the company who is in default.
- (2) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.
- (3) In the case of any such refusal or default the court may by order compel an immediate inspection or, as the case may be, direct that the copy required be sent to the person requesting it.

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

- (1) It is an offence for a person knowingly or recklessly to make in a request under section 116 (register of members: right to inspect or require copy) a statement that is misleading, false or deceptive in a material particular.
- (2) It is an offence for a person in possession of information obtained by exercise of either of the rights conferred by that section—
  - (a) to do anything that results in the information being disclosed to another person, or
  - (b) to fail to do anything with the result that the information is disclosed to another person,
 knowing, or having reason to suspect, that person may use the information for a purpose that is not a proper purpose.
- (3) A person guilty of an offence under this section is liable—
  - (a) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine (or both);
  - (b) on summary conviction—
    - (i) in England and Wales, to imprisonment for a term not exceeding twelve months or to a fine not exceeding the statutory maximum (or both);
    - (ii) in Scotland or Northern Ireland, to imprisonment for a term not exceeding six months, or to a fine not exceeding the statutory maximum (or both).

## 120 Information as to state of register and index

- (1) When a person inspects the register, or the company provides him with a copy of the register or any part of it, the company must inform him of the most recent date (if any) on which alterations were made to the register and [<sup>F3</sup>whether there are] further alterations to be made.
- (2) When a person inspects the index of members' names, the company must inform him whether there is any alteration to the register that is not reflected in the index.
- (3) If a company fails to provide the information required under subsection (1) or (2), an offence is committed by—
  - (a) the company, and
  - (b) every officer of the company who is in default.
- (4) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

### Textual Amendments

- F3** Words in s. 120(1) substituted (26.5.2015 for specified purposes, 6.4.2016 in so far as not already in force) by [Small Business, Enterprise and Employment Act 2015 \(c. 26\)](#), s. 164(1), [Sch. 3 para. 6](#); [S.I. 2015/1329](#), reg. 3(a); [S.I. 2015/2029](#), reg. 4(a)

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## 121 Removal of entries relating to former members

An entry relating to a former member of the company may be removed from the register after the expiration of ten years from the date on which he ceased to be a member.

### *Special cases*

## 122 Share warrants

<sup>F4</sup>(1) Until a share warrant issued by a company is surrendered the following are deemed to be the particulars required to be entered in the register of members in respect of the warrant—

- (a) the fact of the issue of the warrant,
- (b) a statement of the shares included in the warrant, distinguishing each share by its number so long as the share has a number, and
- (c) the date of the issue of the warrant.]

(3) The bearer of a share warrant may, if the articles of the company so provide, be deemed a member of the company within the meaning of this Act, either to the full extent or for any purposes defined in the articles.

<sup>F5</sup>(4) .....

(5) The company is responsible for any loss incurred by any person by reason of the company entering in the register the name of a bearer of a share warrant in respect of the shares specified in it without the warrant being surrendered and cancelled.

(6) On the surrender of a share warrant, the date of the surrender must be entered in the register.

### **Textual Amendments**

**F4** S. 122(1) substituted for s. 122(1)(2) (26.5.2015) by [Small Business, Enterprise and Employment Act 2015 \(c. 26\)](#), s. 164(3)(g)(ii), [Sch. 4 para. 23\(a\)](#)

**F5** S. 122(4) omitted (26.5.2015) by virtue of [Small Business, Enterprise and Employment Act 2015 \(c. 26\)](#), s. 164(3)(g)(ii), [Sch. 4 para. 23\(b\)](#)

## 123 Single member companies

(1) If a limited company is formed under this Act with only one member there shall be entered in the company's register of members, with the name and address of the sole member, a statement that the company has only one member.

(2) If the number of members of a limited company falls to one, or if an unlimited company with only one member becomes a limited company on re-registration, 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—

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

(3) If the membership of a limited company increases from one to two or more members, there shall upon the occurrence of that event be entered in the company's register

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of members, with the name and address of the person who was formerly the sole member—

- (a) a statement that the company has ceased to have only one member, and
  - (b) the date on which that event occurred.
- (4) If a company makes default in complying with this section, an offence is committed by—
- (a) the company, and
  - (b) every officer of the company who is in default.
- (5) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.

#### **124 Company holding its own shares as treasury shares**

- (1) Where a company purchases its own shares in circumstances in which section 724 (treasury shares) applies—
- (a) the requirements of section 113 (register of members) need not be complied with if the company cancels all of the shares forthwith after the purchase, and
  - (b) if the company does not cancel all of the shares forthwith after the purchase, any share that is so cancelled shall be disregarded for the purposes of that section.
- (2) Subject to subsection (1), where a company holds shares as treasury shares the company must be entered in the register as the member holding those shares.

#### *Supplementary*

#### **125 Power of court to rectify register**

- (1) If—
- (a) the name of any person is, without sufficient cause, entered in or omitted from a company's register of members, or
  - (b) default is made or unnecessary delay takes place in entering on the register the fact of any person having ceased to be a member,
- the person aggrieved, or any member of the company, or the company, may apply to the court for rectification of the register.
- (2) The court may either refuse the application or may order rectification of the register and payment by the company of any damages sustained by any party aggrieved.
- (3) On such an application the court may decide any question relating to the title of a person who is a party to the application to have his name entered in or omitted from the register, whether the question arises between members or alleged members, or between members or alleged members on the one hand and the company on the other hand, and generally may decide any question necessary or expedient to be decided for rectification of the register.
- (4) In the case of a company required by this Act to send a list of its members to the registrar of companies, the court, when making an order for rectification of the register, shall by its order direct notice of the rectification to be given to the registrar.



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## 126 Trusts not to be entered on register

No notice of any trust, expressed, implied or constructive, shall be entered on the register of members of a company registered in England and Wales or Northern Ireland, or be receivable by the registrar.

## 127 Register to be evidence

The register of members is prima facie evidence of any matters which are by this Act directed or authorised to be inserted in it [<sup>F6</sup>, except for any matters of which the central register is prima facie evidence by virtue of section 128H].

### Textual Amendments

- F6** Words in s. 127 inserted (30.6.2016) by [Small Business, Enterprise and Employment Act 2015 \(c. 26\)](#), s. 164(1), [Sch. 5 para. 14](#); S.I. 2016/321, reg. 6(c)

## 128 Time limit for claims arising from entry in register

- (1) Liability incurred by a company—
- (a) from the making or deletion of an entry in the register of members, or
  - (b) from a failure to make or delete any such entry,
- is not enforceable more than ten years after the date on which the entry was made or deleted or, as the case may be, the failure first occurred.
- (2) This is without prejudice to any lesser period of limitation (and, in Scotland, to any rule that the obligation giving rise to the liability prescribes before the expiry of that period).

## [<sup>F7</sup>CHAPTER 2A

### OPTION TO KEEP INFORMATION ON CENTRAL REGISTER

### Textual Amendments

- F7** Pt. 8 Ch. 2A inserted (30.6.2016) by [Small Business, Enterprise and Employment Act 2015 \(c. 26\)](#), s. 164(1), [Sch. 5 para. 3](#); S.I. 2016/321, reg. 6(c)

## 128A Introduction

- (1) This Chapter sets out rules allowing private companies to keep information on the register kept by the registrar instead of entering it in their register of members.
- (2) The register kept by the registrar (see section 1080) is referred to in this Chapter as “the central register”.

## 128B Right to make an election

- (1) An election may be made under this section—
- (a) by the subscribers wishing to form a private company under this Act, or

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- (b) by the private company itself once it is formed and registered.
- (2) In the latter case, the election is of no effect unless, before it is made—
- (a) all the members of the company have assented to the making of the election, and
  - (b) any overseas branch registers that the company was keeping under Chapter 3 have been discontinued and all the entries in those registers transferred to the company's register of members in accordance with section 135.
- (3) An election under this section is made by giving notice of election to the registrar.
- (4) If the notice is given by subscribers wishing to form a private company—
- (a) it must be given when the documents required to be delivered under section 9 are delivered to the registrar, and
  - (b) it must be accompanied by a statement containing all the information that—
    - (i) would be required (in the absence of the notice) to be entered in the company's register of members on incorporation of the company, and
    - (ii) is not otherwise included in the documents delivered under section 9.
- (5) If the notice is given by the company, it must be accompanied by—
- (a) a statement by the company—
    - (i) that all the members of the company have assented to the making of the election, and
    - (ii) if the company was keeping any overseas branch registers, that all such registers have been discontinued and all the entries in them transferred to the company's register of members in accordance with section 135, and
  - (b) a statement containing all the information that is required to be contained in the company's register of members as at the date of the notice in respect of matters that are current as at that date.
- (6) The company must where necessary update the statement sent under subsection (5)(b) to ensure that the final version delivered to the registrar contains all the information that is required to be contained in the company's register of members as at the time immediately before the election takes effect (see section 128C) in respect of matters that are current as at that time.
- (7) The obligation in subsection (6) to update the statement includes an obligation to rectify it (where necessary) in consequence of the company's register of members being rectified (whether before or after the election takes effect).
- (8) If default is made in complying with subsection (6), an offence is committed by—
- (a) the company, and
  - (b) every officer of the company who is in default.
- For this purpose a shadow director is treated as an officer of the company.
- (9) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.
- (10) A reference in this Chapter to matters that are current as at a given date or time is a reference to—
- (a) persons who are members of the company as at that date or time, and

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- (b) any other matters that are current as at that date or time.

### **128C Effective date of election**

- (1) An election made under section 128B takes effect when the notice of election is registered by the registrar.
- (2) The election remains in force until either—
  - (a) the company ceases to be a private company, or
  - (b) a notice of withdrawal sent by the company under section 128J is registered by the registrar,whichever occurs first.

### **128D Effect of election on obligations under Chapter 2**

- (1) The effect of an election under section 128B on a company's obligations under Chapter 2 is as follows.
- (2) The company's obligation to maintain a register of members does not apply with respect to the period when the election is in force.
- (3) This means that, during that period—
  - (a) the company must continue to keep a register of members in accordance with Chapter 2 (a “historic” register) containing all the information that was required to be stated in that register as at the time immediately before the election took effect, but
  - (b) the company does not have to update that register to reflect any changes that occur after that time.
- (4) Subsections (2) and (3) apply to the index of members (if the company is obliged to keep an index of members) as they apply to the register of members.
- (5) The provisions of Chapter 2 (including the rights to inspect or require copies of the register and to inspect the index) continue to apply to the historic register and, if applicable, the historic index during the period when the election is in force.
- (6) The company must place a note in its historic register—
  - (a) stating that an election under section 128B is in force,
  - (b) recording when that election took effect, and
  - (c) indicating that up-to-date information about its members is available for public inspection on the central register.
- (7) Subsections (7) and (8) of section 113 apply if a company makes default in complying with subsection (6) as they apply if a company makes default in complying with that section.
- (8) The obligations under this section with respect to a historic register and historic index do not apply in a case where the election was made by subscribers wishing to form a private company.

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## **128E Duty to notify registrar of changes**

- (1) The duty under subsection (2) applies during the period when an election under section 128B is in force.
- (2) The company must deliver to the registrar any relevant information that the company would during that period have been obliged under this Act to enter in its register of members, had the election not been in force.
- (3) “Relevant information” means information other than—
  - (a) the date mentioned in section 113(2)(b) (date when person registered as member),
  - (b) the date mentioned in section 123(3)(b) (date when membership of limited company increases from one to two or more members), and
  - (c) the dates mentioned in the following provisions, but only in cases where the date to be recorded in the central register is to be the date on which the document containing information of the relevant change is registered by the registrar—
    - (i) section 113(2)(c) (date when person ceases to be member),
    - (ii) section 123(2)(b) (date when company becomes single member company).
- (4) The relevant information must be delivered as soon as reasonably practicable after the company becomes aware of it and, in any event, no later than the time by which the company would have been required to enter the information in its register of members.
- (5) In a case of the kind described in subsection (3)(c), the company must, when it delivers information under subsection (2) of the relevant change, indicate to the registrar that, in accordance with section 1081(1A), the date to be recorded in the central register is to be the date on which the document containing that information is registered by the registrar.
- (6) If default is made in complying with this section, an offence is committed by—
  - (a) the company, and
  - (b) every officer of the company who is in default.

For this purpose a shadow director is treated as an officer of the company.

- (7) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.

## **128F Information as to state of central register**

- (1) When a person inspects or requests a copy of material on the central register relating to a company in respect of which an election under section 128B is in force, the person may ask the company to confirm that all information that the company is required to deliver to the registrar under this Chapter has been delivered.
- (2) If a company fails to respond to a request under subsection (1), an offence is committed by—
  - (a) the company, and
  - (b) every officer of the company who is in default.

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*Status: Point in time view as at 01/01/2018.*

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- (3) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

### **128G Power of court to order company to remedy default or delay**

- (1) This section applies if—
- (a) the name of a person is without sufficient cause included in, or omitted from, information that a company delivers to the registrar under this Chapter concerning its members, or
  - (b) default is made or unnecessary delay takes place in informing the registrar under this Chapter of—
    - (i) the name of a person who is to be a member of the company, or
    - (ii) the fact that a person has ceased or is to cease to be a member of the company.
- (2) The person aggrieved, or any member of the company, or the company, may apply to the court for an order—
- (a) requiring the company to deliver to the registrar the information (or statements) necessary to rectify the position, and
  - (b) where applicable, requiring the registrar to record under section 1081(1A) the date determined by the court.
- (3) The court may either refuse the application or may make the order and order the company to pay any damages sustained by any party aggrieved.
- (4) On such an application the court may decide—
- (a) any question relating to the title of a person who is a party to the application to have the person's name included in or omitted from information delivered to the registrar under this Chapter about the company's members, whether the question arises between members or alleged members, or between members or alleged members on the one hand and the company on the other hand, and
  - (b) any question necessary or expedient to be decided for rectifying the position.
- (5) Nothing in this section affects a person's rights under section 1095 or 1096 (rectification of register on application to registrar or under court order).

### **128H Central register to be evidence**

- (1) The central register is prima facie evidence of any matters about which a company is required to deliver information to the registrar under this Chapter.
- (2) Subsection (1) does not apply to information to be included in a statement under section 128B(5)(b) or in any updated statement under section 128B(6).

### **128I Time limits for claims arising from delivery to registrar**

- (1) Liability incurred by a company—
- (a) from the delivery to the registrar of information under this Chapter, or
  - (b) from a failure to deliver any such information,
- is not enforceable more than 10 years after the date on which the information was delivered or, as the case may be, the failure first occurred.

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- (2) This is without prejudice to any lesser period of limitation (and, in Scotland, to any rule that the obligation giving rise to the liability prescribes before the expiry of that period).

### **128J Withdrawing the election**

- (1) A company may withdraw an election made by or in respect of it under section 128B.
- (2) Withdrawal is achieved by giving notice of withdrawal to the registrar.
- (3) The withdrawal takes effect when the notice is registered by the registrar.
- (4) The effect of withdrawal is that the company's obligation under Chapter 2 to maintain a register of members applies from then on with respect to the period going forward.
- (5) This means that, when the withdrawal takes effect—
- (a) the company must enter in its register of members all the information that is required to be contained in that register in respect of matters that are current as at that time,
  - (b) the company must also retain in its register all the information that it was required under section 128D(3)(a) to keep in a historic register while the election was in force, but
  - (c) the company is not required to enter in its register information relating to the period when the election was in force that is no longer current.
- (6) The company must place a note in its register of members—
- (a) stating that the election under section 128B has been withdrawn,
  - (b) recording when that withdrawal took effect, and
  - (c) indicating that information about its members relating to the period when the election was in force that is no longer current is available for public inspection on the central register.
- (7) Subsections (7) and (8) of section 113 apply if a company makes default in complying with subsection (6) as they apply if a company makes default in complying with that section.

### **128K Power to extend option to public companies**

- (1) The Secretary of State may by regulations amend this Act—
- (a) to extend sections 128A to 128J (with or without modification) to public companies or public companies of a class specified in the regulations, and
  - (b) to make such other amendments as the Secretary of State thinks fit in consequence of that extension.
- (2) Regulations under this section are subject to affirmative resolution procedure.]

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## CHAPTER 3

### OVERSEAS BRANCH REGISTERS

#### 129 Overseas branch registers

- (1) A company having a share capital may, if it transacts business in a country or territory to which this Chapter applies, cause to be kept there a branch register of members resident there (an “overseas branch register”).
- (2) This Chapter applies to—
- (a) any part of Her Majesty's dominions outside the United Kingdom, the Channel Islands and the Isle of Man, and
  - (b) the countries or territories listed below.

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Bangladesh	Malaysia
Cyprus	Malta
Dominica	Nigeria
The Gambia	Pakistan
Ghana	Seychelles
Guyana	Sierra Leone
The Hong Kong Special Administrative Region of the People's Republic of China	Singapore
India	South Africa
Ireland	Sri Lanka
Kenya	Swaziland
Kiribati	Trinidad and Tobago
Lesotho	Uganda
Malawi	Zimbabwe

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- (3) The Secretary of State may make provision by regulations as to the circumstances in which a company is to be regarded as keeping a register in a particular country or territory.
- (4) Regulations under this section are subject to negative resolution procedure.
- (5) References—
- (a) in any Act or instrument (including, in particular, a company's articles) to a dominion register, or
  - (b) in articles registered before 1st November 1929 to a colonial register,
- are to be read (unless the context otherwise requires) as a reference to an overseas branch register kept under this section.
- [<sup>F8</sup>(6) A company's right under subsection (1) to keep an overseas branch register does not apply during or with respect to any period when an election is in force in respect of the company under section 128B.]

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#### Textual Amendments

- F8** S. 129(6) inserted (30.6.2016) by [Small Business, Enterprise and Employment Act 2015 \(c. 26\)](#), s. 164(1), [Sch. 5 para. 4](#); S.I. 2016/321, reg. 6(c)

#### Commencement Information

- I2** S. 129 wholly in force at 1.10.2009; s. 129 not in force at Royal Assent, see s. 1300; s. 129 in force for specified purposes at 20.1.2007 by [S.I. 2006/3428](#), [art. 3\(3\)](#) (subject to [art. 5](#), [Sch. 1](#) and with [arts. 6, 8](#), [Sch. 5](#)); s. 129 otherwise in force at 1.10.2009 by [S.I. 2008/2860](#), [art. 3\(h\)](#) (with [arts. 5, 7, 8](#), [Sch. 2](#)) (as amended by [S.I. 2009/1802](#), [art. 18](#))

### 130 Notice of opening of overseas branch register

- (1) A company that begins to keep an overseas branch register must give notice to the registrar within 14 days of doing so, stating the country or territory in which the register is kept.
- (2) If default is made in complying with subsection (1), an offence is committed by—
  - (a) the company, and
  - (b) every officer of the company who is in default.
- (3) A person guilty of an offence under subsection (2) is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.

### 131 Keeping of overseas branch register

- (1) An overseas branch register is regarded as part of the company's register of members ("the main register").
- (2) The Secretary of State may make provision by regulations modifying any provision of Chapter 2 (register of members) as it applies in relation to an overseas branch register.
- (3) Regulations under this section are subject to negative resolution procedure.
- (4) Subject to the provisions of this Act, a company may by its articles make such provision as it thinks fit as to the keeping of overseas branch registers.

#### Commencement Information

- I3** S. 131 wholly in force at 1.10.2009; s. 131 not in force at Royal Assent, see s. 1300; s. 131 in force for specified purposes at 20.1.2007 by [S.I. 2006/3428](#), [art. 3\(3\)](#) (subject to [art. 5](#), [Sch. 1](#) and with [arts. 6, 8](#), [Sch. 5](#)); s. 131 otherwise in force at 1.10.2009 by [S.I. 2008/2860](#), [art. 3\(h\)](#) (with [arts. 5, 7, 8](#), [Sch. 2](#)) (as amended by [S.I. 2009/1802](#), [art. 18](#))

### 132 Register or duplicate to be kept available for inspection in UK

- (1) A company that keeps an overseas branch register must keep available for inspection—
  - (a) the register, or
  - (b) a duplicate of the register duly entered up from time to time,



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at the place in the United Kingdom where the company's main register is kept available for inspection.

- (2) Any such duplicate is treated for all purposes of this Act as part of the main register.
- (3) If default is made in complying with subsection (1), an offence is committed by—
  - (a) the company, and
  - (b) every officer of the company who is in default.
- (4) A person guilty of an offence under subsection (3) is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.

### **133 Transactions in shares registered in overseas branch register**

- (1) Shares registered in an overseas branch register must be distinguished from those registered in the main register.
- (2) No transaction with respect to shares registered in an overseas branch register may be registered in any other register.
- (3) An instrument of transfer of a share registered in an overseas branch register—
  - (a) is regarded as a transfer of property situated outside the United Kingdom, and
  - (b) unless executed in a part of the United Kingdom, is exempt from stamp duty.

### **134 Jurisdiction of local courts**

- (1) A competent court in a country or territory where an overseas branch register is kept may exercise the same jurisdiction as is exercisable by a court in the United Kingdom—
  - (a) to rectify the register (see section 125), or
  - (b) in relation to a request for inspection or a copy of the register (see section 117).
- (2) The offences—
  - (a) of refusing inspection or failing to provide a copy of the register (see section 118), and
  - (b) of making a false, misleading or deceptive statement in a request for inspection or a copy (see section 119),may be prosecuted summarily before any tribunal having summary criminal jurisdiction in the country or territory where the register is kept.
- (3) This section extends only to those countries and territories to which paragraph 3 of Schedule 14 to the Companies Act 1985 (c. 6) (which made similar provision) extended immediately before the coming into force of this Chapter.

### **135 Discontinuance of overseas branch register**

- (1) A company may discontinue an overseas branch register.
- (2) If it does so all the entries in that register must be transferred—
  - (a) to some other overseas branch register kept in the same country or territory, or
  - (b) to the main register.

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- (3) The company must give notice to the registrar within 14 days of the discontinuance.
- (4) If default is made in complying with subsection (3), an offence is committed by—
  - (a) the company, and
  - (b) every officer of the company who is in default.
- (5) A person guilty of an offence under subsection (4) is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.

## CHAPTER 4

### PROHIBITION ON SUBSIDIARY BEING MEMBER OF ITS HOLDING COMPANY

#### *General prohibition*

#### **136 Prohibition on subsidiary being a member of its holding company**

- (1) Except as provided by this Chapter—
  - (a) a body corporate cannot be a member of a company that is its holding company, and
  - (b) any allotment or transfer of shares in a company to its subsidiary is void.
- (2) The exceptions are provided for in—
  - section 138 (subsidiary acting as personal representative or trustee), and
  - section 141 (subsidiary acting as authorised dealer in securities).

#### **Modifications etc. (not altering text)**

- C6** S. 136 excluded by [Commonhold and Leasehold Reform Act 2002 \(c. 15\), Sch. 3 para. 15\(2\)](#) (as substituted (1.10.2009) by [The Companies Act 2006 \(Consequential Amendments, Transitional Provisions and Savings\) Order 2009 \(S.I. 2009/1941\), art. 2\(1\), Sch. 1 para. 195\(11\)](#) (with art. 10)

#### **137 Shares acquired before prohibition became applicable**

- (1) Where a body corporate became a holder of shares in a company—
  - (a) before the relevant date, or
  - (b) on or after that date and before the commencement of this Chapter in circumstances in which the prohibition in section 23(1) of the Companies Act 1985 or Article 33(1) of the Companies (Northern Ireland) Order 1986 (S.I. 1986/1032 (N.I. 6)) (or any corresponding earlier enactment), as it then had effect, did not apply, or
  - (c) on or after the commencement of this Chapter in circumstances in which the prohibition in section 136 did not apply,
 it may continue to be a member of the company.
- (2) The relevant date for the purposes of subsection (1)(a) is—
  - (a) 1st July 1948 in the case of a company registered in Great Britain, and
  - (b) 1st April 1961 in the case of a company registered in Northern Ireland.

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- (3) So long as it is permitted to continue as a member of a company by virtue of this section, an allotment to it of fully paid shares in the company may be validly made by way of capitalisation of reserves of the company.
- (4) But, so long as the prohibition in section 136 would (apart from this section) apply, it has no right to vote in respect of the shares mentioned in subsection (1) above, or any shares allotted as mentioned in subsection (3) above, on a written resolution or at meetings of the company or of any class of its members.

#### *Subsidiary acting as personal representative or trustee*

### **138 Subsidiary acting as personal representative or trustee**

- (1) The prohibition in section 136 (prohibition on subsidiary being a member of its holding company) does not apply where the subsidiary is concerned only—
  - (a) as personal representative, or
  - (b) as trustee,unless, in the latter case, the holding company or a subsidiary of it is beneficially interested under the trust.
- (2) For the purpose of ascertaining whether the holding company or a subsidiary is so interested, there shall be disregarded—
  - (a) any interest held only by way of security for the purposes of a transaction entered into by the holding company or subsidiary in the ordinary course of a business that includes the lending of money;
  - (b) any interest within—
    - section 139 (interests to be disregarded: residual interest under pension scheme or employees' share scheme), or
    - section 140 (interests to be disregarded: employer's rights of recovery under pension scheme or employees' share scheme);
  - (c) any rights that the company or subsidiary has in its capacity as trustee, including in particular—
    - (i) any right to recover its expenses or be remunerated out of the trust property, and
    - (ii) any right to be indemnified out of the trust property for any liability incurred by reason of any act or omission in the performance of its duties as trustee.

### **139 Interests to be disregarded: residual interest under pension scheme or employees' share scheme**

- (1) Where shares in a company are held on trust for the purposes of a pension scheme or employees' share scheme, there shall be disregarded for the purposes of section 138 any residual interest that has not vested in possession.
- (2) A “residual interest” means a right of the company or subsidiary (“the residual beneficiary”) to receive any of the trust property in the event of—
  - (a) all the liabilities arising under the scheme having been satisfied or provided for, or
  - (b) the residual beneficiary ceasing to participate in the scheme, or

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- (c) the trust property at any time exceeding what is necessary for satisfying the liabilities arising or expected to arise under the scheme.
- (3) In subsection (2)—
- (a) the reference to a right includes a right dependent on the exercise of a discretion vested by the scheme in the trustee or another person, and
  - (b) the reference to liabilities arising under a scheme includes liabilities that have resulted, or may result, from the exercise of any such discretion.
- (4) For the purposes of this section a residual interest vests in possession—
- (a) in a case within subsection (2)(a), on the occurrence of the event mentioned there (whether or not the amount of the property receivable pursuant to the right is ascertained);
  - (b) in a case within subsection (2)(b) or (c), when the residual beneficiary becomes entitled to require the trustee to transfer to him any of the property receivable pursuant to the right.
- (5) In this section “pension scheme” means a scheme for the provision of benefits consisting of or including relevant benefits for or in respect of employees or former employees.
- (6) In subsection (5)—
- (a) “relevant benefits” means any pension, lump sum, gratuity or other like benefit given or to be given on retirement or on death or in anticipation of retirement or, in connection with past service, after retirement or death; and
  - (b) “employee” shall be read as if a director of a company were employed by it.

#### **140 Interests to be disregarded: employer's rights of recovery under pension scheme or employees' share scheme**

- (1) Where shares in a company are held on trust for the purposes of a pension scheme or employees' share scheme, there shall be disregarded for the purposes of section 138 any charge or lien on, or set-off against, any benefit or other right or interest under the scheme for the purpose of enabling the employer or former employer of a member of the scheme to obtain the discharge of a monetary obligation due to him from the member.
- (2) [<sup>F9</sup>In the case of a trust for the purposes of a pension scheme there shall also be disregarded any right to receive from the trustee of the scheme, or as trustee of the scheme to retain, an amount that can be recovered or retained, under <sup>F10</sup>... section 57 of the Pension Schemes (Northern Ireland) Act 1993 (c. 49) (deduction of contributions equivalent premium from refund of scheme contributions) or otherwise, as reimbursement or partial reimbursement for any contributions equivalent premium paid in connection with the scheme under Part 3 of that Act.]
- (3) In this section “pension scheme” means a scheme for the provision of benefits consisting of or including relevant benefits for or in respect of employees or former employees.

“Relevant benefits” here means any pension, lump sum, gratuity or other like benefit given or to be given on retirement or on death or in anticipation of retirement or, in connection with past service, after retirement or death.

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- (4) In this section “employer” and “employee” shall be read as if a director of a company were employed by it.

#### Textual Amendments

- F9** S. 140(2) omitted (N.I.) (6.4.2016) by virtue of [Pensions Act \(Northern Ireland\) 2015 \(c. 5\), s. 53\(3\), Sch. 13 para. 73](#)
- F10** Words in s. 140(2) omitted (6.4.2016) by virtue of [Pensions Act 2014 \(c. 19\), s. 56\(4\), Sch. 13 para. 75](#)

### *Subsidiary acting as dealer in securities*

#### **141 Subsidiary acting as authorised dealer in securities**

- (1) The prohibition in section 136 (prohibition on subsidiary being a member of its holding company) does not apply where the shares are held by the subsidiary in the ordinary course of its business as an intermediary.
- (2) For this purpose a person is an intermediary if he—
- carries on a bona fide business of dealing in securities,
  - is a member of or has access to a regulated market, and
  - does not carry on an excluded business.
- (3) The following are excluded businesses—
- a business that consists wholly or mainly in the making or managing of investments;
  - a business that consists wholly or mainly in, or is carried on wholly or mainly for the purposes of, providing services to persons who are connected with the person carrying on the business;
  - a business that consists in insurance business;
  - a business that consists in managing or acting as trustee in relation to a pension scheme, or that is carried on by the manager or trustee of such a scheme in connection with or for the purposes of the scheme;
  - a business that consists in operating or acting as trustee in relation to a collective investment scheme, or that is carried on by the operator or trustee of such a scheme in connection with and for the purposes of the scheme.
- (4) For the purposes of this section—
- the question whether a person is connected with another shall be determined in accordance with <sup>F11</sup>section 1122 of the Corporation Tax Act 2010];
  - “collective investment scheme” has the meaning given in section 235 of the Financial Services and Markets Act 2000 (c. 8);
  - “insurance business” means business that consists in the effecting or carrying out of contracts of insurance;
  - “securities” includes—
    - options,
    - futures, and
    - contracts for differences,and rights or interests in those investments;

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- (e) “trustee” and “the operator” in relation to a collective investment scheme shall be construed in accordance with section 237(2) of the Financial Services and Markets Act 2000 (c. 8).
- (5) Expressions used in this section that are also used in the provisions regulating activities under the Financial Services and Markets Act 2000 have the same meaning here as they do in those provisions.

See section 22 of that Act, orders made under that section and Schedule 2 to that Act.

#### **Textual Amendments**

- F11** Words in s. 141(4)(a) substituted (1.4.2010 with effect in accordance with s. 1184 of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), ss. 1177, 1184(1), [Sch. 1 para. 488](#) (with [Sch. 2](#))

### **142 Protection of third parties in other cases where subsidiary acting as dealer in securities**

- (1) This section applies where—
- (a) a subsidiary that is a dealer in securities has purportedly acquired shares in its holding company in contravention of the prohibition in section 136, and
  - (b) a person acting in good faith has agreed, for value and without notice of the contravention, to acquire shares in the holding company—
    - (i) from the subsidiary, or
    - (ii) from someone who has purportedly acquired the shares after their disposal by the subsidiary.
- (2) A transfer to that person of the shares mentioned in subsection (1)(a) has the same effect as it would have had if their original acquisition by the subsidiary had not been in contravention of the prohibition.

#### *Supplementary*

### **143 Application of provisions to companies not limited by shares**

In relation to a company other than a company limited by shares, the references in this Chapter to shares shall be read as references to the interest of its members as such, whatever the form of that interest.

### **144 Application of provisions to nominees**

The provisions of this Chapter apply to a nominee acting on behalf of a subsidiary as to the subsidiary itself.

**Status:**

Point in time view as at 01/01/2018.

**Changes to legislation:**

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