

## SCHEDULE 4

### CONSEQUENTIAL AMENDMENTS

#### PART 2

#### AMENDMENTS OF THE 1986 ORDER

##### **Resolutions and agreements affecting a company's constitution**

17.—(1) In Article 41(2) (resolution of directors changing of name of company to comply with direction of Department), omit the second sentence and after that paragraph insert—

“(2A) Where such a resolution is passed by the directors, the company must give notice to the registrar of the change.

(2B) Where a company changes its name under this Article, the registrar shall (subject to Article 36) enter the new name on the register in place of the former name, and shall issue a certificate of incorporation altered to meet the circumstances of the case; and the change of name has effect from the date on which the altered certificate is issued.

(2C) A change of name by a company under this Article does not affect any right or obligations of the company or render defective any legal proceedings by or against it; and any legal proceedings that might have been continued or commenced against it by its former name may be continued or commenced against it by its new name.”.

(2) In Article 61(4) (re-registration of unlimited company as limited: procedural requirements)—

(a) omit the words from “The special resolution” to “15 days); and”; and

(b) for “under Article 388” substitute “under section 30 of the Companies Act 2006”.

(3) In Article 90(8) (resolution of company giving, varying, revoking or renewing authority of directors to allot shares), omit the words from “but it is in any case subject to Article 388” to the end and substitute “but in any case Chapter 3 of Part 3 of the Companies Act 2006 (resolutions affecting a company's constitution) applies to it.”.

(4) In Article 138(1) (registration of particulars of special rights) for “Article 388” substitute “section 30 of the Companies Act 2006”.

(5) In Article 139(1) (registration of newly created class rights) for “Article 388” substitute “section 30 of the Companies Act 2006”.

(6) In Article 157(2) (resolution of directors altering memorandum on company ceasing to be public company following acquisition of its own shares), for the second sentence substitute “Chapter 3 of Part 3 of the Companies Act 2006 (resolutions affecting a company's constitution) applies to such a resolution.”.

(7) In Article 166(5)(a) (financial assistance by private company for acquisition of its own shares: statutory declaration to be delivered to registrar along with copy of special resolution), for “Article 388” substitute “section 30 of the Companies Act 2006”.

(8) In Article 176 (authority for market purchase of own shares), for paragraph (7) substitute—

“(7) Chapter 3 of Part 3 of the Companies Act 2006 (resolutions affecting a company's constitution) applies to a resolution of a company conferring, varying, revoking or renewing authority under this Article.”.

(9) In Article 388(2) (resolutions or agreements to be embodied in copies of articles issued by the company), for “every such resolution or agreement” substitute “every resolution or agreement to

which Chapter 3 of Part 3 of the Companies Act 2006 applies (resolutions and agreements affecting a company's constitution) and which is”.

### **Reference to extraordinary resolution**

**18.**—(1) In Article 135(2) (variation of class rights) for “an extraordinary resolution” substitute “a special resolution”.

(2) This amendment applies—

- (a) to written resolutions for which the circulation date (see section 290 of the Companies Act 2006) is on or after 1st October 2007;
- (b) to resolutions passed at a meeting of which notice is given on or after that date.

### **Provisions referring to general meetings of private companies**

**19.**—(1) In Article 243(1) (auditors' report on company's annual accounts), for the words from “are to be laid before the company” to the end substitute—

“are, during their tenure of office—

- (a) in the case of a private company, to be sent out to members under Article 246(1);
- (b) in the case of a public company, to be laid before the company in general meeting under Article 249.”.

(2) In Article 246 (persons entitled to receive copies of accounts and reports)—

- (a) in paragraph (1) omit the words from “not less than 21 days” to the end;
- (b) omit paragraph (4); and
- (c) in paragraph (5) after “this Article” insert “or Article 246A”.

(3) After that Article insert—

#### **“Time allowed for sending out copies of accounts and reports**

**246A.**—(1) The time allowed for sending out copies of the company's annual accounts and reports is as follows.

(2) A private company must comply with Article 246(1) not later than—

- (a) the end of the period for delivering accounts (see Article 252), or
- (b) if earlier, the date on which it actually delivers its accounts and reports under Article 250.

(3) A public company must comply with Article 246(1) not less than 21 days before the date of the meeting at which copies of the documents are to be laid in accordance with Article 249.

(4) If in the case of a public company copies are sent out later than is required by paragraph (3), they shall, despite that, be deemed to have been duly sent if it is so agreed by all the members entitled to attend and vote at the meeting.”.

(4) References in any enactment or instrument to the period for laying and delivering accounts, including those in Article 252 (which defines that period), shall be read in relation to a private company as references to the period for delivering accounts.

(5) In Article 249 (accounts and reports to be laid before company in general meeting), in paragraph (1) for “a company” substitute “a public company”.

(6) In Article 278(3) (distributions: justification by reference to company's last annual accounts) for the words from “that is to say” to the end substitute—

“that is to say—

- (a) in the case of a private company, those prepared under Part 8 that were last sent to members in accordance with Article 246(1);
  - (b) in the case of a public company, those prepared under Part 8 which were laid in respect of the last preceding accounting reference period in respect of which accounts so prepared were laid (and for this purpose accounts are laid if Article 249(1) has been complied with in relation to them).”.
- (7) In Article 279 (distributions: auditors’ report on accounts), in paragraph (4) omit the words from “and a copy” to the end and after that paragraph insert—
- “(4A) A copy of the auditors’ statement under paragraph (4) must—
- (a) in the case of a private company, have been circulated to members along with the copies of the accounts sent to them under Article 246(1);
  - (b) in the case of a public company, have been laid before the company in general meeting.”.
- (8) These amendments have effect for financial years ending on or after 1st October 2007.

#### **Provisions referring to written resolutions of private companies**

- 20.**—(1) Article 398 (right of auditors to attend company meetings etc) is amended as follows.
- (2) Omit paragraph (1A).
  - (3) In paragraph (2)—
    - (a) in the opening words, omit “in accordance with Article 389A”, and
    - (b) in sub-paragraph (a), for “Schedule 15A” substitute “Chapter 2 of Part 13 of the Companies Act 2006”.

#### **References to loans, quasi-loans and other dealings in favour of directors**

- 21.** In Article 325 (directors to disclose interest in contracts), in paragraph (6) for “Article 338” substitute “section 197, 198, 200, 201 or 203 of the Companies Act 2006”.
- 22.**—(1) Parts 2 and 3 of Schedule 6 (disclosure of information: loans, quasi-loans and other transactions in favour of directors etc) are amended as follows.
- (2) In paragraphs 15(a) and 16(a) for “Article 338” substitute “section 197, 198, 200, 201 or 203 of the Companies Act 2006”.
  - (3) In paragraph 19(a) for “was prohibited by Article 338” substitute “was one in respect of which approval was required under section 197, 198, 200, 201 or 203 of the Companies Act 2006”.
  - (4) In paragraph 22(2)—
    - (a) in paragraph (d) for “Article 338(6) or (7)” substitute “section 203 of the Companies Act 2006”; and
    - (b) in paragraph (e) for “Article 338(6)” substitute “section 203(1)(b) of the Companies Act 2006”.
  - (5) In paragraph 24(2)(c) for “Article 338(6) or (7)” substitute “section 203 of the Companies Act 2006”.
  - (6) In paragraph 26—
    - (a) for “Article 353 (power of Department to alter sums by order subject to negative resolution)” substitute “Section 258 of the Companies Act 2006 (power to increase financial limits)”, and
    - (b) for “Part 11 of this Order” substitute “Part 10 of that Act”.

- (7) In paragraph 27, for sub-paragraph (1) substitute—
- “(1) The following provisions of the Companies Act 2006 apply for the purposes of this Part—
- (a) section 202 (meaning of “credit transaction”);
  - (b) section 211 (value of transactions and arrangements);
  - (c) section 212 (person for whom a transaction or arrangement is entered into);
  - (d) sections 252 to 255 and Schedule 1 (persons connected with a director).”
- (8) In paragraph 28—
- (a) in sub-paragraph (a) for “paragraph (6) or (7) of Article 338” substitute “section 203 of the Companies Act 2006”, and
  - (b) in sub-paragraphs (b) and (c) for “either of those paragraphs” substitute “that section”.
- (9) In paragraph 29(3)—
- (a) for “Article 353 (power of Department to alter money sums by order subject to negative resolution)” substitute “Section 258 of the Companies Act 2006 (power to increase financial limits)”, and
  - (b) for “Part 11 of this Order” substitute “Part 10 of that Act”.
- (10) In paragraph 30 for the words from “apply for the purposes of this Part” to the end of paragraph (b) substitute—
- “of the Companies Act 2006 apply for the purposes of this Part—
- (a) section 199 (meaning of “quasi-loan”),
  - (b) section 202 (meaning of “credit transaction”), and
  - (c) section 212 (person for whom a transaction or arrangement is entered into);”.
- (11) These amendments apply in relation to arrangements and transactions entered into on or after 1st October 2007.

**23.**—(1) In Part 4 of Schedule 9 (special provisions for banking companies and groups: additional disclosure: emoluments of directors and others)—

- (a) in paragraph 2 (loans, quasi-loans and other dealings), for “Article 338” substitute “section 197, 198, 200, 201 or 203 of the Companies Act 2006”;
- (b) in paragraph 3(5) (other transactions, arrangements and agreements: meaning of “connected person”), for “Article 354 applies” substitute “Sections 252 to 255 of, and Schedule 1 to, the Companies Act 2006 apply”.

(2) These amendments apply in relation to arrangements and transactions entered into on or after 1st October 2007.

#### **Provisions relating to the appointment of auditors**

**24.**—(1) In Article 392 (duty to appoint auditors)—

- (a) in paragraph (1) for “Every company” substitute “Every public company”;
- (b) in paragraph (2) omit the words from “except in the case of a private company” to the end;
- (c) in paragraph (3) omit the words from “or 393A(2)” to the end; and
- (d) omit paragraph (4).

(2) In Article 393 (appointment at general meeting at which accounts laid), in paragraph (1) omit the words from “and to a private company” to the end.

(3) In Article 395 (appointment by Department in default of appointment by company), in paragraph (1) for “If in any case” substitute “If in the case of a public company”.

(4) In Article 396 (filling of casual vacancies)—

(a) in paragraph (1) after “The directors” insert “of a public company”;

(b) in paragraph (3) for “a company” substitute “a public company”.

(5) In Article 396A (certain companies exempt from obligation to appoint auditors)—

(a) in paragraph (1) for “A company” substitute “A public company”;

(b) in paragraph (2) for “a company” substitute “a public company”;

(c) omit paragraph (4); and

(d) in paragraph (5), omit “or (4)”.

(6) These amendments have effect in relation to appointments for financial years beginning on or after 1st October 2007.

### **References to provisions about protection of members from unfair prejudice**

**25.** In Article 136 (saving for court’s powers under other provisions), for “Articles 452 to 454 (protection of minorities)” substitute “Part 30 of the Companies Act 2006 (protection of members against unfair prejudice)”.

**26.** In paragraph 9 of Schedule 20 (effect of registration under Article 629: saving for powers of company to alter its constitution etc), for “None of the provisions of this Order (except Article 454(3))” substitute “None of the provisions of this Order, and none of the provisions of the Companies Act 2006 (except section 996(2)),”.

### **Removal of references to repealed enactments**

**27.**—(1) Part 16 (orders imposing restrictions on shares) is amended as follows.

(2) In the Part heading for “ARTICLES 218, 224 AND 438” substitute “ARTICLE 438”.

(3) In Article 447(1), in the opening words, for the words from “pursuant to Articles 218(5A) to “of that order)” substitute “pursuant to Article 438(1A) or 449(1A)”.

(4) In Article 447(2) for the words from “Article 218(5A)” to “Article 224(1A)” substitute “Article 438(1A) or 449(1A)”.

(5) In Article 447(3) for the words from “Article 218(5A)” to “Article 224(1A)” substitute “Article 438(1A) or 449(1A)”.

(6) In Article 448(1), in the opening words, for the words from “Articles 218(5A)” to “Article 224(1A)” substitute “Article 438(1A) or 449”.

(7) In Article 448(2) for the words from “Articles 218(5A)” to “Article 224(1A)” substitute “Article 438(1A) or 449”.

(8) In Article 449(2) omit the words from “and if the order” to the end.

(9) In Article 449(3)(b) omit “218 or”.

(10) In Article 449(4), in the second sentence, omit the words from “(unless” to “Article 224)”.

(11) In Article 449(5)(a) omit the words from “(unless” to “Article 224)”.