

Companies Act 2006

A summary of the main
provisions of the Act
as it applies to private companies
in the voluntary sector

Introduction.....	5
Summary – the headline changes.....	1
1. Part 1: General introductory provisions.....	3
1.1 Types of company.....	3
2. Part 2: Company formation.....	3
3. Part 3: A company’s constitution.....	4
3.1 Memorandum and articles of association.....	4
(a) Memorandum of association.....	4
(b) Articles of association.....	4
(c) Objects.....	4
(d) Alterations.....	5
(e) Model articles.....	5
(f) Provision for entrenchment.....	5
3.2 Resolutions and agreements affecting a company’s constitution.....	6
4. Part 4: A company’s capacity and related matters.....	6
4.1 Formalities for execution of documents.....	6
5. Part 5: A company’s name.....	6
5.1 Prohibited names.....	6
5.2 Use of “Limited” suffix.....	7
5.3 Similar names.....	7
5.4 Change of name.....	7
5.5 Disclosure of company name.....	7
6. Part 6: A company’s registered office.....	8
6.1 Welsh companies.....	8

7.	Part 7: Re-registration of companies	8
8.	Part 8: A company's members	8
8.1	Register of members.....	8
8.2	Inspection of register.....	8
8.3	Miscellaneous.....	9
9.	Part 9: Exercise of members' rights.....	9
	Delegating the enjoyment of exercise of shareholder rights	9
10.	Part 10: A company's directors	9
10.1	Definitions	10
10.2	Number of directors.....	10
10.3	Requirement for one director to be a natural person.....	10
10.4	Age of directors.....	10
10.5	Register of directors	10
10.6	Register of directors' residential addresses.....	11
10.7	Directors' duties.....	11
10.8	Declaration of interest in existing transaction or arrangement.....	12
10.9	Transactions with directors requiring approval of members.....	13
10.10	Long-term service contracts.....	13
10.11	Substantial property transactions	13
10.12	Loans to directors.....	14
10.13	Payments for loss of office.....	14
10.14	Directors' service contracts to be open to inspection.....	14

10.15	Directors' liabilities.....	14
10.16	Directors' residential addresses.....	15
10.17	Supplementary provisions.....	15
11.	Part 11: Derivative claims and proceedings by members	16
12.	Part 12: Company secretaries.....	16
13.	Part 13: Resolutions and meetings.....	16
13.1	Written resolutions	17
13.2	General meetings	18
13.3	Notice of meetings.....	18
13.4	Circulation of shareholders' statements and requisitioned meetings	19
13.5	Quorum	19
13.6	Proxies and corporate representatives	19
13.7	Records of resolutions and meetings	20
14.	Part 14: Control of political donations and expenditure	20
15.	Part 15: Accounts and reports.....	20
15.1	Small companies regime.....	20
15.2	Accounting reference date.....	21
15.3	Annual accounts	21
15.4	Filing of accounts and reports.....	22
16.	Part 16: Audit.....	22
16.1	Removal and resignation of auditors	23
16.2	Auditors' liability.....	24
17.	Part 17: A company's share capital.....	24

17.1	Authorised share capital abolished	24
17.2	Directors' authority to allot shares.....	25
17.3	Registration of allotments	25
17.4	Return of allotments	25
17.5	Statements of share capital.....	25
17.6	Alteration of share capital.....	26
17.7	Redenomination of share capital.....	26
17.8	Class rights	26
18.	Part 21: Certification and transfer of securities.....	27
18.1	Share transfers	27
19.	Part 25: Company charges.....	27
20.	Part 31: Dissolution and restoration to the Register	28
21.	Part 41: Business names	28

Introduction

The Companies Act 2006 (the "Act") received Royal Assent on 8 November 2006. It will be fully in force by October 2008 (at the latest) although some of its provisions are already in force or are expected to be brought into force in the early part of 2007.

The Act is a wholesale restatement of UK company law. The Act will repeal the majority of the Companies Act 1985 (the "1985 Act") but many of the repealed provisions are restated in the Act. Amendments are proposed to some of the remaining sections of the 1985 Act and to other legislation. Some case law is codified.

The Act will apply to all UK companies (i.e. Great Britain and Northern Ireland). Hence there will be no future requirement to replicate company law provisions in special Northern Ireland legislation. Separate Scottish legislation will be required to supplement the Act as it applies to Scottish companies in certain areas.

The Act comprises 1300 sections and 16 schedules and is the longest ever statute. There will be secondary legislation to support it. This is not a comprehensive guide to the contents of the Act. This note aims to cover the main points of change or interest relevant to private companies in the voluntary sector. In particular, topics of company law where there is no change or only very slight changes may not be covered at all.

References in this note to sections are to sections of the Act unless otherwise stated and unless (1985) appears after the reference, in which case it is a reference to a section of the 1985 Act.

Summary – the headline changes

There will be transitional provisions governing how certain changes will apply to companies already in existence when such changes come into force.

Changes to how companies are formed and constituted:

There is to be a new procedure for forming a company

It will be possible for a single subscriber to incorporate any type of company

Changes affecting share capital:

Companies will no longer be required to have an authorised share capital – the number of shares which a company can issue can in theory be unlimited

For a private company with a single class of shares, it will no longer be necessary to grant the directors authority to allot shares. They will be able to allot an unlimited number of shares unless they are restricted from doing so by the articles

Any alteration to the share capital of a company, including an allotment of shares, will trigger a requirement to deliver a statement of capital to the Registrar of Companies setting out details about the company's share capital

It will become possible for a shareholder to "delegate" the rights of membership (such as the right to vote or the right to receive a dividend) so that they can be exercised or enjoyed by someone else (such as the beneficial owner where the shares are held by a trustee or intermediary)

Changes affecting the memorandum and articles of association:

Companies are likely to have to adopt new articles of association if they want to benefit from many of the simplifying provisions of the Act

The memorandum of association will be a shorter document required for incorporation but with no significance beyond that

The articles of association will be the single constitutional document of the company

There are to be new, shorter, simpler and modernised model articles to replace the current Table A

The objects of a company will be unlimited unless the articles limit them. The objects clause in the memorandum of association of existing companies will be deemed to be part of their articles of association

It will be possible to entrench provisions in the articles of association so that they cannot be changed or can be changed only in restricted circumstances

Changes to decision making procedures:

The rules on written resolutions for private companies will change and there is a new procedure to be followed. It will no longer be necessary for all the members to agree to a written resolution. Rather, a simple majority will be required for an ordinary resolution, and a majority of 75% for a special resolution. Whilst it will remain possible for a private company to convene and pass resolutions at a general meeting, the new rules on written resolutions provide such a degree of flexibility that most private companies are likely to abandon the use of general meetings altogether (although a general meeting will continue to be required to remove a director or auditor before the end of his term of office)

Private companies will no longer be required to hold an annual general meeting, but they can do so if they wish. If their articles require an AGM then the articles will require amendment if they wish to take advantage of this relaxation in the rules

Elective resolutions and extraordinary resolutions will no longer exist. The reduced rules which private companies are currently able to apply by passing elective resolutions will become the default rules for private companies

The notice period for general meetings will be 14 clear days in all cases (other than the AGM of a public company for which the notice period will be 21 clear days), regardless of whether or not a special resolution is proposed

Changes in relation to directors and the company secretary:

Every company will be required to have at least one director who is a natural person

There is to be a new statutory code of directors' duties which is based on the existing common law rules but which arguably contains certain more extensive duties, and specifies a range of factors to which directors must have regard when making decisions

There are to be new rules for directors to observe when disclosing existing and proposed dealings between themselves (or their connected persons) and the company

There are changes to the rules which apply when a director (or a person connected with a director) enters into certain dealings with the company (such as the rules on substantial property transactions, loans to directors and payments for loss of office)

There are changes to the information which must be recorded in the register of directors and there will no longer be a requirement to keep a register of directors' shareholdings

All directors will benefit from new rules protecting the confidentiality of their residential address

Private companies will no longer be required to have a secretary

The address of the secretary to be recorded in the register of secretaries is to be his service address (and so does not have to be his residential address and could, for example, be stated to be the registered address of the company)

Changes in relation to accounts and audit:

The filing deadlines for annual accounts and reports will be reduced to 9 months after year end for private companies

The rules about what must be contained in a company's accounts and reports have been rewritten

Companies will have the ability to enter into a contract with the auditor in order to limit the auditor's liability. Members' consent will be required before such an agreement is entered into and the limit will be ineffective to the extent that it is below the amount which is "fair and reasonable in the circumstances"

Miscellaneous changes:

There is to be a new procedure which members must follow when bringing a cause of action on behalf of the company (whether against a director of the company or any other person) where the cause of action arises out of negligence, default, breach of duty or breach of trust by a director of the company

It will become an offence to use a business name which gives so misleading an indication of the nature of the activities of the business so as to be likely to cause harm to the public

1. Part 1: General introductory provisions

1.1 Types of company

The types of company available (limited by shares, limited by guarantee, unlimited etc.) will remain unchanged. The Act is expressly made subject to the provisions of part 2 of the Companies (Audit, Investigations and Community Enterprise) Act 2004 (i.e. the provisions allowing a company to be registered as a Community Interest Company).

2. Part 2: Company formation

Part 2 of the Act deals with formation of companies and there is a new incorporation procedure which replaces the existing provisions about formation in the 1985 Act.

In order to register a company it will be necessary to submit a memorandum of association in the prescribed form, an application for registration, a statement of compliance (which replaces the current statutory declaration) and a copy of the articles of association (if any) (s9(1)). The Registrar of Companies has the power to prescribe the form in which information is provided to her and there will, no doubt, be a whole new set of Companies House prescribed forms in the fullness of time.

Notably, the current requirement for a company to have an authorised share capital will be abolished (although the existing authorised share capital of existing companies will remain in place until removed by ordinary resolution). Furthermore, it will be possible to incorporate any sort of company with a single subscriber and not just a private limited company as at present (s7(1)).

3. Part 3: A company's constitution

3.1 Memorandum and articles of association

(a) Memorandum of association

The memorandum of association will be a statement by the subscribers agreeing to become members of the Company (s8). It will be required for incorporation but will have no relevance beyond that. It will no longer contain an objects clause and will not be capable of amendment.

(b) Articles of association

The articles of association will be the single constitutional document of a company. Any reference, therefore, in the Act or the 1985 Act to a company's constitution is, unless the context requires otherwise, to its articles of association and any agreements or resolutions required to be attached to the articles (s17). The memorandum of association will no longer be part of a company's constitution.

Any restrictions on the company's powers or objects will in future be contained in the articles of association and not in the memorandum of association. For existing companies, any information in the current memorandum of association which is not information of the type included in the new style memorandum will be deemed to be part of the articles of association instead (s28(1)).

(c) Objects

It will not be necessary to state a company's objects in the articles of association since its objects will be unrestricted unless the articles specifically restrict them (s31(1)). Note that, for existing companies, the objects clause and all other provisions in the memorandum of association (other than the limited information contained in the new style memorandum of association) will be deemed to be part of the

articles and so the objects of a company will continue to be those set out in its objects clause until such time as it chooses to delete the objects clause from its articles and notice of the change has been registered at Companies House (s31(2)).

(d) Alterations

As currently, a special resolution will be required to amend the articles of association (s21(1)).

(e) Model articles

As currently (with Table A), there will be model articles of association which, in the case of a limited company, will apply to the extent not disapplied or inconsistent with the provisions of any articles of association specifically adopted by the company (s20). A limited company will not, therefore, be required to register articles of association as the model articles will apply by default. Under the 1985 Act, a company limited by guarantee is required to register articles of association. Under the Act, companies limited by guarantee will not be required to register articles, as the model articles will apply by default. This will not be the case for unlimited companies which will, therefore, be required to register articles. Draft model articles for private companies limited by shares and public companies have already been published, and it is expected that model articles for a private company limited by guarantee will follow.

As at present, the model articles applying by default to a company will be those in force at the date of its registration (s20(2)). Most existing companies limited by shares will, therefore, continue to be subject to Table A (1948 or 1985) and so will need to alter their articles of association if they wish to adopt the new, simplified model articles to be prescribed pursuant to the Act.

(f) Provision for entrenchment

There is to be a new mechanism for entrenching provisions in the articles of association – i.e. to render them incapable of amendment, or capable of amendment only if certain conditions are met or certain procedures are complied with (ss22-24). An entrenched provision can be included in the articles on incorporation, or added at a later date with the consent of all the members. Notice of an entrenchment must be given to Companies House. If a company's articles contain an entrenched provision, any subsequent amendment to the articles must be accompanied by a statement of compliance certifying that the alteration has been made in accordance with the articles. Notice and a statement of compliance must also be given to Companies House upon the removal of an entrenched provision. Section 28 provides that any provision for entrenchment in the old memorandum of association which,

as a result of the Act, becomes part of the company's articles of association is to be governed by the rules relating to entrenchment set out above.

3.2 Resolutions and agreements affecting a company's constitution

The rules as to which members' resolutions must be notified to Companies House are similar to the existing rules in section 380 (1985) and the filing deadline remains 15 days (ss29-30). Note, however, that extraordinary and elective resolutions will cease to exist under the Act.

Note the requirement to notify the Registrar if the articles are amended by an enactment (other than an enactment amending the general law) or by order of a court or other authority (ss 34-35).

4. Part 4: A company's capacity and related matters

4.1 Formalities for execution of documents

All the current methods for execution of contracts and deeds on behalf of the company pursuant to the 1985 Act (as amended by the Regulatory Reform (Execution of Deeds and Documents) Order 2005) will continue to be available after the Act has come into force.

Key points to note are as follows:

- Section 47 confirms our existing understanding that a power of attorney must be by deed to empower the attorney to execute deeds on the company's behalf.
- Documents (including deeds) will be able to be executed by a company by affixing the common seal or by the signature of two authorised signatories or by the signature of a director which is witnessed (s44). The authorised signatories are the company's directors and the secretary (if any).

Persons who are company secretaries of private companies immediately before the Act comes into force will automatically remain in office and retain their existing powers to sign documents on behalf of the company.

5. Part 5: A company's name

5.1 Prohibited names

Chapter 1 of part 5 of the Act sets out general requirements regarding company names. These requirements are very similar to those under the existing law, requiring approval for the use of prescribed words. Section 57

is a new provision providing power for regulations to specify what letters, symbols and punctuation may be used within a company's name and specifying a permitted format for names. The Government's explanatory note suggests that such regulations may be used, for example, to prevent the use of superscript or subscript.

5.2 Use of "Limited" suffix

Sections 60 to 64 govern when a company can be exempted from the requirement to have the word "limited" in its name. Companies which are currently exempt will continue to be exempt (unless and until they change their name and provided they continue to meet the conditions specified in section 61 or 62 (as applicable) and section 63). Section 60 also extends the exemption to charities and to other companies exempted by regulations.

5.3 Similar names

Section 69 enables any person (the "applicant") to raise an objection to a company name which is the same as, or similar to, a name in which the applicant has goodwill. It is then for the company to defeat the objection, and it can do this on any of the grounds specified in the section: these include that the name was adopted in good faith, that the interests of the applicant are not adversely affected to any significant extent and that the adoption of the name pre-dates the commencement of the activities on which the applicant relies to show goodwill. However, an objection can in any event be upheld if the applicant can show that the company's main purpose in choosing the name was to extort money from the applicant or to prevent the applicant from using that name. This should deter the opportunistic registration of company names.

5.4 Change of name

Section 77 deals with change of name of a company and provides that as well as being able to change its name by special resolution, a company may also provide in its articles that its name can be changed in some other manner. Section 78 requires a company to notify the registrar if a special resolution to change its name has been passed and to forward a copy of the special resolution to the registrar. Sections 78(2) and (3) deal, in particular, with the procedure to be followed where a special resolution for change of name is passed but the name change is subject to conditions. Section 79 deals with the notification requirements where the name is changed pursuant to a procedure set out in the articles.

5.5 Disclosure of company name

Chapter 6 of part 5 of the Act deals with the requirements to disclose the company name (e.g. in correspondence and at business premises). Section 85 is a new provision that, in considering a company's

compliance with this chapter, differences in case, punctuation or format of the lettering used for its name are to be left out of account unless the differences result in there being a risk of confusion.

6. Part 6: A company's registered office

6.1 Welsh companies

Section 88 defines "Welsh company" as a company in relation to which it is stated in the register that its registered office is to be in Wales. A company can be set up as a Welsh company on incorporation (section 9(2)(b)) or can subsequently become a Welsh company (section 88(2)). It will also be possible for a company to decide to cease to be a Welsh company (section 88(3)).

7. Part 7: Re-registration of companies

Part 7 of the Act is about re-registration of companies. The procedures are the same as currently in all significant respects.

8. Part 8: A company's members

8.1 Register of members

As at present, the register of members must be kept available for inspection, but there may in future be more flexibility as there is to be a power to make regulations to specify places other than the registered office at which the register of members may be kept. As at present, there will be a requirement to notify the Registrar of that place and any change in that place (save where the register has at all times been kept at the registered office) (section 114).

8.2 Inspection of register

Section 116 deals with the right of members and non-members to request inspection or copies of the register of members. The request must contain specified information including an indication of the purpose for which the information will be used. The timescale within which the company must comply with the request will be reduced from 10 days to 5 working days. However, the company will have the option to apply to court (before the expiry of 5 working days) for an order that it need not comply with the request if it thinks the request was not made for a proper purpose. The section does not define what is a "proper purpose".

When someone has requested an inspection or copy of the register of members, there will be a new requirement on the company to inform him of the date to which the information supplied is up to date (section 120).

8.3 Miscellaneous

An entry relating to a former member may be removed from the register after 10 years rather than the current 20 years (section 121).

The Act makes it clear that shares may be issued in warrant to bearer form (i.e. they do not first need to be issued in registered form) (section 122).

The time limit for making a claim in relation to any entry or deletion, or failure to make any entry or deletion, in the register of members will be reduced from 20 years to 10 years (section 128).

Note the requirement in section 113(5) for the register of members to state the names of each joint holder of shares.

9. Part 9: Exercise of members' rights

Delegating the enjoyment of exercise of shareholder rights

There are new provisions in this part designed to allow all or any of the members' rights to be exercised by the beneficial owner where shares are held through an intermediary or a chain of intermediaries. The extended proxy rights (see part 13) can also be used to benefit a beneficial owner who is not the registered shareholder. The provisions of part 9 go further in that they enable the enfranchisement of persons identified by the registered member. The key provision is section 145 which provides that the articles of association may allow a member to nominate another person or persons to exercise and enjoy all or any of his membership rights. Subject to any further restriction in the articles, the only right which cannot be "delegated" in this way is the right to transfer the shares. It will even be possible for the articles to specify that different rights may be "delegated" depending on the class of share. All provisions of the Companies Acts which refer to a "member" are to be read as having reference also to any such nominated person to whom those particular rights have been delegated (this will affect provisions such as those requiring notice of meetings to be given to all the members, provision of accounts to members etc.). Section 145 will not give the nominated person any directly enforceable rights against the company, and so membership rights will continue to be enforced through the registered member.

10. Part 10: A company's directors

This part replaces, and brings together in one place, the provisions in the 1985 Act relating to the appointment and removal of directors, the enforcement of fair dealing by directors and the provisions relating to

confidentiality for the residential addresses of directors. It also includes the new statutory statement of directors' duties.

10.1 Definitions

The definitions of "director" and "shadow director" remain unchanged (sections 250 and 251).

10.2 Number of directors

All public companies will be required to have at least two directors (section 154). Private companies must have at least one director.

10.3 Requirement for one director to be a natural person

It will be a new requirement that every company has at least one director who is a natural person (although this can include a corporation sole, such as the Archbishop of Canterbury) (section 155). In other words, one company cannot be the sole director of another company.

10.4 Age of directors

There is a new provision introducing a minimum age of 16 for a natural person to be a director (section 157) although there is power to make regulations creating exceptions to this rule. Existing under-age directors will automatically cease to hold office when section 157 comes into force (section 159). A minor can nevertheless incur liability if he acts as a de facto director or shadow director (section 157).

10.5 Register of directors

There are some changes to the information which must be recorded in the register of directors (section 163). It is the director's service address which must in future be recorded, rather than his residential address, and the register may simply state his service address as "the company's registered office". It will no longer be necessary to record details of other directorships. It will become necessary, in the case of a married female director, to include details of any maiden name and, more generally, it will become necessary to state any former name by which a person was known for business purposes (this is new wording which did not appear in the predecessor section 289 (1985)). More information will be required in respect of directors which are corporations or firms than is the case at present – broadly speaking, it will become necessary to provide details of the register on which the body corporate is registered and its registered number. In the case of directors which are non-EEA companies, further information about the body corporate's legal form and governing law will also be required (section 164).

10.6 Register of directors' residential addresses

Details of residential addresses of directors who are individuals must be recorded in a separate register in relation to which there is no requirement to make it available for inspection (section 165). The details of changes in director's details which must be notified to Companies House will include any change in his residential address (section 167).

10.7 Directors' duties

Chapter 2 of part 10 contains the much heralded code of directors' duties. According to the Government's explanatory note, it is a codification of the current law save only that two changes have been made to the way in which conflicts of interest between the director and the company are regulated.

Under section 175 (the duty to avoid conflicts of interest), transactions or arrangements with the company in which the director is interested do not have to be authorised by either the members or the board. It is sufficient for the director to declare his interest (in accordance with section 177). This reflects what is currently permitted by the articles of many companies. Note, however, that chapter 4 of part 10 retains the current requirements for shareholder approval for a range of transactions involving directors (long service contracts, substantial property transactions, loans and quasi-loans and payments for loss of office). Note that section 177 relates to the duty to declare the nature and extent of an interest in proposed transactions or arrangements. Compare the provisions of chapter 3 of part 10 which deal with the declaration of an interest in an existing transaction or arrangement (and which replace section 317 (1985)). Note also that section 177 requires the disclosure to be made to the other directors. The DTI suggests that no disclosure would therefore be required by a sole director.

Section 175 also permits authorisation by the independent directors of most conflicts of interest arising from third party dealings by the director (e.g. his involvement with competitor companies). Board authorisation of conflicts of interest is to be the default position for private companies (but the articles may impose more stringent requirements), but public companies will need to make provision in their articles to permit this. Board authorisation is not permitted in respect of the acceptance of benefits from third parties (section 176).

Controversy has arisen surrounding sub-section 172(1) which requires a director to "act in the way he considers, in good faith, would be most likely to promote the success of the company for the benefit of its members as a whole". Concerns have been raised, in particular, about the words "promote the success of the company" which, it is argued, actually impose a new and additional duty on directors. Although these words are not defined, the clause goes on to specify a non-exhaustive list of factors a director must take into account when discharging this duty.

These comprise:

- the likely consequences of any decision in the long term;
- the interests of the company's employees;
- the need to foster the company's business relationships with suppliers, customers and others;
- the impact of the company's operations on the community and the environment;
- the desirability of the company maintaining a reputation for high standards of business conduct; and
- the need to act fairly as between members of the company.

Considered against the background of the new enhanced rights of shareholders to bring derivative actions on behalf of the company to enforce claims arising out of default by directors, strong concerns have been voiced that directors will be at risk of legal action by aggrieved shareholders (including, for example, interest groups such as environmental activists) who consider that the factors referred to above were not properly weighed up in reaching a decision.

The new code replaces certain existing common law rules and equitable principles, but section 170 provides that the code should be interpreted and applied by the courts in the same way as those rules and principles. In other words, developments in the law of trusts and agency (which, of course, form the basis of the rules on directors' duties) are to be reflected in the interpretation and application of the duties. Section 170(5) provides that the general duties apply to shadow directors to the extent that the common law rules would have applied. It is unfortunate that the Act does not set out expressly which duties apply to shadow directors.

It is important to note that the codification does not provide an exhaustive statement of directors' duties – other duties are found elsewhere in the Act (e.g. the duty to deliver the company's accounts to the registrar of companies) and, indeed, in other legislation. Other duties remain uncodified – and the explanatory note to the Act gives as an example the duty to consider the interests of creditors in times of threatened insolvency.

10.8 Declaration of interest in existing transaction or arrangement

Chapter 3 of part 10 replaces section 317 (1985) but differs in several respects as it is not attempted to paraphrase all the changes here. Of particular note, however, is the new written procedure for declaring an interest (section 184) – this being just one of the three permitted methods of declaration (declaration at a board meeting, by notice in writing and by general notice in accordance with section 185). (In the case of a general notice, note that there is a new requirement for the director to state the nature and extent of his

interest in the body corporate or firm, or the nature of his connection with the person, in respect of which or whom the general notice is given.) This disclosure requirement does not apply to a sole director.

As already mentioned, this chapter relates only to existing transactions or arrangements – proposed transactions or arrangements fall within the ambit of section 177 instead, but if a matter has been declared pursuant to section 177, no further declaration is necessary under chapter 3 when the transaction or arrangement is entered into.

10.9 Transactions with directors requiring approval of members

Chapters 4 and 5 of part 10 replace part X of the 1985 Act (Enforcement of Fair Dealings by Directors), but there are a number of changes. Note in particular:

- the current requirement to disclose, and maintain a register of, share dealings by directors and their families is to be repealed (with effect from 6 April 2007); and
- chapter 4 sets out the requirements for member approval in relation to long-term service contracts, substantial property transactions, loans, quasi-loans and credit transactions and payments for loss of office.

10.10 Long-term service contracts

In an extension of the existing law, shareholder approval will be required for directors' service contracts in excess of two, as opposed to five, years (section 188). "Service contracts" is defined widely to include mere letters of appointment as a director (section 227).

10.11 Substantial property transactions

In relation to substantial property transactions (sections 190-196), there are the following changes: the existing concept of a "non-cash asset of requisite value" will be replaced by the concept of a "substantial non-cash asset" and the de minimis value will be increased from £2,000 to £5,000 (the other thresholds of £100,000 and 10% of asset value will remain unchanged); there is a new requirement to aggregate the values of non-cash assets forming part of an arrangement or series of arrangements for the purpose of determining whether the value thresholds have been exceeded; companies will be permitted to enter into contracts conditional on members' approval being obtained; and there are to be new exceptions for transactions entered into by companies which are in compulsory liquidation or administration (section 193) and payments under directors' service contracts or for loss of office (section 190(6)).

10.12 Loans to directors

In relation to loans to directors, there will no longer be an outright prohibition, and instead there will be a requirement for member approval (section 197). The criminal penalty for breach will also be abolished. Members' approval will also be required for quasi-loans and credit transactions in public companies and companies associated with a public company (draft provisions extending the regulation of quasi-loans and credit transactions to private companies were dropped from the final version of the Bill). Members' approval will also be required for such transactions entered into with a person connected with a director or a director of the holding company. The various exceptions have been restated, and some of the thresholds have been changed.

10.13 Payments for loss of office

Sections 215 to 222 replace sections 312 to 316 (1985) in relation to payments to directors for loss of office. There are various substantive changes including: members' approval will be required for payments in respect of the loss of any office or employment with the company that is related to the management of the company's affairs and not merely the loss of office as a director; payments to persons connected with the director will be covered as will certain payments to directors of the holding company; no approval will be required from the members of a company which is a wholly-owned subsidiary.

10.14 Directors' service contracts to be open to inspection

Sections 227 and 228 replace section 318 (1985). Section 227 sets out a definition of "service contract", and all the provisions of part 10 relating to directors' service contracts will also apply to directors' letters of appointment. The requirement to keep copies of the contract available for inspection will continue to apply for 12 months after the contract in question has expired (section 228(3)). The current exceptions for contracts requiring the director to work outside the UK and for contracts with less than 12 months left to run will be withdrawn. Currently members have the right to inspect directors' contracts, but the Act also gives them the right to request a copy (section 229).

10.15 Directors' liabilities

Chapter 7 houses the provisions currently to be found in sections 309A – C (1985) regarding providing insurance and indemnities for directors. In addition to the existing ability of a company to provide a "qualifying third party indemnity provision", a company will in future be able to provide a "qualifying pension scheme indemnity provision" in accordance with section 235. In other words, a company which is a trustee of an occupational pension scheme may purchase insurance for its directors against liability incurred in connection with its activities as trustee of the scheme.

Section 239 introduces a new requirement in relation to the ratification of conduct by a director which involves negligence, default, breach of duty or breach of trust in relation to the company. The conduct may be ratified by ordinary resolution (unless the articles provide for a higher majority) or written resolution but both the director and any member connected with him are precluded from voting. The section does not affect the law on unanimous consent, so the restriction on who may vote on a ratification resolution will not apply if all the members vote (formally or informally) in favour of the resolution. Neither does the section override any rule of law as to which acts are incapable of ratification.

10.16 Directors' residential addresses

Part 8 of chapter 10 replaces the current "confidentiality order" regime. The residential addresses of all directors will be "protected information" which the company must not use or disclose save in the limited circumstances specified in section 241. There are also restrictions on when the Registrar of Companies may use or disclose this protected information (sections 242 to 246) although there is no requirement on the Registrar to remove protected information from the public register if it was filed before the Act came into force. As currently, their residential address will be kept on a secure register to which certain public authorities and credit reference agencies will have access in certain circumstances. Other parties, such as members and creditors or anyone else with a "sufficient interest", are to have the right to apply to court for access to the residential address in certain circumstances.

10.17 Supplementary provisions

Chapter 9 sets out various definitions including "director" (section 250), "shadow director" (section 251), "connected person" (sections 252 – 253), "connected with" a body corporate (section 254), "controlling" a body corporate (section 255) and "associated bodies corporate" (section 256).

Section 252 sets out the definition of persons who are "connected" with a director. Section 253 sets out those members of a director's family who are treated as "connected" with him and the following new categories of family member have been included: parents, children and step-children over 18, cohabitants (of either the same or a different sex to the director) and infant children of a cohabitant (if those infant children live with the director).

Section 248(2) – minutes of board meetings must be kept for at least 10 years. NB Part 37 of the Act makes provision as to the form in which company records (including minutes) must be kept, and imposes a duty to take precautions against falsification.

11. Part 11: Derivative claims and proceedings by members

This part introduces a new procedure for shareholders wishing to bring an action on behalf of the company whether against a director or another person arising in respect of negligence, default, breach of duty or breach of trust by a director of the company. The Act sets out a definition of “derivative claim” and provides that such a claim may only be brought in accordance with part 11 or pursuant to section 994 proceedings (i.e. what are currently known as section 459 proceedings). Court permission will be required in order to proceed with a part 11 claim, and section 263 sets out the circumstances in which the court must refuse permission and the factors it must take into account when deciding whether or not to give permission.

The new rules extend the circumstances in which a derivative action may be brought by a shareholder, since it will no longer be necessary to show that there has been a “fraud on the minority”. It is not clear how the common law in this area (the rule in *Foss v Harbottle*) will apply once the new rules are in force.

12. Part 12: Company secretaries

Private companies will no longer be required to have a secretary but they can choose to have one if they wish. If a private company does not have a secretary, anything required to be sent or given to the secretary may be sent to the company instead and anything to be done by (or to) the secretary may be done by (or to) a director or a person authorised for that purpose by the directors (section 270). As a consequence, the provisions in this part regarding the duty to keep a register of secretaries and to notify the registrar of changes to the secretary will only apply to public companies and to those private companies that choose to have a secretary.

A public company must, as at present, have a secretary.

In a change to the present position, the secretary must record his service address in the register rather than his residential address (section 277(5)).

13. Part 13: Resolutions and meetings

There are two significant changes to the rules governing shareholder resolutions.

Firstly, all the provisions which currently form part of the “elective” regime for private companies will become the default position. As a consequence:

- a private company will not be required to hold an AGM, nor to lay its accounts at a general meeting. (Note, however, that existing companies whose articles expressly require an AGM will have to hold an AGM unless they amend their articles to remove this requirement);

- a private company with a single class of shares will be able to give its directors indefinite authority to allot shares (indeed, the directors will have indefinite authority unless the articles say otherwise – although, for companies already in existence when the Act comes into force, this will depend on how the Act is implemented);
- the “requisite majority” for obtaining consent to short notice will be 90% (unless the articles specify a greater percentage up to 95%); and
- a private company will not be automatically required to reappoint its auditors annually.

Secondly, private companies will no longer be required to hold any general meetings (save that a general meeting will continue to be required to pass a resolution to remove a director or the auditor before the expiration of his term of office). This part of the Act allows any decision of a private company (save those just referred to) to be taken by written resolution, and there are new rules as to the majorities required for written resolutions (see below).

13.1 Written resolutions

Where a written resolution is used in place of an ordinary or special resolution in a private company, there is no longer a requirement for all the members to sign the written resolution – it is enough that members representing the requisite majority of voting rights sign it (sections 282 and 283). Note the requirement that the written resolution must record the fact that a resolution is a special resolution in order for it to be validly passed as a special resolution (section 283(3)). The requirement in section 381B(1985) to provide a copy of the written resolution to the auditors has not been retained in the Act.

Section 284 provides that (subject to the articles) each member has one vote per share and the date for determining eligibility is the date on which the resolution is circulated (section 289) (not the date on which the resolution is passed which is the case at present).

Section 291 sets out the procedure for circulating a written resolution to the members and regard must also be had to sections 298 and 299 where e-mail or website publication is used. Copies must be sent to all the members at the same time (in hard copy, by e-mail or by means of a website), although it is permitted to send a copy or copies around a number of members in turn if this can be done without undue delay. The resolution must be accompanied by a statement indicating how members can signify their agreement to the resolution and the date by which the resolution must be passed if it is not to lapse.

Sections 292 to 293 set out rules regarding when members can require the company to circulate a written resolution, accompanied by a statement of up to 1000 words. Such a requisition can be made by members

holding the requisite percentage of votes – and this is 5% or such lesser percentage as is specified by the articles. The requisition procedure is not permitted for resolutions which are “frivolous or vexatious” and the court can also relieve a company of the obligation to circulate a members’ statement if it is of the view that the right to require circulation is being abused (section 295).

A member can signify his agreement to a written resolution in hard copy or by e-mail, and once he has done this, he cannot withdraw his agreement (section 296). Unlike the current position where members must sign a copy of the resolution, it is enough that the member signifies his agreement by sending to the company an authenticated document identifying the resolution and indicating his agreement to it (section 296). (Section 1146 sets out what is meant by “authenticated”.) A period of 28 days (or any different period specified by the articles) is permitted for a written resolution to be passed, and if it has not received the requisite majority by this date it will lapse (section 297).

It is to be noted that private companies will no longer be able to follow a written resolution procedure in their articles which differs from the requirements of the Act – section 281 provides that a resolution of the members of a private company must be passed as a written resolution in accordance with chapter 2 of part 13 or at a meeting of the members. It is not clear what the effect of this section will be on existing written resolution procedures included in articles of association. Maybe there will be transitional provisions to deal with this.

13.2 General meetings

Chapter 3 replaces the provisions of the 1985 act governing the passing of resolutions at a meeting. The provisions reflect the fact that private companies will no longer have to hold an AGM.

Section 301 provides that a resolution must be notified and passed in accordance with both the provisions of the Act and with any additional provisions specified in the articles. It follows that the requirements of the Act cannot be avoided by making alternative provision in the articles, as both have to be complied with. There is no equivalent of section 378(6) (1985) which provides that a resolution can be validly notified and passed in accordance with the 1985 Act or the articles.

13.3 Notice of meetings

This section retains the minimum notice period of 21 days for public company AGMs but makes the notice period 14 days for all other general meetings (even where a special resolution is proposed) (section 307). These are clear days (section 360). As currently, meetings can be called on short notice if the requisite majority of members agree. However, the requisite majority has been reduced in the case of private companies from 95% to 90% of the voting rights (although the articles may specify a percentage of up to 95%).

Note that there have been included in this chapter some provisions regarding the calling of general meetings which, hitherto, were found in Table A – e.g. provision as to the persons entitled to receive notice of meetings (section 310) and provision as to the content of a notice of meeting (section 311).

13.4 Circulation of shareholders' statements and requisitioned meetings

Sections 314 to 317 replace sections 376 and 377 (1985) in relation to the members' power to require circulation of a statement prior to a meeting and there are a few small changes: the threshold number of members who can trigger the requisition procedure remains the same, but the relevant shares counted for these purposes where the statement relates to a particular resolution (rather than simply to other business to be dealt with at the meeting) are those shares carrying the right to vote on that particular resolution (rather than just the right to vote at the meeting); and requests in electronic form are now permitted.

Note that there have also been some minor changes to the rules about the power of members to requisition a meeting – most notably that for private companies, the 10% of voting rights threshold is lowered to 5% if, broadly speaking, more than 12 months have elapsed since the last requisitioned meeting (section 303).

13.5 Quorum

Section 318 is the new provision governing the quorum at general meetings, subject, in the case of companies with two or more members, to the articles. The quorum is now one "qualifying person" in the case of a single member company and two "qualifying persons" in any other company. A "qualifying person" is a member, the authorised representative of a corporate member or a proxy, but note that two representatives of the same corporate member or two proxies of the same member cannot constitute a quorum in a company with more than one member.

13.6 Proxies and corporate representatives

Section 323 makes it clear that a corporate member can appoint more than one representative but goes on to say that, if two or more representatives exercise their powers in relation to the same matter but in different ways, then the power will be treated as not having been exercised at all. If a corporation wishes to appoint multiple representatives with different voting intentions, or wishes to give them authority to vote different blocks of shares, it should therefore consider appointing them as proxies instead.

The rules on the rights to appoint a proxy have changed (section 324). The new rules are as follows: every member will have the right to appoint a proxy to attend, vote and speak at a meeting; in a company with a share capital, two or more proxies may be appointed provided their appointments are in respect of different shares. Section 327 replaces section 372(5) (1985) in relation to the date by which notice of appointment of a

proxy must be received by the company: there are two changes, firstly non-working days (i.e. weekends and Bank Holidays), are not counted towards the maximum 48 hour notice period (e.g. for a meeting at 9am on the Tuesday following the Easter weekend, the last time for notifying the appointment of a proxy would be 9am on the previous Wednesday, or any later time permitted by the articles). The second change is that polls which are not taken immediately will be covered by the rules, compared to the current position where only meetings and adjourned meetings are covered. Section 330 sets out rules similar to those in section 327 governing the time by which notice of termination of a proxy's authority must be given to the company (compare the current position where these provisions are located in Table A) but, again, the articles can provide for a later time.

13.7 Records of resolutions and meetings

Chapter 6 of part 13 contains the new provisions relating to the retention of records of resolutions and general meetings. It does not cover records relating to board meetings as these are dealt with in part 10 of the Act.

All records of members' resolutions, minutes of general meetings and decisions of a sole member must in future be kept for a minimum of 10 years (the 1985 Act envisages that they are kept indefinitely).

14. Part 14: Control of political donations and expenditure

The regime for control of political donations and expenditure is broadly similar to the existing regime.

15. Part 15: Accounts and reports

Part 15 replaces the provisions of part VII of the 1985 Act relating to accounts and reports. Part 16 replaces the existing rules relating to audit of accounts. The provisions of part 15 have been arranged in a different way to how they appear in the 1985 Act - the provisions relating to small companies are set out before those relating to other companies (rather than being expressed as exceptions to the general rule as is the case at present), private company provisions are set out before the rules for public companies, and quoted company provisions are set out after the rules applying to non-quoted companies (see section 380). Another example of the "Think Small First" approach.

The main substantive change affecting private companies is a reduction in the time limit for private companies to file their accounts from 10 months to 9 months after the year end

15.1 Small companies regime

But for two small changes, the conditions for qualification as a small company are unchanged from the current regime. The first change is that under the existing regime a group is ineligible for the small companies regime

if (inter alia) any member of the group is a body corporate (other than a company) with power to offer its shares to the public (see section 247A(2) (1985)). In the Act, the equivalent provision states that the group is ineligible if any member is a body corporate (other than a company) whose shares are admitted to trading on a regulated market in an EEA state (section 384(2)(b)). The second change concerns the definition of balance sheet total (section 382(5)).

15.2 Accounting reference date

Chapter 3 of part 15 contains the replacement provisions specifying when a company's accounting reference date falls and how it can be changed.

15.3 Annual accounts

Chapter 4 deals with the annual accounts. Section 393(1) places an obligation on the directors not to approve the accounts unless they are satisfied that they show a true and fair view. The chapter proceeds to set out the requirements for drawing up individual accounts and group accounts for small companies and then for other companies. There are to be regulations (replacing the equivalent schedules of the 1985 Act) specifying the form and content of "Companies Act" accounts. Of course, it will continue to be possible to draw up "IAS accounts" instead, and the rules as to when IAS accounting is required or may be used are replaced but unchanged.

Points to note are as follows:

The current exemption from preparing consolidated accounts for medium sized groups (section 248(1) (1985)) has been abolished.

There are replacement provisions dealing with what information regarding directors' remuneration, loans to directors etc. must be disclosed in the notes to the accounts.

Although the requirement that a director signs the balance sheet of the accounts on behalf of the company has been retained (section 414), it will no longer be a requirement for a director to sign the copy of the balance sheet delivered to the Registrar of Companies (as this would have hampered developments in the electronic delivery of accounts).

Copies of the annual accounts will no longer need to be sent to persons for whom the company does not have a current address (section 423(2)).

There are changes to the dates by which accounts must be distributed. For private companies, the date by which copies must now be circulated is the deadline date for filing or, if earlier, the date on which the accounts are filed with the Registrar of Companies (section 424).

15.4 Filing of accounts and reports

The filing deadline for private companies has been reduced to 9 months.

A new rule has been introduced for determining the filing deadline where the accounting reference date is the last day of the month (section 443). The new rule is designed to remove any uncertainty arising from months being of unequal length. If the accounting reference date is the last day of the month, then the filing deadline is the last day of the 6th (or 9th, as the case may be) month afterwards (even if that is not the corresponding date). For example, a private company with an accounting reference date of 30 June has until 31 March to file its accounts. There is also special provision for deadlines occurring at the end of the short month of February (section 443(4)).

It has been made much clearer what different companies have to do as regards filing of accounts. Sections 444 to 448 set out the requirements for small companies, medium-sized companies, unquoted companies, quoted companies and unlimited companies respectively.

16. Part 16: Audit

The various provisions relating to the audit of companies have been brought together in this part, and there are a number of significant changes.

Chapter 2 deals with the appointment of auditors. It broadly restates the existing law in sections 384 to 388A of the 1985 Act (but with some minor changes detailed below) although the provisions have been reorganised to deal with private and public companies separately.

For private companies, the changes are as follows:

- the time period during which an auditor should be appointed has changed. It is now within 28 days following the circulation of a private company's accounts (and so is no longer tied to the general meeting at which the accounts are laid). The term of office of an auditor will come to an end at the end of such 28 day period, and it is from then that the term of office of the incoming auditor will begin; and
- an auditor will be automatically deemed to be reappointed unless: (a) he was appointed by the directors; (b) the company's articles require reappointment; (c) the members have given notice to the

company under section 488 to exclude deemed re-appointment; (d) the members have resolved that he should not be re-appointed or (e) the directors decide that they do not require an auditor for the following year.

Section 493 provides a new power for the Secretary of State to issue regulations requiring disclosure (e.g. by the company in its accounts) of the terms on which the auditor is appointed and remunerated. This is in addition to section 494 which restates the existing power to require disclosure of the nature and value of any other services provided by the auditor or associates of the auditor to the company and any associated companies.

There is a new requirement where the auditor is a firm for a single individual, the “senior statutory auditor”, to sign the audit report (section 503) although this does not subject that individual to any civil liability to which he would not otherwise be subject.

Under section 506 a company may decide (which decision must then be notified to the Secretary of State) to take advantage of an exemption from having to disclose the name of the auditor in all published copies of the auditor’s report on the grounds that it considers there is a serious risk that the auditor, senior statutory auditor or any other person would be subject to violence or intimidation if the name was published.

Section 507 creates a new criminal offence of knowingly or recklessly causing an auditor’s report to include any matter that is misleading, false or deceptive in any material respect or omitting any of certain statements required to be included in the auditor’s report.

16.1 Removal and resignation of auditors

Chapter 4 deals with removal and resignation of auditors, and there are some points to note. As at present, it will be necessary to hold a general meeting to pass an ordinary resolution to remove an auditor before the end of his term of office. This will remain the case for both private and public companies notwithstanding that private companies are generally given the power to pass resolutions by majority written resolution.

Section 519 requires an auditor who is departing office for any reason to deposit a statement with the company explaining the circumstances surrounding his departure. In the case of private companies, this may be a statement to the effect that there are no circumstances that need to be brought to the attention of the members or creditors of the company.

16.2 Auditors' liability

Chapter 6 replaces section 310 (1985). The existing general prohibition on indemnifying an auditor against claims by the company in respect of negligence or other default is restated as is the exception to the general prohibition to allow a company to indemnify its auditor against the costs of successfully defending himself against such a claim. However, there is a new exception permitting the company and the auditor to enter into an agreement to contractually limit the auditor's liability to the company for negligence or default arising out of the audit in a particular financial year providing the members have given their approval (in accordance with section 536). Note, however, that such a "liability limitation agreement" will be effective only to the extent that it does not limit the auditor's liability to less than the amount which is fair and reasonable in the circumstances (assessed in accordance with section 537). The agreement will have to be disclosed (section 538).

Note that there is an ambiguity in the drafting (see sections 534(1) and 535(4)) which makes it unclear whether the limit on liability must be a limit in terms of the monetary amount which may be recovered or whether it can be limited in some other manner. There is a power to make regulations to govern the content of a liability limitation agreement and it is to be hoped that, if such regulations are made, they help to resolve this ambiguity.

Note that the existing exception in section 310 (1985) allowing a company to purchase insurance for its auditors has not been repeated in the Act.

17. Part 17: A company's share capital

The Act will make a number of significant changes to the existing rules relating to share capital including reform of the capital maintenance rules relating to private companies. All existing and new provisions relating to share capital will be consolidated in parts 17, 18, 20, 21 and 22 of the Act.

17.1 Authorised share capital abolished

The concept of authorised share capital is to be abolished. There will in future be no ceiling on the number of shares which the directors of a company can be authorised to allot. Shareholders wishing to restrict the number of shares that can be issued by a company can, of course, include a restriction to this effect in the articles of association.

Note that the existing authorised share capital of companies already in existence when this provision comes into force will remain in effect but it will be possible for the shareholders of such companies to remove the authorised share capital by ordinary resolution.

17.2 Directors' authority to allot shares

In the case of private companies with one class of shares only, it will no longer be necessary for the members to authorise the directors to allot shares. The directors will be free to allot shares except to the extent they are prevented from doing so by the articles of association (section 550). The DTI has not indicated clearly how this provision will apply to existing companies, but it does appear that any existing authority to allot in effect when section 550 comes into force will continue to apply, thus overriding the effect of section 550.

Note that private companies with more than one class of shares will no longer be able to grant indefinite authority to allot, but will be subject to the five year limit (i.e. there is no equivalent of section 80A 1985).

Note that the provisions of the Act dealing with allotment (section 549 on) do not use the concept of "relevant securities" used by section 80 (1985). The Act refers instead to the allotment of shares and the grant of rights to subscribe for or to convert any security into shares. This change in terminology will need to be reflected in the wording of shareholder resolutions after the Act comes into force.

17.3 Registration of allotments

A company will be required to register an allotment of shares as soon as practicable and in any event within 2 months of allotment. Failure to do so will be an offence (section 557).

17.4 Return of allotments

In future, the return of allotments made to the Registrar following a new allotment of shares is to be accompanied by a statement of capital detailing the company's total allotted share capital at the date of the return and the rights attaching to those shares (section 555). The current requirement to deliver a copy of the contract where shares are allotted as fully or partly paid up otherwise than in cash has not been restated in the Act. However, this requirement may reappear in the regulations to be made by the Secretary of State prescribing the contents of the return of allotments.

17.5 Statements of share capital

Whenever any alteration (other than a variation of class rights which does not change the company's aggregate subscribed capital) is made to a company's share capital (such as an allotment, or a sub-division of shares), the notification to Companies House must be accompanied by a "statement of capital" setting out details of the company's issued share capital, the rights attached to the shares and information as to the amount paid up on the shares. This requirement for delivery of a statement of capital is set out at various places throughout the Act.

17.6 Alteration of share capital

Section 617 usefully lists the various different ways in which the share capital of a company can be altered. There are the following changes to note:

At present under section 121 (1985), a sub-division or consolidation of shares not only requires an ordinary resolution, it must also be authorised by the articles of association. The replacement section 618 continues to require an ordinary resolution but there is no requirement that the articles authorise the alteration. Instead, the members may choose to place a restriction upon sub-division or consolidation in the articles of association. There will be transitional provisions for existing companies whose articles do not currently authorise the alteration of share capital (effectively amounting to a prohibition) preserving the restriction unless the shareholders amend the articles to remove the restriction.

The ability of a company to convert its shares into stock (and to reconvert stock into shares) currently found in section 121(2)(c) (1985) has not been retained although a company that currently has stock may reconvert it into shares (section 620).

It will no longer be possible for a company to create a reserve capital (as is currently possible in certain circumstances under sections 120 and 124 (1985)).

17.7 Redenomination of share capital

Sections 622 to 628 introduce a new and simple procedure for a company to redenominate its shares in another currency by ordinary resolution of its members.

Redenomination may result in the nominal value of shares being expressed in awkward fractions (e.g. 1.0357 dollars). During the period of three months following a redenomination, a company may by special resolution reduce its capital in order to end up with shares with a more sensible nominal value (section 626). The amount by which the company can reduce its share capital for these purposes is limited to 10% of the nominal value of its share capital (immediately after the reduction).

Section 628 provides for the value of any reduction in capital to be placed in a reserve known as the redenomination reserve. This reserve may be used to pay up bonus shares.

17.8 Class rights

Chapter 9 replaces and simplifies the provisions of sections 125 to 129 (1985) dealing with class rights. In future a special resolution will be required instead of an extraordinary resolution (reflecting the abolition of the extraordinary resolution) where the approval for the variation is by resolution at a class meeting (as

opposed to by written consent) and the written consent of three quarters in nominal value of that class of shareholders is the requirement where the written procedure is to be used instead. The requirements of these sections are subject to any different requirements in the articles and so, for example, it will not be possible to change class rights if those rights have been entrenched in the articles of association.

Section 631 extends the statutory provisions on variations of class rights to companies without a share capital (e.g. where class rights exist due to differences in voting rights).

Unlike other alterations to a company's share capital, there is no requirement to file a statement of capital following the variation of class rights.

In future, all variations to class rights will need to be separately notified, notwithstanding that the Registrar will in any event receive notice of the variation (e.g. because it has been effected by way of a change to the articles of association) (sections 636 – 640).

18. Part 21: Certification and transfer of securities

18.1 Share transfers

There are to be some changes to the law on the registration of transfers of shares. Section 771 will require the company to register a transfer of shares or debentures or else provide the transferee with reasons for the refusal to register as soon as practicable and in any event within 2 months of the transfer being lodged with the company. Failure to comply will be an offence.

19. Part 25: Company charges

This part restates the existing provisions on registration of company charges (part XII CA 1985). There is no change in the registration period of 21 days or the categories of charge which must be registered. Obviously the section numbers differ in the new Act and so what we know of as form 395 is likely to be referred to as a form 860 in the future.

The provisions of sections 409–424 (1985) regarding charges created by an overseas company have not been restated, although there is a power to make regulations requiring overseas companies which have a business presence in the UK to register specific charges over property in the UK.

There is also a power to make regulations for facilitating information sharing between different registries and to provide that a charge registered in one register (e.g. at HM Land Registry) does not then have to be registered again at another (e.g. at Companies House). It remains to be seen whether, and when, it is intended

to make such regulations. The Law Commission has looked at reforming the whole system of registration of charges so there may be further changes made (by way of regulation) in the future.

20. Part 31: Dissolution and restoration to the Register

The rules on how a company is dissolved and restored to the register are set out in part 31. Substantive changes include:

- There is to be a new administrative procedure available in limited circumstances enabling the Registrar of Companies to restore a company to the register without the need for an application to the court.
- There is to be a single, unified procedure for applying to court to be restored to the register, with a time limit of 6 years from the date of dissolution (with exceptions – section 1030).

21. Part 41: Business names

This part contains replacement provisions regarding the use of, and restrictions upon the use of, business names. It replaces the Business Names Act 1985. This part, however, has wider coverage than the Business Names Act 1985 as its restrictions on the use of names in the course of business apply to any person carrying on business in the UK (compare sub-section 1(1) of that Act). Part 5 of the Act contains the equivalent provisions for the regulation of company names.

As at present, prior approval will be required for the use of names containing specified sensitive words and expressions. Section 1197 replaces sections 33, 34 and 34A (1985) restricting the improper use in business names of company indicators (such as “plc”, “limited” etc.) and complements section 65 which controls the use of these indicators in company names.

Section 1198 makes it an offence to use a business name which gives so misleading an indication of the nature of the activities of the business so as to be likely to cause harm to the public. It complements section 76 of the Act which contains the equivalent provision for misleading company names.

Chapter 2 of part 41 re-enacts those parts of the Business Names Act 1985 dealing with the display of business names and information at business premises and in certain correspondence. Again, there are equivalent provisions for company names, and these are to be found in chapter 6 of part 5 of the Act.