

General power of amendment by regulations

484 General power of amendment by regulations

- (1) The Secretary of State may by regulations amend this Chapter or section 539 (minor definitions) so far as applying to this Chapter by adding, altering or repealing provisions.
- (2) The regulations may make consequential amendments or repeals in other provisions of this Act, or in other enactments.
- (3) Regulations under this section imposing new requirements, or rendering existing requirements more onerous, are subject to affirmative resolution procedure.
- (4) Other regulations under this section are subject to negative resolution procedure.

CHAPTER 2

APPOINTMENT OF AUDITORS

Private companies

485 Appointment of auditors of private company: general

- (1) An auditor or auditors of a private company must be appointed for each financial year of the company, unless the directors reasonably resolve otherwise on the ground that audited accounts are unlikely to be required.
- (2) For each financial year for which an auditor or auditors is or are to be appointed (other than the company's first financial year), the appointment must be made before the end of the period of 28 days beginning with—
 - (a) the end of the time allowed for sending out copies of the company's annual accounts and reports for the previous financial year (see section 424), or
 - (b) if earlier, the day on which copies of the company's annual accounts and reports for the previous financial year are sent out under section 423.

This is the "period for appointing auditors".

- (3) The directors may appoint an auditor or auditors of the company—
 - (a) at any time before the company's first period for appointing auditors,
 - (b) following a period during which the company (being exempt from audit) did not have any auditor, at any time before the company's next period for appointing auditors, or
 - (c) to fill a casual vacancy in the office of auditor.
- (4) The members may appoint an auditor or auditors by ordinary resolution—
 - (a) during a period for appointing auditors,
 - (b) if the company should have appointed an auditor or auditors during a period for appointing auditors but failed to do so, or
 - (c) where the directors had power to appoint under subsection (3) but have failed to make an appointment.

- (5) An auditor or auditors of a private company may only be appointed –
- (a) in accordance with this section, or
 - (b) in accordance with section 486 (default power of Secretary of State).
- This is without prejudice to any deemed re-appointment under section 487.

486 Appointment of auditors of private company: default power of Secretary of State

- (1) If a private company fails to appoint an auditor or auditors in accordance with section 485, the Secretary of State may appoint one or more persons to fill the vacancy.
- (2) Where subsection (2) of that section applies and the company fails to make the necessary appointment before the end of the period for appointing auditors, the company must within one week of the end of that period give notice to the Secretary of State of his power having become exercisable.
- (3) If a company fails to give the notice required by this section, 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 and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.

487 Term of office of auditors of private company

- (1) An auditor or auditors of a private company hold office in accordance with the terms of their appointment, subject to the requirements that –
- (a) they do not take office until any previous auditor or auditors cease to hold office, and
 - (b) they cease to hold office at the end of the next period for appointing auditors unless re-appointed.
- (2) Where no auditor has been appointed by the end of the next period for appointing auditors, any auditor in office immediately before that time is deemed to be re-appointed at that time, unless –
- (a) he was appointed by the directors, or
 - (b) the company's articles require actual re-appointment, or
 - (c) the deemed re-appointment is prevented by the members under section 488, or
 - (d) the members have resolved that he should not be re-appointed, or
 - (e) the directors have resolved that no auditor or auditors should be appointed for the financial year in question.
- (3) This is without prejudice to the provisions of this Part as to removal and resignation of auditors.
- (4) No account shall be taken of any loss of the opportunity of deemed re-appointment under this section in ascertaining the amount of any compensation or damages payable to an auditor on his ceasing to hold office for any reason.

488 Prevention by members of deemed re-appointment of auditor

- (1) An auditor of a private company is not deemed to be re-appointed under section 487(2) if the company has received notices under this section from members representing at least the requisite percentage of the total voting rights of all members who would be entitled to vote on a resolution that the auditor should not be re-appointed.
- (2) The “requisite percentage” is 5%, or such lower percentage as is specified for this purpose in the company’s articles.
- (3) A notice under this section –
 - (a) may be in hard copy or electronic form,
 - (b) must be authenticated by the person or persons giving it, and
 - (c) must be received by the company before the end of the accounting reference period immediately preceding the time when the deemed re-appointment would have effect.

Public companies

489 Appointment of auditors of public company: general

- (1) An auditor or auditors of a public company must be appointed for each financial year of the company, unless the directors reasonably resolve otherwise on the ground that audited accounts are unlikely to be required.
- (2) For each financial year for which an auditor or auditors is or are to be appointed (other than the company’s first financial year), the appointment must be made before the end of the accounts meeting of the company at which the company’s annual accounts and reports for the previous financial year are laid.
- (3) The directors may appoint an auditor or auditors of the company –
 - (a) at any time before the company’s first accounts meeting;
 - (b) following a period during which the company (being exempt from audit) did not have any auditor, at any time before the company’s next accounts meeting;
 - (c) to fill a casual vacancy in the office of auditor.
- (4) The members may appoint an auditor or auditors by ordinary resolution –
 - (a) at an accounts meeting;
 - (b) if the company should have appointed an auditor or auditors at an accounts meeting but failed to do so;
 - (c) where the directors had power to appoint under subsection (3) but have failed to make an appointment.
- (5) An auditor or auditors of a public company may only be appointed –
 - (a) in accordance with this section, or
 - (b) in accordance with section 490 (default power of Secretary of State).

490 Appointment of auditors of public company: default power of Secretary of State

- (1) If a public company fails to appoint an auditor or auditors in accordance with section 489, the Secretary of State may appoint one or more persons to fill the vacancy.
- (2) Where subsection (2) of that section applies and the company fails to make the necessary appointment before the end of the accounts meeting, the company must within one week of the end of that meeting give notice to the Secretary of State of his power having become exercisable.
- (3) If a company fails to give the notice required by this section, 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 and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.

491 Term of office of auditors of public company

- (1) The auditor or auditors of a public company hold office in accordance with the terms of their appointment, subject to the requirements that –
 - (a) they do not take office until the previous auditor or auditors have ceased to hold office, and
 - (b) they cease to hold office at the conclusion of the accounts meeting next following their appointment, unless re-appointed.
- (2) This is without prejudice to the provisions of this Part as to removal and resignation of auditors.

General provisions

492 Fixing of auditor's remuneration

- (1) The remuneration of an auditor appointed by the members of a company must be fixed by the members by ordinary resolution or in such manner as the members may by ordinary resolution determine.
- (2) The remuneration of an auditor appointed by the directors of a company must be fixed by the directors.
- (3) The remuneration of an auditor appointed by the Secretary of State must be fixed by the Secretary of State.
- (4) For the purposes of this section “remuneration” includes sums paid in respect of expenses.
- (5) This section applies in relation to benefits in kind as to payments of money.

493 Disclosure of terms of audit appointment

- (1) The Secretary of State may make provision by regulations for securing the disclosure of the terms on which a company's auditor is appointed, remunerated or performs his duties.
Nothing in the following provisions of this section affects the generality of this power.
- (2) The regulations may –
 - (a) require disclosure of –
 - (i) a copy of any terms that are in writing, and
 - (ii) a written memorandum setting out any terms that are not in writing;
 - (b) require disclosure to be at such times, in such places and by such means as are specified in the regulations;
 - (c) require the place and means of disclosure to be stated –
 - (i) in a note to the company's annual accounts (in the case of its individual accounts) or in such manner as is specified in the regulations (in the case of group accounts),
 - (ii) in the directors' report, or
 - (iii) in the auditor's report on the company's annual accounts.
- (3) The provisions of this section apply to a variation of the terms mentioned in subsection (1) as they apply to the original terms.
- (4) Regulations under this section are subject to affirmative resolution procedure.

494 Disclosure of services provided by auditor or associates and related remuneration

- (1) The Secretary of State may make provision by regulations for securing the disclosure of –
 - (a) the nature of any services provided for a company by the company's auditor (whether in his capacity as auditor or otherwise) or by his associates;
 - (b) the amount of any remuneration received or receivable by a company's auditor, or his associates, in respect of any such services.
Nothing in the following provisions of this section affects the generality of this power.
- (2) The regulations may provide –
 - (a) for disclosure of the nature of any services provided to be made by reference to any class or description of services specified in the regulations (or any combination of services, however described);
 - (b) for the disclosure of amounts of remuneration received or receivable in respect of services of any class or description specified in the regulations (or any combination of services, however described);
 - (c) for the disclosure of separate amounts so received or receivable by the company's auditor or any of his associates, or of aggregate amounts so received or receivable by all or any of those persons.
- (3) The regulations may –
 - (a) provide that "remuneration" includes sums paid in respect of expenses;

- (b) apply to benefits in kind as well as to payments of money, and require the disclosure of the nature of any such benefits and their estimated money value;
 - (c) apply to services provided for associates of a company as well as to those provided for a company;
 - (d) define “associate” in relation to an auditor and a company respectively.
- (4) The regulations may provide that any disclosure required by the regulations is to be made –
- (a) in a note to the company’s annual accounts (in the case of its individual accounts) or in such manner as is specified in the regulations (in the case of group accounts),
 - (b) in the directors’ report, or
 - (c) in the auditor’s report on the company’s annual accounts.
- (5) If the regulations provide that any such disclosure is to be made as mentioned in subsection (4)(a) or (b), the regulations may require the auditor to supply the directors of the company with any information necessary to enable the disclosure to be made.
- (6) Regulations under this section are subject to negative resolution procedure.

CHAPTER 3

FUNCTIONS OF AUDITOR

Auditor’s report

495 Auditor’s report on company’s annual accounts

- (1) A company’s auditor must make a report to the company’s members on all annual accounts of the company of which copies are, during his tenure of office –
- (a) in the case of a private company, to be sent out to members under section 423;
 - (b) in the case of a public company, to be laid before the company in general meeting under section 437.
- (2) The auditor’s report must include –
- (a) an introduction identifying the annual accounts that are the subject of the audit and the financial reporting framework that has been applied in their preparation, and
 - (b) a description of the scope of the audit identifying the auditing standards in accordance with which the audit was conducted.
- (3) The report must state clearly whether, in the auditor’s opinion, the annual accounts –
- (a) give a true and fair view –
 - (i) in the case of an individual balance sheet, of the state of affairs of the company as at the end of the financial year,
 - (ii) in the case of an individual profit and loss account, of the profit or loss of the company for the financial year,

- (iii) in the case of group accounts, of the state of affairs as at the end of the financial year and of the profit or loss for the financial year of the undertakings included in the consolidation as a whole, so far as concerns members of the company;
- (b) have been properly prepared in accordance with the relevant financial reporting framework; and
- (c) have been prepared in accordance with the requirements of this Act (and, where applicable, Article 4 of the IAS Regulation).

Expressions used in this subsection that are defined for the purposes of Part 15 (see section 474) have the same meaning as in that Part.

- (4) The auditor’s report –
 - (a) must be either unqualified or qualified, and
 - (b) must include a reference to any matters to which the auditor wishes to draw attention by way of emphasis without qualifying the report.

496 Auditor’s report on directors’ report

The auditor must state in his report on the company’s annual accounts whether in his opinion the information given in the directors’ report for the financial year for which the accounts are prepared is consistent with those accounts.

497 Auditor’s report on auditable part of directors’ remuneration report

- (1) If the company is a quoted company, the auditor, in his report on the company’s annual accounts for the financial year, must –
 - (a) report to the company’s members on the auditable part of the directors’ remuneration report, and
 - (b) state whether in his opinion that part of the directors’ remuneration report has been properly prepared in accordance with this Act.
- (2) For the purposes of this Part, “the auditable part” of a directors’ remuneration report is the part identified as such by regulations under section 421.

Duties and rights of auditors

498 Duties of auditor

- (1) A company’s auditor, in preparing his report, must carry out such investigations as will enable him to form an opinion as to –
 - (a) whether adequate accounting records have been kept by the company and returns adequate for their audit have been received from branches not visited by him, and
 - (b) whether the company’s individual accounts are in agreement with the accounting records and returns, and
 - (c) in the case of a quoted company, whether the auditable part of the company’s directors’ remuneration report is in agreement with the accounting records and returns.
- (2) If the auditor is of the opinion –
 - (a) that adequate accounting records have not been kept, or that returns adequate for their audit have not been received from branches not visited by him, or

- (b) that the company's individual accounts are not in agreement with the accounting records and returns, or
 - (c) in the case of a quoted company, that the auditable part of its directors' remuneration report is not in agreement with the accounting records and returns,the auditor shall state that fact in his report.
- (3) If the auditor fails to obtain all the information and explanations which, to the best of his knowledge and belief, are necessary for the purposes of his audit, he shall state that fact in his report.
- (4) If—
 - (a) the requirements of regulations under section 412 (disclosure of directors' benefits: remuneration, pensions and compensation for loss of office) are not complied with in the annual accounts, or
 - (b) in the case of a quoted company, the requirements of regulations under section 421 as to information forming the auditable part of the directors' remuneration report are not complied with in that report,the auditor must include in his report, so far as he is reasonably able to do so, a statement giving the required particulars.
- (5) If the directors of the company have prepared accounts and reports in accordance with the small companies regime and in the auditor's opinion they were not entitled so to do, the auditor shall state that fact in his report.

499 Auditor's general right to information

- (1) An auditor of a company—
 - (a) has a right of access at all times to the company's books, accounts and vouchers (in whatever form they are held), and
 - (b) may require any of the following persons to provide him with such information or explanations as he thinks necessary for the performance of his duties as auditor.
- (2) Those persons are—
 - (a) any officer or employee of the company;
 - (b) any person holding or accountable for any of the company's books, accounts or vouchers;
 - (c) any subsidiary undertaking of the company which is a body corporate incorporated in the United Kingdom;
 - (d) any officer, employee or auditor of any such subsidiary undertaking or any person holding or accountable for any books, accounts or vouchers of any such subsidiary undertaking;
 - (e) any person who fell within any of paragraphs (a) to (d) at a time to which the information or explanations required by the auditor relates or relate.
- (3) A statement made by a person in response to a requirement under this section may not be used in evidence against him in criminal proceedings except proceedings for an offence under section 501.
- (4) Nothing in this section compels a person to disclose information in respect of which a claim to legal professional privilege (in Scotland, to confidentiality of communications) could be maintained in legal proceedings.

500 Auditor's right to information from overseas subsidiaries

- (1) Where a parent company has a subsidiary undertaking that is not a body corporate incorporated in the United Kingdom, the auditor of the parent company may require it to obtain from any of the following persons such information or explanations as he may reasonably require for the purposes of his duties as auditor.
- (2) Those persons are—
 - (a) the undertaking;
 - (b) any officer, employee or auditor of the undertaking;
 - (c) any person holding or accountable for any of the undertaking's books, accounts or vouchers;
 - (d) any person who fell within paragraph (b) or (c) at a time to which the information or explanations relates or relate.
- (3) If so required, the parent company must take all such steps as are reasonably open to it to obtain the information or explanations from the person concerned.
- (4) A statement made by a person in response to a requirement under this section may not be used in evidence against him in criminal proceedings except proceedings for an offence under section 501.
- (5) Nothing in this section compels a person to disclose information in respect of which a claim to legal professional privilege (in Scotland, to confidentiality of communications) could be maintained in legal proceedings.

501 Auditor's rights to information: offences

- (1) A person commits an offence who knowingly or recklessly makes to an auditor of a company a statement (oral or written) that—
 - (a) conveys or purports to convey any information or explanations which the auditor requires, or is entitled to require, under section 499, and
 - (b) is misleading, false or deceptive in a material particular.
- (2) A person guilty of an offence under subsection (1) 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).
- (3) A person who fails to comply with a requirement under section 499 without delay commits an offence unless it was not reasonably practicable for him to provide the required information or explanations.
- (4) If a parent company fails to comply with section 500, 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 (3) or (4) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (6) Nothing in this section affects any right of an auditor to apply for an injunction (in Scotland, an interdict or an order for specific performance) to enforce any of his rights under section 499 or 500.

502 Auditor's rights in relation to resolutions and meetings

- (1) In relation to a written resolution proposed to be agreed to by a private company, the company's auditor is entitled to receive all such communications relating to the resolution as, by virtue of any provision of Chapter 2 of Part 13 of this Act, are required to be supplied to a member of the company.
- (2) A company's auditor is entitled –
 - (a) to receive all notices of, and other communications relating to, any general meeting which a member of the company is entitled to receive,
 - (b) to attend any general meeting of the company, and
 - (c) to be heard at any general meeting which he attends on any part of the business of the meeting which concerns him as auditor.
- (3) Where the auditor is a firm, the right to attend or be heard at a meeting is exercisable by an individual authorised by the firm in writing to act as its representative at the meeting.

Signature of auditor's report

503 Signature of auditor's report

- (1) The auditor's report must state the name of the auditor and be signed and dated.
- (2) Where the auditor is an individual, the report must be signed by him.
- (3) Where the auditor is a firm, the report must be signed by the senior statutory auditor in his own name, for and on behalf of the auditor.

504 Senior statutory auditor

- (1) The senior statutory auditor means the individual identified by the firm as senior statutory auditor in relation to the audit in accordance with –
 - (a) standards issued by the European Commission, or
 - (b) if there is no applicable standard so issued, any relevant guidance issued by –
 - (i) the Secretary of State, or
 - (ii) a body appointed by order of the Secretary of State.
- (2) The person identified as senior statutory auditor must be eligible for appointment as auditor of the company in question (see Chapter 2 of Part 42 of this Act).
- (3) The senior statutory auditor is not, by reason of being named or identified as senior statutory auditor or by reason of his having signed the auditor's report, subject to any civil liability to which he would not otherwise be subject.

- (4) An order appointing a body for the purpose of subsection (1)(b)(ii) is subject to negative resolution procedure.

505 Names to be stated in published copies of auditor's report

- (1) Every copy of the auditor's report that is published by or on behalf of the company must—
- (a) state the name of the auditor and (where the auditor is a firm) the name of the person who signed it as senior statutory auditor, or
 - (b) if the conditions in section 506 (circumstances in which names may be omitted) are met, state that a resolution has been passed and notified to the Secretary of State in accordance with that section.
- (2) For the purposes of this section a company is regarded as publishing the report if it publishes, issues or circulates it or otherwise makes it available for public inspection in a manner calculated to invite members of the public generally, or any class of members of the public, to read it.
- (3) If a copy of the auditor's report is published without the statement required by this section, 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.

506 Circumstances in which names may be omitted

- (1) The auditor's name and, where the auditor is a firm, the name of the person who signed the report as senior statutory auditor, may be omitted from—
- (a) published copies of the report, and
 - (b) the copy of the report delivered to the registrar under Chapter 10 of Part 15 (filing of accounts and reports),
- if the following conditions are met.
- (2) The conditions are that the company—
- (a) considering on reasonable grounds that statement of the name would create or be likely to create a serious risk that the auditor or senior statutory auditor, or any other person, would be subject to violence or intimidation, has resolved that the name should not be stated, and
 - (b) has given notice of the resolution to the Secretary of State, stating—
 - (i) the name and registered number of the company,
 - (ii) the financial year of the company to which the report relates, and
 - (iii) the name of the auditor and (where the auditor is a firm) the name of the person who signed the report as senior statutory auditor.

Offences in connection with auditor's report

507 Offences in connection with auditor's report

- (1) A person to whom this section applies commits an offence if he knowingly or recklessly causes a report under section 495 (auditor's report on company's annual accounts) to include any matter that is misleading, false or deceptive in a material particular.
- (2) A person to whom this section applies commits an offence if he knowingly or recklessly causes such a report to omit a statement required by –
 - (a) section 498(2)(b) (statement that company's accounts do not agree with accounting records and returns),
 - (b) section 498(3) (statement that necessary information and explanations not obtained), or
 - (c) section 498(5) (statement that directors wrongly took advantage of exemption from obligation to prepare group accounts).
- (3) This section applies to –
 - (a) where the auditor is an individual, that individual and any employee or agent of his who is eligible for appointment as auditor of the company;
 - (b) where the auditor is a firm, any director, member, employee or agent of the firm who is eligible for appointment as auditor of the company.
- (4) A person guilty of an offence under this section is liable –
 - (a) on conviction on indictment, to a fine;
 - (b) on summary conviction, to a fine not exceeding the statutory maximum.

508 Guidance for regulatory and prosecuting authorities: England, Wales and Northern Ireland

- (1) The Secretary of State may issue guidance for the purpose of helping relevant regulatory and prosecuting authorities to determine how they should carry out their functions in cases where behaviour occurs that –
 - (a) appears to involve the commission of an offence under section 507 (offences in connection with auditor's report), and
 - (b) has been, is being or may be investigated pursuant to arrangements –
 - (i) under paragraph 15 of Schedule 10 (investigation of complaints against auditors and supervisory bodies), or
 - (ii) of a kind mentioned in paragraph 24 of that Schedule (independent investigation for disciplinary purposes of public interest cases).
- (2) The Secretary of State must obtain the consent of the Attorney General before issuing any such guidance.
- (3) In this section "relevant regulatory and prosecuting authorities" means –
 - (a) supervisory bodies within the meaning of Part 42 of this Act,
 - (b) bodies to which the Secretary of State may make grants under section 16(1) of the Companies (Audit, Investigations and Community Enterprise) Act 2004 (c. 27) (bodies concerned with accounting standards etc),

- (c) the Director of the Serious Fraud Office,
 - (d) the Director of Public Prosecutions or the Director of Public Prosecutions for Northern Ireland, and
 - (e) the Secretary of State.
- (4) This section does not apply to Scotland.

509 Guidance for regulatory authorities: Scotland

- (1) The Lord Advocate may issue guidance for the purpose of helping relevant regulatory authorities to determine how they should carry out their functions in cases where behaviour occurs that –
- (a) appears to involve the commission of an offence under section 507 (offences in connection with auditor’s report), and
 - (b) has been, is being or may be investigated pursuant to arrangements –
 - (i) under paragraph 15 of Schedule 10 (investigation of complaints against auditors and supervisory bodies), or
 - (ii) of a kind mentioned in paragraph 24 of that Schedule (independent investigation for disciplinary purposes of public interest cases).
- (2) The Lord Advocate must consult the Secretary of State before issuing any such guidance.
- (3) In this section “relevant regulatory authorities” means –
- (a) supervisory bodies within the meaning of Part 42 of this Act,
 - (b) bodies to which the Secretary of State may make grants under section 16(1) of the Companies (Audit, Investigations and Community Enterprise) Act 2004 (c. 27) (bodies concerned with accounting standards etc), and
 - (c) the Secretary of State.
- (4) This section applies only to Scotland.

CHAPTER 4

REMOVAL, RESIGNATION, ETC OF AUDITORS

Removal of auditor

510 Resolution removing auditor from office

- (1) The members of a company may remove an auditor from office at any time.
- (2) This power is exercisable only –
- (a) by ordinary resolution at a meeting, and
 - (b) in accordance with section 511 (special notice of resolution to remove auditor).
- (3) Nothing in this section is to be taken as depriving the person removed of compensation or damages payable to him in respect of the termination –
- (a) of his appointment as auditor, or
 - (b) of any appointment terminating with that as auditor.

- (4) An auditor may not be removed from office before the expiration of his term of office except by resolution under this section.

511 Special notice required for resolution removing auditor from office

- (1) Special notice is required for a resolution at a general meeting of a company removing an auditor from office.
- (2) On receipt of notice of such an intended resolution the company must immediately send a copy of it to the auditor proposed to be removed.
- (3) The auditor proposed to be removed may make with respect to the intended resolution representations in writing to the company (not exceeding a reasonable length) and request their notification to members of the company.
- (4) The company must (unless the representations are received by it too late for it to do so) –
 - (a) in any notice of the resolution given to members of the company, state the fact of the representations having been made, and
 - (b) send a copy of the representations to every member of the company to whom notice of the meeting is or has been sent.
- (5) If a copy of any such representations is not sent out as required because received too late or because of the company's default, the auditor may (without prejudice to his right to be heard orally) require that the representations be read out at the meeting.
- (6) Copies of the representations need not be sent out and the representations need not be read at the meeting if, on the application either of the company or of any other person claiming to be aggrieved, the court is satisfied that the auditor is using the provisions of this section to secure needless publicity for defamatory matter.

The court may order the company's costs (in Scotland, expenses) on the application to be paid in whole or in part by the auditor, notwithstanding that he is not a party to the application.

512 Notice to registrar of resolution removing auditor from office

- (1) Where a resolution is passed under section 510 (resolution removing auditor from office), the company must give notice of that fact to the registrar within 14 days.
- (2) If a company fails to give the notice required by this section, an offence is committed by –
 - (a) the company, and
 - (b) every officer of it who is in default.
- (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 and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.

513 Rights of auditor who has been removed from office

- (1) An auditor who has been removed by resolution under section 510 has, notwithstanding his removal, the rights conferred by section 502(2) in relation to any general meeting of the company –
 - (a) at which his term of office would otherwise have expired, or
 - (b) at which it is proposed to fill the vacancy caused by his removal.
- (2) In such a case the references in that section to matters concerning the auditor as auditor shall be construed as references to matters concerning him as a former auditor.

Failure to re-appoint auditor

514 Failure to re-appoint auditor: special procedure required for written resolution

- (1) This section applies where a resolution is proposed as a written resolution of a private company whose effect would be to appoint a person as auditor in place of a person (the “outgoing auditor”) whose term of office has expired, or is to expire, at the end of the period for appointing auditors.
- (2) The following provisions apply if –
 - (a) no period for appointing auditors has ended since the outgoing auditor ceased to hold office, or
 - (b) such a period has ended and an auditor or auditors should have been appointed but were not.
- (3) The company must send a copy of the proposed resolution to the person proposed to be appointed and to the outgoing auditor.
- (4) The outgoing auditor may, within 14 days after receiving the notice, make with respect to the proposed resolution representations in writing to the company (not exceeding a reasonable length) and request their circulation to members of the company.
- (5) The company must circulate the representations together with the copy or copies of the resolution circulated in accordance with section 291 (resolution proposed by directors) or section 293 (resolution proposed by members).
- (6) Where subsection (5) applies –
 - (a) the period allowed under section 293(3) for service of copies of the proposed resolution is 28 days instead of 21 days, and
 - (b) the provisions of section 293(5) and (6) (offences) apply in relation to a failure to comply with that subsection as in relation to a default in complying with that section.
- (7) Copies of the representations need not be circulated if, on the application either of the company or of any other person claiming to be aggrieved, the court is satisfied that the auditor is using the provisions of this section to secure needless publicity for defamatory matter.
The court may order the company’s costs (in Scotland, expenses) on the application to be paid in whole or in part by the auditor, notwithstanding that he is not a party to the application.

- (8) If any requirement of this section is not complied with, the resolution is ineffective.

515 Failure to re-appoint auditor: special notice required for resolution at general meeting

- (1) This section applies to a resolution at a general meeting of a company whose effect would be to appoint a person as auditor in place of a person (the “outgoing auditor”) whose term of office has ended, or is to end –
- (a) in the case of a private company, at the end of the period for appointing auditors;
 - (b) in the case of a public company, at the end of the next accounts meeting.
- (2) Special notice is required of such a resolution if –
- (a) in the case of a private company –
 - (i) no period for appointing auditors has ended since the outgoing auditor ceased to hold office, or
 - (ii) such a period has ended and an auditor or auditors should have been appointed but were not;
 - (b) in the case of a public company –
 - (i) there has been no accounts meeting of the company since the outgoing auditor ceased to hold office, or
 - (ii) there has been an accounts meeting at which an auditor or auditors should have been appointed but were not.
- (3) On receipt of notice of such an intended resolution the company shall forthwith send a copy of it to the person proposed to be appointed and to the outgoing auditor.
- (4) The outgoing auditor may make with respect to the intended resolution representations in writing to the company (not exceeding a reasonable length) and request their notification to members of the company.
- (5) The company must (unless the representations are received by it too late for it to do so) –
- (a) in any notice of the resolution given to members of the company, state the fact of the representations having been made, and
 - (b) send a copy of the representations to every member of the company to whom notice of the meeting is or has been sent.
- (6) If a copy of any such representations is not sent out as required because received too late or because of the company’s default, the outgoing auditor may (without prejudice to his right to be heard orally) require that the representations be read out at the meeting.
- (7) Copies of the representations need not be sent out and the representations need not be read at the meeting if, on the application either of the company or of any other person claiming to be aggrieved, the court is satisfied that the auditor is using the provisions of this section to secure needless publicity for defamatory matter.

The court may order the company’s costs (in Scotland, expenses) on the application to be paid in whole or in part by the outgoing auditor, notwithstanding that he is not a party to the application.

*Resignation of auditor***516 Resignation of auditor**

- (1) An auditor of a company may resign his office by depositing a notice in writing to that effect at the company's registered office.
- (2) The notice is not effective unless it is accompanied by the statement required by section 519.
- (3) An effective notice of resignation operates to bring the auditor's term of office to an end as of the date on which the notice is deposited or on such later date as may be specified in it.

517 Notice to registrar of resignation of auditor

- (1) Where an auditor resigns the company must within 14 days of the deposit of a notice of resignation send a copy of the notice to the registrar of companies.
- (2) 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.
- (3) A person guilty of an offence under this section is liable –
 - (a) on conviction on indictment, to a fine;
 - (b) on summary conviction, to a fine not exceeding the statutory maximum and, for continued contravention, a daily default fine not exceeding one-tenth of the statutory maximum.

518 Rights of resigning auditor

- (1) This section applies where an auditor's notice of resignation is accompanied by a statement of the circumstances connected with his resignation (see section 519).
- (2) He may deposit with the notice a signed requisition calling on the directors of the company forthwith duly to convene a general meeting of the company for the purpose of receiving and considering such explanation of the circumstances connected with his resignation as he may wish to place before the meeting.
- (3) He may request the company to circulate to its members –
 - (a) before the meeting convened on his requisition, or
 - (b) before any general meeting at which his term of office would otherwise have expired or at which it is proposed to fill the vacancy caused by his resignation,a statement in writing (not exceeding a reasonable length) of the circumstances connected with his resignation.
- (4) The company must (unless the statement is received too late for it to comply) –
 - (a) in any notice of the meeting given to members of the company, state the fact of the statement having been made, and
 - (b) send a copy of the statement to every member of the company to whom notice of the meeting is or has been sent.

- (5) The directors must within 21 days from the date of the deposit of a requisition under this section proceed duly to convene a meeting for a day not more than 28 days after the date on which the notice convening the meeting is given.
- (6) If default is made in complying with subsection (5), every director who failed to take all reasonable steps to secure that a meeting was convened commits an offence.
- (7) A person guilty of an offence under this section is liable –
 - (a) on conviction on indictment, to a fine;
 - (b) on summary conviction to a fine not exceeding the statutory maximum.
- (8) If a copy of the statement mentioned above is not sent out as required because received too late or because of the company's default, the auditor may (without prejudice to his right to be heard orally) require that the statement be read out at the meeting.
- (9) Copies of a statement need not be sent out and the statement need not be read out at the meeting if, on the application either of the company or of any other person who claims to be aggrieved, the court is satisfied that the auditor is using the provisions of this section to secure needless publicity for defamatory matter.

The court may order the company's costs (in Scotland, expenses) on such an application to be paid in whole or in part by the auditor, notwithstanding that he is not a party to the application.
- (10) An auditor who has resigned has, notwithstanding his resignation, the rights conferred by section 502(2) in relation to any such general meeting of the company as is mentioned in subsection (3)(a) or (b) above.

In such a case the references in that section to matters concerning the auditor as auditor shall be construed as references to matters concerning him as a former auditor.

Statement by auditor on ceasing to hold office

519 Statement by auditor to be deposited with company

- (1) Where an auditor of an unquoted company ceases for any reason to hold office, he must deposit at the company's registered office a statement of the circumstances connected with his ceasing to hold office, unless he considers that there are no circumstances in connection with his ceasing to hold office that need to be brought to the attention of members or creditors of the company.
- (2) If he considers that there are no circumstances in connection with his ceasing to hold office that need to be brought to the attention of members or creditors of the company, he must deposit at the company's registered office a statement to that effect.
- (3) Where an auditor of a quoted company ceases for any reason to hold office, he must deposit at the company's registered office a statement of the circumstances connected with his ceasing to hold office.
- (4) The statement required by this section must be deposited –
 - (a) in the case of resignation, along with the notice of resignation;

- (b) in the case of failure to seek re-appointment, not less than 14 days before the end of the time allowed for next appointing an auditor;
 - (c) in any other case, not later than the end of the period of 14 days beginning with the date on which he ceases to hold office.
- (5) A person ceasing to hold office as auditor who fails to comply with this section commits an offence.
- (6) In proceedings for such an offence it is a defence for the person charged to show that he took all reasonable steps and exercised all due diligence to avoid the commission of the offence.
- (7) A person guilty of an offence under this section is liable –
- (a) on conviction on indictment, to a fine;
 - (b) on summary conviction, to a fine not exceeding the statutory maximum.

520 Company's duties in relation to statement

- (1) This section applies where the statement deposited under section 519 states the circumstances connected with the auditor's ceasing to hold office.
- (2) The company must within 14 days of the deposit of the statement either –
- (a) send a copy of it to every person who under section 423 is entitled to be sent copies of the accounts, or
 - (b) apply to the court.
- (3) If it applies to the court, the company must notify the auditor of the application.
- (4) If the court is satisfied that the auditor is using the provisions of section 519 to secure needless publicity for defamatory matter –
- (a) it shall direct that copies of the statement need not be sent out, and
 - (b) it may further order the company's costs (in Scotland, expenses) on the application to be paid in whole or in part by the auditor, even if he is not a party to the application.

The company must within 14 days of the court's decision send to the persons mentioned in subsection (2)(a) a statement setting out the effect of the order.

- (5) If no such direction is made the company must send copies of the statement to the persons mentioned in subsection (2)(a) within 14 days of the court's decision or, as the case may be, of the discontinuance of the proceedings.
- (6) In the event of default in complying with this section an offence is committed by every officer of the company who is in default.
- (7) In proceedings for such an offence it is a defence for the person charged to show that he took all reasonable steps and exercised all due diligence to avoid the commission of the offence.
- (8) A person guilty of an offence under this section is liable –
- (a) on conviction on indictment, to a fine;
 - (b) on summary conviction, to a fine not exceeding the statutory maximum.

521 Copy of statement to be sent to registrar

- (1) Unless within 21 days beginning with the day on which he deposited the statement under section 519 the auditor receives notice of an application to the court under section 520, he must within a further seven days send a copy of the statement to the registrar.
- (2) If an application to the court is made under section 520 and the auditor subsequently receives notice under subsection (5) of that section, he must within seven days of receiving the notice send a copy of the statement to the registrar.
- (3) An auditor who fails to comply with subsection (1) or (2) commits an offence.
- (4) In proceedings for such an offence it is a defence for the person charged to show that he took all reasonable steps and exercised all due diligence to avoid the commission of the offence.
- (5) A person guilty of an offence under this section is liable –
 - (a) on conviction on indictment, to a fine;
 - (b) on summary conviction, to a fine not exceeding the statutory maximum.

522 Duty of auditor to notify appropriate audit authority

- (1) Where –
 - (a) in the case of a major audit, an auditor ceases for any reason to hold office, or
 - (b) in the case of an audit that is not a major audit, an auditor ceases to hold office before the end of his term of office,the auditor ceasing to hold office must notify the appropriate audit authority.
- (2) The notice must –
 - (a) inform the appropriate audit authority that he has ceased to hold office, and
 - (b) be accompanied by a copy of the statement deposited by him at the company's registered office in accordance with section 519.
- (3) If the statement so deposited is to the effect that he considers that there are no circumstances in connection with his ceasing to hold office that need to be brought to the attention of members or creditors of the company, the notice must also be accompanied by a statement of the reasons for his ceasing to hold office.
- (4) The auditor must comply with this section –
 - (a) in the case of a major audit, at the same time as he deposits a statement at the company's registered office in accordance with section 519;
 - (b) in the case of an audit that is not a major audit, at such time (not being earlier than the time mentioned in paragraph (a)) as the appropriate audit authority may require.
- (5) A person ceasing to hold office as auditor who fails to comply with this section commits an offence.
- (6) If that person is a firm an offence is committed by –
 - (a) the firm, and

- (b) every officer of the firm who is in default.
- (7) In proceedings for an offence under this section it is a defence for the person charged to show that he took all reasonable steps and exercised all due diligence to avoid the commission of the offence.
- (8) A person guilty of an offence under this section is liable –
 - (a) on conviction on indictment, to a fine;
 - (b) on summary conviction, to a fine not exceeding the statutory maximum.

523 Duty of company to notify appropriate audit authority

- (1) Where an auditor ceases to hold office before the end of his term of office, the company must notify the appropriate audit authority.
- (2) The notice must –
 - (a) inform the appropriate audit authority that the auditor has ceased to hold office, and
 - (b) be accompanied by –
 - (i) a statement by the company of the reasons for his ceasing to hold office, or
 - (ii) if the copy of the statement deposited by the auditor at the company's registered office in accordance with section 519 contains a statement of circumstances in connection with his ceasing to hold office that need to be brought to the attention of members or creditors of the company, a copy of that statement.
- (3) The company must give notice under this section not later than 14 days after the date on which the auditor's statement is deposited at the company's registered office in accordance with section 519.
- (4) If a company fails to comply with this section, an offence is committed by –
 - (a) the company, and
 - (b) every officer of the company who is in default.
- (5) In proceedings for such an offence it is a defence for the person charged to show that he took all reasonable steps and exercised all due diligence to avoid the commission of the offence.
- (6) A person guilty of an offence under this section is liable –
 - (a) on conviction on indictment, to a fine;
 - (b) on summary conviction, to a fine not exceeding the statutory maximum.

524 Information to be given to accounting authorities

- (1) The appropriate audit authority on receiving notice under section 522 or 523 of an auditor's ceasing to hold office –
 - (a) must inform the accounting authorities, and
 - (b) may if it thinks fit forward to those authorities a copy of the statement or statements accompanying the notice.
- (2) The accounting authorities are –
 - (a) the Secretary of State, and

- (b) any person authorised by the Secretary of State for the purposes of section 456 (revision of defective accounts: persons authorised to apply to court).
- (3) If either of the accounting authorities is also the appropriate audit authority it is only necessary to comply with this section as regards any other accounting authority.
- (4) If the court has made an order under section 520(4) directing that copies of the statement need not be sent out by the company, sections 460 and 461 (restriction on further disclosure) apply in relation to the copies sent to the accounting authorities as they apply to information obtained under section 459 (power to require documents etc).

525 Meaning of “appropriate audit authority” and “major audit”

- (1) In sections 522, 523 and 524 “appropriate audit authority” means –
 - (a) in the case of a major audit –
 - (i) the Secretary of State, or
 - (ii) if the Secretary of State has delegated functions under section 1252 to a body whose functions include receiving the notice in question, that body;
 - (b) in the case of an audit that is not a major audit, the relevant supervisory body.“Supervisory body” has the same meaning as in Part 42 (statutory auditors) (see section 1217).
- (2) In sections 522 and this section “major audit” means a statutory audit conducted in respect of –
 - (a) a company any of whose securities have been admitted to the official list (within the meaning of Part 6 of the Financial Services and Markets Act 2000 (c. 8)), or
 - (b) any other person in whose financial condition there is a major public interest.
- (3) In determining whether an audit is a major audit within subsection (2)(b), regard shall be had to any guidance issued by any of the authorities mentioned in subsection (1).

Supplementary

526 Effect of casual vacancies

If an auditor ceases to hold office for any reason, any surviving or continuing auditor or auditors may continue to act.

CHAPTER 5**QUOTED COMPANIES: RIGHT OF MEMBERS TO RAISE AUDIT CONCERNS AT ACCOUNTS MEETING****527 Members' power to require website publication of audit concerns**

- (1) The members of a quoted company may require the company to publish on a website a statement setting out any matter relating to –
 - (a) the audit of the company's accounts (including the auditor's report and the conduct of the audit) that are to be laid before the next accounts meeting, or
 - (b) any circumstances connected with an auditor of the company ceasing to hold office since the previous accounts meeting,that the members propose to raise at the next accounts meeting of the company.
- (2) A company is required to do so once it has received requests to that effect from –
 - (a) members representing at least 5% of the total voting rights of all the members who have a relevant right to vote (excluding any voting rights attached to any shares in the company held as treasury shares), or
 - (b) at least 100 members who have a relevant right to vote and hold shares in the company on which there has been paid up an average sum, per member, of at least £100.See also section 153 (exercise of rights where shares held on behalf of others).
- (3) In subsection (2) a "relevant right to vote" means a right to vote at the accounts meeting.
- (4) A request –
 - (a) may be sent to the company in hard copy or electronic form,
 - (b) must identify the statement to which it relates,
 - (c) must be authenticated by the person or persons making it, and
 - (d) must be received by the company at least one week before the meeting to which it relates.
- (5) A quoted company is not required to place on a website a statement under this section if, on an application by the company or another person who claims to be aggrieved, the court is satisfied that the rights conferred by this section are being abused.
- (6) The court may order the members requesting website publication to pay the whole or part of the company's costs (in Scotland, expenses) on such an application, even if they are not parties to the application.

528 Requirements as to website availability

- (1) The following provisions apply for the purposes of section 527 (website publication of members' statement of audit concerns).
- (2) The information must be made available on a website that –
 - (a) is maintained by or on behalf of the company, and
 - (b) identifies the company in question.

- (3) Access to the information on the website, and the ability to obtain a hard copy of the information from the website, must not be conditional on the payment of a fee or otherwise restricted.
- (4) The statement –
 - (a) must be made available within three working days of the company being required to publish it on a website, and
 - (b) must be kept available until after the meeting to which it relates.
- (5) A failure to make information available on a website throughout the period specified in subsection (4)(b) is disregarded if –
 - (a) the information is made available on the website for part of that period, and
 - (b) the failure is wholly attributable to circumstances that it would not be reasonable to have expected the company to prevent or avoid.

529 Website publication: company’s supplementary duties

- (1) A quoted company must in the notice it gives of the accounts meeting draw attention to –
 - (a) the possibility of a statement being placed on a website in pursuance of members’ requests under section 527, and
 - (b) the effect of the following provisions of this section.
- (2) A company may not require the members requesting website publication to pay its expenses in complying with that section or section 528 (requirements in connection with website publication).
- (3) Where a company is required to place a statement on a website under section 527 it must forward the statement to the company’s auditor not later than the time when it makes the statement available on the website.
- (4) The business which may be dealt with at the accounts meeting includes any statement that the company has been required under section 527 to publish on a website.

530 Website publication: offences

- (1) In the event of default in complying with
 - (a) section 528 (requirements as to website publication), or
 - (b) section 529 (companies’ supplementary duties in relation to request for website publication),an offence is committed by every officer of the company who is in default.
- (2) A person guilty of an offence under this section is liable –
 - (a) on conviction on indictment, to a fine;
 - (b) on summary conviction, to a fine not exceeding the statutory maximum.

531 Meaning of “quoted company”

- (1) For the purposes of this Chapter a company is a quoted company if it is a quoted company in accordance with section 385 (quoted and unquoted companies for the purposes of Part 15) in relation to the financial year to which the accounts to be laid at the next accounts meeting relate.

- (2) The provisions of subsections (4) to (6) of that section (power to amend definition by regulations) apply in relation to the provisions of this Chapter as in relation to the provisions of that Part.

CHAPTER 6

AUDITORS' LIABILITY

Voidness of provisions protecting auditors from liability

532 Voidness of provisions protecting auditors from liability

- (1) This section applies to any provision –
- (a) for exempting an auditor of a company (to any extent) from any liability that would otherwise attach to him in connection with any negligence, default, breach of duty or breach of trust in relation to the company occurring in the course of the audit of accounts, or
 - (b) by which a company directly or indirectly provides an indemnity (to any extent) for an auditor of the company, or of an associated company, against any liability attaching to him in connection with any negligence, default, breach of duty or breach of trust in relation to the company of which he is auditor occurring in the course of the audit of accounts.
- (2) Any such provision is void, except as permitted by –
- (a) section 533 (indemnity for costs of successfully defending proceedings), or
 - (b) sections 534 to 536 (liability limitation agreements).
- (3) This section applies to any provision, whether contained in a company's articles or in any contract with the company or otherwise.
- (4) For the purposes of this section companies are associated if one is a subsidiary of the other or both are subsidiaries of the same body corporate.

Indemnity for costs of defending proceedings

533 Indemnity for costs of successfully defending proceedings

Section 532 (general voidness of provisions protecting auditors from liability) does not prevent a company from indemnifying an auditor against any liability incurred by him –

- (a) in defending proceedings (whether civil or criminal) in which judgment is given in his favour or he is acquitted, or
- (b) in connection with an application under section 1157 (power of court to grant relief in case of honest and reasonable conduct) in which relief is granted to him by the court.

Liability limitation agreements

534 Liability limitation agreements

- (1) A “liability limitation agreement” is an agreement that purports to limit the amount of a liability owed to a company by its auditor in respect of any negligence, default, breach of duty or breach of trust, occurring in the course of the audit of accounts, of which the auditor may be guilty in relation to the company.
- (2) Section 532 (general voidness of provisions protecting auditors from liability) does not affect the validity of a liability limitation agreement that –
 - (a) complies with section 535 (terms of liability limitation agreement) and of any regulations under that section, and
 - (b) is authorised by the members of the company (see section 536).
- (3) Such an agreement –
 - (a) is effective to the extent provided by section 537, and
 - (b) is not subject –
 - (i) in England and Wales or Northern Ireland, to section 2(2) or 3(2)(a) of the Unfair Contract Terms Act 1977 (c. 50);
 - (ii) in Scotland, to section 16(1)(b) or 17(1)(a) of that Act.

535 Terms of liability limitation agreement

- (1) A liability limitation agreement –
 - (a) must not apply in respect of acts or omissions occurring in the course of the audit of accounts for more than one financial year, and
 - (b) must specify the financial year in relation to which it applies.
- (2) The Secretary of State may by regulations –
 - (a) require liability limitation agreements to contain specified provisions or provisions of a specified description;
 - (b) prohibit liability limitation agreements from containing specified provisions or provisions of a specified description.“Specified” here means specified in the regulations.
- (3) Without prejudice to the generality of the power conferred by subsection (2), that power may be exercised with a view to preventing adverse effects on competition.
- (4) Subject to the preceding provisions of this section, it is immaterial how a liability limitation agreement is framed.
In particular, the limit on the amount of the auditor’s liability need not be a sum of money, or a formula, specified in the agreement.
- (5) Regulations under this section are subject to negative resolution procedure.

536 Authorisation of agreement by members of the company

- (1) A liability limitation agreement is authorised by the members of the company if it has been authorised under this section and that authorisation has not been withdrawn.

- (2) A liability limitation agreement between a private company and its auditor may be authorised –
 - (a) by the company passing a resolution, before it enters into the agreement, waiving the need for approval,
 - (b) by the company passing a resolution, before it enters into the agreement, approving the agreement’s principal terms, or
 - (c) by the company passing a resolution, after it enters into the agreement, approving the agreement.
- (3) A liability limitation agreement between a public company and its auditor may be authorised –
 - (a) by the company passing a resolution in general meeting, before it enters into the agreement, approving the agreement’s principal terms, or
 - (b) by the company passing a resolution in general meeting, after it enters into the agreement, approving the agreement.
- (4) The “principal terms” of an agreement are terms specifying, or relevant to the determination of –
 - (a) the kind (or kinds) of acts or omissions covered,
 - (b) the financial year to which the agreement relates, or
 - (c) the limit to which the auditor’s liability is subject.
- (5) Authorisation under this section may be withdrawn by the company passing an ordinary resolution to that effect –
 - (a) at any time before the company enters into the agreement, or
 - (b) if the company has already entered into the agreement, before the beginning of the financial year to which the agreement relates.

Paragraph (b) has effect notwithstanding anything in the agreement.

537 Effect of liability limitation agreement

- (1) A liability limitation agreement is not effective to limit the auditor’s liability to less than such amount as is fair and reasonable in all the circumstances of the case having regard (in particular) to –
 - (a) the auditor’s responsibilities under this Part,
 - (b) the nature and purpose of the auditor’s contractual obligations to the company, and
 - (c) the professional standards expected of him.
- (2) A liability limitation agreement that purports to limit the auditor’s liability to less than the amount mentioned in subsection (1) shall have effect as if it limited his liability to that amount.
- (3) In determining what is fair and reasonable in all the circumstances of the case no account is to be taken of –
 - (a) matters arising after the loss or damage in question has been incurred, or
 - (b) matters (whenever arising) affecting the possibility of recovering compensation from other persons liable in respect of the same loss or damage.

538 Disclosure of agreement by company

- (1) A company which has entered into a liability limitation agreement must make such disclosure in connection with the agreement as the Secretary of State may require by regulations.
- (2) The regulations may provide, in particular, that any disclosure required by the regulations shall be made –
 - (a) in a note to the company’s annual accounts (in the case of its individual accounts) or in such manner as is specified in the regulations (in the case of group accounts), or
 - (b) in the directors’ report.
- (3) Regulations under this section are subject to negative resolution procedure.

CHAPTER 7

SUPPLEMENTARY PROVISIONS

539 Minor definitions

In this Part –

- “e-money issuer” means a person who has permission under Part 4 of the Financial Services and Markets Act 2000 (c. 8) to carry on the activity of issuing electronic money within the meaning of article 9B of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544);
- “ISD investment firm” has the meaning given by the Glossary forming part of the Handbook made by the Financial Services Authority under the Financial Services and Markets Act 2000;
- “qualified”, in relation to an auditor’s report (or a statement contained in an auditor’s report), means that the report or statement does not state the auditor’s unqualified opinion that the accounts have been properly prepared in accordance with this Act or, in the case of an undertaking not required to prepare accounts in accordance with this Act, under any corresponding legislation under which it is required to prepare accounts;
- “turnover”, in relation to a company, means the amounts derived from the provision of goods and services falling within the company’s ordinary activities, after deduction of –
 - (a) trade discounts,
 - (b) value added tax, and
 - (c) any other taxes based on the amounts so derived;
- “UCITS management company” has the meaning given by the Glossary forming part of the Handbook made by the Financial Services Authority under the Financial Services and Markets Act 2000.

PART 17

A COMPANY'S SHARE CAPITAL

CHAPTER 1

SHARES AND SHARE CAPITAL OF A COMPANY

Shares

540 Shares

- (1) In the Companies Acts “share”, in relation to a company, means share in the company's share capital.
- (2) A company's shares may no longer be converted into stock.
- (3) Stock created before the commencement of this Part may be reconverted into shares in accordance with section 620.
- (4) In the Companies Acts –
 - (a) references to shares include stock except where a distinction between share and stock is express or implied, and
 - (b) references to a number of shares include an amount of stock where the context admits of the reference to shares being read as including stock.

541 Nature of shares

The shares or other interest of a member in a company are personal property (or, in Scotland, moveable property) and are not in the nature of real estate (or heritage).

542 Nominal value of shares

- (1) Shares in a limited company having a share capital must each have a fixed nominal value.
- (2) An allotment of a share that does not have a fixed nominal value is void.
- (3) Shares in a limited company having a share capital may be denominated in any currency, and different classes of shares may be denominated in different currencies.
But see section 765 (initial authorised minimum share capital requirement for public company to be met by reference to share capital denominated in sterling or euros).
- (4) If a company purports to allot shares in contravention of this section, an offence is committed by every officer of the company who is in default.
- (5) A person guilty of an offence under this section is liable –
 - (a) on conviction on indictment, to a fine;
 - (b) on summary conviction, to a fine not exceeding the statutory maximum.

543 Numbering of shares

- (1) Each share in a company having a share capital must be distinguished by its appropriate number, except in the following circumstances.
- (2) If at any time –
 - (a) all the issued shares in a company are fully paid up and rank *pari passu* for all purposes, or
 - (b) all the issued shares of a particular class in a company are fully paid up and rank *pari passu* for all purposes,none of those shares need thereafter have a distinguishing number so long as it remains fully paid up and ranks *pari passu* for all purposes with all shares of the same class for the time being issued and fully paid up.

544 Transferability of shares

- (1) The shares or other interest of any member in a company are transferable in accordance with the company's articles.
- (2) This is subject to –
 - (a) the Stock Transfer Act 1963 (c. 18) or the Stock Transfer Act (Northern Ireland) 1963 (c.24 (N.I.)) (which enables securities of certain descriptions to be transferred by a simplified process), and
 - (b) regulations under Chapter 2 of Part 21 of this Act (which enable title to securities to be evidenced and transferred without a written instrument).
- (3) See Part 21 of this Act generally as regards share transfers.

545 Companies having a share capital

References in the Companies Acts to a company having a share capital are to a company that has power under its constitution to issue shares.

546 Issued and allotted share capital

- (1) References in the Companies Acts –
 - (a) to “issued share capital” are to shares of a company that have been issued;
 - (b) to “allotted share capital” are to shares of a company that have been allotted.
- (2) References in the Companies Acts to issued or allotted shares, or to issued or allotted share capital, include shares taken on the formation of the company by the subscribers to the company's memorandum.

Share capital

547 Called-up share capital

In the Companies Acts –

“called-up share capital”, in relation to a company, means so much of its share capital as equals the aggregate amount of the calls made on its shares (whether or not those calls have been paid), together with –

- (a) any share capital paid up without being called, and
 - (b) any share capital to be paid on a specified future date under the articles, the terms of allotment of the relevant shares or any other arrangements for payment of those shares; and
- “uncalled share capital” is to be construed accordingly.

548 Equity share capital

In the Companies Acts “equity share capital”, in relation to a company, means its issued share capital excluding any part of that capital that, neither as respects dividends nor as respects capital, carries any right to participate beyond a specified amount in a distribution.

CHAPTER 2

ALLOTMENT OF SHARES: GENERAL PROVISIONS

Power of directors to allot shares

549 Exercise by directors of power to allot shares etc

- (1) The directors of a company must not exercise any power of the company –
 - (a) to allot shares in the company, or
 - (b) to grant rights to subscribe for, or to convert any security into, shares in the company,
 except in accordance with section 550 (private company with single class of shares) or section 551 (authorisation by company).
- (2) Subsection (1) does not apply –
 - (a) to the allotment of shares in pursuance of an employees' share scheme, or
 - (b) to the grant of a right to subscribe for, or to convert any security into, shares so allotted.
- (3) If this section applies in relation to the grant of a right to subscribe for, or to convert any security into, shares, it does not apply in relation to the allotment of shares pursuant to that right.
- (4) A director who knowingly contravenes, or permits or authorises a contravention of, this section commits an offence.
- (5) A person guilty of an offence under this section is liable –
 - (a) on conviction on indictment, to a fine;
 - (b) on summary conviction, to a fine not exceeding the statutory maximum.
- (6) Nothing in this section affects the validity of an allotment or other transaction.

550 Power of directors to allot shares etc: private company with only one class of shares

Where a private company has only one class of shares, the directors may exercise any power of the company –

- (a) to allot shares of that class, or

(b) to grant rights to subscribe for or to convert any security into such shares,
except to the extent that they are prohibited from doing so by the company's articles.

551 Power of directors to allot shares etc: authorisation by company

- (1) The directors of a company may exercise a power of the company –
 - (a) to allot shares in the company, or
 - (b) to grant rights to subscribe for or to convert any security into shares in the company,if they are authorised to do so by the company's articles or by resolution of the company.
- (2) Authorisation may be given for a particular exercise of the power or for its exercise generally, and may be unconditional or subject to conditions.
- (3) Authorisation must –
 - (a) state the maximum amount of shares that may be allotted under it, and
 - (b) specify the date on which it will expire, which must be not more than five years from –
 - (i) in the case of authorisation contained in the company's articles at the time of its original incorporation, the date of that incorporation;
 - (ii) in any other case, the date on which the resolution is passed by virtue of which the authorisation is given.
- (4) Authorisation may –
 - (a) be renewed or further renewed by resolution of the company for a further period not exceeding five years, and
 - (b) be revoked or varied at any time by resolution of the company.
- (5) A resolution renewing authorisation must –
 - (a) state (or restate) the maximum amount of shares that may be allotted under the authorisation or, as the case may be, the amount remaining to be allotted under it, and
 - (b) specify the date on which the renewed authorisation will expire.
- (6) In relation to rights to subscribe for or to convert any security into shares in the company, references in this section to the maximum amount of shares that may be allotted under the authorisation are to the maximum amount of shares that may be allotted pursuant to the rights.
- (7) The directors may allot shares, or grant rights to subscribe for or to convert any security into shares, after authorisation has expired if –
 - (a) the shares are allotted, or the rights are granted, in pursuance of an offer or agreement made by the company before the authorisation expired, and
 - (b) the authorisation allowed the company to make an offer or agreement which would or might require shares to be allotted, or rights to be granted, after the authorisation had expired.
- (8) A resolution of a company to give, vary, revoke or renew authorisation under this section may be an ordinary resolution, even though it amends the company's articles.

- (9) Chapter 3 of Part 3 (resolutions affecting a company's constitution) applies to a resolution under this section.

Prohibition of commissions, discounts and allowances

552 General prohibition of commissions, discounts and allowances

- (1) Except as permitted by section 553 (permitted commission), a company must not apply any of its shares or capital money, either directly or indirectly, in payment of any commission, discount or allowance to any person in consideration of his –
- (a) subscribing or agreeing to subscribe (whether absolutely or conditionally) for shares in the company, or
 - (b) procuring or agreeing to procure subscriptions (whether absolute or conditional) for shares in the company.
- (2) It is immaterial how the shares or money are so applied, whether by being added to the purchase money of property acquired by the company or to the contract price of work to be executed for the company, or being paid out of the nominal purchase money or contract price, or otherwise.
- (3) Nothing in this section affects the payment of such brokerage as has previously been lawful.

553 Permitted commission

- (1) A company may, if the following conditions are satisfied, pay a commission to a person in consideration of his subscribing or agreeing to subscribe (whether absolutely or conditionally) for shares in the company, or procuring or agreeing to procure subscriptions (whether absolute or conditional) for shares in the company.
- (2) The conditions are that –
- (a) the payment of the commission is authorised by the company's articles; and
 - (b) the commission paid or agreed to be paid does not exceed –
 - (i) 10% of the price at which the shares are issued, or
 - (ii) the amount or rate authorised by the articles,whichever is the less.
- (3) A vendor to, or promoter of, or other person who receives payment in money or shares from, a company may apply any part of the money or shares so received in payment of any commission the payment of which directly by the company would be permitted by this section.

Registration of allotment

554 Registration of allotment

- (1) A company must register an allotment of shares as soon as practicable and in any event within two months after the date of the allotment.
- (2) This does not apply if the company has issued a share warrant in respect of the shares (see section 779).

- (3) If a company fails to comply with this section, 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 and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.
- (5) For the company's duties as to the issue of share certificates etc, see Part 21 (certification and transfer of securities).

Return of allotment

555 Return of allotment by limited company

- (1) This section applies to a company limited by shares and to a company limited by guarantee and having a share capital.
- (2) The company must, within one month of making an allotment of shares, deliver to the registrar for registration a return of the allotment.
- (3) The return must –
 - (a) contain the prescribed information, and
 - (b) be accompanied by a statement of capital.
- (4) The statement of capital must state with respect to the company's share capital at the date to which the return is made up –
 - (a) the total number of shares of the company,
 - (b) the aggregate nominal value of those shares,
 - (c) for each class of shares –
 - (i) prescribed particulars of the rights attached to the shares,
 - (ii) the total number of shares of that class, and
 - (iii) the aggregate nominal value of shares of that class, and
 - (d) the amount paid up and the amount (if any) unpaid on each share (whether on account of the nominal value of the share or by way of premium).

556 Return of allotment by unlimited company allotting new class of shares

- (1) This section applies to an unlimited company that allots shares of a class with rights that are not in all respects uniform with shares previously allotted.
- (2) The company must, within one month of making such an allotment, deliver to the registrar for registration a return of the allotment.
- (3) The return must contain the prescribed particulars of the rights attached to the shares.
- (4) For the purposes of this section shares are not to be treated as different from shares previously allotted by reason only that the former do not carry the same rights to dividends as the latter during the twelve months immediately following the former's allotment.

557 Offence of failure to make return

- (1) If a company makes default in complying with –
section 555 (return of allotment of shares by limited company), or
section 556 (return of allotment of new class of shares by unlimited company),
an offence is committed by every officer of the company who is in default.
- (2) A person guilty of an offence under this section is liable –
 - (a) on conviction on indictment, to a fine;
 - (b) on summary conviction, to a fine not exceeding the statutory maximum and, for continued contravention, a daily default fine not exceeding one-tenth of the statutory maximum.
- (3) In the case of default in delivering to the registrar within one month after the allotment the return required by section 555 or 556 –
 - (a) any person liable for the default may apply to the court for relief, and
 - (b) the court, if satisfied –
 - (i) that the omission to deliver the document was accidental or due to inadvertence, or
 - (ii) that it is just and equitable to grant relief,may make an order extending the time for delivery of the document for such period as the court thinks proper.

Supplementary provisions

558 When shares are allotted

For the purposes of the Companies Acts shares in a company are taken to be allotted when a person acquires the unconditional right to be included in the company's register of members in respect of the shares.

559 Provisions about allotment not applicable to shares taken on formation

The provisions of this Chapter have no application in relation to the taking of shares by the subscribers to the memorandum on the formation of the company.

CHAPTER 3

ALLOTMENT OF EQUITY SECURITIES: EXISTING SHAREHOLDERS' RIGHT OF PRE-EMPTION

Introductory

560 Meaning of "equity securities" and related expressions

- (1) In this Chapter –
"equity securities" means –
 - (a) ordinary shares in the company, or
 - (b) rights to subscribe for, or to convert securities into, ordinary shares in the company;

“ordinary shares” means shares other than shares that as respects dividends and capital carry a right to participate only up to a specified amount in a distribution.

- (2) References in this Chapter to the allotment of equity securities include—
- (a) the grant of a right to subscribe for, or to convert any securities into, ordinary shares in the company, and
 - (b) the sale of ordinary shares in the company that immediately before the sale are held by the company as treasury shares.

Existing shareholders' right of pre-emption

561 Existing shareholders' right of pre-emption

- (1) A company must not allot equity securities to a person on any terms unless—
- (a) it has made an offer to each person who holds ordinary shares in the company to allot to him on the same or more favourable terms a proportion of those securities that is as nearly as practicable equal to the proportion in nominal value held by him of the ordinary share capital of the company, and
 - (b) the period during which any such offer may be accepted has expired or the company has received notice of the acceptance or refusal of every offer so made.
- (2) Securities that a company has offered to allot to a holder of ordinary shares may be allotted to him, or anyone in whose favour he has renounced his right to their allotment, without contravening subsection (1)(b).
- (3) If subsection (1) applies in relation to the grant of such a right, it does not apply in relation to the allotment of shares in pursuance of that right.
- (4) Shares held by the company as treasury shares are disregarded for the purposes of this section, so that—
- (a) the company is not treated as a person who holds ordinary shares, and
 - (b) the shares are not treated as forming part of the ordinary share capital of the company.
- (5) This section is subject to—
- (a) sections 564 to 566 (exceptions to pre-emption right),
 - (b) sections 567 and 568 (exclusion of rights of pre-emption),
 - (c) sections 569 to 573 (disapplication of pre-emption rights), and
 - (d) section 576 (saving for certain older pre-emption procedures).

562 Communication of pre-emption offers to shareholders

- (1) This section has effect as to the manner in which offers required by section 561 are to be made to holders of a company's shares.
- (2) The offer may be made in hard copy or electronic form.
- (3) If the holder—
- (a) has no registered address in an EEA State and has not given to the company an address in an EEA State for the service of notices on him, or
 - (b) is the holder of a share warrant,

the offer may be made by causing it, or a notice specifying where a copy of it can be obtained or inspected, to be published in the Gazette.

- (4) The offer must state a period during which it may be accepted and the offer shall not be withdrawn before the end of that period.
- (5) The period must be a period of at least 21 days beginning—
 - (a) in the case of an offer made in hard copy form, with the date on which the offer is sent or supplied;
 - (b) in the case of an offer made in electronic form, with the date on which the offer is sent;
 - (c) in the case of an offer made by publication in the Gazette, with the date of publication.
- (6) The Secretary of State may by regulations made by statutory instrument—
 - (a) reduce the period specified in subsection (5) (but not to less than 14 days), or
 - (b) increase that period.
- (7) A statutory instrument containing regulations made under subsection (6) is subject to affirmative resolution procedure.

563 Liability of company and officers in case of contravention

- (1) This section applies where there is a contravention of—
 - section 561 (existing shareholders' right of pre-emption), or
 - section 562 (communication of pre-emption offers to shareholders).
- (2) The company and every officer of it who knowingly authorised or permitted the contravention are jointly and severally liable to compensate any person to whom an offer should have been made in accordance with those provisions for any loss, damage, costs or expenses which the person has sustained or incurred by reason of the contravention.
- (3) No proceedings to recover any such loss, damage, costs or expenses shall be commenced after the expiration of two years—
 - (a) from the delivery to the registrar of companies of the return of allotment, or
 - (b) where equity securities other than shares are granted, from the date of the grant.

Exceptions to right of pre-emption

564 Exception to pre-emption right: bonus shares

Section 561(1) (existing shareholders' right of pre-emption) does not apply in relation to the allotment of bonus shares.

565 Exception to pre-emption right: issue for non-cash consideration

Section 561(1) (existing shareholders' right of pre-emption) does not apply to a particular allotment of equity securities if these are, or are to be, wholly or partly paid up otherwise than in cash.

566 Exception to pre-emption right: securities held under employees' share scheme

Section 561 (existing shareholders' right of pre-emption) does not apply to the allotment of securities that would, apart from any renunciation or assignment of the right to their allotment, be held under an employees' share scheme.

*Exclusion of right of pre-emption***567 Exclusion of requirements by private companies**

- (1) All or any of the requirements of –
 - (a) section 561 (existing shareholders' right of pre-emption), or
 - (b) section 562 (communication of pre-emption offers to shareholders)may be excluded by provision contained in the articles of a private company.
- (2) They may be excluded –
 - (a) generally in relation to the allotment by the company of equity securities, or
 - (b) in relation to allotments of a particular description.
- (3) Any requirement or authorisation contained in the articles of a private company that is inconsistent with either of those sections is treated for the purposes of this section as a provision excluding that section.
- (4) A provision to which section 568 applies (exclusion of pre-emption right: corresponding right conferred by articles) is not to be treated as inconsistent with section 561.

568 Exclusion of pre-emption right: articles conferring corresponding right

- (1) The provisions of this section apply where, in a case in which section 561 (existing shareholders' right of pre-emption) would otherwise apply –
 - (a) a company's articles contain provision ("pre-emption provision") prohibiting the company from allotting ordinary shares of a particular class unless it has complied with the condition that it makes such an offer as is described in section 561(1) to each person who holds ordinary shares of that class, and
 - (b) in accordance with that provision –
 - (i) the company makes an offer to allot shares to such a holder, and
 - (ii) he or anyone in whose favour he has renounced his right to their allotment accepts the offer.
- (2) In that case, section 561 does not apply to the allotment of those shares and the company may allot them accordingly.
- (3) The provisions of section 562 (communication of pre-emption offers to shareholders) apply in relation to offers made in pursuance of the pre-emption provision of the company's articles.
This is subject to section 567 (exclusion of requirements by private companies).
- (4) If there is a contravention of the pre-emption provision of the company's articles, the company, and every officer of it who knowingly authorised or permitted the contravention, are jointly and severally liable to compensate any person to whom an offer should have been made under the provision for any

loss, damage, costs or expenses which the person has sustained or incurred by reason of the contravention.

- (5) No proceedings to recover any such loss, damage, costs or expenses may be commenced after the expiration of two years –
- (a) from the delivery to the registrar of companies of the return of allotment, or
 - (b) where equity securities other than shares are granted, from the date of the grant.

Disapplication of pre-emption rights

569 Disapplication of pre-emption rights: private company with only one class of shares

- (1) The directors of a private company that has only one class of shares may be given power by the articles, or by a special resolution of the company, to allot equity securities of that class as if section 561 (existing shareholders' right of pre-emption) –
 - (a) did not apply to the allotment, or
 - (b) applied to the allotment with such modifications as the directors may determine.
- (2) Where the directors make an allotment under this section, the provisions of this Chapter have effect accordingly.

570 Disapplication of pre-emption rights: directors acting under general authorisation

- (1) Where the directors of a company are generally authorised for the purposes of section 551 (power of directors to allot shares etc: authorisation by company), they may be given power by the articles, or by a special resolution of the company, to allot equity securities pursuant to that authorisation as if section 561 (existing shareholders' right of pre-emption) –
 - (a) did not apply to the allotment, or
 - (b) applied to the allotment with such modifications as the directors may determine.
- (2) Where the directors make an allotment under this section, the provisions of this Chapter have effect accordingly.
- (3) The power conferred by this section ceases to have effect when the authorisation to which it relates –
 - (a) is revoked, or
 - (b) would (if not renewed) expire.

But if the authorisation is renewed the power may also be renewed, for a period not longer than that for which the authorisation is renewed, by a special resolution of the company.

- (4) Notwithstanding that the power conferred by this section has expired, the directors may allot equity securities in pursuance of an offer or agreement previously made by the company if the power enabled the company to make an offer or agreement that would or might require equity securities to be allotted after it expired.

571 Disapplication of pre-emption rights by special resolution

- (1) Where the directors of a company are authorised for the purposes of section 551 (power of directors to allot shares etc: authorisation by company), whether generally or otherwise, the company may by special resolution resolve that section 561 (existing shareholders' right of pre-emption) –
 - (a) does not apply to a specified allotment of equity securities to be made pursuant to that authorisation, or
 - (b) applies to such an allotment with such modifications as may be specified in the resolution.
- (2) Where such a resolution is passed the provisions of this Chapter have effect accordingly.
- (3) A special resolution under this section ceases to have effect when the authorisation to which it relates –
 - (a) is revoked, or
 - (b) would (if not renewed) expire.

But if the authorisation is renewed the resolution may also be renewed, for a period not longer than that for which the authorisation is renewed, by a special resolution of the company.

- (4) Notwithstanding that any such resolution has expired, the directors may allot equity securities in pursuance of an offer or agreement previously made by the company if the resolution enabled the company to make an offer or agreement that would or might require equity securities to be allotted after it expired.
- (5) A special resolution under this section, or a special resolution to renew such a resolution, must not be proposed unless –
 - (a) it is recommended by the directors, and
 - (b) the directors have complied with the following provisions.
- (6) Before such a resolution is proposed, the directors must make a written statement setting out –
 - (a) their reasons for making the recommendation,
 - (b) the amount to be paid to the company in respect of the equity securities to be allotted, and
 - (c) the directors' justification of that amount.
- (7) The directors' statement must –
 - (a) if the resolution is proposed as a written resolution, be sent or submitted to every eligible member at or before the time at which the proposed resolution is sent or submitted to him;
 - (b) if the resolution is proposed at a general meeting, be circulated to the members entitled to notice of the meeting with that notice.

572 Liability for false statement in directors' statement

- (1) This section applies in relation to a directors' statement under section 571 (special resolution disapplying pre-emption rights) that is sent, submitted or circulated under subsection (7) of that section.
- (2) A person who knowingly or recklessly authorises or permits the inclusion of any matter that is misleading, false or deceptive in a material particular in such a statement commits an offence.

- (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).

573 Disapplication of pre-emption rights: sale of treasury shares

- (1) This section applies in relation to a sale of shares that is an allotment of equity securities by virtue of section 560(2)(b) (sale of shares held by company as treasury shares).
- (2) The directors of a company may be given power by the articles, or by a special resolution of the company, to allot equity securities as if section 561 (existing shareholders' right of pre-emption) –
 - (a) did not apply to the allotment, or
 - (b) applied to the allotment with such modifications as the directors may determine.
- (3) The provisions of section 570(2) and (4) apply in that case as they apply to a case within subsection (1) of that section.
- (4) The company may by special resolution resolve that section 561 –
 - (a) shall not apply to a specified allotment of securities, or
 - (b) shall apply to the allotment with such modifications as may be specified in the resolution.
- (5) The provisions of section 571(2) and (4) to (7) apply in that case as they apply to a case within subsection (1) of that section.

Supplementary

574 References to holder of shares in relation to offer

- (1) In this Chapter, in relation to an offer to allot securities required by –
 - (a) section 561 (existing shareholders' right of pre-emption), or
 - (b) any provision to which section 568 applies (articles conferring corresponding right),a reference (however expressed) to the holder of shares of any description is to whoever was the holder of shares of that description at the close of business on a date to be specified in the offer.
- (2) The specified date must fall within the period of 28 days immediately before the date of the offer.

575 Saving for other restrictions on offer or allotment

- (1) The provisions of this Chapter are without prejudice to any other enactment by virtue of which a company is prohibited (whether generally or in specified circumstances) from offering or allotting equity securities to any person.
- (2) Where a company cannot by virtue of such an enactment offer or allot equity securities to a holder of ordinary shares of the company, those shares are disregarded for the purposes of section 561 (existing shareholders' right of pre-emption), so that—
 - (a) the person is not treated as a person who holds ordinary shares, and
 - (b) the shares are not treated as forming part of the ordinary share capital of the company.

576 Saving for certain older pre-emption requirements

- (1) In the case of a public company the provisions of this Chapter do not apply to an allotment of equity securities that are subject to a pre-emption requirement in relation to which section 96(1) of the Companies Act 1985 (c. 6) or Article 106(1) of the Companies (Northern Ireland) Order 1986 (S.I. 1986/1032 (N.I. 6)) applied immediately before the commencement of this Chapter.
- (2) In the case of a private company a pre-emption requirement to which section 96(3) of the Companies Act 1985 or Article 106(3) of the Companies (Northern Ireland) Order 1986 applied immediately before the commencement of this Chapter shall have effect, so long as the company remains a private company, as if it were contained in the company's articles.
- (3) A pre-emption requirement to which section 96(4) of the Companies Act 1985 or Article 106(4) of the Companies (Northern Ireland) Order 1986 applied immediately before the commencement of this section shall be treated for the purposes of this Chapter as if it were contained in the company's articles.

577 Provisions about pre-emption not applicable to shares taken on formation

The provisions of this Chapter have no application in relation to the taking of shares by the subscribers to the memorandum on the formation of the company.

CHAPTER 4**PUBLIC COMPANIES: ALLOTMENT WHERE ISSUE NOT FULLY SUBSCRIBED****578 Public companies: allotment where issue not fully subscribed**

- (1) No allotment shall be made of shares of a public company offered for subscription unless—
 - (a) the issue is subscribed for in full, or
 - (b) the offer is made on terms that the shares subscribed for may be allotted—
 - (i) in any event, or
 - (ii) if specified conditions are met (and those conditions are met).

- (2) If shares are prohibited from being allotted by subsection (1) and 40 days have elapsed after the first making of the offer, all money received from applicants for shares must be repaid to them forthwith, without interest.
- (3) If any of the money is not repaid within 48 days after the first making of the offer, the directors of the company are jointly and severally liable to repay it, with interest at the rate for the time being specified under section 17 of the Judgments Act 1838 (c. 110) from the expiration of the 48th day.
A director is not so liable if he proves that the default in the repayment of the money was not due to any misconduct or negligence on his part.
- (4) This section applies in the case of shares offered as wholly or partly payable otherwise than in cash as it applies in the case of shares offered for subscription.
- (5) In that case—
 - (a) the references in subsection (1) to subscription shall be construed accordingly;
 - (b) references in subsections (2) and (3) to the repayment of money received from applicants for shares include—
 - (i) the return of any other consideration so received (including, if the case so requires, the release of the applicant from any undertaking), or
 - (ii) if it is not reasonably practicable to return the consideration, the payment of money equal to its value at the time it was so received;
 - (c) references to interest apply accordingly.
- (6) Any condition requiring or binding an applicant for shares to waive compliance with any requirement of this section is void.

579 Public companies: effect of irregular allotment where issue not fully subscribed

- (1) An allotment made by a public company to an applicant in contravention of section 578 (public companies: allotment where issue not fully subscribed) is voidable at the instance of the applicant within one month after the date of the allotment, and not later.
- (2) It is so voidable even if the company is in the course of being wound up.
- (3) A director of a public company who knowingly contravenes, or permits or authorises the contravention of, any provision of section 578 with respect to allotment is liable to compensate the company and the allottee respectively for any loss, damages, costs or expenses that the company or allottee may have sustained or incurred by the contravention.
- (4) Proceedings to recover any such loss, damages, costs or expenses may not be brought more than two years after the date of the allotment.

CHAPTER 5

PAYMENT FOR SHARES

General rules

580 Shares not to be allotted at a discount

- (1) A company's shares must not be allotted at a discount.
- (2) If shares are allotted in contravention of this section, the allottee is liable to pay the company an amount equal to the amount of the discount, with interest at the appropriate rate.

581 Provision for different amounts to be paid on shares

A company, if so authorised by its articles, may –

- (a) make arrangements on the issue of shares for a difference between the shareholders in the amounts and times of payment of calls on their shares;
- (b) accept from any member the whole or part of the amount remaining unpaid on any shares held by him, although no part of that amount has been called up;
- (c) pay a dividend in proportion to the amount paid up on each share where a larger amount is paid up on some shares than on others.

582 General rule as to means of payment

- (1) Shares allotted by a company, and any premium on them, may be paid up in money or money's worth (including goodwill and know-how).
- (2) This section does not prevent a company –
 - (a) from allotting bonus shares to its members, or
 - (b) from paying up, with sums available for the purpose, any amounts for the time being unpaid on any of its shares (whether on account of the nominal value of the shares or by way of premium).
- (3) This section has effect subject to the following provisions of this Chapter (additional rules for public companies).

583 Meaning of payment in cash

- (1) The following provisions have effect for the purposes of the Companies Acts.
- (2) A share in a company is deemed paid up (as to its nominal value or any premium on it) in cash, or allotted for cash, if the consideration received for the allotment or payment up is a cash consideration.
- (3) A "cash consideration" means –
 - (a) cash received by the company,
 - (b) a cheque received by the company in good faith that the directors have no reason for suspecting will not be paid,
 - (c) a release of a liability of the company for a liquidated sum,
 - (d) an undertaking to pay cash to the company at a future date, or

- (e) payment by any other means giving rise to a present or future entitlement (of the company or a person acting on the company's behalf) to a payment, or credit equivalent to payment, in cash.
- (4) The Secretary of State may by order provide that particular means of payment specified in the order are to be regarded as falling within subsection (3)(e).
- (5) In relation to the allotment or payment up of shares in a company –
 - (a) the payment of cash to a person other than the company, or
 - (b) an undertaking to pay cash to a person other than the company,
 counts as consideration other than cash.
 This does not apply for the purposes of Chapter 3 (allotment of equity securities: existing shareholders' right of pre-emption).
- (6) For the purpose of determining whether a share is or is to be allotted for cash, or paid up in cash, "cash" includes foreign currency.
- (7) An order under this section is subject to negative resolution procedure.

Additional rules for public companies

584 Public companies: shares taken by subscribers of memorandum

Shares taken by a subscriber to the memorandum of a public company in pursuance of an undertaking of his in the memorandum, and any premium on the shares, must be paid up in cash.

585 Public companies: must not accept undertaking to do work or perform services

- (1) A public company must not accept at any time, in payment up of its shares or any premium on them, an undertaking given by any person that he or another should do work or perform services for the company or any other person.
- (2) If a public company accepts such an undertaking in payment up of its shares or any premium on them, the holder of the shares when they or the premium are treated as paid up (in whole or in part) by the undertaking is liable –
 - (a) to pay the company in respect of those shares an amount equal to their nominal value, together with the whole of any premium or, if the case so requires, such proportion of that amount as is treated as paid up by the undertaking; and
 - (b) to pay interest at the appropriate rate on the amount payable under paragraph (a).
- (3) The reference in subsection (2) to the holder of shares includes a person who has an unconditional right –
 - (a) to be included in the company's register of members in respect of those shares, or
 - (b) to have an instrument of transfer of them executed in his favour.

586 Public companies: shares must be at least one-quarter paid up

- (1) A public company must not allot a share except as paid up at least as to one-quarter of its nominal value and the whole of any premium on it.

- (2) This does not apply to shares allotted in pursuance of an employees' share scheme.
- (3) If a company allots a share in contravention of this section –
 - (a) the share is to be treated as if one-quarter of its nominal value, together with the whole of any premium on it, had been received, and
 - (b) the allottee is liable to pay the company the minimum amount which should have been received in respect of the share under subsection (1) (less the value of any consideration actually applied in payment up, to any extent, of the share and any premium on it), with interest at the appropriate rate.
- (4) Subsection (3) does not apply to the allotment of bonus shares, unless the allottee knew or ought to have known the shares were allotted in contravention of this section.

587 Public companies: payment by long-term undertaking

- (1) A public company must not allot shares as fully or partly paid up (as to their nominal value or any premium on them) otherwise than in cash if the consideration for the allotment is or includes an undertaking which is to be, or may be, performed more than five years after the date of the allotment.
- (2) If a company allots shares in contravention of subsection (1), the allottee is liable to pay the company an amount equal to the aggregate of their nominal value and the whole of any premium (or, if the case so requires, so much of that aggregate as is treated as paid up by the undertaking), with interest at the appropriate rate.
- (3) Where a contract for the allotment of shares does not contravene subsection (1), any variation of the contract that has the effect that the contract would have contravened the subsection, if the terms of the contract as varied had been its original terms, is void.

This applies also to the variation by a public company of the terms of a contract entered into before the company was re-registered as a public company.
- (4) Where –
 - (a) a public company allots shares for a consideration which consists of or includes (in accordance with subsection (1)) an undertaking that is to be performed within five years of the allotment, and
 - (b) the undertaking is not performed within the period allowed by the contract for the allotment of the shares,the allottee is liable to pay the company, at the end of the period so allowed, an amount equal to the aggregate of the nominal value of the shares and the whole of any premium (or, if the case so requires, so much of that aggregate as is treated as paid up by the undertaking), with interest at the appropriate rate.
- (5) References in this section to a contract for the allotment of shares include an ancillary contract relating to payment in respect of them.

Supplementary provisions

588 Liability of subsequent holders of shares

- (1) If a person becomes a holder of shares in respect of which –

- (a) there has been a contravention of any provision of this Chapter, and
 - (b) by virtue of that contravention another is liable to pay any amount under the provision contravened,
- that person is also liable to pay that amount (jointly and severally with any other person so liable), subject as follows.
- (2) A person otherwise liable under subsection (1) is exempted from that liability if either –
 - (a) he is a purchaser for value and, at the time of the purchase, he did not have actual notice of the contravention concerned, or
 - (b) he derived title to the shares (directly or indirectly) from a person who became a holder of them after the contravention and was not liable under subsection (1).
 - (3) References in this section to a holder, in relation to shares in a company, include any person who has an unconditional right –
 - (a) to be included in the company's register of members in respect of those shares, or
 - (b) to have an instrument of transfer of the shares executed in his favour.
 - (4) This section applies in relation to a failure to carry out a term of a contract as mentioned in section 587(4) (public companies: payment by long-term undertaking) as it applies in relation to a contravention of a provision of this Chapter.

589 Power of court to grant relief

- (1) This section applies in relation to liability under –
 - section 585(2) (liability of allottee in case of breach by public company of prohibition on accepting undertaking to do work or perform services),
 - section 587(2) or (4) (liability of allottee in case of breach by public company of prohibition on payment by long-term undertaking), or
 - section 588 (liability of subsequent holders of shares),
 as it applies in relation to a contravention of those sections.
- (2) A person who –
 - (a) is subject to any such liability to a company in relation to payment in respect of shares in the company, or
 - (b) is subject to any such liability to a company by virtue of an undertaking given to it in, or in connection with, payment for shares in the company,
 may apply to the court to be exempted in whole or in part from the liability.
- (3) In the case of a liability within subsection (2)(a), the court may exempt the applicant from the liability only if and to the extent that it appears to the court just and equitable to do so having regard to –
 - (a) whether the applicant has paid, or is liable to pay, any amount in respect of –
 - (i) any other liability arising in relation to those shares under any provision of this Chapter or Chapter 6, or
 - (ii) any liability arising by virtue of any undertaking given in or in connection with payment for those shares;
 - (b) whether any person other than the applicant has paid or is likely to pay, whether in pursuance of any order of the court or otherwise, any such amount;

- (c) whether the applicant or any other person –
 - (i) has performed in whole or in part, or is likely so to perform any such undertaking, or
 - (ii) has done or is likely to do any other thing in payment or part payment for the shares.
- (4) In the case of a liability within subsection (2)(b), the court may exempt the applicant from the liability only if and to the extent that it appears to the court just and equitable to do so having regard to –
 - (a) whether the applicant has paid or is liable to pay any amount in respect of liability arising in relation to the shares under any provision of this Chapter or Chapter 6;
 - (b) whether any person other than the applicant has paid or is likely to pay, whether in pursuance of any order of the court or otherwise, any such amount.
- (5) In determining whether it should exempt the applicant in whole or in part from any liability, the court must have regard to the following overriding principles –
 - (a) a company that has allotted shares should receive money or money's worth at least equal in value to the aggregate of the nominal value of those shares and the whole of any premium or, if the case so requires, so much of that aggregate as is treated as paid up;
 - (b) subject to that, where a company would, if the court did not grant the exemption, have more than one remedy against a particular person, it should be for the company to decide which remedy it should remain entitled to pursue.
- (6) If a person brings proceedings against another (“the contributor”) for a contribution in respect of liability to a company arising under any provision of this Chapter or Chapter 6 and it appears to the court that the contributor is liable to make such a contribution, the court may, if and to the extent that it appears to it just and equitable to do so having regard to the respective culpability (in respect of the liability to the company) of the contributor and the person bringing the proceedings –
 - (a) exempt the contributor in whole or in part from his liability to make such a contribution, or
 - (b) order the contributor to make a larger contribution than, but for this subsection, he would be liable to make.

590 Penalty for contravention of this Chapter

- (1) If a company contravenes any of the provisions of this Chapter, 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 –
 - (a) on conviction on indictment, to a fine;
 - (b) on summary conviction, to a fine not exceeding the statutory maximum.

591 Enforceability of undertakings to do work etc

- (1) An undertaking given by any person, in or in connection with payment for shares in a company, to do work or perform services or to do any other thing, if it is enforceable by the company apart from this Chapter, is so enforceable notwithstanding that there has been a contravention in relation to it of a provision of this Chapter or Chapter 6.
- (2) This is without prejudice to section 589 (power of court to grant relief etc in respect of liabilities).

592 The appropriate rate of interest

- (1) For the purposes of this Chapter the “appropriate rate” of interest is 5% per annum or such other rate as may be specified by order made by the Secretary of State.
- (2) An order under this section is subject to negative resolution procedure.

CHAPTER 6**PUBLIC COMPANIES: INDEPENDENT VALUATION OF NON-CASH CONSIDERATION***Non-cash consideration for shares***593 Public company: valuation of non-cash consideration for shares**

- (1) A public company must not allot shares as fully or partly paid up (as to their nominal value or any premium on them) otherwise than in cash unless –
 - (a) the consideration for the allotment has been independently valued in accordance with the provisions of this Chapter,
 - (b) the valuer's report has been made to the company during the six months immediately preceding the allotment of the shares, and
 - (c) a copy of the report has been sent to the proposed allottee.
- (2) For this purpose the application of an amount standing to the credit of –
 - (a) any of a company's reserve accounts, or
 - (b) its profit and loss account,
 in paying up (to any extent) shares allotted to members of the company, or premiums on shares so allotted, does not count as consideration for the allotment.
Accordingly, subsection (1) does not apply in that case.
- (3) If a company allots shares in contravention of subsection (1) and either –
 - (a) the allottee has not received the valuer's report required to be sent to him, or
 - (b) there has been some other contravention of the requirements of this section or section 596 that the allottee knew or ought to have known amounted to a contravention,
 the allottee is liable to pay the company an amount equal to the aggregate of the nominal value of the shares and the whole of any premium (or, if the case so requires, so much of that aggregate as is treated as paid up by the consideration), with interest at the appropriate rate.

- (4) This section has effect subject to –
 section 594 (exception to valuation requirement: arrangement with another company), and
 section 595 (exception to valuation requirement: merger).

594 Exception to valuation requirement: arrangement with another company

- (1) Section 593 (valuation of non-cash consideration) does not apply to the allotment of shares by a company (“company A”) in connection with an arrangement to which this section applies.
- (2) This section applies to an arrangement for the allotment of shares in company A on terms that the whole or part of the consideration for the shares allotted is to be provided by –
 (a) the transfer to that company, or
 (b) the cancellation,
of all or some of the shares, or of all or some of the shares of a particular class, in another company (“company B”).
- (3) It is immaterial whether the arrangement provides for the issue to company A of shares, or shares of any particular class, in company B.
- (4) This section applies to an arrangement only if under the arrangement it is open to all the holders of the shares in company B (or, where the arrangement applies only to shares of a particular class, to all the holders of shares of that class) to take part in the arrangement.
- (5) In determining whether that is the case, the following shall be disregarded –
 (a) shares held by or by a nominee of company A;
 (b) shares held by or by a nominee of a company which is –
 (i) the holding company, or a subsidiary, of company A, or
 (ii) a subsidiary of such a holding company;
 (c) shares held as treasury shares by company B.
- (6) In this section –
 (a) “arrangement” means any agreement, scheme or arrangement (including an arrangement sanctioned in accordance with –
 (i) Part 26 (arrangements and reconstructions), or
 (ii) section 110 of the Insolvency Act 1986 (c. 45) or Article 96 of the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)) (liquidator in winding up accepting shares as consideration for sale of company property)), and
 (b) “company”, except in reference to company A, includes any body corporate.

595 Exception to valuation requirement: merger

- (1) Section 593 (valuation of non-cash consideration) does not apply to the allotment of shares by a company in connection with a proposed merger with another company.
- (2) A proposed merger is where one of the companies proposes to acquire all the assets and liabilities of the other in exchange for the issue of shares or other

securities of that one to shareholders of the other, with or without any cash payment to shareholders.

- (3) In this section “company”, in reference to the other company, includes any body corporate.

596 Non-cash consideration for shares: requirements as to valuation and report

- (1) The provisions of sections 1150 to 1153 (general provisions as to independent valuation and report) apply to the valuation and report required by section 593 (public company: valuation of non-cash consideration for shares).
- (2) The valuer's report must state –
- (a) the nominal value of the shares to be wholly or partly paid for by the consideration in question;
 - (b) the amount of any premium payable on the shares;
 - (c) the description of the consideration and, as respects so much of the consideration as he himself has valued, a description of that part of the consideration, the method used to value it and the date of the valuation;
 - (d) the extent to which the nominal value of the shares and any premium are to be treated as paid up –
 - (i) by the consideration;
 - (ii) in cash.
- (3) The valuer's report must contain or be accompanied by a note by him –
- (a) in the case of a valuation made by a person other than himself, that it appeared to himself reasonable to arrange for it to be so made or to accept a valuation so made,
 - (b) whoever made the valuation, that the method of valuation was reasonable in all the circumstances,
 - (c) that it appears to the valuer that there has been no material change in the value of the consideration in question since the valuation, and
 - (d) that, on the basis of the valuation, the value of the consideration, together with any cash by which the nominal value of the shares or any premium payable on them is to be paid up, is not less than so much of the aggregate of the nominal value and the whole of any such premium as is treated as paid up by the consideration and any such cash.
- (4) Where the consideration to be valued is accepted partly in payment up of the nominal value of the shares and any premium and partly for some other consideration given by the company, section 593 and the preceding provisions of this section apply as if references to the consideration accepted by the company included the proportion of that consideration that is properly attributable to the payment up of that value and any premium.
- (5) In such a case –
- (a) the valuer must carry out, or arrange for, such other valuations as will enable him to determine that proportion, and
 - (b) his report must state what valuations have been made under this subsection and also the reason for, and method and date of, any such valuation and any other matters which may be relevant to that determination.

597 Copy of report to be delivered to registrar

- (1) A company to which a report is made under section 593 as to the value of any consideration for which, or partly for which, it proposes to allot shares must deliver a copy of the report to the registrar for registration.
- (2) The copy must be delivered at the same time that the company files the return of the allotment of those shares under section 555 (return of allotment by limited company).
- (3) If default is made in complying with subsection (1) or (2), an offence is committed by every officer of the company who is in default.
- (4) A person guilty of an offence under this section is liable –
 - (a) on conviction on indictment, to a fine;
 - (b) on summary conviction, to a fine not exceeding the statutory maximum and, for continued contravention, a daily default fine not exceeding one-tenth of the statutory maximum.
- (5) In the case of default in delivering to the registrar any document as required by this section, any person liable for the default may apply to the court for relief.
- (6) The court, if satisfied –
 - (a) that the omission to deliver the document was accidental or due to inadvertence, or
 - (b) that it is just and equitable to grant relief,may make an order extending the time for delivery of the document for such period as the court thinks proper.

Transfer of non-cash asset in initial period

598 Public company: agreement for transfer of non-cash asset in initial period

- (1) A public company formed as such must not enter into an agreement –
 - (a) with a person who is a subscriber to the company's memorandum,
 - (b) for the transfer by him to the company, or another, before the end of the company's initial period of one or more non-cash assets, and
 - (c) under which the consideration for the transfer to be given by the company is at the time of the agreement equal in value to one-tenth or more of the company's issued share capital,unless the conditions referred to below have been complied with.
- (2) The company's "initial period" means the period of two years beginning with the date of the company being issued with a certificate under section 761 (trading certificate).
- (3) The conditions are those specified in –
 - section 599 (requirement of independent valuation), and
 - section 601 (requirement of approval by members).
- (4) This section does not apply where –
 - (a) it is part of the company's ordinary business to acquire, or arrange for other persons to acquire, assets of a particular description, and
 - (b) the agreement is entered into by the company in the ordinary course of that business.

- (5) This section does not apply to an agreement entered into by the company under the supervision of the court or of an officer authorised by the court for the purpose.

599 Agreement for transfer of non-cash asset: requirement of independent valuation

- (1) The following conditions must have been complied with—
- (a) the consideration to be received by the company, and any consideration other than cash to be given by the company, must have been independently valued in accordance with the provisions of this Chapter,
 - (b) the valuer's report must have been made to the company during the six months immediately preceding the date of the agreement, and
 - (c) a copy of the report must have been sent to the other party to the proposed agreement not later than the date on which copies have to be circulated to members under section 601(3).
- (2) The reference in subsection (1)(a) to the consideration to be received by the company is to the asset to be transferred to it or, as the case may be, to the advantage to the company of the asset's transfer to another person.
- (3) The reference in subsection (1)(c) to the other party to the proposed agreement is to the person referred to in section 598(1)(a).
If he has received a copy of the report under section 601 in his capacity as a member of the company, it is not necessary to send another copy under this section.
- (4) This section does not affect any requirement to value any consideration for purposes of section 593 (valuation of non-cash consideration for shares).

600 Agreement for transfer of non-cash asset: requirements as to valuation and report

- (1) The provisions of sections 1150 to 1153 (general provisions as to independent valuation and report) apply to the valuation and report required by section 599 (public company: transfer of non-cash asset).
- (2) The valuer's report must state—
- (a) the consideration to be received by the company, describing the asset in question (specifying the amount to be received in cash) and the consideration to be given by the company (specifying the amount to be given in cash), and
 - (b) the method and date of valuation.
- (3) The valuer's report must contain or be accompanied by a note by him—
- (a) in the case of a valuation made by a person other than himself, that it appeared to himself reasonable to arrange for it to be so made or to accept a valuation so made,
 - (b) whoever made the valuation, that the method of valuation was reasonable in all the circumstances,
 - (c) that it appears to the valuer that there has been no material change in the value of the consideration in question since the valuation, and

- (d) that, on the basis of the valuation, the value of the consideration to be received by the company is not less than the value of the consideration to be given by it.
- (4) Any reference in section 599 or this section to consideration given for the transfer of an asset includes consideration given partly for its transfer.
- (5) In such a case –
 - (a) the value of any consideration partly so given is to be taken as the proportion of the consideration properly attributable to its transfer,
 - (b) the valuer must carry out or arrange for such valuations of anything else as will enable him to determine that proportion, and
 - (c) his report must state what valuations have been made for that purpose and also the reason for and method and date of any such valuation and any other matters which may be relevant to that determination.

601 Agreement for transfer of non-cash asset: requirement of approval by members

- (1) The following conditions must have been complied with –
 - (a) the terms of the agreement must have been approved by an ordinary resolution of the company,
 - (b) the requirements of this section must have been complied with as respects the circulation to members of copies of the valuer's report under section 599, and
 - (c) a copy of the proposed resolution must have been sent to the other party to the proposed agreement.
- (2) The reference in subsection (1)(c) to the other party to the proposed agreement is to the person referred to in section 598(1)(a).
- (3) The requirements of this section as to circulation of copies of the valuer's report are as follows –
 - (a) if the resolution is proposed as a written resolution, copies of the valuer's report must be sent or submitted to every eligible member at or before the time at which the proposed resolution is sent or submitted to him;
 - (b) if the resolution is proposed at a general meeting, copies of the valuer's report must be circulated to the members entitled to notice of the meeting not later than the date on which notice of the meeting is given.

602 Copy of resolution to be delivered to registrar

- (1) A company that has passed a resolution under section 601 with respect to the transfer of an asset must, within 15 days of doing so, deliver to the registrar a copy of the resolution together with the valuer's report required by that section.
- (2) If a company fails to comply 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 this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for

continued contravention, to a daily default fine not exceeding one-tenth of level 3 on the standard scale.

603 Adaptation of provisions in relation to company re-registering as public

The provisions of sections 598 to 602 (public companies: transfer of non-cash assets) apply with the following adaptations in relation to a company re-registered as a public company –

- (a) the reference in section 598(1)(a) to a person who is a subscriber to the company's memorandum shall be read as a reference to a person who is a member of the company on the date of re-registration;
- (b) the reference in section 598(2) to the date of the company being issued with a certificate under section 761 (trading certificate) shall be read as a reference to the date of re-registration.

604 Agreement for transfer of non-cash asset: effect of contravention

- (1) This section applies where a public company enters into an agreement in contravention of section 598 and either –
 - (a) the other party to the agreement has not received the valuer's report required to be sent to him, or
 - (b) there has been some other contravention of the requirements of this Chapter that the other party to the agreement knew or ought to have known amounted to a contravention.
- (2) In those circumstances –
 - (a) the company is entitled to recover from that person any consideration given by it under the agreement, or an amount equal to the value of the consideration at the time of the agreement, and
 - (b) the agreement, so far as not carried out, is void.
- (3) If the agreement is or includes an agreement for the allotment of shares in the company, then –
 - (a) whether or not the agreement also contravenes section 593 (valuation of non-cash consideration for shares), this section does not apply to it in so far as it is for the allotment of shares, and
 - (b) the allottee is liable to pay the company an amount equal to the aggregate of the nominal value of the shares and the whole of any premium (or, if the case so requires, so much of that aggregate as is treated as paid up by the consideration), with interest at the appropriate rate.

Supplementary provisions

605 Liability of subsequent holders of shares

- (1) If a person becomes a holder of shares in respect of which –
 - (a) there has been a contravention of section 593 (public company: valuation of non-cash consideration for shares), and
 - (b) by virtue of that contravention another is liable to pay any amount under the provision contravened,

that person is also liable to pay that amount (jointly and severally with any other person so liable), unless he is exempted from liability under subsection (3) below.

- (2) If a company enters into an agreement in contravention of section 598 (public company: agreement for transfer of non-cash asset in initial period) and –
- (a) the agreement is or includes an agreement for the allotment of shares in the company,
 - (b) a person becomes a holder of shares allotted under the agreement, and
 - (c) by virtue of the agreement and allotment under it another person is liable to pay an amount under section 604,

the person who becomes the holder of the shares is also liable to pay that amount (jointly and severally with any other person so liable), unless he is exempted from liability under subsection (3) below.

This applies whether or not the agreement also contravenes section 593.

- (3) A person otherwise liable under subsection (1) or (2) is exempted from that liability if either –
- (a) he is a purchaser for value and, at the time of the purchase, he did not have actual notice of the contravention concerned, or
 - (b) he derived title to the shares (directly or indirectly) from a person who became a holder of them after the contravention and was not liable under subsection (1) or (2).
- (4) References in this section to a holder, in relation to shares in a company, include any person who has an unconditional right –
- (a) to be included in the company's register of members in respect of those shares, or
 - (b) to have an instrument of transfer of the shares executed in his favour.

606 Power of court to grant relief

- (1) A person who –
- (a) is liable to a company under any provision of this Chapter in relation to payment in respect of any shares in the company, or
 - (b) is liable to a company by virtue of an undertaking given to it in, or in connection with, payment for any shares in the company,
- may apply to the court to be exempted in whole or in part from the liability.
- (2) In the case of a liability within subsection (1)(a), the court may exempt the applicant from the liability only if and to the extent that it appears to the court just and equitable to do so having regard to –
- (a) whether the applicant has paid, or is liable to pay, any amount in respect of –
 - (i) any other liability arising in relation to those shares under any provision of this Chapter or Chapter 5, or
 - (ii) any liability arising by virtue of any undertaking given in or in connection with payment for those shares;
 - (b) whether any person other than the applicant has paid or is likely to pay, whether in pursuance of any order of the court or otherwise, any such amount;
 - (c) whether the applicant or any other person –

- (i) has performed in whole or in part, or is likely so to perform any such undertaking, or
 - (ii) has done or is likely to do any other thing in payment or part payment for the shares.
- (3) In the case of a liability within subsection (1)(b), the court may exempt the applicant from the liability only if and to the extent that it appears to the court just and equitable to do so having regard to –
 - (a) whether the applicant has paid or is liable to pay any amount in respect of liability arising in relation to the shares under any provision of this Chapter or Chapter 5;
 - (b) whether any person other than the applicant has paid or is likely to pay, whether in pursuance of any order of the court or otherwise, any such amount.
- (4) In determining whether it should exempt the applicant in whole or in part from any liability, the court must have regard to the following overriding principles –
 - (a) that a company that has allotted shares should receive money or money's worth at least equal in value to the aggregate of the nominal value of those shares and the whole of any premium or, if the case so requires, so much of that aggregate as is treated as paid up;
 - (b) subject to this, that where such a company would, if the court did not grant the exemption, have more than one remedy against a particular person, it should be for the company to decide which remedy it should remain entitled to pursue.
- (5) If a person brings proceedings against another ("the contributor") for a contribution in respect of liability to a company arising under any provision of this Chapter or Chapter 5 and it appears to the court that the contributor is liable to make such a contribution, the court may, if and to the extent that it appears to it, just and equitable to do so having regard to the respective culpability (in respect of the liability to the company) of the contributor and the person bringing the proceedings –
 - (a) exempt the contributor in whole or in part from his liability to make such a contribution, or
 - (b) order the contributor to make a larger contribution than, but for this subsection, he would be liable to make.
- (6) Where a person is liable to a company under section 604(2) (agreement for transfer of non-cash asset: effect of contravention), the court may, on application, exempt him in whole or in part from that liability if and to the extent that it appears to the court to be just and equitable to do so having regard to any benefit accruing to the company by virtue of anything done by him towards the carrying out of the agreement mentioned in that subsection.

607 Penalty for contravention of this Chapter

- (1) This section applies where a company contravenes –
 - section 593 (public company allotting shares for non-cash consideration),
 - or
 - section 598 (public company entering into agreement for transfer of non-cash asset).
- (2) 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 this section is liable –
- (a) on conviction on indictment, to a fine;
 - (b) on summary conviction, to a fine not exceeding the statutory maximum.

608 Enforceability of undertakings to do work etc

- (1) An undertaking given by any person, in or in connection with payment for shares in a company, to do work or perform services or to do any other thing, if it is enforceable by the company apart from this Chapter, is so enforceable notwithstanding that there has been a contravention in relation to it of a provision of this Chapter or Chapter 5.
- (2) This is without prejudice to section 606 (power of court to grant relief etc in respect of liabilities).

609 The appropriate rate of interest

- (1) For the purposes of this Chapter the “appropriate rate” of interest is 5% per annum or such other rate as may be specified by order made by the Secretary of State.
- (2) An order under this section is subject to negative resolution procedure.

CHAPTER 7

SHARE PREMIUMS

The share premium account

610 Application of share premiums

- (1) If a company issues shares at a premium, whether for cash or otherwise, a sum equal to the aggregate amount or value of the premiums on those shares must be transferred to an account called “the share premium account”.
- (2) Where, on issuing shares, a company has transferred a sum to the share premium account, it may use that sum to write off –
 - (a) the expenses of the issue of those shares;
 - (b) any commission paid on the issue of those shares.
- (3) The company may use the share premium account to pay up new shares to be allotted to members as fully paid bonus shares.
- (4) Subject to subsections (2) and (3), the provisions of the Companies Acts relating to the reduction of a company’s share capital apply as if the share premium account were part of its paid up share capital.
- (5) This section has effect subject to –
 - section 611 (group reconstruction relief);
 - section 612 (merger relief);
 - section 614 (power to make further provisions by regulations).

- (6) In this Chapter “the issuing company” means the company issuing shares as mentioned in subsection (1) above.

Relief from requirements as to share premiums

611 Group reconstruction relief

- (1) This section applies where the issuing company –
- (a) is a wholly-owned subsidiary of another company (“the holding company”), and
 - (b) allots shares –
 - (i) to the holding company, or
 - (ii) to another wholly-owned subsidiary of the holding company, in consideration for the transfer to the issuing company of non-cash assets of a company (“the transferor company”) that is a member of the group of companies that comprises the holding company and all its wholly-owned subsidiaries.
- (2) Where the shares in the issuing company allotted in consideration for the transfer are issued at a premium, the issuing company is not required by section 610 to transfer any amount in excess of the minimum premium value to the share premium account.
- (3) The minimum premium value means the amount (if any) by which the base value of the consideration for the shares allotted exceeds the aggregate nominal value of the shares.
- (4) The base value of the consideration for the shares allotted is the amount by which the base value of the assets transferred exceeds the base value of any liabilities of the transferor company assumed by the issuing company as part of the consideration for the assets transferred.
- (5) For the purposes of this section –
- (a) the base value of assets transferred is taken as –
 - (i) the cost of those assets to the transferor company, or
 - (ii) if less, the amount at which those assets are stated in the transferor company's accounting records immediately before the transfer;
 - (b) the base value of the liabilities assumed is taken as the amount at which they are stated in the transferor company's accounting records immediately before the transfer.

612 Merger relief

- (1) This section applies where the issuing company has secured at least a 90% equity holding in another company in pursuance of an arrangement providing for the allotment of equity shares in the issuing company on terms that the consideration for the shares allotted is to be provided –
- (a) by the issue or transfer to the issuing company of equity shares in the other company, or
 - (b) by the cancellation of any such shares not held by the issuing company.
- (2) If the equity shares in the issuing company allotted in pursuance of the arrangement in consideration for the acquisition or cancellation of equity

shares in the other company are issued at a premium, section 610 does not apply to the premiums on those shares.

- (3) Where the arrangement also provides for the allotment of any shares in the issuing company on terms that the consideration for those shares is to be provided –
 - (a) by the issue or transfer to the issuing company of non-equity shares in the other company, or
 - (b) by the cancellation of any such shares in that company not held by the issuing company,relief under subsection (2) extends to any shares in the issuing company allotted on those terms in pursuance of the arrangement.
- (4) This section does not apply in a case falling within section 611 (group reconstruction relief).

613 Merger relief: meaning of 90% equity holding

- (1) The following provisions have effect to determine for the purposes of section 612 (merger relief) whether a company (“company A”) has secured at least a 90% equity holding in another company (“company B”) in pursuance of such an arrangement as is mentioned in subsection (1) of that section.
- (2) Company A has secured at least a 90% equity holding in company B if in consequence of an acquisition or cancellation of equity shares in company B (in pursuance of that arrangement) it holds equity shares in company B of an aggregate amount equal to 90% or more of the nominal value of that company’s equity share capital.
- (3) For this purpose –
 - (a) it is immaterial whether any of those shares were acquired in pursuance of the arrangement; and
 - (b) shares in company B held by the company as treasury shares are excluded in determining the nominal value of company B’s share capital.
- (4) Where the equity share capital of company B is divided into different classes of shares, company A is not regarded as having secured at least a 90% equity holding in company B unless the requirements of subsection (2) are met in relation to each of those classes of shares taken separately.
- (5) For the purposes of this section shares held by –
 - (a) a company that is company A’s holding company or subsidiary, or
 - (b) a subsidiary of company A’s holding company, or
 - (c) its or their nominees,are treated as held by company A.

614 Power to make further provision by regulations

- (1) The Secretary of State may by regulations make such provision as he thinks appropriate –
 - (a) for relieving companies from the requirements of section 610 (application of share premiums) in relation to premiums other than cash premiums;

- (b) for restricting or otherwise modifying any relief from those requirements provided by this Chapter.
- (2) Regulations under this section are subject to affirmative resolution procedure.

615 Relief may be reflected in company's balance sheet

An amount corresponding to the amount representing the premiums, or part of the premiums, on shares issued by a company that by virtue of any relief under this Chapter is not included in the company's share premium account may also be disregarded in determining the amount at which any shares or other consideration provided for the shares issued is to be included in the company's balance sheet.

Supplementary provisions

616 Interpretation of this Chapter

- (1) In this Chapter –
 - “arrangement” means any agreement, scheme or arrangement (including an arrangement sanctioned in accordance with –
 - (a) Part 26 (arrangements and reconstructions), or
 - (b) section 110 of the Insolvency Act 1986 (c. 45) or Article 96 of the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)) (liquidator in winding up accepting shares as consideration for sale of company property));
 - “company”, except in reference to the issuing company, includes any body corporate;
 - “equity shares” means shares comprised in a company's equity share capital, and “non-equity shares” means shares (of any class) that are not so comprised;
 - “the issuing company” has the meaning given by section 610(6).
- (2) References in this Chapter (however expressed) to –
 - (a) the acquisition by a company of shares in another company, and
 - (b) the issue or allotment of shares to, or the transfer of shares to or by, a company,
 include (respectively) the acquisition of shares by, and the issue or allotment or transfer of shares to or by, a nominee of that company.
 The reference in section 611 to the transferor company shall be read accordingly.
- (3) References in this Chapter to the transfer of shares in a company include the transfer of a right to be included in the company's register of members in respect of those shares.

CHAPTER 8

ALTERATION OF SHARE CAPITAL

How share capital may be altered

617 Alteration of share capital of limited company

- (1) A limited company having a share capital may not alter its share capital except in the following ways.
- (2) The company may –
 - (a) increase its share capital by allotting new shares in accordance with this Part, or
 - (b) reduce its share capital in accordance with Chapter 10.
- (3) The company may –
 - (a) sub-divide or consolidate all or any of its share capital in accordance with section 618, or
 - (b) reconvert stock into shares in accordance with section 620.
- (4) The company may redenominate all or any of its shares in accordance with section 622, and may reduce its share capital in accordance with section 626 in connection with such a redenomination.
- (5) Nothing in this section affects –
 - (a) the power of a company to purchase its own shares, or to redeem shares, in accordance with Part 18;
 - (b) the power of a company to purchase its own shares in pursuance of an order of the court under –
 - (i) section 98 (application to court to cancel resolution for re-registration as a private company),
 - (ii) section 721(6) (powers of court on objection to redemption or purchase of shares out of capital),
 - (iii) section 759 (remedial order in case of breach of prohibition of public offers by private company), or
 - (iv) Part 30 (protection of members against unfair prejudice);
 - (c) the forfeiture of shares, or the acceptance of shares surrendered in lieu, in pursuance of the company's articles, for failure to pay any sum payable in respect of the shares;
 - (d) the cancellation of shares under section 662 (duty to cancel shares held by or for a public company);
 - (e) the power of a company –
 - (i) to enter into a compromise or arrangement in accordance with Part 26 (arrangements and reconstructions), or
 - (ii) to do anything required to comply with an order of the court on an application under that Part.

Subdivision or consolidation of shares

618 Sub-division or consolidation of shares

- (1) A limited company having a share capital may –

- (a) sub-divide its shares, or any of them, into shares of a smaller nominal amount than its existing shares, or
 - (b) consolidate and divide all or any of its share capital into shares of a larger nominal amount than its existing shares.
- (2) In any sub-division, consolidation or division of shares under this section, the proportion between the amount paid and the amount (if any) unpaid on each resulting share must be the same as it was in the case of the share from which that share is derived.
- (3) A company may exercise a power conferred by this section only if its members have passed a resolution authorising it to do so.
- (4) A resolution under subsection (3) may authorise a company –
- (a) to exercise more than one of the powers conferred by this section;
 - (b) to exercise a power on more than one occasion;
 - (c) to exercise a power at a specified time or in specified circumstances.
- (5) The company's articles may exclude or restrict the exercise of any power conferred by this section.

619 Notice to registrar of sub-division or consolidation

- (1) If a company exercises the power conferred by section 618 (sub-division or consolidation of shares) it must within one month after doing so give notice to the registrar, specifying the shares affected.
- (2) The notice must be accompanied by a statement of capital.
- (3) The statement of capital must state with respect to the company's share capital immediately following the exercise of the power –
- (a) the total number of shares of the company,
 - (b) the aggregate nominal value of those shares,
 - (c) for each class of shares –
 - (i) prescribed particulars of the rights attached to the shares,
 - (ii) the total number of shares of that class, and
 - (iii) the aggregate nominal value of shares of that class, and
 - (d) the amount paid up and the amount (if any) unpaid on each share (whether on account of the nominal value of the share or by way of premium).
- (4) 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.
- (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.

Reconversion of stock into shares

620 Reconversion of stock into shares

- (1) A limited company that has converted paid-up shares into stock (before the repeal by this Act of the power to do so) may reconvert that stock into paid-up shares of any nominal value.
- (2) A company may exercise the power conferred by this section only if its members have passed an ordinary resolution authorising it to do so.
- (3) A resolution under subsection (2) may authorise a company to exercise the power conferred by this section –
 - (a) on more than one occasion;
 - (b) at a specified time or in specified circumstances.

621 Notice to registrar of reconversion of stock into shares

- (1) If a company exercises a power conferred by section 620 (reconversion of stock into shares) it must within one month after doing so give notice to the registrar, specifying the stock affected.
- (2) The notice must be accompanied by a statement of capital.
- (3) The statement of capital must state with respect to the company's share capital immediately following the exercise of the power –
 - (a) the total number of shares of the company,
 - (b) the aggregate nominal value of those shares,
 - (c) for each class of shares –
 - (i) prescribed particulars of the rights attached to the shares,
 - (ii) the total number of shares of that class, and
 - (iii) the aggregate nominal value of shares of that class, and
 - (d) the amount paid up and the amount (if any) unpaid on each share (whether on account of the nominal value of the share or by way of premium).
- (4) 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.
- (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.

Redenomination of share capital

622 Redenomination of share capital

- (1) A limited company having a share capital may by resolution redenominate its share capital or any class of its share capital.
“Redenominate” means convert shares from having a fixed nominal value in one currency to having a fixed nominal value in another currency.

- (2) The conversion must be made at an appropriate spot rate of exchange specified in the resolution.
- (3) The rate must be either –
 - (a) a rate prevailing on a day specified in the resolution, or
 - (b) a rate determined by taking the average of rates prevailing on each consecutive day of a period specified in the resolution.The day or period specified for the purposes of paragraph (a) or (b) must be within the period of 28 days ending on the day before the resolution is passed.
- (4) A resolution under this section may specify conditions which must be met before the redenomination takes effect.
- (5) Redenomination in accordance with a resolution under this section takes effect –
 - (a) on the day on which the resolution is passed, or
 - (b) on such later day as may be determined in accordance with the resolution.
- (6) A resolution under this section lapses if the redenomination for which it provides has not taken effect at the end of the period of 28 days beginning on the date on which it is passed.
- (7) A company's articles may prohibit or restrict the exercise of the power conferred by this section.
- (8) Chapter 3 of Part 3 (resolutions affecting a company's constitution) applies to a resolution under this section.

623 Calculation of new nominal values

For each class of share the new nominal value of each share is calculated as follows:

Step One

Take the aggregate of the old nominal values of all the shares of that class.

Step Two

Translate that amount into the new currency at the rate of exchange specified in the resolution.

Step Three

Divide that amount by the number of shares in the class.

624 Effect of redenomination

- (1) The redenomination of shares does not affect any rights or obligations of members under the company's constitution, or any restrictions affecting members under the company's constitution.
In particular, it does not affect entitlement to dividends (including entitlement to dividends in a particular currency), voting rights or any liability in respect of amounts unpaid on shares.
- (2) For this purpose the company's constitution includes the terms on which any shares of the company are allotted or held.
- (3) Subject to subsection (1), references to the old nominal value of the shares in any agreement or statement, or in any deed, instrument or document, shall

(unless the context otherwise requires) be read after the resolution takes effect as references to the new nominal value of the shares.

625 Notice to registrar of redenomination

- (1) If a limited company having a share capital redenominates any of its share capital, it must within one month after doing so give notice to the registrar, specifying the shares redenominated.
- (2) The notice must –
 - (a) state the date on which the resolution was passed, and
 - (b) be accompanied by a statement of capital.
- (3) The statement of capital must state with respect to the company's share capital as redenominated by the resolution –
 - (a) the total number of shares of the company,
 - (b) the aggregate nominal value of those shares,
 - (c) for each class of shares –
 - (i) prescribed particulars of the rights attached to the shares,
 - (ii) the total number of shares of that class, and
 - (iii) the aggregate nominal value of shares of that class, and
 - (d) the amount paid up and the amount (if any) unpaid on each share (whether on account of the nominal value of the share or by way of premium).
- (4) 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.
- (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.

626 Reduction of capital in connection with redenomination

- (1) A limited company that passes a resolution redenominating some or all of its shares may, for the purpose of adjusting the nominal values of the redenominated shares to obtain values that are, in the opinion of the company, more suitable, reduce its share capital under this section.
- (2) A reduction of capital under this section requires a special resolution of the company.
- (3) Any such resolution must be passed within three months of the resolution effecting the redenomination.
- (4) The amount by which a company's share capital is reduced under this section must not exceed 10% of the nominal value of the company's allotted share capital immediately after the reduction.
- (5) A reduction of capital under this section does not extinguish or reduce any liability in respect of share capital not paid up.
- (6) Nothing in Chapter 10 applies to a reduction of capital under this section.

627 Notice to registrar of reduction of capital in connection with redenomination

- (1) A company that passes a resolution under section 626 (reduction of capital in connection with redenomination) must within 15 days after the resolution is passed give notice to the registrar stating –
 - (a) the date of the resolution, and
 - (b) the date of the resolution under section 622 in connection with which it was passed.

This is in addition to the copies of the resolutions themselves that are required to be delivered to the registrar under Chapter 3 of Part 3.

- (2) The notice must be accompanied by a statement of capital.
- (3) The statement of capital must state with respect to the company's share capital as reduced by the resolution –
 - (a) the total number of shares of the company,
 - (b) the aggregate nominal value of those shares,
 - (c) for each class of shares –
 - (i) prescribed particulars of the rights attached to the shares,
 - (ii) the total number of shares of that class, and
 - (iii) the aggregate nominal value of shares of that class, and
 - (d) the amount paid up and the amount (if any) unpaid on each share (whether on account of the nominal value of the share or by way of premium).
- (4) The registrar must register the notice and the statement on receipt.
- (5) The reduction of capital is not effective until those documents are registered.
- (6) The company must also deliver to the registrar, within 15 days after the resolution is passed, a statement by the directors confirming that the reduction in share capital is in accordance with section 626(4) (reduction of capital not to exceed 10% of nominal value of allotted shares immediately after reduction).
- (7) 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.
- (8) A person guilty of an offence under this section is liable –
 - (a) on conviction on indictment to a fine, and
 - (b) on summary conviction to a fine not exceeding the statutory maximum.

628 Redenomination reserve

- (1) The amount by which a company's share capital is reduced under section 626 (reduction of capital in connection with redenomination) must be transferred to a reserve, called "the redenomination reserve".
- (2) The redenomination reserve may be applied by the company in paying up shares to be allotted to members as fully paid bonus shares.
- (3) Subject to that, the provisions of the Companies Acts relating to the reduction of a company's share capital apply as if the redenomination reserve were paid-up share capital of the company.

CHAPTER 9

CLASSES OF SHARE AND CLASS RIGHTS

Introductory

629 Classes of shares

- (1) For the purposes of the Companies Acts shares are of one class if the rights attached to them are in all respects uniform.
- (2) For this purpose the rights attached to shares are not regarded as different from those attached to other shares by reason only that they do not carry the same rights to dividends in the twelve months immediately following their allotment.

Variation of class rights

630 Variation of class rights: companies having a share capital

- (1) This section is concerned with the variation of the rights attached to a class of shares in a company having a share capital.
- (2) Rights attached to a class of a company's shares may only be varied –
 - (a) in accordance with provision in the company's articles for the variation of those rights, or
 - (b) where the company's articles contain no such provision, if the holders of shares of that class consent to the variation in accordance with this section.
- (3) This is without prejudice to any other restrictions on the variation of the rights.
- (4) The consent required for the purposes of this section on the part of the holders of a class of a company's shares is –
 - (a) consent in writing from the holders of at least three-quarters in nominal value of the issued shares of that class (excluding any shares held as treasury shares), or
 - (b) a special resolution passed at a separate general meeting of the holders of that class sanctioning the variation.
- (5) Any amendment of a provision contained in a company's articles for the variation of the rights attached to a class of shares, or the insertion of any such provision into the articles, is itself to be treated as a variation of those rights.
- (6) In this section, and (except where the context otherwise requires) in any provision in a company's articles for the variation of the rights attached to a class of shares, references to the variation of those rights include references to their abrogation.

631 Variation of class rights: companies without a share capital

- (1) This section is concerned with the variation of the rights of a class of members of a company where the company does not have a share capital.
- (2) Rights of a class of members may only be varied –

- (a) in accordance with provision in the company's articles for the variation of those rights, or
 - (b) where the company's articles contain no such provision, if the members of that class consent to the variation in accordance with this section.
- (3) This is without prejudice to any other restrictions on the variation of the rights.
- (4) The consent required for the purposes of this section on the part of the members of a class is –
- (a) consent in writing from at least three-quarters of the members of the class, or
 - (b) a special resolution passed at a separate general meeting of the members of that class sanctioning the variation.
- (5) Any amendment of a provision contained in a company's articles for the variation of the rights of a class of members, or the insertion of any such provision into the articles, is itself to be treated as a variation of those rights.
- (6) In this section, and (except where the context otherwise requires) in any provision in a company's articles for the variation of the rights of a class of members, references to the variation of those rights include references to their abrogation.

632 Variation of class rights: saving for court's powers under other provisions

Nothing in section 630 or 631 (variation of class rights) affects the power of the court under –

- section 98 (application to cancel resolution for public company to be re-registered as private),
- Part 26 (arrangements and reconstructions), or
- Part 30 (protection of members against unfair prejudice).

633 Right to object to variation: companies having a share capital

- (1) This section applies where the rights attached to any class of shares in a company are varied under section 630 (variation of class rights: companies having a share capital).
- (2) The holders of not less in the aggregate than 15% of the issued shares of the class in question (being persons who did not consent to or vote in favour of the resolution for the variation) may apply to the court to have the variation cancelled.
- For this purpose any of the company's share capital held as treasury shares is disregarded.
- (3) If such an application is made, the variation has no effect unless and until it is confirmed by the court.
- (4) Application to the court –
- (a) must be made within 21 days after the date on which the consent was given or the resolution was passed (as the case may be), and
 - (b) may be made on behalf of the shareholders entitled to make the application by such one or more of their number as they may appoint in writing for the purpose.

- (5) The court, after hearing the applicant and any other persons who apply to the court to be heard and appear to the court to be interested in the application, may, if satisfied having regard to all the circumstances of the case that the variation would unfairly prejudice the shareholders of the class represented by the applicant, disallow the variation, and shall if not so satisfied confirm it.
The decision of the court on any such application is final.
- (6) References in this section to the variation of the rights of holders of a class of shares include references to their abrogation.

634 Right to object to variation: companies without a share capital

- (1) This section applies where the rights of any class of members of a company are varied under section 631 (variation of class rights: companies without a share capital).
- (2) Members amounting to not less than 15% of the members of the class in question (being persons who did not consent to or vote in favour of the resolution for the variation) may apply to the court to have the variation cancelled.
- (3) If such an application is made, the variation has no effect unless and until it is confirmed by the court.
- (4) Application to the court must be made within 21 days after the date on which the consent was given or the resolution was passed (as the case may be) and may be made on behalf of the members entitled to make the application by such one or more of their number as they may appoint in writing for the purpose.
- (5) The court, after hearing the applicant and any other persons who apply to the court to be heard and appear to the court to be interested in the application, may, if satisfied having regard to all the circumstances of the case that the variation would unfairly prejudice the members of the class represented by the applicant, disallow the variation, and shall if not so satisfied confirm it.
The decision of the court on any such application is final.
- (6) References in this section to the variation of the rights of a class of members include references to their abrogation.

635 Copy of court order to be forwarded to the registrar

- (1) The company must within 15 days after the making of an order by the court on an application under section 633 or 634 (objection to variation of class rights) forward a copy of the order to the registrar.
- (2) 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.
- (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 and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.

Matters to be notified to the registrar

636 Notice of name or other designation of class of shares

- (1) Where a company assigns a name or other designation, or a new name or other designation, to any class or description of its shares, it must within one month from doing so deliver to the registrar a notice giving particulars of the name or designation so assigned.
- (2) 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.
- (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 and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.

637 Notice of particulars of variation of rights attached to shares

- (1) Where the rights attached to any shares of a company are varied, the company must within one month from the date on which the variation is made deliver to the registrar a notice giving particulars of the variation.
- (2) 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.
- (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 and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.

638 Notice of new class of members

- (1) If a company not having a share capital creates a new class of members, the company must within one month from the date on which the new class is created deliver to the registrar a notice containing particulars of the rights attached to that class.
- (2) 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.
- (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 and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.

639 Notice of name or other designation of class of members

- (1) Where a company not having a share capital assigns a name or other designation, or a new name or other designation, to any class of its members, it must within one month from doing so deliver to the registrar a notice giving particulars of the name or designation so assigned.

- (2) 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.
- (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 and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.

640 Notice of particulars of variation of class rights

- (1) If the rights of any class of members of a company not having a share capital are varied, the company must within one month from the date on which the variation is made deliver to the registrar a notice containing particulars of the variation.
- (2) 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.
- (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 and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.

CHAPTER 10

REDUCTION OF SHARE CAPITAL

Introductory

641 Circumstances in which a company may reduce its share capital

- (1) A limited company having a share capital may reduce its share capital –
 - (a) in the case of a private company limited by shares, by special resolution supported by a solvency statement (see sections 642 to 644);
 - (b) in any case, by special resolution confirmed by the court (see sections 645 to 651).
- (2) A company may not reduce its capital under subsection (1)(a) if as a result of the reduction there would no longer be any member of the company holding shares other than redeemable shares.
- (3) Subject to that, a company may reduce its share capital under this section in any way.
- (4) In particular, a company may –
 - (a) extinguish or reduce the liability on any of its shares in respect of share capital not paid up, or
 - (b) either with or without extinguishing or reducing liability on any of its shares –
 - (i) cancel any paid-up share capital that is lost or unrepresented by available assets, or

- (ii) repay any paid-up share capital in excess of the company's wants.
- (5) A special resolution under this section may not provide for a reduction of share capital to take effect later than the date on which the resolution has effect in accordance with this Chapter.
- (6) This Chapter (apart from subsection (5) above) has effect subject to any provision of the company's articles restricting or prohibiting the reduction of the company's share capital.

Private companies: reduction of capital supported by solvency statement

642 Reduction of capital supported by solvency statement

- (1) A resolution for reducing share capital of a private company limited by shares is supported by a solvency statement if—
 - (a) the directors of the company make a statement of the solvency of the company in accordance with section 643 (a “solvency statement”) not more than 15 days before the date on which the resolution is passed, and
 - (b) the resolution and solvency statement are registered in accordance with section 644.
- (2) Where the resolution is proposed as a written resolution, a copy of the solvency statement must be sent or submitted to every eligible member at or before the time at which the proposed resolution is sent or submitted to him.
- (3) Where the resolution is proposed at a general meeting, a copy of the solvency statement must be made available for inspection by members of the company throughout that meeting.
- (4) The validity of a resolution is not affected by a failure to comply with subsection (2) or (3).

643 Solvency statement

- (1) A solvency statement is a statement that each of the directors—
 - (a) has formed the opinion, as regards the company's situation at the date of the statement, that there is no ground on which the company could then be found to be unable to pay (or otherwise discharge) its debts; and
 - (b) has also formed the opinion—
 - (i) if it is intended to commence the winding up of the company within twelve months of that date, that the company will be able to pay (or otherwise discharge) its debts in full within twelve months of the commencement of the winding up; or
 - (ii) in any other case, that the company will be able to pay (or otherwise discharge) its debts as they fall due during the year immediately following that date.
- (2) In forming those opinions, the directors must take into account all of the company's liabilities (including any contingent or prospective liabilities).
- (3) The solvency statement must be in the prescribed form and must state—

- (a) the date on which it is made, and
 - (b) the name of each director of the company.
- (4) If the directors make a solvency statement without having reasonable grounds for the opinions expressed in it, and the statement is delivered to the registrar, an offence is committed by every director who is in default.
- (5) A person guilty of an offence under subsection (4) 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).

644 Registration of resolution and supporting documents

- (1) Within 15 days after the resolution for reducing share capital is passed the company must deliver to the registrar –
- (a) a copy of the solvency statement, and
 - (b) a statement of capital.
- This is in addition to the copy of the resolution itself that is required to be delivered to the registrar under Chapter 3 of Part 3.
- (2) The statement of capital must state with respect to the company's share capital as reduced by the resolution –
- (a) the total number of shares of the company,
 - (b) the aggregate nominal value of those shares,
 - (c) for each class of shares –
 - (i) prescribed particulars of the rights attached to the shares,
 - (ii) the total number of shares of that class, and
 - (iii) the aggregate nominal value of shares of that class, and
 - (d) the amount paid up and the amount (if any) unpaid on each share (whether on account of the nominal value of the share or by way of premium).
- (3) The registrar must register the documents delivered to him under subsection (1) on receipt.
- (4) The resolution does not take effect until those documents are registered.
- (5) The company must also deliver to the registrar, within 15 days after the resolution is passed, a statement by the directors confirming that the solvency statement was –
- (a) made not more than 15 days before the date on which the resolution was passed, and
 - (b) provided to members in accordance with section 642(2) or (3).
- (6) The validity of a resolution is not affected by –

- (a) a failure to deliver the documents required to be delivered to the registrar under subsection (1) within the time specified in that subsection, or
 - (b) a failure to comply with subsection (5).
- (7) If the company delivers to the registrar a solvency statement that was not provided to members in accordance with section 642(2) or (3), an offence is committed by every officer of the company who is in default.
- (8) 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.
- (9) A person guilty of an offence under subsection (7) or (8) is liable –
- (a) on conviction on indictment, to a fine;
 - (b) on summary conviction, to a fine not exceeding the statutory maximum.

Reduction of capital confirmed by the court

645 Application to court for order of confirmation

- (1) Where a company has passed a resolution for reducing share capital, it may apply to the court for an order confirming the reduction.
- (2) If the proposed reduction of capital involves either –
 - (a) diminution of liability in respect of unpaid share capital, or
 - (b) the payment to a shareholder of any paid-up share capital,section 646 (creditors entitled to object to reduction) applies unless the court directs otherwise.
- (3) The court may, if having regard to any special circumstances of the case it thinks proper to do so, direct that section 646 is not to apply as regards any class or classes of creditors.
- (4) The court may direct that section 646 is to apply in any other case.

646 Creditors entitled to object to reduction

- (1) Where this section applies (see section 645(2) and (4)), every creditor of the company who at the date fixed by the court is entitled to any debt or claim that, if that date were the commencement of the winding up of the company would be admissible in proof against the company, is entitled to object to the reduction of capital.
- (2) The court shall settle a list of creditors entitled to object.
- (3) For that purpose the court –
 - (a) shall ascertain, as far as possible without requiring an application from any creditor, the names of those creditors and the nature and amount of their debts or claims, and
 - (b) may publish notices fixing a day or days within which creditors not entered on the list are to claim to be so entered or are to be excluded from the right of objecting to the reduction of capital.

- (4) If a creditor entered on the list whose debt or claim is not discharged or has not determined does not consent to the reduction, the court may, if it thinks fit, dispense with the consent of that creditor on the company securing payment of his debt or claim.
- (5) For this purpose the debt or claim must be secured by appropriating (as the court may direct) the following amount –
 - (a) if the company admits the full amount of the debt or claim or, though not admitting it, is willing to provide for it, the full amount of the debt or claim;
 - (b) if the company does not admit, and is not willing to provide for, the full amount of the debt or claim, or if the amount is contingent or not ascertained, an amount fixed by the court after the like enquiry and adjudication as if the company were being wound up by the court.

647 Offences in connection with list of creditors

- (1) If an officer of the company –
 - (a) intentionally or recklessly –
 - (i) conceals the name of a creditor entitled to object to the reduction of capital, or
 - (ii) misrepresents the nature or amount of the debt or claim of a creditor, or
 - (b) is knowingly concerned in any such concealment or misrepresentation, he commits an offence.
- (2) A person guilty of an offence under this section is liable –
 - (a) on conviction on indictment, to a fine;
 - (b) on summary conviction, to a fine not exceeding the statutory maximum.

648 Court order confirming reduction

- (1) The court may make an order confirming the reduction of capital on such terms and conditions as it thinks fit.
- (2) The court must not confirm the reduction unless it is satisfied, with respect to every creditor of the company who is entitled to object to the reduction of capital that either –
 - (a) his consent to the reduction has been obtained, or
 - (b) his debt or claim has been discharged, or has determined or has been secured.
- (3) Where the court confirms the reduction, it may order the company to publish (as the court directs) the reasons for reduction of capital, or such other information in regard to it as the court thinks expedient with a view to giving proper information to the public, and (if the court thinks fit) the causes that led to the reduction.
- (4) The court may, if for any special reason it thinks proper to do so, make an order directing that the company must, during such period (commencing on or at any time after the date of the order) as is specified in the order, add to its name as its last words the words “and reduced”.

If such an order is made, those words are, until the end of the period specified in the order, deemed to be part of the company's name.

649 Registration of order and statement of capital

- (1) The registrar, on production of an order of the court confirming the reduction of a company's share capital and the delivery of a copy of the order and of a statement of capital (approved by the court), shall register the order and statement.

This is subject to section 650 (public company reducing capital below authorised minimum).

- (2) The statement of capital must state with respect to the company's share capital as altered by the order –
- (a) the total number of shares of the company,
 - (b) the aggregate nominal value of those shares,
 - (c) for each class of shares –
 - (i) prescribed particulars of the rights attached to the shares,
 - (ii) the total number of shares of that class, and
 - (iii) the aggregate nominal value of shares of that class, and
 - (d) the amount paid up and the amount (if any) unpaid on each share (whether on account of the nominal value of the share or by way of premium).
- (3) The resolution for reducing share capital, as confirmed by the court's order, takes effect –
- (a) in the case of a reduction of share capital that forms part of a compromise or arrangement sanctioned by the court under Part 26 (arrangements and reconstructions) –
 - (i) on delivery of the order and statement of capital to the registrar, or
 - (ii) if the court so orders, on the registration of the order and statement of capital;
 - (b) in any other case, on the registration of the order and statement of capital.
- (4) Notice of the registration of the order and statement of capital must be published in such manner as the court may direct.
- (5) The registrar must certify the registration of the order and statement of capital.
- (6) The certificate –
- (a) must be signed by the registrar or authenticated by the registrar's official seal, and
 - (b) is conclusive evidence –
 - (i) that the requirements of this Act with respect to the reduction of share capital have been complied with, and
 - (ii) that the company's share capital is as stated in the statement of capital.

Public company reducing capital below authorised minimum

650 Public company reducing capital below authorised minimum

- (1) This section applies where the court makes an order confirming a reduction of a public company's capital that has the effect of bringing the nominal value of its allotted share capital below the authorised minimum.
- (2) The registrar must not register the order unless either –
 - (a) the court so directs, or
 - (b) the company is first re-registered as a private company.
- (3) Section 651 provides an expedited procedure for re-registration in these circumstances.

651 Expedited procedure for re-registration as a private company

- (1) The court may authorise the company to be re-registered as a private company without its having passed the special resolution required by section 97.
- (2) If it does so, the court must specify in the order the changes to the company's name and articles to be made in connection with the re-registration.
- (3) The company may then be re-registered as a private company if an application to that effect is delivered to the registrar together with –
 - (a) a copy of the court's order, and
 - (b) notice of the company's name, and a copy of the company's articles, as altered by the court's order.
- (4) On receipt of such an application the registrar must issue a certificate of incorporation altered to meet the circumstances of the case.
- (5) The certificate must state that it is issued on re-registration and the date on which it is issued.
- (6) On the issue of the certificate –
 - (a) the company by virtue of the issue of the certificate becomes a private company, and
 - (b) the changes in the company's name and articles take effect.
- (7) The certificate is conclusive evidence that the requirements of this Act as to re-registration have been complied with.

Effect of reduction of capital

652 Liability of members following reduction of capital

- (1) Where a company's share capital is reduced a member of the company (past or present) is not liable in respect of any share to any call or contribution exceeding in amount the difference (if any) between –
 - (a) the nominal amount of the share as notified to the registrar in the statement of capital delivered under section 644 or 649, and
 - (b) the amount paid on the share or the reduced amount (if any) which is deemed to have been paid on it, as the case may be.
- (2) This is subject to section 653 (liability to creditor in case of omission from list).

- (3) Nothing in this section affects the rights of the contributories among themselves.

653 Liability to creditor in case of omission from list of creditors

- (1) This section applies where, in the case of a reduction of capital confirmed by the court—
- (a) a creditor entitled to object to the reduction of share capital is by reason of his ignorance—
 - (i) of the proceedings for reduction of share capital, or
 - (ii) of their nature and effect with respect to his debt or claim, not entered on the list of creditors, and
 - (b) after the reduction of capital the company is unable to pay the amount of his debt or claim.
- (2) Every person who was a member of the company at the date on which the resolution for reducing capital took effect under section 649(3) is liable to contribute for the payment of the debt or claim an amount not exceeding that which he would have been liable to contribute if the company had commenced to be wound up on the day before that date.
- (3) If the company is wound up, the court on the application of the creditor in question, and proof of ignorance as mentioned in subsection (1)(a), may if it thinks fit—
- (a) settle accordingly a list of persons liable to contribute under this section, and
 - (b) make and enforce calls and orders on them as if they were ordinary contributories in a winding up.
- (4) The reference in subsection (1)(b) to a company being unable to pay the amount of a debt or claim has the same meaning as in section 123 of the Insolvency Act 1986 (c. 45) or Article 103 of the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)).

CHAPTER 11

MISCELLANEOUS AND SUPPLEMENTARY PROVISIONS

654 Treatment of reserve arising from reduction of capital

- (1) A reserve arising from the reduction of a company's share capital is not distributable, subject to any provision made by order under this section.
- (2) The Secretary of State may by order specify cases in which—
- (a) the prohibition in subsection (1) does not apply, and
 - (b) the reserve is to be treated for the purposes of Part 23 (distributions) as a realised profit.
- (3) An order under this section is subject to affirmative resolution procedure.

655 Shares no bar to damages against company

A person is not debarred from obtaining damages or other compensation from a company by reason only of his holding or having held shares in the company

or any right to apply or subscribe for shares or to be included in the company's register of members in respect of shares.

656 Public companies: duty of directors to call meeting on serious loss of capital

- (1) Where the net assets of a public company are half or less of its called-up share capital, the directors must call a general meeting of the company to consider whether any, and if so what, steps should be taken to deal with the situation.
- (2) They must do so not later than 28 days from the earliest day on which that fact is known to a director of the company.
- (3) The meeting must be convened for a date not later than 56 days from that day.
- (4) If there is a failure to convene a meeting as required by this section, each of the directors of the company who –
 - (a) knowingly authorises or permits the failure, or
 - (b) after the period during which the meeting should have been convened, knowingly authorises or permits the failure to continue,commits an offence.
- (5) A person guilty of an offence under this section is liable –
 - (a) on conviction on indictment, to a fine;
 - (b) on summary conviction, to a fine not exceeding the statutory maximum.
- (6) Nothing in this section authorises the consideration at a meeting convened in pursuance of subsection (1) of any matter that could not have been considered at that meeting apart from this section.

657 General power to make further provision by regulations

- (1) The Secretary of State may by regulations modify the following provisions of this Part –
 - sections 552 and 553 (prohibited commissions, discounts and allowances),
 - Chapter 5 (payment for shares),
 - Chapter 6 (public companies: independent valuation of non-cash consideration),
 - Chapter 7 (share premiums),
 - sections 622 to 628 (redenomination of share capital),
 - Chapter 10 (reduction of capital), and
 - section 656 (public companies: duty of directors to call meeting on serious loss of capital).
- (2) The regulations may –
 - (a) amend or repeal any of those provisions, or
 - (b) make such other provision as appears to the Secretary of State appropriate in place of any of those provisions.
- (3) Regulations under this section may make consequential amendments or repeals in other provisions of this Act, or in other enactments.
- (4) Regulations under this section are subject to affirmative resolution procedure.

PART 18

ACQUISITION BY LIMITED COMPANY OF ITS OWN SHARES

CHAPTER 1

GENERAL PROVISIONS

Introductory

658 General rule against limited company acquiring its own shares

- (1) A limited company must not acquire its own shares, whether by purchase, subscription or otherwise, except in accordance with the provisions of this Part.
- (2) If a company purports to act in contravention of this section—
 - (a) an offence is committed by—
 - (i) the company, and
 - (ii) every officer of the company who is in default, and
 - (b) the purported acquisition is void.
- (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 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 a fine not exceeding the statutory maximum (or both).

659 Exceptions to general rule

- (1) A limited company may acquire any of its own fully paid shares otherwise than for valuable consideration.
- (2) Section 658 does not prohibit—
 - (a) the acquisition of shares in a reduction of capital duly made;
 - (b) the purchase of shares in pursuance of an order of the court under—
 - (i) section 98 (application to court to cancel resolution for re-registration as a private company),
 - (ii) section 721(6) (powers of court on objection to redemption or purchase of shares out of capital),
 - (iii) section 759 (remedial order in case of breach of prohibition of public offers by private company), or
 - (iv) Part 30 (protection of members against unfair prejudice);
 - (c) the forfeiture of shares, or the acceptance of shares surrendered in lieu, in pursuance of the company's articles, for failure to pay any sum payable in respect of the shares.

Shares held by company's nominee

660 Treatment of shares held by nominee

- (1) This section applies where shares in a limited company –
 - (a) are taken by a subscriber to the memorandum as nominee of the company,
 - (b) are issued to a nominee of the company, or
 - (c) are acquired by a nominee of the company, partly paid up, from a third person.
- (2) For all purposes –
 - (a) the shares are to be treated as held by the nominee on his own account, and
 - (b) the company is to be regarded as having no beneficial interest in them.
- (3) This section does not apply –
 - (a) to shares acquired otherwise than by subscription by a nominee of a public company, where –
 - (i) a person acquires shares in the company with financial assistance given to him, directly or indirectly, by the company for the purpose of or in connection with the acquisition, and
 - (ii) the company has a beneficial interest in the shares;
 - (b) to shares acquired by a nominee of the company when the company has no beneficial interest in the shares.

661 Liability of others where nominee fails to make payment in respect of shares

- (1) This section applies where shares in a limited company –
 - (a) are taken by a subscriber to the memorandum as nominee of the company,
 - (b) are issued to a nominee of the company, or
 - (c) are acquired by a nominee of the company, partly paid up, from a third person.
- (2) If the nominee, having been called on to pay any amount for the purposes of paying up, or paying any premium on, the shares, fails to pay that amount within 21 days from being called on to do so, then –
 - (a) in the case of shares that he agreed to take as subscriber to the memorandum, the other subscribers to the memorandum, and
 - (b) in any other case, the directors of the company when the shares were issued to or acquired by him,are jointly and severally liable with him to pay that amount.
- (3) If in proceedings for the recovery of an amount under subsection (2) it appears to the court that the subscriber or director –
 - (a) has acted honestly and reasonably, and
 - (b) having regard to all the circumstances of the case, ought fairly to be relieved from liability,the court may relieve him, either wholly or in part, from his liability on such terms as the court thinks fit.

- (4) If a subscriber to a company's memorandum or a director of a company has reason to apprehend that a claim will or might be made for the recovery of any such amount from him –
 - (a) he may apply to the court for relief, and
 - (b) the court has the same power to relieve him as it would have had in proceedings for recovery of that amount.
- (5) This section does not apply to shares acquired by a nominee of the company when the company has no beneficial interest in the shares.

Shares held by or for public company

662 Duty to cancel shares in public company held by or for the company

- (1) This section applies in the case of a public company –
 - (a) where shares in the company are forfeited, or surrendered to the company in lieu of forfeiture, in pursuance of the articles, for failure to pay any sum payable in respect of the shares;
 - (b) where shares in the company are surrendered to the company in pursuance of section 102C(1)(b) of the Building Societies Act 1986 (c. 53);
 - (c) where shares in the company are acquired by it (otherwise than in accordance with this Part or Part 30 (protection of members against unfair prejudice)) and the company has a beneficial interest in the shares;
 - (d) where a nominee of the company acquires shares in the company from a third party without financial assistance being given directly or indirectly by the company and the company has a beneficial interest in the shares; or
 - (e) where a person acquires shares in the company, with financial assistance given to him, directly or indirectly, by the company for the purpose of or in connection with the acquisition, and the company has a beneficial interest in the shares.
- (2) Unless the shares or any interest of the company in them are previously disposed of, the company must –
 - (a) cancel the shares and diminish the amount of the company's share capital by the nominal value of the shares cancelled, and
 - (b) where the effect is that the nominal value of the company's allotted share capital is brought below the authorised minimum, apply for re-registration as a private company, stating the effect of the cancellation.
- (3) It must do so no later than –
 - (a) in a case within subsection (1)(a) or (b), three years from the date of the forfeiture or surrender;
 - (b) in a case within subsection (1)(c) or (d), three years from the date of the acquisition;
 - (c) in a case within subsection (1)(e), one year from the date of the acquisition.
- (4) The directors of the company may take any steps necessary to enable the company to comply with this section, and may do so without complying with the provisions of Chapter 10 of Part 17 (reduction of capital).

See also section 664 (re-registration as private company in consequence of cancellation).

- (5) Neither the company nor, in a case within subsection (1)(d) or (e), the nominee or other shareholder may exercise any voting rights in respect of the shares.
- (6) Any purported exercise of those rights is void.

663 Notice of cancellation of shares

- (1) Where a company cancels shares in order to comply with section 662, it must within one month after the shares are cancelled give notice to the registrar, specifying the shares cancelled.
- (2) The notice must be accompanied by a statement of capital.
- (3) The statement of capital must state with respect to the company's share capital immediately following the cancellation –
 - (a) the total number of shares of the company,
 - (b) the aggregate nominal value of those shares,
 - (c) for each class of shares –
 - (i) prescribed particulars of the rights attached to the shares,
 - (ii) the total number of shares of that class, and
 - (iii) the aggregate nominal value of shares of that class, and
 - (d) the amount paid up and the amount (if any) unpaid on each share (whether on account of the nominal value of the share or by way of premium).
- (4) 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.
- (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.

664 Re-registration as private company in consequence of cancellation

- (1) Where a company is obliged to re-register as a private company to comply with section 662, the directors may resolve that the company should be so re-registered.
Chapter 3 of Part 3 (resolutions affecting a company's constitution) applies to any such resolution.
- (2) The resolution may make such changes –
 - (a) in the company's name, and
 - (b) in the company's articles,as are necessary in connection with its becoming a private company.
- (3) The application for re-registration must contain a statement of the company's proposed name on re-registration.
- (4) The application must be accompanied by –

- (a) a copy of the resolution (unless a copy has already been forwarded under Chapter 3 of Part 3),
 - (b) a copy of the company's articles as amended by the resolution, and
 - (c) a statement of compliance.
- (5) The statement of compliance required is a statement that the requirements of this section as to re-registration as a private company have been complied with.
- (6) The registrar may accept the statement of compliance as sufficient evidence that the company is entitled to be re-registered as a private company.

665 Issue of certificate of incorporation on re-registration

- (1) If on an application under section 664 the registrar is satisfied that the company is entitled to be re-registered as a private company, the company shall be re-registered accordingly.
- (2) The registrar must issue a certificate of incorporation altered to meet the circumstances of the case.
- (3) The certificate must state that it is issued on re-registration and the date on which it is issued.
- (4) On the issue of the certificate –
- (a) the company by virtue of the issue of the certificate becomes a private company, and
 - (b) the changes in the company's name and articles take effect.
- (5) The certificate is conclusive evidence that the requirements of this Act as to re-registration have been complied with.

666 Effect of failure to re-register

- (1) If a public company that is required by section 662 to apply to be re-registered as a private company fails to do so before the end of the period specified in subsection (3) of that section, Chapter 1 of Part 20 (prohibition of public offers by private company) applies to it as if it were a private company.
- (2) Subject to that, the company continues to be treated as a public company until it is so re-registered.

667 Offence in case of failure to cancel shares or re-register

- (1) This section applies where a company, when required to do by section 662 –
- (a) fails to cancel any shares, or
 - (b) fails to make an application for re-registration as a private company, within the time specified in subsection (3) of that section.
- (2) 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 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.

668 Application of provisions to company re-registering as public company

- (1) This section applies where, after shares in a private company –
 - (a) are forfeited in pursuance of the company's articles or are surrendered to the company in lieu of forfeiture,
 - (b) are acquired by the company (otherwise than by any of the methods permitted by this Part or Part 30 (protection of members against unfair prejudice)), the company having a beneficial interest in the shares,
 - (c) are acquired by a nominee of the company from a third party without financial assistance being given directly or indirectly by the company, the company having a beneficial interest in the shares, or
 - (d) are acquired by a person with financial assistance given to him, directly or indirectly, by the company for the purpose of or in connection with the acquisition, the company having a beneficial interest in the shares,the company is re-registered as a public company.
- (2) In that case the provisions of sections 662 to 667 apply to the company as if it had been a public company at the time of the forfeiture, surrender or acquisition, subject to the following modification.
- (3) The modification is that the period specified in section 662(3)(a), (b) or (c) (period for complying with obligations under that section) runs from the date of the re-registration of the company as a public company.

669 Transfer to reserve on acquisition of shares by public company or nominee

- (1) Where –
 - (a) a public company, or a nominee of a public company, acquires shares in the company, and
 - (b) those shares are shown in a balance sheet of the company as an asset, an amount equal to the value of the shares must be transferred out of profits available for dividend to a reserve fund and is not then available for distribution.
- (2) Subsection (1) applies to an interest in shares as it applies to shares. As it so applies the reference to the value of the shares shall be read as a reference to the value to the company of its interest in the shares.

Charges of public company on own shares

670 Public companies: general rule against lien or charge on own shares

- (1) A lien or other charge of a public company on its own shares (whether taken expressly or otherwise) is void, except as permitted by this section.
- (2) In the case of any description of company, a charge is permitted if the shares are not fully paid up and the charge is for an amount payable in respect of the shares.
- (3) In the case of a company whose ordinary business –
 - (a) includes the lending of money, or

- (b) consists of the provision of credit or the bailment (in Scotland, hiring) of goods under a hire-purchase agreement, or both, a charge is permitted (whether the shares are fully paid or not) if it arises in connection with a transaction entered into by the company in the ordinary course of that business.
- (4) In the case of a company that has been re-registered as a public company, a charge is permitted if it was in existence immediately before the application for re-registration.

Supplementary provisions

671 Interests to be disregarded in determining whether company has beneficial interest

In determining for the purposes of this Chapter whether a company has a beneficial interest in shares, there shall be disregarded any such interest as is mentioned in –

- section 672 (residual interest under pension scheme or employees' share scheme),
- section 673 (employer's charges and other rights of recovery), or
- section 674 (rights as personal representative or trustee).

672 Residual interest under pension scheme or employees' share scheme

- (1) Where the shares are held on trust for the purposes of a pension scheme or employees' share scheme, there shall be disregarded any residual interest of the company that has not vested in possession.
- (2) A "residual interest" means a right of the company 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 company ceasing to participate in the scheme, or
 - (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 company becomes entitled to require the trustee to transfer to it any of the property receivable pursuant to that right.
- (5) Where by virtue of this section shares are exempt from section 660 or 661 (shares held by company's nominee) at the time they are taken, issued or

acquired but the residual interest in question vests in possession before they are disposed of or fully paid up, those sections apply to the shares as if they had been taken, issued or acquired on the date on which that interest vests in possession.

- (6) Where by virtue of this section shares are exempt from sections 662 to 668 (shares held by or for public company) at the time they are acquired but the residual interest in question vests in possession before they are disposed of, those sections apply to the shares as if they had been acquired on the date on which the interest vests in possession.

673 Employer’s charges and other rights of recovery

- (1) Where the shares are held on trust for the purposes of a pension scheme there shall be disregarded –
- (a) 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;
 - (b) 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 –
 - (i) under section 61 of the Pension Schemes Act 1993 (c. 48), or otherwise, as reimbursement or partial reimbursement for any contributions equivalent premium paid in connection with the scheme under Part 3 of that Act, or
 - (ii) under section 57 of the Pension Schemes (Northern Ireland) Act 1993 (c. 49), or otherwise, as reimbursement or partial reimbursement for any contributions equivalent premium paid in connection with the scheme under Part 3 of that Act.
- (2) Where the shares are held on trust for the purposes of an employees’ share scheme, there shall be disregarded 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.

674 Rights as personal representative or trustee

Where the company is a personal representative or trustee, there shall be disregarded any rights that the company has in that capacity including, in particular –

- (a) any right to recover its expenses or be remunerated out of the estate or trust property, and
- (b) any right to be indemnified out of that property for any liability incurred by reason of any act or omission of the company in the performance of its duties as personal representative or trustee.

675 Meaning of “pension scheme”

- (1) In this Chapter “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.
- (2) In subsection (1) “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.

676 Application of provisions to directors

For the purposes of this Chapter references to “employer” and “employee”, in the context of a pension scheme or employees’ share scheme, shall be read as if a director of a company were employed by it.

CHAPTER 2

FINANCIAL ASSISTANCE FOR PURCHASE OF OWN SHARES

Introductory

677 Meaning of “financial assistance”

- (1) In this Chapter “financial assistance” means—
 - (a) financial assistance given by way of gift,
 - (b) financial assistance given—
 - (i) by way of guarantee, security or indemnity (other than an indemnity in respect of the indemnifier’s own neglect or default), or
 - (ii) by way of release or waiver,
 - (c) financial assistance given—
 - (i) by way of a loan or any other agreement under which any of the obligations of the person giving the assistance are to be fulfilled at a time when in accordance with the agreement any obligation of another party to the agreement remains unfulfilled, or
 - (ii) by way of the novation of, or the assignment (in Scotland, assignation) of rights arising under, a loan or such other agreement, or
 - (d) any other financial assistance given by a company where—
 - (i) the net assets of the company are reduced to a material extent by the giving of the assistance, or
 - (ii) the company has no net assets.
- (2) “Net assets” here means the aggregate amount of the company’s assets less the aggregate amount of its liabilities.
- (3) For this purpose a company’s liabilities include—
 - (a) where the company draws up Companies Act individual accounts, any provision of a kind specified for the purposes of this subsection by regulations under section 396, and
 - (b) where the company draws up IAS individual accounts, any provision made in those accounts.

Circumstances in which financial assistance prohibited

678 Assistance for acquisition of shares in public company

- (1) Where a person is acquiring or proposing to acquire shares in a public company, it is not lawful for that company, or a company that is a subsidiary of that company, to give financial assistance directly or indirectly for the purpose of the acquisition before or at the same time as the acquisition takes place.
- (2) Subsection (1) does not prohibit a company from giving financial assistance for the acquisition of shares in it or its holding company if—
 - (a) the company's principal purpose in giving the assistance is not to give it for the purpose of any such acquisition, or
 - (b) the giving of the assistance for that purpose is only an incidental part of some larger purpose of the company,and the assistance is given in good faith in the interests of the company.
- (3) Where—
 - (a) a person has acquired shares in a company, and
 - (b) a liability has been incurred (by that or another person) for the purpose of the acquisition,it is not lawful for that company, or a company that is a subsidiary of that company, to give financial assistance directly or indirectly for the purpose of reducing or discharging the liability if, at the time the assistance is given, the company in which the shares were acquired is a public company.
- (4) Subsection (3) does not prohibit a company from giving financial assistance if—
 - (a) the company's principal purpose in giving the assistance is not to reduce or discharge any liability incurred by a person for the purpose of the acquisition of shares in the company or its holding company, or
 - (b) the reduction or discharge of any such liability is only an incidental part of some larger purpose of the company,and the assistance is given in good faith in the interests of the company.
- (5) This section has effect subject to sections 681 and 682 (unconditional and conditional exceptions to prohibition).

679 Assistance by public company for acquisition of shares in its private holding company

- (1) Where a person is acquiring or proposing to acquire shares in a private company, it is not lawful for a public company that is a subsidiary of that company to give financial assistance directly or indirectly for the purpose of the acquisition before or at the same time as the acquisition takes place.
- (2) Subsection (1) does not prohibit a company from giving financial assistance for the acquisition of shares in its holding company if—
 - (a) the company's principal purpose in giving the assistance is not to give it for the purpose of any such acquisition, or
 - (b) the giving of the assistance for that purpose is only an incidental part of some larger purpose of the company,and the assistance is given in good faith in the interests of the company.

- (3) Where –
- (a) a person has acquired shares in a private company, and
 - (b) a liability has been incurred (by that or another person) for the purpose of the acquisition,
- it is not lawful for a public company that is a subsidiary of that company to give financial assistance directly or indirectly for the purpose of reducing or discharging the liability.
- (4) Subsection (3) does not prohibit a company from giving financial assistance if –
- (a) the company’s principal purpose in giving the assistance is not to reduce or discharge any liability incurred by a person for the purpose of the acquisition of shares in its holding company, or
 - (b) the reduction or discharge of any such liability is only an incidental part of some larger purpose of the company,
- and the assistance is given in good faith in the interests of the company.
- (5) This section has effect subject to sections 681 and 682 (unconditional and conditional exceptions to prohibition).

680 Prohibited financial assistance an offence

- (1) If a company contravenes section 678(1) or (3) or section 679(1) or (3) (prohibited financial assistance) 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 –
- (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).

Exceptions from prohibition

681 Unconditional exceptions

- (1) Neither section 678 nor section 679 prohibits a transaction to which this section applies.
- (2) Those transactions are –
- (a) a distribution of the company’s assets by way of –
 - (i) dividend lawfully made, or
 - (ii) distribution in the course of a company’s winding up;
 - (b) an allotment of bonus shares;
 - (c) a reduction of capital under Chapter 10 of Part 17;
 - (d) a redemption of shares under Chapter 3 or a purchase of shares under Chapter 4 of this Part;

- (e) anything done in pursuance of an order of the court under Part 26 (order sanctioning compromise or arrangement with members or creditors);
- (f) anything done under an arrangement made in pursuance of section 110 of the Insolvency Act 1986 (c. 45) or Article 96 of the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)) (liquidator in winding up accepting shares as consideration for sale of company's property);
- (g) anything done under an arrangement made between a company and its creditors that is binding on the creditors by virtue of Part 1 of the Insolvency Act 1986 or Part 2 of the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)).

682 Conditional exceptions

- (1) Neither section 678 nor section 679 prohibits a transaction to which this section applies –
 - (a) if the company giving the assistance is a private company, or
 - (b) if the company giving the assistance is a public company and –
 - (i) the company has net assets that are not reduced by the giving of the assistance, or
 - (ii) to the extent that those assets are so reduced, the assistance is provided out of distributable profits.
- (2) The transactions to which this section applies are –
 - (a) where the lending of money is part of the ordinary business of the company, the lending of money in the ordinary course of the company's business;
 - (b) the provision by the company, in good faith in the interests of the company or its holding company, of financial assistance for the purposes of an employees' share scheme;
 - (c) the provision of financial assistance by the company for the purposes of or in connection with anything done by the company (or another company in the same group) for the purpose of enabling or facilitating transactions in shares in the first-mentioned company or its holding company between, and involving the acquisition of beneficial ownership of those shares by –
 - (i) bona fide employees or former employees of that company (or another company in the same group), or
 - (ii) spouses or civil partners, widows, widowers or surviving civil partners, or minor children or step-children of any such employees or former employees;
 - (d) the making by the company of loans to persons (other than directors) employed in good faith by the company with a view to enabling those persons to acquire fully paid shares in the company or its holding company to be held by them by way of beneficial ownership.
- (3) The references in this section to "net assets" are to the amount by which the aggregate of the company's assets exceeds the aggregate of its liabilities.
- (4) For this purpose –
 - (a) the amount of both assets and liabilities shall be taken to be as stated in the company's accounting records immediately before the financial assistance is given, and

- (b) “liabilities” includes any amount retained as reasonably necessary for the purpose of providing for a liability the nature of which is clearly defined and that is either likely to be incurred or certain to be incurred but uncertain as to amount or as to the date on which it will arise.
- (5) For the purposes of subsection (2)(c) a company is in the same group as another company if it is a holding company or subsidiary of that company or a subsidiary of a holding company of that company.

Supplementary

683 Definitions for this Chapter

- (1) In this Chapter –
- “distributable profits”, in relation to the giving of any financial assistance –
- (a) means those profits out of which the company could lawfully make a distribution equal in value to that assistance, and
 - (b) includes, in a case where the financial assistance consists of or includes, or is treated as arising in consequence of, the sale, transfer or other disposition of a non-cash asset, any profit that, if the company were to make a distribution of that character would be available for that purpose (see section 846); and
- “distribution” has the same meaning as in Part 23 (distributions) (see section 829).
- (2) In this Chapter –
- (a) a reference to a person incurring a liability includes his changing his financial position by making an agreement or arrangement (whether enforceable or unenforceable, and whether made on his own account or with any other person) or by any other means, and
 - (b) a reference to a company giving financial assistance for the purposes of reducing or discharging a liability incurred by a person for the purpose of the acquisition of shares includes its giving such assistance for the purpose of wholly or partly restoring his financial position to what it was before the acquisition took place.

CHAPTER 3

REDEEMABLE SHARES

684 Power of limited company to issue redeemable shares

- (1) A limited company having a share capital may issue shares that are to be redeemed or are liable to be redeemed at the option of the company or the shareholder (“redeemable shares”), subject to the following provisions.
- (2) The articles of a private limited company may exclude or restrict the issue of redeemable shares.
- (3) A public limited company may only issue redeemable shares if it is authorised to do so by its articles.

- (4) No redeemable shares may be issued at a time when there are no issued shares of the company that are not redeemable.

685 Terms and manner of redemption

- (1) The directors of a limited company may determine the terms, conditions and manner of redemption of shares if they are authorised to do so –
 - (a) by the company's articles, or
 - (b) by a resolution of the company.
- (2) A resolution under subsection (1)(b) may be an ordinary resolution, even though it amends the company's articles.
- (3) Where the directors are authorised under subsection (1) to determine the terms, conditions and manner of redemption of shares –
 - (a) they must do so before the shares are allotted, and
 - (b) any obligation of the company to state in a statement of capital the rights attached to the shares extends to the terms, conditions and manner of redemption.
- (4) Where the directors are not so authorised, the terms, conditions and manner of redemption of any redeemable shares must be stated in the company's articles.

686 Payment for redeemable shares

- (1) Redeemable shares in a limited company may not be redeemed unless they are fully paid.
- (2) The terms of redemption of shares in a limited company may provide that the amount payable on redemption may, by agreement between the company and the holder of the shares, be paid on a date later than the redemption date.
- (3) Unless redeemed in accordance with a provision authorised by subsection (2), the shares must be paid for on redemption.

687 Financing of redemption

- (1) A private limited company may redeem redeemable shares out of capital in accordance with Chapter 5.
- (2) Subject to that, redeemable shares in a limited company may only be redeemed out of –
 - (a) distributable profits of the company, or
 - (b) the proceeds of a fresh issue of shares made for the purposes of the redemption.
- (3) Any premium payable on redemption of shares in a limited company must be paid out of distributable profits of the company, subject to the following provision.
- (4) If the redeemable shares were issued at a premium, any premium payable on their redemption may be paid out of the proceeds of a fresh issue of shares made for the purposes of the redemption, up to an amount equal to –
 - (a) the aggregate of the premiums received by the company on the issue of the shares redeemed, or

- (b) the current amount of the company's share premium account (including any sum transferred to that account in respect of premiums on the new shares),
whichever is the less.
- (5) The amount of the company's share premium account is reduced by a sum corresponding (or by sums in the aggregate corresponding) to the amount of any payment made under subsection (4).
- (6) This section is subject to section 735(4) (terms of redemption enforceable in a winding up).

688 Redeemed shares treated as cancelled

Where shares in a limited company are redeemed –

- (a) the shares are treated as cancelled, and
- (b) the amount of the company's issued share capital is diminished accordingly by the nominal value of the shares redeemed.

689 Notice to registrar of redemption

- (1) If a limited company redeems any redeemable shares it must within one month after doing so give notice to the registrar, specifying the shares redeemed.
- (2) The notice must be accompanied by a statement of capital.
- (3) The statement of capital must state with respect to the company's share capital immediately following the redemption –
 - (a) the total number of shares of the company,
 - (b) the aggregate nominal value of those shares,
 - (c) for each class of shares –
 - (i) prescribed particulars of the rights attached to the shares,
 - (ii) the total number of shares of that class, and
 - (iii) the aggregate nominal value of shares of that class, and
 - (d) the amount paid up and the amount (if any) unpaid on each share (whether on account of the nominal value of the share or by way of premium).
- (4) 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.
- (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.

CHAPTER 4

PURCHASE OF OWN SHARES

General provisions

690 Power of limited company to purchase own shares

- (1) A limited company having a share capital may purchase its own shares (including any redeemable shares), subject to—
 - (a) the following provisions of this Chapter, and
 - (b) any restriction or prohibition in the company's articles.
- (2) A limited company may not purchase its own shares if as a result of the purchase there would no longer be any issued shares of the company other than redeemable shares or shares held as treasury shares.

691 Payment for purchase of own shares

- (1) A limited company may not purchase its own shares unless they are fully paid.
- (2) Where a limited company purchases its own shares, the shares must be paid for on purchase.

692 Financing of purchase of own shares

- (1) A private limited company may purchase its own shares out of capital in accordance with Chapter 5.
- (2) Subject to that—
 - (a) a limited company may only purchase its own shares out of—
 - (i) distributable profits of the company, or
 - (ii) the proceeds of a fresh issue of shares made for the purpose of financing the purchase, and
 - (b) any premium payable on the purchase by a limited company of its own shares must be paid out of distributable profits of the company, subject to subsection (3).
- (3) If the shares to be purchased were issued at a premium, any premium payable on their purchase by the company may be paid out of the proceeds of a fresh issue of shares made for the purpose of financing the purchase, up to an amount equal to—
 - (a) the aggregate of the premiums received by the company on the issue of the shares purchased, or
 - (b) the current amount of the company's share premium account (including any sum transferred to that account in respect of premiums on the new shares),whichever is the less.
- (4) The amount of the company's share premium account is reduced by a sum corresponding (or by sums in the aggregate corresponding) to the amount of any payment made under subsection (3).
- (5) This section has effect subject to section 735(4) (terms of purchase enforceable in a winding up).

Authority for purchase of own shares

693 Authority for purchase of own shares

- (1) A limited company may only purchase its own shares –
 - (a) by an off-market purchase, in pursuance of a contract approved in advance in accordance with section 694;
 - (b) by a market purchase, authorised in accordance with section 701.
- (2) A purchase is “off-market” if the shares either –
 - (a) are purchased otherwise than on a recognised investment exchange, or
 - (b) are purchased on a recognised investment exchange but are not subject to a marketing arrangement on the exchange.
- (3) For this purpose a company’s shares are subject to a marketing arrangement on a recognised investment exchange if –
 - (a) they are listed under Part 6 of the Financial Services and Markets Act 2000 (c. 8), or
 - (b) the company has been afforded facilities for dealings in the shares to take place on the exchange –
 - (i) without prior permission for individual transactions from the authority governing that investment exchange, and
 - (ii) without limit as to the time during which those facilities are to be available.
- (4) A purchase is a “market purchase” if it is made on a recognised investment exchange and is not an off-market purchase by virtue of subsection (2)(b).
- (5) In this section “recognised investment exchange” means a recognised investment exchange (within the meaning of Part 18 of the Financial Services and Markets Act 2000) other than an overseas exchange (within the meaning of that Part).

Authority for off-market purchase

694 Authority for off-market purchase

- (1) A company may only make an off-market purchase of its own shares in pursuance of a contract approved prior to the purchase in accordance with this section.
- (2) Either –
 - (a) the terms of the contract must be authorised by a special resolution of the company before the contract is entered into, or
 - (b) the contract must provide that no shares may be purchased in pursuance of the contract until its terms have been authorised by a special resolution of the company.
- (3) The contract may be a contract, entered into by the company and relating to shares in the company, that does not amount to a contract to purchase the shares but under which the company may (subject to any conditions) become entitled or obliged to purchase the shares.
- (4) The authority conferred by a resolution under this section may be varied, revoked or from time to time renewed by a special resolution of the company.

- (5) In the case of a public company a resolution conferring, varying or renewing authority must specify a date on which the authority is to expire, which must not be later than 18 months after the date on which the resolution is passed.
- (6) A resolution conferring, varying, revoking or renewing authority under this section is subject to –
 - section 695 (exercise of voting rights), and
 - section 696 (disclosure of details of contract).

695 Resolution authorising off-market purchase: exercise of voting rights

- (1) This section applies to a resolution to confer, vary, revoke or renew authority for the purposes of section 694 (authority for off-market purchase of own shares).
- (2) Where the resolution is proposed as a written resolution, a member who holds shares to which the resolution relates is not an eligible member.
- (3) Where the resolution is proposed at a meeting of the company, it is not effective if –
 - (a) any member of the company holding shares to which the resolution relates exercises the voting rights carried by any of those shares in voting on the resolution, and
 - (b) the resolution would not have been passed if he had not done so.
- (4) For this purpose –
 - (a) a member who holds shares to which the resolution relates is regarded as exercising the voting rights carried by those shares not only if he votes in respect of them on a poll on the question whether the resolution shall be passed, but also if he votes on the resolution otherwise than on a poll;
 - (b) any member of the company may demand a poll on that question;
 - (c) a vote and a demand for a poll by a person as proxy for a member are the same respectively as a vote and a demand by the member.

696 Resolution authorising off-market purchase: disclosure of details of contract

- (1) This section applies in relation to a resolution to confer, vary, revoke or renew authority for the purposes of section 694 (authority for off-market purchase of own shares).
- (2) A copy of the contract (if it is in writing) or a memorandum setting out its terms (if it is not) must be made available to members –
 - (a) in the case of a written resolution, by being sent or submitted to every eligible member at or before the time at which the proposed resolution is sent or submitted to him;
 - (b) in the case of a resolution at a meeting, by being made available for inspection by members of the company both –
 - (i) at the company's registered office for not less than 15 days ending with the date of the meeting, and
 - (ii) at the meeting itself.
- (3) A memorandum of contract terms so made available must include the names of the members holding shares to which the contract relates.

- (4) A copy of the contract so made available must have annexed to it a written memorandum specifying such of those names as do not appear in the contract itself.
- (5) The resolution is not validly passed if the requirements of this section are not complied with

697 Variation of contract for off-market purchase

- (1) A company may only agree to a variation of a contract authorised under section 694 (authority for off-market purchase) if the variation is approved in advance in accordance with this section.
- (2) The terms of the variation must be authorised by a special resolution of the company before it is agreed to.
- (3) That authority may be varied, revoked or from time to time renewed by a special resolution of the company.
- (4) In the case of a public company a resolution conferring, varying or renewing authority must specify a date on which the authority is to expire, which must not be later than 18 months after the date on which the resolution is passed.
- (5) A resolution conferring, varying, revoking or renewing authority under this section is subject to –
 - section 698 (exercise of voting rights), and
 - section 699 (disclosure of details of variation).

698 Resolution authorising variation: exercise of voting rights

- (1) This section applies to a resolution to confer, vary, revoke or renew authority for the purposes of section 697 (variation of contract for off-market purchase of own shares).
- (2) Where the resolution is proposed as a written resolution, a member who holds shares to which the resolution relates is not an eligible member.
- (3) Where the resolution is proposed at a meeting of the company, it is not effective if –
 - (a) any member of the company holding shares to which the resolution relates exercises the voting rights carried by any of those shares in voting on the resolution, and
 - (b) the resolution would not have been passed if he had not done so.
- (4) For this purpose –
 - (a) a member who holds shares to which the resolution relates is regarded as exercising the voting rights carried by those shares not only if he votes in respect of them on a poll on the question whether the resolution shall be passed, but also if he votes on the resolution otherwise than on a poll;
 - (b) any member of the company may demand a poll on that question;
 - (c) a vote and a demand for a poll by a person as proxy for a member are the same respectively as a vote and a demand by the member.

699 Resolution authorising variation: disclosure of details of variation

- (1) This section applies in relation to a resolution under section 697 (variation of contract for off-market purchase of own shares).
- (2) A copy of the proposed variation (if it is in writing) or a written memorandum giving details of the proposed variation (if it is not) must be made available to members—
 - (a) in the case of a written resolution, by being sent or submitted to every eligible member at or before the time at which the proposed resolution is sent or submitted to him;
 - (b) in the case of a resolution at a meeting, by being made available for inspection by members of the company both—
 - (i) at the company's registered office for not less than 15 days ending with the date of the meeting, and
 - (ii) at the meeting itself.
- (3) There must also be made available as mentioned in subsection (2) a copy of the original contract or, as the case may be, a memorandum of its terms, together with any variations previously made.
- (4) A memorandum of the proposed variation so made available must include the names of the members holding shares to which the variation relates.
- (5) A copy of the proposed variation so made available must have annexed to it a written memorandum specifying such of those names as do not appear in the variation itself.
- (6) The resolution is not validly passed if the requirements of this section are not complied with.

700 Release of company's rights under contract for off-market purchase

- (1) An agreement by a company to release its rights under a contract approved under section 694 (authorisation of off-market purchase) is void unless the terms of the release agreement are approved in advance in accordance with this section.
- (2) The terms of the proposed agreement must be authorised by a special resolution of the company before the agreement is entered into.
- (3) That authority may be varied, revoked or from time to time renewed by a special resolution of the company.
- (4) In the case of a public company a resolution conferring, varying or renewing authority must specify a date on which the authority is to expire, which must not be later than 18 months after the date on which the resolution is passed.
- (5) The provisions of—
 - section 698 (exercise of voting rights), and
 - section 699 (disclosure of details of variation),apply to a resolution authorising a proposed release agreement as they apply to a resolution authorising a proposed variation.

Authority for market purchase

701 Authority for market purchase

- (1) A company may only make a market purchase of its own shares if the purchase has first been authorised by a resolution of the company.
- (2) That authority –
 - (a) may be general or limited to the purchase of shares of a particular class or description, and
 - (b) may be unconditional or subject to conditions.
- (3) The authority must –
 - (a) specify the maximum number of shares authorised to be acquired, and
 - (b) determine both the maximum and minimum prices that may be paid for the shares.
- (4) The authority may be varied, revoked or from time to time renewed by a resolution of the company.
- (5) A resolution conferring, varying or renewing authority must specify a date on which it is to expire, which must not be later than 18 months after the date on which the resolution is passed.
- (6) A company may make a purchase of its own shares after the expiry of the time limit specified if –
 - (a) the contract of purchase was concluded before the authority expired, and
 - (b) the terms of the authority permitted the company to make a contract of purchase that would or might be executed wholly or partly after its expiration.
- (7) A resolution to confer or vary authority under this section may determine either or both the maximum and minimum price for purchase by –
 - (a) specifying a particular sum, or
 - (b) providing a basis or formula for calculating the amount of the price (but without reference to any person's discretion or opinion).
- (8) Chapter 3 of Part 3 (resolutions affecting a company's constitution) applies to a resolution under this section.

Supplementary provisions

702 Copy of contract or memorandum to be available for inspection

- (1) This section applies where a company has entered into –
 - (a) a contract approved under section 694 (authorisation of contract for off-market purchase), or
 - (b) a contract for a purchase authorised under section 701 (authorisation of market purchase).
- (2) The company must keep available for inspection –
 - (a) a copy of the contract, or
 - (b) if the contract is not in writing, a written memorandum setting out its terms.

- (3) The copy or memorandum must be kept available for inspection from the conclusion of the contract until the end of the period of ten years beginning with—
 - (a) the date on which the purchase of all the shares in pursuance of the contract is completed, or
 - (b) the date on which the contract otherwise determines.
- (4) The copy or memorandum must be kept available for inspection—
 - (a) at the company's registered office, or
 - (b) at a place specified in regulations under section 1136.
- (5) The company must give notice to the registrar—
 - (a) of the place at which the copy or memorandum is kept available for inspection, and
 - (b) of any change in that place,unless it has at all times been kept at the company's registered office.
- (6) Every copy or memorandum required to be kept under this section must be kept open to inspection without charge—
 - (a) by any member of the company, and
 - (b) in the case of a public company, by any other person.
- (7) The provisions of this section apply to a variation of a contract as they apply to the original contract.

703 Enforcement of right to inspect copy or memorandum

- (1) If default is made in complying with section 702(2), (3) or (4) or default is made for 14 days in complying with section 702(5), or an inspection required under section 702(6) is refused, 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 refusal of an inspection required under section 702(6) the court may by order compel an immediate inspection.

704 No assignment of company's right to purchase own shares

The rights of a company under a contract authorised under—

- (a) section 694 (authority for off-market purchase), or
 - (b) section 701 (authority for market purchase)
- are not capable of being assigned.

705 Payments apart from purchase price to be made out of distributable profits

- (1) A payment made by a company in consideration of—
 - (a) acquiring any right with respect to the purchase of its own shares in pursuance of a contingent purchase contract approved under section 694 (authorisation of off-market purchase),

- (b) the variation of any contract approved under that section, or
- (c) the release of any of the company's obligations with respect to the purchase of any of its own shares under a contract –
 - (i) approved under section 694, or
 - (ii) authorised under section 701 (authorisation of market purchase),

must be made out of the company's distributable profits.

- (2) If this requirement is not met in relation to a contract, then –
 - (a) in a case within subsection (1)(a), no purchase by the company of its own shares in pursuance of that contract may be made under this Chapter;
 - (b) in a case within subsection (1)(b), no such purchase following the variation may be made under this Chapter;
 - (c) in a case within subsection (1)(c), the purported release is void.

706 Treatment of shares purchased

Where a limited company makes a purchase of its own shares in accordance with this Chapter, then –

- (a) if section 724 (treasury shares) applies, the shares may be held and dealt with in accordance with Chapter 6;
- (b) if that section does not apply –
 - (i) the shares are treated as cancelled, and
 - (ii) the amount of the company's issued share capital is diminished accordingly by the nominal value of the shares cancelled.

707 Return to registrar of purchase of own shares

- (1) Where a company purchases shares under this Chapter, it must deliver a return to the registrar within the period of 28 days beginning with the date on which the shares are delivered to it.
- (2) The return must distinguish –
 - (a) shares in relation to which section 724 (treasury shares) applies and shares in relation to which that section does not apply, and
 - (b) shares in relation to which that section applies –
 - (i) that are cancelled forthwith (under section 729 (cancellation of treasury shares)), and
 - (ii) that are not so cancelled.
- (3) The return must state, with respect to shares of each class purchased –
 - (a) the number and nominal value of the shares, and
 - (b) the date on which they were delivered to the company.
- (4) In the case of a public company the return must also state –
 - (a) the aggregate amount paid by the company for the shares, and
 - (b) the maximum and minimum prices paid in respect of shares of each class purchased.
- (5) Particulars of shares delivered to the company on different dates and under different contracts may be included in a single return.

In such a case the amount required to be stated under subsection (4)(a) is the aggregate amount paid by the company for all the shares to which the return relates.

- (6) If default is made in complying with this section an offence is committed by every officer of the company who is in default.
- (7) A person guilty of an offence under this section is liable—
 - (a) on conviction on indictment, to a fine;
 - (b) on summary conviction to a fine not exceeding the statutory maximum and, for continued contravention, a daily default fine not exceeding one-tenth of the statutory maximum.

708 Notice to registrar of cancellation of shares

- (1) If on the purchase by a company of any of its own shares in accordance with this Part—
 - (a) section 724 (treasury shares) does not apply (so that the shares are treated as cancelled), or
 - (b) that section applies but the shares are cancelled forthwith (under section 729 (cancellation of treasury shares)),the company must give notice of cancellation to the registrar, within the period of 28 days beginning with the date on which the shares are delivered to it, specifying the shares cancelled.
- (2) The notice must be accompanied by a statement of capital.
- (3) The statement of capital must state with respect to the company's share capital immediately following the cancellation—
 - (a) the total number of shares of the company,
 - (b) the aggregate nominal value of those shares,
 - (c) for each class of shares—
 - (i) prescribed particulars of the rights attached to the shares,
 - (ii) the total number of shares of that class, and
 - (iii) the aggregate nominal value of shares of that class, and
 - (d) the amount paid up and the amount (if any) unpaid on each share (whether on account of the nominal value of the share or by way of premium).
- (4) 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.
- (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.

CHAPTER 5

REDEMPTION OR PURCHASE BY PRIVATE COMPANY OUT OF CAPITAL

Introductory

709 Power of private limited company to redeem or purchase own shares out of capital

- (1) A private limited company may in accordance with this Chapter, but subject to any restriction or prohibition in the company's articles, make a payment in respect of the redemption or purchase of its own shares otherwise than out of distributable profits or the proceeds of a fresh issue of shares.
- (2) References below in this Chapter to payment out of capital are to any payment so made, whether or not it would be regarded apart from this section as a payment out of capital.

The permissible capital payment

710 The permissible capital payment

- (1) The payment that may, in accordance with this Chapter, be made by a company out of capital in respect of the redemption or purchase of its own shares is such amount as, after applying for that purpose –
 - (a) any available profits of the company, and
 - (b) the proceeds of any fresh issue of shares made for the purposes of the redemption or purchase,is required to meet the price of redemption or purchase.
- (2) That is referred to below in this Chapter as “the permissible capital payment” for the shares.

711 Available profits

- (1) For the purposes of this Chapter the available profits of the company, in relation to the redemption or purchase of any shares, are the profits of the company that are available for distribution (within the meaning of Part 23).
- (2) But the question whether a company has any profits so available, and the amount of any such profits, shall be determined in accordance with section 712 instead of in accordance with sections 836 to 842 in that Part.

712 Determination of available profits

- (1) The available profits of the company are determined as follows.
- (2) First, determine the profits of the company by reference to the following items as stated in the relevant accounts –
 - (a) profits, losses, assets and liabilities,
 - (b) provisions of the following kinds –
 - (i) where the relevant accounts are Companies Act accounts, provisions of a kind specified for the purposes of this subsection by regulations under section 396;

- (ii) where the relevant accounts are IAS accounts, provisions of any kind;
 - (c) share capital and reserves (including undistributable reserves).
- (3) Second, reduce the amount so determined by the amount of –
 - (a) any distribution lawfully made by the company, and
 - (b) any other relevant payment lawfully made by the company out of distributable profits,after the date of the relevant accounts and before the end of the relevant period.
- (4) For this purpose “other relevant payment lawfully made” includes –
 - (a) financial assistance lawfully given out of distributable profits in accordance with Chapter 2,
 - (b) payments lawfully made out of distributable profits in respect of the purchase by the company of any shares in the company, and
 - (c) payments of any description specified in section 705 (payments other than purchase price to be made out of distributable profits) lawfully made by the company.
- (5) The resulting figure is the amount of available profits.
- (6) For the purposes of this section “the relevant accounts” are any accounts that –
 - (a) are prepared as at a date within the relevant period, and
 - (b) are such as to enable a reasonable judgment to be made as to the amounts of the items mentioned in subsection (2).
- (7) In this section “the relevant period” means the period of three months ending with the date on which the directors’ statement is made in accordance with section 714.

Requirements for payment out of capital

713 Requirements for payment out of capital

- (1) A payment out of capital by a private company for the redemption or purchase of its own shares is not lawful unless the requirements of the following sections are met –
 - section 714 (directors’ statement and auditor’s report);
 - section 716 (approval by special resolution);
 - section 719 (public notice of proposed payment);
 - section 720 (directors’ statement and auditor’s report to be available for inspection).
- (2) This is subject to any order of the court under section 721 (power of court to extend period for compliance on application by persons objecting to payment).

714 Directors’ statement and auditor’s report

- (1) The company’s directors must make a statement in accordance with this section.
- (2) The statement must specify the amount of the permissible capital payment for the shares in question.

- (3) It must state that, having made full inquiry into the affairs and prospects of the company, the directors have formed the opinion –
 - (a) as regards its initial situation immediately following the date on which the payment out of capital is proposed to be made, that there will be no grounds on which the company could then be found unable to pay its debts, and
 - (b) as regards its prospects for the year immediately following that date, that having regard to –
 - (i) their intentions with respect to the management of the company's business during that year, and
 - (ii) the amount and character of the financial resources that will in their view be available to the company during that year, the company will be able to continue to carry on business as a going concern (and will accordingly be able to pay its debts as they fall due) throughout that year.
- (4) In forming their opinion for the purposes of subsection (3)(a), the directors must take into account all of the company's liabilities (including any contingent or prospective liabilities).
- (5) The directors' statement must be in the prescribed form and must contain such information with respect to the nature of the company's business as may be prescribed.
- (6) It must in addition have annexed to it a report addressed to the directors by the company's auditor stating that –
 - (a) he has inquired into the company's state of affairs,
 - (b) the amount specified in the statement as the permissible capital payment for the shares in question is in his view properly determined in accordance with sections 710 to 712, and
 - (c) he is not aware of anything to indicate that the opinion expressed by the directors in their statement as to any of the matters mentioned in subsection (3) above is unreasonable in all the circumstances.

715 Directors' statement: offence if no reasonable grounds for opinion

- (1) If the directors make a statement under section 714 without having reasonable grounds for the opinion expressed in it, an offence is committed by every director who is in default.
- (2) 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 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 a fine not exceeding the statutory maximum (or both).

716 Payment to be approved by special resolution

- (1) The payment out of capital must be approved by a special resolution of the company.
- (2) The resolution must be passed on, or within the week immediately following, the date on which the directors make the statement required by section 714.
- (3) A resolution under this section is subject to –
 - section 717 (exercise of voting rights), and
 - section 718 (disclosure of directors' statement and auditors' report).

717 Resolution authorising payment: exercise of voting rights

- (1) This section applies to a resolution under section 716 (authority for payment out of capital for redemption or purchase of own shares).
- (2) Where the resolution is proposed as a written resolution, a member who holds shares to which the resolution relates is not an eligible member.
- (3) Where the resolution is proposed at a meeting of the company, it is not effective if –
 - (a) any member of the company holding shares to which the resolution relates exercises the voting rights carried by any of those shares in voting on the resolution, and
 - (b) the resolution would not have been passed if he had not done so.
- (4) For this purpose –
 - (a) a member who holds shares to which the resolution relates is regarded as exercising the voting rights carried by those shares not only if he votes in respect of them on a poll on the question whether the resolution shall be passed, but also if he votes on the resolution otherwise than on a poll;
 - (b) any member of the company may demand a poll on that question;
 - (c) a vote and a demand for a poll by a person as proxy for a member are the same respectively as a vote and a demand by the member.

718 Resolution authorising payment: disclosure of directors' statement and auditor's report

- (1) This section applies to a resolution under section 716 (resolution authorising payment out of capital for redemption or purchase of own shares).
- (2) A copy of the directors' statement and auditor's report under section 714 must be made available to members –
 - (a) in the case of a written resolution, by being sent or submitted to every eligible member at or before the time at which the proposed resolution is sent or submitted to him;
 - (b) in the case of a resolution at a meeting, by being made available for inspection by members of the company at the meeting.
- (3) The resolution is ineffective if this requirement is not complied with.

719 Public notice of proposed payment

- (1) Within the week immediately following the date of the resolution under section 716 the company must cause to be published in the Gazette a notice—
 - (a) stating that the company has approved a payment out of capital for the purpose of acquiring its own shares by redemption or purchase or both (as the case may be),
 - (b) specifying—
 - (i) the amount of the permissible capital payment for the shares in question, and
 - (ii) the date of the resolution,
 - (c) stating where the directors' statement and auditor's report required by section 714 are available for inspection, and
 - (d) stating that any creditor of the company may at any time within the five weeks immediately following the date of the resolution apply to the court under section 721 for an order preventing the payment.
- (2) Within the week immediately following the date of the resolution the company must also either—
 - (a) cause a notice to the same effect as that required by subsection (1) to be published in an appropriate national newspaper, or
 - (b) give notice in writing to that effect to each of its creditors.
- (3) "An appropriate national newspaper" means a newspaper circulating throughout the part of the United Kingdom in which the company is registered.
- (4) Not later than the day on which the company—
 - (a) first publishes the notice required by subsection (1), or
 - (b) if earlier, first publishes or gives the notice required by subsection (2),the company must deliver to the registrar a copy of the directors' statement and auditor's report required by section 714.

720 Directors' statement and auditor's report to be available for inspection

- (1) The directors' statement and auditor's report must be kept available for inspection throughout the period—
 - (a) beginning with the day on which the company—
 - (i) first publishes the notice required by section 719(1), or
 - (ii) if earlier, first publishes or gives the notice required by section 719(2), and
 - (b) ending five weeks after the date of the resolution for payment out of capital.
- (2) They must be kept available for inspection—
 - (a) at the company's registered office, or
 - (b) at a place specified in regulations under section 1136.
- (3) The company must give notice to the registrar—
 - (a) of the place at which the statement and report are kept available for inspection, and
 - (b) of any change in that place,unless they have at all times been kept at the company's registered office.

- (4) They must be open to the inspection of any member or creditor of the company without charge.
- (5) If default is made for 14 days in complying with subsection (3), or an inspection under subsection (4) is refused, 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.
- (7) In the case of a refusal of an inspection required by subsection (4), the court may by order compel an immediate inspection.

Objection to payment by members or creditors

721 Application to court to cancel resolution

- (1) Where a private company passes a special resolution approving a payment out of capital for the redemption or purchase of any of its shares –
 - (a) any member of the company (other than one who consented to or voted in favour of the resolution), and
 - (b) any creditor of the company,may apply to the court for the cancellation of the resolution.
- (2) The application –
 - (a) must be made within five weeks after the passing of the resolution, and
 - (b) may be made on behalf of the persons entitled to make it by such one or more of their number as they may appoint in writing for the purpose.
- (3) On an application under this section the court may if it thinks fit –
 - (a) adjourn the proceedings in order that an arrangement may be made to the satisfaction of the court –
 - (i) for the purchase of the interests of dissentient members, or
 - (ii) for the protection of dissentient creditors, and
 - (b) give such directions and make such orders as it thinks expedient for facilitating or carrying into effect any such arrangement.
- (4) Subject to that, the court must make an order either cancelling or confirming the resolution, and may do so on such terms and conditions as it thinks fit.
- (5) If the court confirms the resolution, it may by order alter or extend any date or period of time specified –
 - (a) in the resolution, or
 - (b) in any provision of this Chapter applying to the redemption or purchase to which the resolution relates.
- (6) The court's order may, if the court thinks fit –
 - (a) provide for the purchase by the company of the shares of any of its members and for the reduction accordingly of the company's capital, and
 - (b) make any alteration in the company's articles that may be required in consequence of that provision.

- (7) The court's order may, if the court thinks fit, require the company not to make any, or any specified, amendments of its articles without the leave of the court.

722 Notice to registrar of court application or order

- (1) On making an application under section 721 (application to court to cancel resolution) the applicants, or the person making the application on their behalf, must immediately give notice to the registrar.
This is without prejudice to any provision of rules of court as to service of notice of the application.
- (2) On being served with notice of any such application, the company must immediately give notice to the registrar.
- (3) Within 15 days of the making of the court's order on the application, or such longer period as the court may at any time direct, the company must deliver to the registrar a copy of the order.
- (4) If a company fails to comply with subsection (2) or (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 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.

Supplementary provisions

723 When payment out of capital to be made

- (1) The payment out of capital must be made –
- (a) no earlier than five weeks after the date on which the resolution under section 716 is passed, and
 - (b) no more than seven weeks after that date.
- (2) This is subject to any exercise of the court's powers under section 721(5) (power to alter or extend time where resolution confirmed after objection).

CHAPTER 6

TREASURY SHARES

724 Treasury shares

- (1) This section applies where –
- (a) a limited company makes a purchase of its own shares in accordance with Chapter 4,
 - (b) the purchase is made out of distributable profits, and
 - (c) the shares are qualifying shares.
- (2) For this purpose “qualifying shares” means shares that –

- (a) are included in the official list in accordance with the provisions of Part 6 of the Financial Services and Markets Act 2000 (c. 8),
- (b) are traded on the market known as the Alternative Investment Market established under the rules of London Stock Exchange plc,
- (c) are officially listed in an EEA State, or
- (d) are traded on a regulated market.

In paragraph (a) “the official list” has the meaning given in section 103(1) of the Financial Services and Markets Act 2000.

- (3) Where this section applies the company may –
 - (a) hold the shares (or any of them), or
 - (b) deal with any of them, at any time, in accordance with section 727 or 729.
- (4) Where shares are held by the company, the company must be entered in its register of members as the member holding the shares.
- (5) In the Companies Acts references to a company holding shares as treasury shares are to the company holding shares that –
 - (a) were (or are treated as having been) purchased by it in circumstances in which this section applies, and
 - (b) have been held by the company continuously since they were so purchased (or treated as purchased).

725 Treasury shares: maximum holdings

- (1) Where a company has shares of only one class, the aggregate nominal value of shares held as treasury shares must not at any time exceed 10% of the nominal value of the issued share capital of the company at that time.
- (2) Where the share capital of a company is divided into shares of different classes, the aggregate nominal value of the shares of any class held as treasury shares must not at any time exceed 10% of the nominal value of the issued share capital of the shares of that class at that time.
- (3) If subsection (1) or (2) is contravened by a company, the company must dispose of or cancel the excess shares, in accordance with section 727 or 729, before the end of the period of twelve months beginning with the date on which that contravention occurs.

The “excess shares” means such number of the shares held by the company as treasury shares at the time in question as resulted in the limit being exceeded.
- (4) Where a company purchases qualifying shares out of distributable profits in accordance with section 724, a contravention by the company of subsection (1) or (2) above does not render the acquisition void under section 658 (general rule against limited company acquiring its own shares).

726 Treasury shares: exercise of rights

- (1) This section applies where shares are held by a company as treasury shares.
- (2) The company must not exercise any right in respect of the treasury shares, and any purported exercise of such a right is void.

This applies, in particular, to any right to attend or vote at meetings.

- (3) No dividend may be paid, and no other distribution (whether in cash or otherwise) of the company's assets (including any distribution of assets to members on a winding up) may be made to the company, in respect of the treasury shares.
- (4) Nothing in this section prevents –
 - (a) an allotment of shares as fully paid bonus shares in respect of the treasury shares, or
 - (b) the payment of any amount payable on the redemption of the treasury shares (if they are redeemable shares).
- (5) Shares allotted as fully paid bonus shares in respect of the treasury shares are treated as if purchased by the company, at the time they were allotted, in circumstances in which section 724(1) (treasury shares) applied.

727 Treasury shares: disposal

- (1) Where shares are held as treasury shares, the company may at any time –
 - (a) sell the shares (or any of them) for a cash consideration, or
 - (b) transfer the shares (or any of them) for the purposes of or pursuant to an employees' share scheme.
- (2) In subsection (1)(a) "cash consideration" means –
 - (a) cash received by the company, or
 - (b) a cheque received by the company in good faith that the directors have no reason for suspecting will not be paid, or
 - (c) a release of a liability of the company for a liquidated sum, or
 - (d) an undertaking to pay cash to the company on or before a date not more than 90 days after the date on which the company agrees to sell the shares, or
 - (e) payment by any other means giving rise to a present or future entitlement (of the company or a person acting on the company's behalf) to a payment, or credit equivalent to payment, in cash.

For this purpose "cash" includes foreign currency.

- (3) The Secretary of State may by order provide that particular means of payment specified in the order are to be regarded as falling within subsection (2)(e).
- (4) If the company receives a notice under section 979 (takeover offers: right of offeror to buy out minority shareholders) that a person desires to acquire shares held by the company as treasury shares, the company must not sell or transfer the shares to which the notice relates except to that person.
- (5) An order under this section is subject to negative resolution procedure.

728 Treasury shares: notice of disposal

- (1) Where shares held by a company as treasury shares –
 - (a) are sold, or
 - (b) are transferred for the purposes of an employees' share scheme,the company must deliver a return to the registrar not later than 28 days after the shares are disposed of.
- (2) The return must state with respect to shares of each class disposed of –
 - (a) the number and nominal value of the shares, and

- (b) the date on which they were disposed of.
- (3) Particulars of shares disposed of on different dates may be included in a single return.
- (4) If default is made in complying with this section an offence is committed by every officer of the company who is in default.
- (5) A person guilty of an offence under this section is liable –
 - (a) on conviction on indictment, to a fine;
 - (b) on summary conviction, to a fine not exceeding the statutory maximum and, for continued contravention, a daily default fine not exceeding one-tenth of the statutory maximum.

729 Treasury shares: cancellation

- (1) Where shares are held as treasury shares, the company may at any time cancel the shares (or any of them).
- (2) If shares held as treasury shares cease to be qualifying shares, the company must forthwith cancel the shares.
- (3) For this purpose shares are not to be regarded as ceasing to be qualifying shares by virtue only of –
 - (a) the suspension of their listing in accordance with the applicable rules in the EEA State in which the shares are officially listed, or
 - (b) the suspension of their trading in accordance with –
 - (i) in the case of shares traded on the market known as the Alternative Investment Market, the rules of London Stock Exchange plc, and
 - (ii) in any other case, the rules of the regulated market on which they are traded.
- (4) If company cancels shares held as treasury shares, the amount of the company's share capital is reduced accordingly by the nominal amount of the shares cancelled.
- (5) The directors may take any steps required to enable the company to cancel its shares under this section without complying with the provisions of Chapter 10 of Part 17 (reduction of share capital).

730 Treasury shares: notice of cancellation

- (1) Where shares held by a company as treasury shares are cancelled, the company must deliver a return to the registrar not later than 28 days after the shares are cancelled.

This does not apply to shares that are cancelled forthwith on their acquisition by the company (see section 708).
- (2) The return must state with respect to shares of each class cancelled –
 - (a) the number and nominal value of the shares, and
 - (b) the date on which they were cancelled.
- (3) Particulars of shares cancelled on different dates may be included in a single return.
- (4) The notice must be accompanied by a statement of capital.

- (5) The statement of capital must state with respect to the company's share capital immediately following the cancellation –
- (a) the total number of shares of the company,
 - (b) the aggregate nominal value of those shares,
 - (c) for each class of shares –
 - (i) prescribed particulars of the rights attached to the shares,
 - (ii) the total number of shares of that class, and
 - (iii) the aggregate nominal value of shares of that class, and
 - (d) the amount paid up and the amount (if any) unpaid on each share (whether on account of the nominal value of the share or by way of premium).
- (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.
- (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.

731 Treasury shares: treatment of proceeds of sale

- (1) Where shares held as treasury shares are sold, the proceeds of sale must be dealt with in accordance with this section.
- (2) If the proceeds of sale are equal to or less than the purchase price paid by the company for the shares, the proceeds are treated for the purposes of Part 23 (distributions) as a realised profit of the company.
- (3) If the proceeds of sale exceed the purchase price paid by the company –
- (a) an amount equal to the purchase price paid is treated as a realised profit of the company for the purposes of that Part, and
 - (b) the excess must be transferred to the company's share premium account.
- (4) For the purposes of this section –
- (a) the purchase price paid by the company must be determined by the application of a weighted average price method, and
 - (b) if the shares were allotted to the company as fully paid bonus shares, the purchase price paid for them is treated as nil.

732 Treasury shares: offences

- (1) If a company contravenes any of the provisions of this Chapter (except section 730 (notice of cancellation)), 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 –
- (a) on conviction on indictment, to a fine;
 - (b) on summary conviction to a fine not exceeding the statutory maximum.

CHAPTER 7

SUPPLEMENTARY PROVISIONS

733 The capital redemption reserve

- (1) In the following circumstances a company must transfer amounts to a reserve, called the “capital redemption reserve”.
 - (2) Where under this Part shares of a limited company are redeemed or purchased wholly out of the company’s profits, the amount by which the company’s issued share capital is diminished in accordance with—
 - (a) section 688(b) (on the cancellation of shares redeemed), or
 - (b) section 706(b)(ii) (on the cancellation of shares purchased),must be transferred to the capital redemption reserve.
 - (3) If—
 - (a) the shares are redeemed or purchased wholly or partly out of the proceeds of a fresh issue, and
 - (b) the aggregate amount of the proceeds is less than the aggregate nominal value of the shares redeemed or purchased,the amount of the difference must be transferred to the capital redemption reserve.

This does not apply in the case of a private company if, in addition to the proceeds of the fresh issue, the company applies a payment out of capital under Chapter 5 in making the redemption or purchase.
 - (4) The amount by which a company’s share capital is diminished in accordance with section 729(4) (on the cancellation of shares held as treasury shares) must be transferred to the capital redemption reserve.
 - (5) The company may use the capital redemption reserve to pay up new shares to be allotted to members as fully paid bonus shares.
 - (6) Subject to that, the provisions of the Companies Acts relating to the reduction of a company’s share capital apply as if the capital redemption reserve were part of its paid up share capital.

734 Accounting consequences of payment out of capital

- (1) This section applies where a payment out of capital is made in accordance with Chapter 5 (redemption or purchase of own shares by private company out of capital).
- (2) If the permissible capital payment is less than the nominal amount of the shares redeemed or purchased, the amount of the difference must be transferred to the company’s capital redemption reserve.
- (3) If the permissible capital payment is greater than the nominal amount of the shares redeemed or purchased—
 - (a) the amount of any capital redemption reserve, share premium account or fully paid share capital of the company, and
 - (b) any amount representing unrealised profits of the company for the time being standing to the credit of any revaluation reserve maintained by the company,

may be reduced by a sum not exceeding (or by sums not in total exceeding) the amount by which the permissible capital payment exceeds the nominal amount of the shares.

- (4) Where the proceeds of a fresh issue are applied by the company in making a redemption or purchase of its own shares in addition to a payment out of capital under this Chapter, the references in subsections (2) and (3) to the permissible capital payment are to be read as referring to the aggregate of that payment and those proceeds.

735 Effect of company's failure to redeem or purchase

- (1) This section applies where a company –
- (a) issues shares on terms that they are or are liable to be redeemed, or
 - (b) agrees to purchase any of its shares.
- (2) The company is not liable in damages in respect of any failure on its part to redeem or purchase any of the shares.
 This is without prejudice to any right of the holder of the shares other than his right to sue the company for damages in respect of its failure.
- (3) The court shall not grant an order for specific performance of the terms of redemption or purchase if the company shows that it is unable to meet the costs of redeeming or purchasing the shares in question out of distributable profits.
- (4) If the company is wound up and at the commencement of the winding up any of the shares have not been redeemed or purchased, the terms of redemption or purchase may be enforced against the company.
 When shares are redeemed or purchased under this subsection, they are treated as cancelled.
- (5) Subsection (4) does not apply if –
- (a) the terms provided for the redemption or purchase to take place at a date later than that of the commencement of the winding up, or
 - (b) during the period –
 - (i) beginning with the date on which the redemption or purchase was to have taken place, and
 - (ii) ending with the commencement of the winding up,
 the company could not at any time have lawfully made a distribution equal in value to the price at which the shares were to have been redeemed or purchased.
- (6) There shall be paid in priority to any amount that the company is liable under subsection (4) to pay in respect of any shares –
- (a) all other debts and liabilities of the company (other than any due to members in their character as such), and
 - (b) if other shares carry rights (whether as to capital or as to income) that are preferred to the rights as to capital attaching to the first-mentioned shares, any amount due in satisfaction of those preferred rights.

Subject to that, any such amount shall be paid in priority to any amounts due to members in satisfaction of their rights (whether as to capital or income) as members.

736 Meaning of “distributable profits”

In this Part (except in Chapter 2 (financial assistance): see section 683) “distributable profits”, in relation to the making of any payment by a company, means profits out of which the company could lawfully make a distribution (within the meaning given by section 830) equal in value to the payment.

737 General power to make further provision by regulations

- (1) The Secretary of State may by regulations modify the provisions of this Part.
- (2) The regulations may –
 - (a) amend or repeal any of the provisions of this Part, or
 - (b) make such other provision as appears to the Secretary of State appropriate in place of any of the provisions of this Part.
- (3) Regulations under this section may make consequential amendments or repeals in other provisions of this Act, or in other enactments.
- (4) Regulations under this section are subject to affirmative resolution procedure.

PART 19

DEBENTURES

General provisions

738 Meaning of “debenture”

In the Companies Acts “debenture” includes debenture stock, bonds and any other securities of a company, whether or not constituting a charge on the assets of the company.

739 Perpetual debentures

- (1) A condition contained in debentures, or in a deed for securing debentures, is not invalid by reason only that the debentures are made –
 - (a) irredeemable, or
 - (b) redeemable only –
 - (i) on the happening of a contingency (however remote), or
 - (ii) on the expiration of a period (however long),any rule of equity to the contrary notwithstanding.
- (2) Subsection (1) applies to debentures whenever issued and to deeds whenever executed.

740 Enforcement of contract to subscribe for debentures

A contract with a company to take up and pay for debentures of the company may be enforced by an order for specific performance.

741 Registration of allotment of debentures

- (1) A company must register an allotment of debentures as soon as practicable and in any event within two months after the date of the allotment.
- (2) If a company fails to comply with this section, 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 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.
- (4) For the duties of the company as to the issue of the debentures, or certificates of debenture stock, see Part 21 (certification and transfer of securities)

742 Debentures to bearer (Scotland)

Notwithstanding anything in the statute of the Scots Parliament of 1696, chapter 25, debentures to bearer issued in Scotland are valid and binding according to their terms.

*Register of debenture holders***743 Register of debenture holders**

- (1) Any register of debenture holders of a company that is kept by the company must be kept available for inspection –
 - (a) at the company's 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 any such register 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, been kept available for inspection at the company's registered office.
- (4) 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.
- (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.
- (6) References in this section to a register of debenture holders include a duplicate –
 - (a) of a register of debenture holders that is kept outside the United Kingdom, or
 - (b) of any part of such a register.

744 Register of debenture holders: right to inspect and require copy

- (1) Every register of debenture holders of a company must, except when duly closed, be open to the inspection –
 - (a) of the registered holder of any such debentures, or any holder of shares in 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 the register, or 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.
- (5) For the purposes of this section a register is “duly closed” if it is closed in accordance with provision contained –
 - (a) in the articles or in the debentures,
 - (b) in the case of debenture stock in the stock certificates, or
 - (c) in the trust deed or other document securing the debentures or debenture stock.

The total period for which a register is closed in any year must not exceed 30 days.

- (6) References in this section to a register of debenture holders include a duplicate –
 - (a) of a register of debenture holders that is kept outside the United Kingdom, or
 - (b) of any part of such a register.

745 Register of debenture holders: response to request for inspection or copy

- (1) Where a company receives a request under section 744 (register of debenture holders: 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.

746 Register of debenture holders: refusal of inspection or default in providing copy

- (1) If an inspection required under section 744 (register of debenture holders: 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.

747 Register of debenture holders: 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 744 (register of debenture holders: right to inspect and 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).

748 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 debenture holders, 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).

Supplementary provisions

749 Right of debenture holder to copy of deed

- (1) Any holder of debentures of a company is entitled, on request and on payment of such fee as may be prescribed, to be provided with a copy of any trust deed for securing the debentures.
- (2) If default is made in complying with this section, an offence is committed by every officer of the company who is in default.
- (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 and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.
- (4) In the case of any such default the court may direct that the copy required be sent to the person requiring it.

750 Liability of trustees of debentures

- (1) Any provision contained in –
 - (a) a trust deed for securing an issue of debentures, or
 - (b) any contract with the holders of debentures secured by a trust deed,is void in so far as it would have the effect of exempting a trustee of the deed from, or indemnifying him against, liability for breach of trust where he fails to show the degree of care and diligence required of him as trustee, having regard to the provisions of the trust deed conferring on him any powers, authorities or discretions.
- (2) Subsection (1) does not invalidate –
 - (a) a release otherwise validly given in respect of anything done or omitted to be done by a trustee before the giving of the release;

- (b) any provision enabling such a release to be given –
 - (i) on being agreed to by a majority of not less than 75% in value of the debenture holders present and voting in person or, where proxies are permitted, by proxy at a meeting summoned for the purpose, and
 - (ii) either with respect to specific acts or omissions or on the trustee dying or ceasing to act.
- (3) This section is subject to section 751 (saving for certain older provisions).

751 Liability of trustees of debentures: saving for certain older provisions

- (1) Section 750 (liability of trustees of debentures) does not operate –
 - (a) to invalidate any provision in force on the relevant date so long as any person –
 - (i) then entitled to the benefit of the provision, or
 - (ii) afterwards given the benefit of the provision under subsection (3) below,
 remains a trustee of the deed in question, or
 - (b) to deprive any person of any exemption or right to be indemnified in respect of anything done or omitted to be done by him while any such provision was in force.
- (2) The relevant date for this purpose is –
 - (a) 1st July 1948 in a case where section 192 of the Companies Act 1985 (c. 6) applied immediately before the commencement of this section;
 - (b) 1st July 1961 in a case where Article 201 of the Companies (Northern Ireland) Order 1986 (S.I. 1986/1032 (N.I. 6)) then applied.
- (3) While any trustee of a trust deed remains entitled to the benefit of a provision saved by subsection (1) above the benefit of that provision may be given either –
 - (a) to all trustees of the deed, present and future, or
 - (b) to any named trustees or proposed trustees of it,
 by a resolution passed by a majority of not less than 75% in value of the debenture holders present in person or, where proxies are permitted, by proxy at a meeting summoned for the purpose.
- (4) A meeting for that purpose must be summoned in accordance with the provisions of the deed or, if the deed makes no provision for summoning meetings, in a manner approved by the court.

752 Power to re-issue redeemed debentures

- (1) Where a company has redeemed debentures previously issued, then unless –
 - (a) provision to the contrary (express or implied) is contained in the company's articles or in any contract made by the company, or
 - (b) the company has, by passing a resolution to that effect or by some other act, manifested its intention that the debentures shall be cancelled,
 the company may re-issue the debentures, either by re-issuing the same debentures or by issuing new debentures in their place.
 This subsection is deemed always to have had effect.

- (2) On a re-issue of redeemed debentures the person entitled to the debentures has (and is deemed always to have had) the same priorities as if the debentures had never been redeemed.
- (3) The re-issue of a debenture or the issue of another debenture in its place under this section is treated as the issue of a new debenture for the purposes of stamp duty.
It is not so treated for the purposes of any provision limiting the amount or number of debentures to be issued.
- (4) A person lending money on the security of a debenture re-issued under this section which appears to be duly stamped may give the debenture in evidence in any proceedings for enforcing his security without payment of the stamp duty or any penalty in respect of it, unless he had notice (or, but for his negligence, might have discovered) that the debenture was not duly stamped. In that case the company is liable to pay the proper stamp duty and penalty.

753 Deposit of debentures to secure advances

Where a company has deposited any of its debentures to secure advances from time to time on current account or otherwise, the debentures are not treated as redeemed by reason only of the company's account having ceased to be in debit while the debentures remained so deposited.

754 Priorities where debentures secured by floating charge

- (1) This section applies where debentures of a company registered in England and Wales or Northern Ireland are secured by a charge that, as created, was a floating charge.
- (2) If possession is taken, by or on behalf of the holders of the debentures, of any property comprised in or subject to the charge, and the company is not at that time in the course of being wound up, the company's preferential debts shall be paid out of assets coming to the hands of the persons taking possession in priority to any claims for principal or interest in respect of the debentures.
- (3) "Preferential debts" means the categories of debts listed in Schedule 6 to the Insolvency Act 1986 (c. 45) or Schedule 4 to the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)).
For the purposes of those Schedules "the relevant date" is the date of possession being taken as mentioned in subsection (2).
- (4) Payments under this section shall be recouped, as far as may be, out of the assets of the company available for payment of general creditors.

PART 20

PRIVATE AND PUBLIC COMPANIES

CHAPTER 1

PROHIBITION OF PUBLIC OFFERS BY PRIVATE COMPANIES

755 Prohibition of public offers by private company

- (1) A private company limited by shares or limited by guarantee and having a share capital must not—
 - (a) offer to the public any securities of the company, or
 - (b) allot or agree to allot any securities of the company with a view to their being offered to the public.
- (2) Unless the contrary is proved, an allotment or agreement to allot securities is presumed to be made with a view to their being offered to the public if an offer of the securities (or any of them) to the public is made—
 - (a) within six months after the allotment or agreement to allot, or
 - (b) before the receipt by the company of the whole of the consideration to be received by it in respect of the securities.
- (3) A company does not contravene this section if—
 - (a) it acts in good faith in pursuance of arrangements under which it is to re-register as a public company before the securities are allotted, or
 - (b) as part of the terms of the offer it undertakes to re-register as a public company within a specified period, and that undertaking is complied with.
- (4) The specified period for the purposes of subsection (3)(b) must be a period ending not later than six months after the day on which the offer is made (or, in the case of an offer made on different days, first made).
- (5) In this Chapter “securities” means shares or debentures.

756 Meaning of “offer to the public”

- (1) This section explains what is meant in this Chapter by an offer of securities to the public.
- (2) An offer to the public includes an offer to any section of the public, however selected.
- (3) An offer is not regarded as an offer to the public if it can properly be regarded, in all the circumstances, as—
 - (a) not being calculated to result, directly or indirectly, in securities of the company becoming available to persons other than those receiving the offer, or
 - (b) otherwise being a private concern of the person receiving it and the person making it.
- (4) An offer is to be regarded (unless the contrary is proved) as being a private concern of the person receiving it and the person making it if—
 - (a) it is made to a person already connected with the company and, where it is made on terms allowing that person to renounce his rights, the

- rights may only be renounced in favour of another person already connected with the company; or
- (b) it is an offer to subscribe for securities to be held under an employees' share scheme and, where it is made on terms allowing that person to renounce his rights, the rights may only be renounced in favour of—
 - (i) another person entitled to hold securities under the scheme, or
 - (ii) a person already connected with the company.
- (5) For the purposes of this section “person already connected with the company” means—
- (a) an existing member or employee of the company,
 - (b) a member of the family of a person who is or was a member or employee of the company,
 - (c) the widow or widower, or surviving civil partner, of a person who was a member or employee of the company,
 - (d) an existing debenture holder of the company, or
 - (e) a trustee (acting in his capacity as such) of a trust of which the principal beneficiary is a person within any of paragraphs (a) to (d).
- (6) For the purposes of subsection (5)(b) the members of a person's family are the person's spouse or civil partner and children (including step-children) and their descendants.

757 Enforcement of prohibition: order restraining proposed contravention

- (1) If it appears to the court—
- (a) on an application under this section, or
 - (b) in proceedings under Part 30 (protection of members against unfair prejudice),
- that a company is proposing to act in contravention of section 755 (prohibition of public offers by private companies), the court shall make an order under this section.
- (2) An order under this section is an order restraining the company from contravening that section.
- (3) An application for an order under this section may be made by—
- (a) a member or creditor of the company, or
 - (b) the Secretary of State.

758 Enforcement of prohibition: orders available to the court after contravention

- (1) This section applies if it appears to the court—
- (a) on an application under this section, or
 - (b) in proceedings under Part 30 (protection of members against unfair prejudice),
- that a company has acted in contravention of section 755 (prohibition of public offers by private companies).
- (2) The court must make an order requiring the company to re-register as a public company unless it appears to the court—
- (a) that the company does not meet the requirements for re-registration as a public company, and

- (b) that it is impractical or undesirable to require it to take steps to do so.
- (3) If it does not make an order for re-registration, the court may make either or both of the following –
 - (a) a remedial order (see section 759), or
 - (b) an order for the compulsory winding up of the company.
- (4) An application under this section may be made by –
 - (a) a member of the company who –
 - (i) was a member at the time the offer was made (or, if the offer was made over a period, at any time during that period), or
 - (ii) became a member as a result of the offer,
 - (b) a creditor of the company who was a creditor at the time the offer was made (or, if the offer was made over a period, at any time during that period), or
 - (c) the Secretary of State.

759 Enforcement of prohibition: remedial order

- (1) A “remedial order” is an order for the purpose of putting a person affected by anything done in contravention of section 755 (prohibition of public offers by private company) in the position he would have been in if it had not been done.
- (2) The following provisions are without prejudice to the generality of the power to make such an order.
- (3) Where a private company has –
 - (a) allotted securities pursuant to an offer to the public, or
 - (b) allotted or agreed to allot securities with a view to their being offered to the public,a remedial order may require any person knowingly concerned in the contravention of section 755 to offer to purchase any of those securities at such price and on such other terms as the court thinks fit.
- (4) A remedial order may be made –
 - (a) against any person knowingly concerned in the contravention, whether or not an officer of the company;
 - (b) notwithstanding anything in the company’s constitution (which includes, for this purpose, the terms on which any securities of the company are allotted or held);
 - (c) whether or not the holder of the securities subject to the order is the person to whom the company allotted or agreed to allot them.
- (5) Where a remedial order is made against the company itself, the court may provide for the reduction of the company’s capital accordingly.

760 Validity of allotment etc not affected

Nothing in this Chapter affects the validity of any allotment or sale of securities or of any agreement to allot or sell securities.

CHAPTER 2

MINIMUM SHARE CAPITAL REQUIREMENT FOR PUBLIC COMPANIES

761 Public company: requirement as to minimum share capital

- (1) A company that is a public company (otherwise than by virtue of re-registration as a public company) must not do business or exercise any borrowing powers unless the registrar has issued it with a certificate under this section (a “trading certificate”).
- (2) The registrar shall issue a trading certificate if, on an application made in accordance with section 762, he is satisfied that the nominal value of the company’s allotted share capital is not less than the authorised minimum.
- (3) For this purpose a share allotted in pursuance of an employees’ share scheme shall not be taken into account unless paid up as to –
 - (a) at least one-quarter of the nominal value of the share, and
 - (b) the whole of any premium on the share.
- (4) A trading certificate has effect from the date on which it is issued and is conclusive evidence that the company is entitled to do business and exercise any borrowing powers.

762 Procedure for obtaining certificate

- (1) An application for a certificate under section 761 must –
 - (a) state that the nominal value of the company’s allotted share capital is not less than the authorised minimum,
 - (b) specify the amount, or estimated amount, of the company’s preliminary expenses,
 - (c) specify any amount or benefit paid or given, or intended to be paid or given, to any promoter of the company, and the consideration for the payment or benefit, and
 - (d) be accompanied by a statement of compliance.
- (2) The statement of compliance is a statement that the company meets the requirements for the issue of a certificate under section 761.
- (3) The registrar may accept the statement of compliance as sufficient evidence of the matters stated in it.

763 The authorised minimum

- (1) “The authorised minimum”, in relation to the nominal value of a public company’s allotted share capital is –
 - (a) £50,000, or
 - (b) the prescribed euro equivalent.
- (2) The Secretary of State may by order prescribe the amount in euros that is for the time being to be treated as equivalent to the sterling amount of the authorised minimum.
- (3) This power may be exercised from time to time as appears to the Secretary of State to be appropriate.

- (4) The amount prescribed shall be determined by applying an appropriate spot rate of exchange to the sterling amount and rounding to the nearest 100 euros.
- (5) An order under this section is subject to negative resolution procedure.
- (6) This section has effect subject to any exercise of the power conferred by section 764 (power to alter authorised minimum).

764 Power to alter authorised minimum

- (1) The Secretary of State may by order –
 - (a) alter the sterling amount of the authorised minimum, and
 - (b) make a corresponding alteration of the prescribed euro equivalent.
- (2) The amount of the prescribed euro equivalent shall be determined by applying an appropriate spot rate of exchange to the sterling amount and rounding to the nearest 100 euros.
- (3) An order under this section that increases the authorised minimum may –
 - (a) require a public company having an allotted share capital of which the nominal value is less than the amount specified in the order to –
 - (i) increase that value to not less than that amount, or
 - (ii) re-register as a private company;
 - (b) make provision in connection with any such requirement for any of the matters for which provision is made by this Act relating to –
 - (i) a company's registration, re-registration or change of name,
 - (ii) payment for shares comprised in a company's share capital, and
 - (iii) offers to the public of shares in or debentures of a company, including provision as to the consequences (in criminal law or otherwise) of a failure to comply with any requirement of the order;
 - (c) provide for any provision of the order to come into force on different days for different purposes.
- (4) An order under this section is subject to affirmative resolution procedure.

765 Authorised minimum: application of initial requirement

- (1) The initial requirement for a public company to have allotted share capital of a nominal value not less than the authorised minimum, that is –
 - (a) the requirement in section 761(2) for the issue of a trading certificate, or
 - (b) the requirement in section 91(1)(a) for re-registration as a public company,must be met either by reference to allotted share capital denominated in sterling or by reference to allotted share capital denominated in euros (but not partly in one and partly in the other).
- (2) Whether the requirement is met is determined in the first case by reference to the sterling amount and in the second case by reference to the prescribed euro equivalent.
- (3) No account is to be taken of any allotted share capital of the company denominated in a currency other than sterling or, as the case may be, euros.

- (4) If the company could meet the requirement either by reference to share capital denominated in sterling or by reference to share capital denominated in euros, it must elect in its application for a trading certificate or, as the case may be, for re-registration as a public company which is to be the currency by reference to which the matter is determined.

766 Authorised minimum: application where shares denominated in different currencies etc

- (1) The Secretary of State may make provision by regulations as to the application of the authorised minimum in relation to a public company that –
 - (a) has shares denominated in more than one currency,
 - (b) redenominates the whole or part of its allotted share capital, or
 - (c) allots new shares.
- (2) The regulations may make provision as to the currencies, exchange rates and dates by reference to which it is to be determined whether the nominal value of the company's allotted share capital is less than the authorised minimum.
- (3) The regulations may provide that where –
 - (a) a company has redenominated the whole or part of its allotted share capital, and
 - (b) the effect of the redenomination is that the nominal value of the company's allotted share capital is less than the authorised minimum,the company must re-register as a private company.
- (4) Regulations under subsection (3) may make provision corresponding to any provision made by sections 664 to 667 (re-registration as private company in consequence of cancellation of shares).
- (5) Any regulations under this section have effect subject to section 765 (authorised minimum: application of initial requirement).
- (6) Regulations under this section are subject to negative resolution procedure.

767 Consequences of doing business etc without a trading certificate

- (1) If a company does business or exercises any borrowing powers in contravention of section 761, 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 subsection (1) is liable –
 - (a) on conviction on indictment, to a fine;
 - (b) on summary conviction, to a fine not exceeding the statutory maximum.
- (3) A contravention of section 761 does not affect the validity of a transaction entered into by the company, but if a company –
 - (a) enters into a transaction in contravention of that section, and
 - (b) fails to comply with its obligations in connection with the transaction within 21 days from being called on to do so,the directors of the company are jointly and severally liable to indemnify any other party to the transaction in respect of any loss or damage suffered by him by reason of the company's failure to comply with its obligations.

- (4) The directors who are so liable are those who were directors at the time the company entered into the transaction.

PART 21

CERTIFICATION AND TRANSFER OF SECURITIES

CHAPTER 1

CERTIFICATION AND TRANSFER OF SECURITIES: GENERAL

Share certificates

768 Share certificate to be evidence of title

- (1) In the case of a company registered in England and Wales or Northern Ireland, a certificate under the common seal of the company specifying any shares held by a member is prima facie evidence of his title to the shares.
- (2) In the case of a company registered in Scotland –
- (a) a certificate under the common seal of the company specifying any shares held by a member, or
 - (b) a certificate specifying any shares held by a member and subscribed by the company in accordance with the Requirements of Writing (Scotland) Act 1995 (c. 7),
- is sufficient evidence, unless the contrary is shown, of his title to the shares.

Issue of certificates etc on allotment

769 Duty of company as to issue of certificates etc on allotment

- (1) A company must, within two months after the allotment of any of its shares, debentures or debenture stock, complete and have ready for delivery –
- (a) the certificates of the shares allotted,
 - (b) the debentures allotted, or
 - (c) the certificates of the debenture stock allotted.
- (2) Subsection (1) does not apply –
- (a) if the conditions of issue of the shares, debentures or debenture stock provide otherwise,
 - (b) in the case of allotment to a financial institution (see section 778), or
 - (c) in the case of an allotment of shares if, following the allotment, the company has issued a share warrant in respect of the shares (see section 779).
- (3) If default is made in complying with subsection (1) an offence is committed by 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.

Transfer of securities

770 Registration of transfer

- (1) A company may not register a transfer of shares in or debentures of the company unless –
 - (a) a proper instrument of transfer has been delivered to it, or
 - (b) the transfer –
 - (i) is an exempt transfer within the Stock Transfer Act 1982 (c. 41), or
 - (ii) is in accordance with regulations under Chapter 2 of this Part.
- (2) Subsection (1) does not affect any power of the company to register as shareholder or debenture holder a person to whom the right to any shares in or debentures of the company has been transmitted by operation of law.

771 Procedure on transfer being lodged

- (1) When a transfer of shares in or debentures of a company has been lodged with the company, the company must either –
 - (a) register the transfer, or
 - (b) give the transferee notice of refusal to register the transfer, together with its reasons for the refusal,as soon as practicable and in any event within two months after the date on which the transfer is lodged with it.
- (2) If the company refuses to register the transfer, it must provide the transferee with such further information about the reasons for the refusal as the transferee may reasonably request.
This does not include copies of minutes of meetings of directors.
- (3) If a company fails to comply with this section, 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 and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.
- (5) This section does not apply –
 - (a) in relation to a transfer of shares if the company has issued a share warrant in respect of the shares (see section 779);
 - (b) in relation to the transmission of shares or debentures by operation of law.

772 Transfer of shares on application of transferor

On the application of the transferor of any share or interest in a company, the company shall enter in its register of members the name of the transferee in the same manner and subject to the same conditions as if the application for the entry were made by the transferee.

773 Execution of share transfer by personal representative

An instrument of transfer of the share or other interest of a deceased member of a company –

- (a) may be made by his personal representative although the personal representative is not himself a member of the company, and
- (b) is as effective as if the personal representative had been such a member at the time of the execution of the instrument.

774 Evidence of grant of probate etc

The production to a company of any document that is by law sufficient evidence of the grant of –

- (a) probate of the will of a deceased person,
- (b) letters of administration of the estate of a deceased person, or
- (c) confirmation as executor of a deceased person,

shall be accepted by the company as sufficient evidence of the grant.

775 Certification of instrument of transfer

- (1) The certification by a company of an instrument of transfer of any shares in, or debentures of, the company is to be taken as a representation by the company to any person acting on the faith of the certification that there have been produced to the company such documents as on their face show a prima facie title to the shares or debentures in the transferor named in the instrument.
- (2) The certification is not to be taken as a representation that the transferor has any title to the shares or debentures.
- (3) Where a person acts on the faith of a false certification by a company made negligently, the company is under the same liability to him as if the certification had been made fraudulently.
- (4) For the purposes of this section –
 - (a) an instrument of transfer is certificated if it bears the words “certificate lodged” (or words to the like effect);
 - (b) the certification of an instrument of transfer is made by a company if –
 - (i) the person issuing the instrument is a person authorised to issue certificated instruments of transfer on the company’s behalf, and
 - (ii) the certification is signed by a person authorised to certificate transfers on the company’s behalf or by an officer or employee either of the company or of a body corporate so authorised;
 - (c) a certification is treated as signed by a person if –
 - (i) it purports to be authenticated by his signature or initials (whether handwritten or not), and
 - (ii) it is not shown that the signature or initials was or were placed there neither by himself nor by a person authorised to use the signature or initials for the purpose of certificating transfers on the company’s behalf.

Issue of certificates etc on transfer

776 Duty of company as to issue of certificates etc on transfer

- (1) A company must, within two months after the date on which a transfer of any of its shares, debentures or debenture stock is lodged with the company, complete and have ready for delivery –
 - (a) the certificates of the shares transferred,
 - (b) the debentures transferred, or
 - (c) the certificates of the debenture stock transferred.
- (2) For this purpose a “transfer” means –
 - (a) a transfer duly stamped and otherwise valid, or
 - (b) an exempt transfer within the Stock Transfer Act 1982 (c. 41),but does not include a transfer that the company is for any reason entitled to refuse to register and does not register.
- (3) Subsection (1) does not apply –
 - (a) if the conditions of issue of the shares, debentures or debenture stock provide otherwise,
 - (b) in the case of a transfer to a financial institution (see section 778), or
 - (c) in the case of a transfer of shares if, following the transfer, the company has issued a share warrant in respect of the shares (see section 779).
- (4) Subsection (1) has effect subject to section 777 (cases where the Stock Transfer Act 1982 applies).
- (5) If default is made in complying with subsection (1) an offence is committed by 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.

777 Issue of certificates etc: cases within the Stock Transfer Act 1982

- (1) Section 776(1) (duty of company as to issue of certificates etc on transfer) does not apply in the case of a transfer to a person where, by virtue of regulations under section 3 of the Stock Transfer Act 1982, he is not entitled to a certificate or other document of or evidencing title in respect of the securities transferred.
- (2) But if in such a case the transferee –
 - (a) subsequently becomes entitled to such a certificate or other document by virtue of any provision of those regulations, and
 - (b) gives notice in writing of that fact to the company,section 776 (duty to company as to issue of certificates etc) has effect as if the reference in subsection (1) of that section to the date of the lodging of the transfer were a reference to the date of the notice.

Issue of certificates etc on allotment or transfer to financial institution

778 Issue of certificates etc: allotment or transfer to financial institution

- (1) A company –
 - (a) of which shares or debentures are allotted to a financial institution,
 - (b) of which debenture stock is allotted to a financial institution, or
 - (c) with which a transfer for transferring shares, debentures or debenture stock to a financial institution is lodged,is not required in consequence of that allotment or transfer to comply with section 769(1) or 776(1) (duty of company as to issue of certificates etc).
- (2) A “financial institution” means –
 - (a) a recognised clearing house acting in relation to a recognised investment exchange, or
 - (b) a nominee of –
 - (i) a recognised clearing house acting in that way, or
 - (ii) a recognised investment exchange,designated for the purposes of this section in the rules of the recognised investment exchange in question.
- (3) Expressions used in subsection (2) have the same meaning as in Part 18 of the Financial Services and Markets Act 2000 (c. 8).

Share warrants

779 Issue and effect of share warrant to bearer

- (1) A company limited by shares may, if so authorised by its articles, issue with respect to any fully paid shares a warrant (a “share warrant”) stating that the bearer of the warrant is entitled to the shares specified in it.
- (2) A share warrant issued under the company’s common seal or (in the case of a company registered in Scotland) subscribed in accordance with the Requirements of Writing (Scotland) Act 1995 (c. 7) entitles the bearer to the shares specified in it and the shares may be transferred by delivery of the warrant.
- (3) A company that issues a share warrant may, if so authorised by its articles, provide (by coupons or otherwise) for the payment of the future dividends on the shares included in the warrant.

780 Duty of company as to issue of certificates on surrender of share warrant

- (1) A company must, within two months of the surrender of a share warrant for cancellation, complete and have ready for delivery the certificates of the shares specified in the warrant.
- (2) Subsection (1) does not apply if the company’s articles provide otherwise.
- (3) If default is made in complying with subsection (1) an offence is committed by 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.

781 Offences in connection with share warrants (Scotland)

- (1) If in Scotland a person –
 - (a) with intent to defraud, forges or alters, or offers, utters, disposes of, or puts off, knowing the same to be forged or altered, any share warrant or coupon, or any document purporting to be a share warrant or coupon issued in pursuance of this Act, or
 - (b) by means of any such forged or altered share warrant, coupon or document –
 - (i) demands or endeavours to obtain or receive any share or interest in a company under this Act, or
 - (ii) demands or endeavours to receive any dividend or money payment in respect of any such share or interest,knowing the warrant, coupon or document to be forged or altered, he commits an offence.
- (2) If in Scotland a person without lawful authority or excuse (of which proof lies on him) –
 - (a) engraves or makes on any plate, wood, stone, or other material, any share warrant or coupon purporting to be –
 - (i) a share warrant or coupon issued or made by any particular company in pursuance of this Act, or
 - (ii) a blank share warrant or coupon so issued or made, or
 - (iii) a part of such a share warrant or coupon, or
 - (b) uses any such plate, wood, stone, or other material, for the making or printing of any such share warrant or coupon, or of any such blank share warrant or coupon or of any part of such a share warrant or coupon, or
 - (c) knowingly has in his custody or possession any such plate, wood, stone, or other material,he commits an offence.
- (3) A person guilty of an offence under subsection (1) is liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding level 5 on the standard scale (or both).
- (4) A person guilty of an offence under subsection (2) is liable –
 - (a) on conviction on indictment, to imprisonment for a term not exceeding seven years or a fine (or both);
 - (b) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum (or both).

Supplementary provisions

782 Issue of certificates etc: court order to make good default

- (1) If a company on which a notice has been served requiring it to make good any default in complying with –
 - (a) section 769(1) (duty of company as to issue of certificates etc on allotment),

- (b) section 776(1) (duty of company as to issue of certificates etc on transfer), or
 - (c) section 780(1) (duty of company as to issue of certificates etc on surrender of share warrant),
- fails to make good the default within ten days after service of the notice, the person entitled to have the certificates or the debentures delivered to him may apply to the court.
- (2) The court may on such an application make an order directing the company and any officer of it to make good the default within such time as may be specified in the order.
 - (3) The order may provide that all costs (in Scotland, expenses) of and incidental to the application are to be borne by the company or by an officer of it responsible for the default.

CHAPTER 2

EVIDENCING AND TRANSFER OF TITLE TO SECURITIES WITHOUT WRITTEN INSTRUMENT

Introductory

783 Scope of this Chapter

In this Chapter –

- (a) “securities” means shares, debentures, debenture stock, loan stock, bonds, units of a collective investment scheme within the meaning of the Financial Services and Markets Act 2000 (c. 8) and other securities of any description;
- (b) references to title to securities include any legal or equitable interest in securities;
- (c) references to a transfer of title include a transfer by way of security;
- (d) references to transfer without a written instrument include, in relation to bearer securities, transfer without delivery.

784 Power to make regulations

- (1) The power to make regulations under this Chapter is exercisable by the Treasury and the Secretary of State, either jointly or concurrently.
- (2) References in this Chapter to the authority having power to make regulations shall accordingly be read as references to both or either of them, as the case may require.
- (3) Regulations under this Chapter are subject to affirmative resolution procedure.

Powers exercisable

785 Provision enabling procedures for evidencing and transferring title

- (1) Provision may be made by regulations for enabling title to securities to be evidenced and transferred without a written instrument.
- (2) The regulations may make provision –

- (a) for procedures for recording and transferring title to securities, and
 - (b) for the regulation of those procedures and the persons responsible for or involved in their operation.
- (3) The regulations must contain such safeguards as appear to the authority making the regulations appropriate for the protection of investors and for ensuring that competition is not restricted, distorted or prevented.
- (4) The regulations may, for the purpose of enabling or facilitating the operation of the procedures provided for by the regulations, make provision with respect to the rights and obligations of persons in relation to securities dealt with under the procedures.
- (5) The regulations may include provision for the purpose of giving effect to –
- (a) the transmission of title to securities by operation of law;
 - (b) any restriction on the transfer of title to securities arising by virtue of the provisions of any enactment or instrument, court order or agreement;
 - (c) any power conferred by any such provision on a person to deal with securities on behalf of the person entitled.
- (6) The regulations may make provision with respect to the persons responsible for the operation of the procedures provided for by the regulations –
- (a) as to the consequences of their insolvency or incapacity, or
 - (b) as to the transfer from them to other persons of their functions in relation to those procedures.

786 Provision enabling or requiring arrangements to be adopted

- (1) Regulations under this Chapter may make provision –
- (a) enabling the members of a company or of any designated class of companies to adopt, by ordinary resolution, arrangements under which title to securities is required to be evidenced or transferred (or both) without a written instrument; or
 - (b) requiring companies, or any designated class of companies, to adopt such arrangements.
- (2) The regulations may make such provision –
- (a) in respect of all securities issued by a company, or
 - (b) in respect of all securities of a specified description.
- (3) The arrangements provided for by regulations making such provision as is mentioned in subsection (1) –
- (a) must not be such that a person who but for the arrangements would be entitled to have his name entered in the company's register of members ceases to be so entitled, and
 - (b) must be such that a person who but for the arrangements would be entitled to exercise any rights in respect of the securities continues to be able effectively to control the exercise of those rights.
- (4) The regulations may –
- (a) prohibit the issue of any certificate by the company in respect of the issue or transfer of securities,

- (b) require the provision by the company to holders of securities of statements (at specified intervals or on specified occasions) of the securities held in their name, and
 - (c) make provision as to the matters of which any such certificate or statement is, or is not, evidence.
- (5) In this section –
- (a) references to a designated class of companies are to a class designated in the regulations or by order under section 787; and
 - (b) “specified” means specified in the regulations.

787 Provision enabling or requiring arrangements to be adopted: order-making powers

- (1) The authority having power to make regulations under this Chapter may by order –
- (a) designate classes of companies for the purposes of section 786 (provision enabling or requiring arrangements to be adopted);
 - (b) provide that, in relation to securities of a specified description –
 - (i) in a designated class of companies, or
 - (ii) in a specified company or class of companies,specified provisions of regulations made under this Chapter by virtue of that section either do not apply or apply subject to specified modifications.
- (2) In subsection (1) “specified” means specified in the order.
- (3) An order under this section is subject to negative resolution procedure.

Supplementary

788 Provision that may be included in regulations

Regulations under this Chapter may –

- (a) modify or exclude any provision of any enactment or instrument, or any rule of law;
- (b) apply, with such modifications as may be appropriate, the provisions of any enactment or instrument (including provisions creating criminal offences);
- (c) require the payment of fees, or enable persons to require the payment of fees, of such amounts as may be specified in the regulations or determined in accordance with them;
- (d) empower the authority making the regulations to delegate to any person willing and able to discharge them any functions of the authority under the regulations.

789 Duty to consult

Before making –

- (a) regulations under this Chapter, or
- (b) any order under section 787,

the authority having power to make regulations under this Chapter must carry out such consultation as appears to it to be appropriate.

790 Resolutions to be forwarded to registrar

Chapter 3 of Part 3 (resolutions affecting a company's constitution) applies to a resolution passed by virtue of regulations under this Chapter.

PART 22

INFORMATION ABOUT INTERESTS IN A COMPANY'S SHARES

*Introductory***791 Companies to which this Part applies**

This Part applies only to public companies.

792 Shares to which this Part applies

- (1) References in this Part to a company's shares are to the company's issued shares of a class carrying rights to vote in all circumstances at general meetings of the company (including any shares held as treasury shares).
- (2) The temporary suspension of voting rights in respect of any shares does not affect the application of this Part in relation to interests in those or any other shares.

*Notice requiring information about interests in shares***793 Notice by company requiring information about interests in its shares**

- (1) A public company may give notice under this section to any person whom the company knows or has reasonable cause to believe –
 - (a) to be interested in the company's shares, or
 - (b) to have been so interested at any time during the three years immediately preceding the date on which the notice is issued.
- (2) The notice may require the person –
 - (a) to confirm that fact or (as the case may be) to state whether or not it is the case, and
 - (b) if he holds, or has during that time held, any such interest, to give such further information as may be required in accordance with the following provisions of this section.
- (3) The notice may require the person to whom it is addressed to give particulars of his own present or past interest in the company's shares (held by him at any time during the three year period mentioned in subsection (1)(b)).
- (4) The notice may require the person to whom it is addressed, where –
 - (a) his interest is a present interest and another interest in the shares subsists, or
 - (b) another interest in the shares subsisted during that three year period at a time when his interest subsisted,to give, so far as lies within his knowledge, such particulars with respect to that other interest as may be required by the notice.

- (5) The particulars referred to in subsections (3) and (4) include—
 - (a) the identity of persons interested in the shares in question, and
 - (b) whether persons interested in the same shares are or were parties to—
 - (i) an agreement to which section 824 applies (certain share acquisition agreements), or
 - (ii) an agreement or arrangement relating to the exercise of any rights conferred by the holding of the shares.
- (6) The notice may require the person to whom it is addressed, where his interest is a past interest, to give (so far as lies within his knowledge) particulars of the identity of the person who held that interest immediately upon his ceasing to hold it.
- (7) The information required by the notice must be given within such reasonable time as may be specified in the notice.

794 Notice requiring information: order imposing restrictions on shares

- (1) Where—
 - (a) a notice under section 793 (notice requiring information about interests in company's shares) is served by a company on a person who is or was interested in shares in the company, and
 - (b) that person fails to give the company the information required by the notice within the time specified in it,the company may apply to the court for an order directing that the shares in question be subject to restrictions.
For the effect of such an order see section 797.
- (2) If the court is satisfied that such an order may unfairly affect the rights of third parties in respect of the shares, the court may, for the purpose of protecting those rights and subject to such terms as it thinks fit, direct that such acts by such persons or descriptions of persons and for such purposes as may be set out in the order shall not constitute a breach of the restrictions.
- (3) On an application under this section the court may make an interim order. Any such order may be made unconditionally or on such terms as the court thinks fit.
- (4) Sections 798 to 802 make further provision about orders under this section.

795 Notice requiring information: offences

- (1) A person who—
 - (a) fails to comply with a notice under section 793 (notice requiring information about interests in company's shares), or
 - (b) in purported compliance with such a notice—
 - (i) makes a statement that he knows to be false in a material particular, or
 - (ii) recklessly makes a statement that is false in a material particular,commits an offence.
- (2) A person does not commit an offence under subsection (1)(a) if he proves that the requirement to give information was frivolous or vexatious.

- (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).

796 Notice requiring information: persons exempted from obligation to comply

- (1) A person is not obliged to comply with a notice under section 793 (notice requiring information about interests in company's shares) if he is for the time being exempted by the Secretary of State from the operation of that section.
- (2) The Secretary of State must not grant any such exemption unless –
- (a) he has consulted the Governor of the Bank of England, and
 - (b) he (the Secretary of State) is satisfied that, having regard to any undertaking given by the person in question with respect to any interest held or to be held by him in any shares, there are special reasons why that person should not be subject to the obligations imposed by that section.

Orders imposing restrictions on shares

797 Consequences of order imposing restrictions

- (1) The effect of an order under section 794 that shares are subject to restrictions is as follows –
- (a) any transfer of the shares is void;
 - (b) no voting rights are exercisable in respect of the shares;
 - (c) no further shares may be issued in right of the shares or in pursuance of an offer made to their holder;
 - (d) except in a liquidation, no payment may be made of sums due from the company on the shares, whether in respect of capital or otherwise.
- (2) Where shares are subject to the restriction in subsection (1)(a), an agreement to transfer the shares is void.
This does not apply to an agreement to transfer the shares on the making of an order under section 800 made by virtue of subsection (3)(b) (removal of restrictions in case of court-approved transfer).
- (3) Where shares are subject to the restriction in subsection (1)(c) or (d), an agreement to transfer any right to be issued with other shares in right of those shares, or to receive any payment on them (otherwise than in a liquidation), is void.
This does not apply to an agreement to transfer any such right on the making of an order under section 800 made by virtue of subsection (3)(b) (removal of restrictions in case of court-approved transfer).
- (4) The provisions of this section are subject –

- (a) to any directions under section 794(2) or section 799(3) (directions for protection of third parties), and
- (b) in the case of an interim order under section 794(3), to the terms of the order.

798 Penalty for attempted evasion of restrictions

- (1) This section applies where shares are subject to restrictions by virtue of an order under section 794.
- (2) A person commits an offence if he—
 - (a) exercises or purports to exercise any right—
 - (i) to dispose of shares that to his knowledge, are for the time being subject to restrictions, or
 - (ii) to dispose of any right to be issued with any such shares, or
 - (b) votes in respect of any such shares (whether as holder or proxy), or appoints a proxy to vote in respect of them, or
 - (c) being the holder of any such shares, fails to notify of their being subject to those restrictions a person whom he does not know to be aware of that fact but does know to be entitled (apart from the restrictions) to vote in respect of those shares whether as holder or as proxy, or
 - (d) being the holder of any such shares, or being entitled to a right to be issued with other shares in right of them, or to receive any payment on them (otherwise than in a liquidation), enters into an agreement which is void under section 797(2) or (3).
- (3) If shares in a company are issued in contravention of the restrictions, 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—
 - (a) on conviction on indictment, to a fine;
 - (b) on summary conviction, to a fine not exceeding the statutory maximum.
- (5) The provisions of this section are subject—
 - (a) to any directions under—
 - section 794(2) (directions for protection of third parties), or
 - section 799 or 800 (relaxation or removal of restrictions), and
 - (b) in the case of an interim order under section 794(3), to the terms of the order.

799 Relaxation of restrictions

- (1) An application may be made to the court on the ground that an order directing that shares shall be subject to restrictions unfairly affects the rights of third parties in respect of the shares.
- (2) An application for an order under this section may be made by the company or by any person aggrieved.
- (3) If the court is satisfied that the application is well-founded, it may, for the purpose of protecting the rights of third parties in respect of the shares, and

subject to such terms as it thinks fit, direct that such acts by such persons or descriptions of persons and for such purposes as may be set out in the order do not constitute a breach of the restrictions.

800 Removal of restrictions

- (1) An application may be made to the court for an order directing that the shares shall cease to be subject to restrictions.
- (2) An application for an order under this section may be made by the company or by any person aggrieved.
- (3) The court must not make an order under this section unless –
 - (a) it is satisfied that the relevant facts about the shares have been disclosed to the company and no unfair advantage has accrued to any person as a result of the earlier failure to make that disclosure, or
 - (b) the shares are to be transferred for valuable consideration and the court approves the transfer.
- (4) An order under this section made by virtue of subsection (3)(b) may continue, in whole or in part, the restrictions mentioned in section 797(1)(c) and (d) (restrictions on issue of further shares or making of payments) so far as they relate to a right acquired or offer made before the transfer.
- (5) Where any restrictions continue in force under subsection (4) –
 - (a) an application may be made under this section for an order directing that the shares shall cease to be subject to those restrictions, and
 - (b) subsection (3) does not apply in relation to the making of such an order.

801 Order for sale of shares

- (1) The court may order that the shares subject to restrictions be sold, subject to the court's approval as to the sale.
- (2) An application for an order under subsection (1) may only be made by the company.
- (3) Where the court has made an order under this section, it may make such further order relating to the sale or transfer of the shares as it thinks fit.
- (4) An application for an order under subsection (3) may be made –
 - (a) by the company,
 - (b) by the person appointed by or in pursuance of the order to effect the sale, or
 - (c) by any person interested in the shares.
- (5) On making an order under subsection (1) or (3) the court may order that the applicant's costs (in Scotland, expenses) be paid out of the proceeds of sale.

802 Application of proceeds of sale under court order

- (1) Where shares are sold in pursuance of an order of the court under section 801, the proceeds of the sale, less the costs of the sale, must be paid into court for the benefit of the persons who are beneficially interested in the shares.

- (2) A person who is beneficially interested in the shares may apply to the court for the whole or part of those proceeds to be paid to him.
- (3) On such an application the court shall order the payment to the applicant of—
 - (a) the whole of the proceeds of sale together with any interest on them, or
 - (b) if another person had a beneficial interest in the shares at the time of their sale, such proportion of the proceeds and interest as the value of the applicant's interest in the shares bears to the total value of the shares.

This is subject to the following qualification.

- (4) If the court has ordered under section 801(5) that the costs (in Scotland, expenses) of an applicant under that section are to be paid out of the proceeds of sale, the applicant is entitled to payment of his costs (or expenses) out of those proceeds before any person interested in the shares receives any part of those proceeds.

Power of members to require company to act

803 Power of members to require company to act

- (1) The members of a company may require it to exercise its powers under section 793 (notice requiring information about interests in shares).
- (2) A company is required to do so once it has received requests (to the same effect) from members of the company holding at least 10% of such of the paid-up capital of the company as carries a right to vote at general meetings of the company (excluding any voting rights attached to any shares in the company held as treasury shares).
- (3) A request—
 - (a) may be in hard copy form or in electronic form,
 - (b) must—
 - (i) state that the company is requested to exercise its powers under section 793,
 - (ii) specify the manner in which the company is requested to act, and
 - (iii) give reasonable grounds for requiring the company to exercise those powers in the manner specified, and
 - (c) must be authenticated by the person or persons making it.

804 Duty of company to comply with requirement

- (1) A company that is required under section 803 to exercise its powers under section 793 (notice requiring information about interests in company's shares) must exercise those powers in the manner specified in the requests.
- (2) If default is made in complying with subsection (1) an offence is committed by every officer of the company who is in default.
- (3) A person guilty of an offence under this section is liable—
 - (a) on conviction on indictment, to a fine;
 - (b) on summary conviction, to a fine not exceeding the statutory maximum.

805 Report to members on outcome of investigation

- (1) On the conclusion of an investigation carried out by a company in pursuance of a requirement under section 803 the company must cause a report of the information received in pursuance of the investigation to be prepared.
The report must be made available for inspection within a reasonable period (not more than 15 days) after the conclusion of the investigation.
- (2) Where –
 - (a) a company undertakes an investigation in pursuance of a requirement under section 803, and
 - (b) the investigation is not concluded within three months after the date on which the company became subject to the requirement,the company must cause to be prepared in respect of that period, and in respect of each succeeding period of three months ending before the conclusion of the investigation, an interim report of the information received during that period in pursuance of the investigation.
- (3) Each such report must be made available for inspection within a reasonable period (not more than 15 days) after the end of the period to which it relates.
- (4) The reports must be retained by the company for at least six years from the date on which they are first made available for inspection and must be kept available for inspection during that time –
 - (a) at the company's registered office, or
 - (b) at a place specified in regulations under section 1136.
- (5) The company must give notice to the registrar –
 - (a) of the place at which the reports are kept available for inspection, and
 - (b) of any change in that place,unless they have at all times been kept at the company's registered office.
- (6) The company must within three days of making any report prepared under this section available for inspection, notify the members who made the requests under section 803 where the report is so available.
- (7) For the purposes of this section an investigation carried out by a company in pursuance of a requirement under section 803 is concluded when –
 - (a) the company has made all such inquiries as are necessary or expedient for the purposes of the requirement, and
 - (b) in the case of each such inquiry –
 - (i) a response has been received by the company, or
 - (ii) the time allowed for a response has elapsed.

806 Report to members: offences

- (1) If default is made for 14 days in complying with section 805(5) (notice to registrar of place at which reports made available for inspection) 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 subsection (1) 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) If default is made in complying with any other provision of section 805 (report to members on outcome of investigation), an offence is committed by every officer of the company who is in default.
- (4) A person guilty of an offence under subsection (3) is liable –
 - (a) on conviction on indictment, to a fine;
 - (b) on summary conviction, to a fine not exceeding the statutory maximum.

807 Right to inspect and request copy of reports

- (1) Any report prepared under section 805 must be open to inspection by any person without charge.
- (2) Any person is entitled, on request and on payment of such fee as may be prescribed, to be provided with a copy of any such report or any part of it. The copy must be provided within ten days after the request is received by the company.
- (3) If an inspection required under subsection (1) is refused, or default is made in complying with subsection (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 and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.
- (5) 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 requiring it.

Register of interests disclosed

808 Register of interests disclosed

- (1) The company must keep a register of information received by it in pursuance of a requirement imposed under section 793 (notice requiring information about interests in company's shares).
- (2) A company which receives any such information must, within three days of the receipt, enter in the register –
 - (a) the fact that the requirement was imposed and the date on which it was imposed, and
 - (b) the information received in pursuance of the requirement.
- (3) The information must be entered against the name of the present holder of the shares in question or, if there is no present holder or the present holder is not known, against the name of the person holding the interest.
- (4) The register must be made up so that the entries against the names entered in it appear in chronological order.

- (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.
- (7) The company is not by virtue of anything done for the purposes of this section affected with notice of, or put upon inquiry as to, the rights of any person in relation to any shares.

809 Register to be kept available for inspection

- (1) The register kept under section 808 (register of interests disclosed) must be kept available for inspection –
 - (a) at the company's registered office, or
 - (b) at a place specified in regulations under section 1136.
- (2) A company must give notice to the registrar of companies of the place where the register 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 been kept available for inspection at the company's registered office.
- (4) If default is made in complying with subsection (1), or 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.
- (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.

810 Associated index

- (1) Unless the register kept under section 808 (register of interests disclosed) is kept in such a form as itself to constitute an index, the company must keep an index of the names entered in it.
- (2) The company must make any necessary entry or alteration in the index within ten days after the date on which any entry or alteration is made in the register.
- (3) The index must contain, in respect of each name, a sufficient indication to enable the information entered against it to be readily found.
- (4) The index must be at all times kept available for inspection at the same place as the register.
- (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.

811 Rights to inspect and require copy of entries

- (1) The register required to be kept under section 808 (register of interests disclosed), and any associated index, must be open to inspection by any person without charge.
- (2) Any person is entitled, on request and on payment of such fee as may be prescribed, to be provided with a copy of any entry in the register.
- (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.

812 Court supervision of purpose for which rights may be exercised

- (1) Where a company receives a request under section 811 (register of interests disclosed: right to inspect and require copy), it must –
 - (a) comply with the request if it is satisfied that it is made for a proper purpose, and
 - (b) refuse the request if it is not so satisfied.
- (2) If the company refuses the request, it must inform the person making the request, stating the reason why it is not satisfied.
- (3) A person whose request is refused may apply to the court.
- (4) If an application is made to the court –
 - (a) the person who made the request must notify the company, and
 - (b) the company must use its best endeavours to notify any persons whose details would be disclosed if the company were required to comply with the request.
- (5) If the court is not satisfied that the inspection or copy is sought for a proper purpose, it shall direct the company not to comply with the request.
- (6) 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.

- (7) If 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.

813 Register of interests disclosed: refusal of inspection or default in providing copy

- (1) If an inspection required under section 811 (register of interests disclosed: 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.

814 Register of interests disclosed: 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 811 (register of interests disclosed: 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).

815 Entries not to be removed from register

- (1) Entries in the register kept under section 808 (register of interests disclosed) must not be deleted except in accordance with –
 - section 816 (old entries), or
 - section 817 (incorrect entry relating to third party).
- (2) If an entry is deleted in contravention of subsection (1), the company must restore it as soon as reasonably practicable.
- (3) If default is made in complying with 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 and, for continued contravention of subsection (2), a daily default fine not exceeding one-tenth of level 3 on the standard scale.

816 Removal of entries from register: old entries

A company may remove an entry from the register kept under section 808 (register of interests disclosed) if more than six years have elapsed since the entry was made.

817 Removal of entries from register: incorrect entry relating to third party

- (1) This section applies where in pursuance of an obligation imposed by a notice under section 793 (notice requiring information about interests in company's shares) a person gives to a company the name and address of another person as being interested in shares in the company.
- (2) That other person may apply to the company for the removal of the entry from the register.
- (3) If the company is satisfied that the information in pursuance of which the entry was made is incorrect, it shall remove the entry.
- (4) If an application under subsection (3) is refused, the applicant may apply to the court for an order directing the company to remove the entry in question from the register.
The court may make such an order if it thinks fit.

818 Adjustment of entry relating to share acquisition agreement

- (1) If a person who is identified in the register kept by a company under section 808 (register of interests disclosed) as being a party to an agreement to which section 824 applies (certain share acquisition agreements) ceases to be a party to the agreement, he may apply to the company for the inclusion of that information in the register.
- (2) If the company is satisfied that he has ceased to be a party to the agreement, it shall record that information (if not already recorded) in every place where his name appears in the register as a party to the agreement.

- (3) If an application under this section is refused (otherwise than on the ground that the information has already been recorded), the applicant may apply to the court for an order directing the company to include the information in question in the register.

The court may make such an order if it thinks fit.

819 Duty of company ceasing to be public company

- (1) If a company ceases to be a public company, it must continue to keep any register kept under section 808 (register of interests disclosed), and any associated index, until the end of the period of six years after it ceased to be such a company.
- (2) 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.
- (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 and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.

Meaning of interest in shares

820 Interest in shares: general

- (1) This section applies to determine for the purposes of this Part whether a person has an interest in shares.
- (2) In this Part –
- (a) a reference to an interest in shares includes an interest of any kind whatsoever in the shares, and
 - (b) any restraints or restrictions to which the exercise of any right attached to the interest is or may be subject shall be disregarded.
- (3) Where an interest in shares is comprised in property held on trust, every beneficiary of the trust is treated as having an interest in the shares.
- (4) A person is treated as having an interest in shares if –
- (a) he enters into a contract to acquire them, or
 - (b) not being the registered holder, he is entitled –
 - (i) to exercise any right conferred by the holding of the shares, or
 - (ii) to control the exercise of any such right.
- (5) For the purposes of subsection (4)(b) a person is entitled to exercise or control the exercise of a right conferred by the holding of shares if he –
- (a) has a right (whether subject to conditions or not) the exercise of which would make him so entitled, or
 - (b) is under an obligation (whether subject to conditions or not) the fulfilment of which would make him so entitled.
- (6) A person is treated as having an interest in shares if –
- (a) he has a right to call for delivery of the shares to himself or to his order, or

- (b) he has a right to acquire an interest in shares or is under an obligation to take an interest in shares.

This applies whether the right or obligation is conditional or absolute.

- (7) Persons having a joint interest are treated as each having that interest.
- (8) It is immaterial that shares in which a person has an interest are unidentifiable.

821 Interest in shares: right to subscribe for shares

- (1) Section 793 (notice by company requiring information about interests in its shares) applies in relation to a person who has, or previously had, or is or was entitled to acquire, a right to subscribe for shares in the company as it applies in relation to a person who is or was interested in shares in that company.
- (2) References in that section to an interest in shares shall be read accordingly.

822 Interest in shares: family interests

- (1) For the purposes of this Part a person is taken to be interested in shares in which –
 - (a) his spouse or civil partner, or
 - (b) any infant child or step-child of his,is interested.
- (2) In relation to Scotland “infant” means a person under the age of 18 years.

823 Interest in shares: corporate interests

- (1) For the purposes of this Part a person is taken to be interested in shares if a body corporate is interested in them and –
 - (a) the body or its directors are accustomed to act in accordance with his directions or instructions, or
 - (b) he is entitled to exercise or control the exercise of one-third or more of the voting power at general meetings of the body.
- (2) For the purposes of this section a person is treated as entitled to exercise or control the exercise of voting power if –
 - (a) another body corporate is entitled to exercise or control the exercise of that voting power, and
 - (b) he is entitled to exercise or control the exercise of one-third or more of the voting power at general meetings of that body corporate.
- (3) For the purposes of this section a person is treated as entitled to exercise or control the exercise of voting power if –
 - (a) he has a right (whether or not subject to conditions) the exercise of which would make him so entitled, or
 - (b) he is under an obligation (whether or not subject to conditions) the fulfilment of which would make him so entitled.

824 Interest in shares: agreement to acquire interests in a particular company

- (1) For the purposes of this Part an interest in shares may arise from an agreement between two or more persons that includes provision for the acquisition by any

one or more of them of interests in shares of a particular public company (the “target company” for that agreement).

- (2) This section applies to such an agreement if—
- (a) the agreement includes provision imposing obligations or restrictions on any one or more of the parties to it with respect to their use, retention or disposal of their interests in the shares of the target company acquired in pursuance of the agreement (whether or not together with any other interests of theirs in the company’s shares to which the agreement relates), and
 - (b) an interest in the target company’s shares is in fact acquired by any of the parties in pursuance of the agreement.
- (3) The reference in subsection (2) to the use of interests in shares in the target company is to the exercise of any rights or of any control or influence arising from those interests (including the right to enter into an agreement for the exercise, or for control of the exercise, of any of those rights by another person).
- (4) Once an interest in shares in the target company has been acquired in pursuance of the agreement, this section continues to apply to the agreement so long as the agreement continues to include provisions of any description mentioned in subsection (2).

This applies irrespective of—

- (a) whether or not any further acquisitions of interests in the company’s shares take place in pursuance of the agreement;
- (b) any change in the persons who are for the time being parties to it;
- (c) any variation of the agreement.

References in this subsection to the agreement include any agreement having effect (whether directly or indirectly) in substitution for the original agreement.

- (5) In this section—
- (a) “agreement” includes any agreement or arrangement, and
 - (b) references to provisions of an agreement include—
 - (i) undertakings, expectations or understandings operative under an arrangement, and
 - (ii) any provision whether express or implied and whether absolute or not.

References elsewhere in this Part to an agreement to which this section applies have a corresponding meaning.

- (6) This section does not apply—
- (a) to an agreement that is not legally binding unless it involves mutuality in the undertakings, expectations or understandings of the parties to it; or
 - (b) to an agreement to underwrite or sub-underwrite an offer of shares in a company, provided the agreement is confined to that purpose and any matters incidental to it.

825 Extent of obligation in case of share acquisition agreement

- (1) For the purposes of this Part each party to an agreement to which section 824 applies is treated as interested in all shares in the target company in which any other party to the agreement is interested apart from the agreement (whether

or not the interest of the other party was acquired, or includes any interest that was acquired, in pursuance of the agreement).

- (2) For those purposes an interest of a party to such an agreement in shares in the target company is an interest apart from the agreement if he is interested in those shares otherwise than by virtue of the application of section 824 (and this section) in relation to the agreement.
- (3) Accordingly, any such interest of the person (apart from the agreement) includes for those purposes any interest treated as his under section 822 or 823 (family or corporate interests) or by the application of section 824 (and this section) in relation to any other agreement with respect to shares in the target company to which he is a party.
- (4) A notification with respect to his interest in shares in the target company made to the company under this Part by a person who is for the time being a party to an agreement to which section 824 applies must—
 - (a) state that the person making the notification is a party to such an agreement,
 - (b) include the names and (so far as known to him) the addresses of the other parties to the agreement, identifying them as such, and
 - (c) state whether or not any of the shares to which the notification relates are shares in which he is interested by virtue of section 824 (and this section) and, if so, the number of those shares.

Other supplementary provisions

826 Information protected from wider disclosure

- (1) Information in respect of which a company is for the time being entitled to any exemption conferred by regulations under section 409(3) (information about related undertakings to be given in notes to accounts: exemption where disclosure harmful to company's business)—
 - (a) must not be included in a report under section 805 (report to members on outcome of investigation), and
 - (b) must not be made available under section 811 (right to inspect and request copy of entries).
- (2) Where any such information is omitted from a report under section 805, that fact must be stated in the report.

827 Reckoning of periods for fulfilling obligations

Where the period allowed by any provision of this Part for fulfilling an obligation is expressed as a number of days, any day that is not a working day shall be disregarded in reckoning that period.

828 Power to make further provision by regulations

- (1) The Secretary of State may by regulations amend—
 - (a) the definition of shares to which this Part applies (section 792),
 - (b) the provisions as to notice by a company requiring information about interests in its shares (section 793), and

- (c) the provisions as to what is taken to be an interest in shares (sections 820 and 821).
- (2) The regulations may amend, repeal or replace those provisions and make such other consequential amendments or repeals of provisions of this Part as appear to the Secretary of State to be appropriate.
- (3) Regulations under this section are subject to affirmative resolution procedure.

PART 23

DISTRIBUTIONS

CHAPTER 1

RESTRICTIONS ON WHEN DISTRIBUTIONS MAY BE MADE

Introductory

829 Meaning of “distribution”

- (1) In this Part “distribution” means every description of distribution of a company’s assets to its members, whether in cash or otherwise, subject to the following exceptions.
- (2) The following are not distributions for the purposes of this Part –
 - (a) an issue of shares as fully or partly paid bonus shares;
 - (b) the reduction of share capital –
 - (i) by extinguishing or reducing the liability of any of the members on any of the company’s shares in respect of share capital not paid up, or
 - (ii) by repaying paid-up share capital;
 - (c) the redemption or purchase of any of the company’s own shares out of capital (including the proceeds of any fresh issue of shares) or out of unrealised profits in accordance with Chapter 3, 4 or 5 of Part 18;
 - (d) a distribution of assets to members of the company on its winding up.

General rules

830 Distributions to be made only out of profits available for the purpose

- (1) A company may only make a distribution out of profits available for the purpose.
- (2) A company’s profits available for distribution are its accumulated, realised profits, so far as not previously utilised by distribution or capitalisation, less its accumulated, realised losses, so far as not previously written off in a reduction or reorganisation of capital duly made.
- (3) Subsection (2) has effect subject to sections 832 and 835 (investment companies etc: distributions out of accumulated revenue profits).

831 Net asset restriction on distributions by public companies

- (1) A public company may only make a distribution –
 - (a) if the amount of its net assets is not less than the aggregate of its called-up share capital and undistributable reserves, and
 - (b) if, and to the extent that, the distribution does not reduce the amount of those assets to less than that aggregate.
- (2) For this purpose a company’s “net assets” means the aggregate of the company’s assets less the aggregate of its liabilities.
- (3) “Liabilities” here includes –
 - (a) where the relevant accounts are Companies Act accounts, provisions of a kind specified for the purposes of this subsection by regulations under section 396;
 - (b) where the relevant accounts are IAS accounts, provisions of any kind.
- (4) A company’s undistributable reserves are –
 - (a) its share premium account;
 - (b) its capital redemption reserve;
 - (c) the amount by which its accumulated, unrealised profits (so far as not previously utilised by capitalisation) exceed its accumulated, unrealised losses (so far as not previously written off in a reduction or reorganisation of capital duly made);
 - (d) any other reserve that the company is prohibited from distributing –
 - (i) by any enactment (other than one contained in this Part), or
 - (ii) by its articles.

The reference in paragraph (c) to capitalisation does not include a transfer of profits of the company to its capital redemption reserve.

- (5) A public company must not include any uncalled share capital as an asset in any accounts relevant for purposes of this section.
- (6) Subsection (1) has effect subject to sections 832 and 835 (investment companies etc: distributions out of accumulated revenue profits).

*Distributions by investment companies***832 Distributions by investment companies out of accumulated revenue profits**

- (1) An investment company may make a distribution out of its accumulated, realised revenue profits if the following conditions are met.
- (2) It may make such a distribution only if, and to the extent that, its accumulated, realised revenue profits, so far as not previously utilised by a distribution or capitalisation, exceed its accumulated revenue losses (whether realised or unrealised), so far as not previously written off in a reduction or reorganisation of capital duly made.
- (3) It may make such a distribution only –
 - (a) if the amount of its assets is at least equal to one and a half times the aggregate of its liabilities to creditors, and
 - (b) if, and to the extent that, the distribution does not reduce that amount to less than one and a half times that aggregate.

- (4) For this purpose a company's liabilities to creditors include—
- (a) in the case of Companies Act accounts, provisions of a kind specified for the purposes of this subsection by regulations under section 396;
 - (b) in the case of IAS accounts, provisions for liabilities to creditors.
- (5) The following conditions must also be met—
- (a) the company's shares must be listed on a recognised UK investment exchange;
 - (b) during the relevant period it must not have—
 - (i) distributed any capital profits otherwise than by way of the redemption or purchase of any of the company's own shares in accordance with Chapter 3 or 4 of Part 18, or
 - (ii) applied any unrealised profits or any capital profits (realised or unrealised) in paying up debentures or amounts unpaid on its issued shares;
 - (c) it must have given notice to the registrar under section 833(1) (notice of intention to carry on business as an investment company)—
 - (i) before the beginning of the relevant period, or
 - (ii) as soon as reasonably practicable after the date of its incorporation.
- (6) For the purposes of this section—
- (a) “recognised UK investment exchange” means a recognised investment exchange within the meaning of Part 18 of the Financial Services and Markets Act 2000 (c. 8), other than an overseas investment exchange within the meaning of that Part; and
 - (b) the “relevant period” is the period beginning with—
 - (i) the first day of the accounting reference period immediately preceding that in which the proposed distribution is to be made, or
 - (ii) where the distribution is to be made in the company's first accounting reference period, the first day of that period,and ending with the date of the distribution.
- (7) The company must not include any uncalled share capital as an asset in any accounts relevant for purposes of this section.

833 Meaning of “investment company”

- (1) In this Part an “investment company” means a public company that—
- (a) has given notice (which has not been revoked) to the registrar of its intention to carry on business as an investment company, and
 - (b) since the date of that notice has complied with the following requirements.
- (2) Those requirements are—
- (a) that the business of the company consists of investing its funds mainly in securities, with the aim of spreading investment risk and giving members of the company the benefit of the results of the management of its funds;
 - (b) that the condition in section 834 is met as regards holdings in other companies;

- (c) that distribution of the company's capital profits is prohibited by its articles;
 - (d) that the company has not retained, otherwise than in compliance with this Part, in respect of any accounting reference period more than 15% of the income it derives from securities.
- (3) Subsection (2)(c) does not require an investment company to be prohibited by its articles from redeeming or purchasing its own shares in accordance with Chapter 3 or 4 of Part 18 out of its capital profits.
- (4) Notice to the registrar under this section may be revoked at any time by the company on giving notice to the registrar that it no longer wishes to be an investment company within the meaning of this section.
- (5) On giving such a notice, the company ceases to be such a company.

834 Investment company: condition as to holdings in other companies

- (1) The condition referred to in section 833(2)(b) (requirements to be complied with by investment company) is that none of the company's holdings in companies (other than those that are for the time being investment companies) represents more than 15% by value of the company's investments.
- (2) For this purpose –
- (a) holdings in companies that –
 - (i) are members of a group (whether or not including the investing company), and
 - (ii) are not for the time being investment companies, are treated as holdings in a single company; and
 - (b) where the investing company is a member of a group, money owed to it by another member of the group –
 - (i) is treated as a security of the latter held by the investing company, and
 - (ii) is accordingly treated as, or as part of, the holding of the investing company in the company owing the money.
- (3) The condition does not apply –
- (a) to a holding in a company acquired before 6th April 1965 that on that date represented not more than 25% by value of the investing company's investments, or
 - (b) to a holding in a company that, when it was acquired, represented not more than 15% by value of the investing company's investments, so long as no addition is made to the holding.
- (4) For the purposes of subsection (3) –
- (a) "holding" means the shares or securities (whether or one class or more than one class) held in any one company;
 - (b) an addition is made to a holding whenever the investing company acquires shares or securities of that one company, otherwise than by being allotted shares or securities without becoming liable to give any consideration, and if an addition is made to a holding that holding is acquired when the addition or latest addition is made to the holding; and
 - (c) where in connection with a scheme of reconstruction a company issues shares or securities to persons holding shares or securities in a second

company in respect of and in proportion to (or as nearly as may be in proportion to) their holdings in the second company, without those persons becoming liable to give any consideration, a holding of the shares or securities in the second company and a corresponding holding of the shares or securities so issued shall be regarded as the same holding.

- (5) In this section –
- “company” and “shares” shall be construed in accordance with sections 99 and 288 of the Taxation of Chargeable Gains Act 1992 (c. 12);
 - “group” means a company and all companies that are its 51% subsidiaries (within the meaning of section 838 of the Income and Corporation Taxes Act 1988 (c. 1)); and
 - “scheme of reconstruction” has the same meaning as in section 136 of the Taxation of Chargeable Gains Act 1992.

835 Power to extend provisions relating to investment companies

- (1) The Secretary of State may by regulations extend the provisions of sections 832 to 834 (distributions by investment companies out of accumulated profits), with or without modifications, to other companies whose principal business consists of investing their funds in securities, land or other assets with the aim of spreading investment risk and giving their members the benefit of the results of the management of the assets.
- (2) Regulations under this section are subject to affirmative resolution procedure.

CHAPTER 2

JUSTIFICATION OF DISTRIBUTION BY REFERENCE TO ACCOUNTS

Justification of distribution by reference to accounts

836 Justification of distribution by reference to relevant accounts

- (1) Whether a distribution may be made by a company without contravening this Part is determined by reference to the following items as stated in the relevant accounts –
 - (a) profits, losses, assets and liabilities;
 - (b) provisions of the following kinds –
 - (i) where the relevant accounts are Companies Act accounts, provisions of a kind specified for the purposes of this subsection by regulations under section 396;
 - (ii) where the relevant accounts are IAS accounts, provisions of any kind;
 - (c) share capital and reserves (including undistributable reserves).
- (2) The relevant accounts are the company’s last annual accounts, except that –
 - (a) where the distribution would be found to contravene this Part by reference to the company’s last annual accounts, it may be justified by reference to interim accounts, and
 - (b) where the distribution is proposed to be declared during the company’s first accounting reference period, or before any accounts

have been circulated in respect of that period, it may be justified by reference to initial accounts.

- (3) The requirements of –
 - section 837 (as regards the company's last annual accounts),
 - section 838 (as regards interim accounts), and
 - section 839 (as regards initial accounts),must be complied with, as and where applicable.
- (4) If any applicable requirement of those sections is not complied with, the accounts may not be relied on for the purposes of this Part and the distribution is accordingly treated as contravening this Part.

Requirements applicable in relation to relevant accounts

837 Requirements where last annual accounts used

- (1) The company's last annual accounts means the company's individual accounts –
 - (a) that were last circulated to members in accordance with section 423 (duty to circulate copies of annual accounts and reports), or
 - (b) if in accordance with section 426 the company provided a summary financial statement instead, that formed the basis of that statement.
- (2) The accounts must have been properly prepared in accordance with this Act, or have been so prepared subject only to matters that are not material for determining (by reference to the items mentioned in section 836(1)) whether the distribution would contravene this Part.
- (3) Unless the company is exempt from audit and the directors take advantage of that exemption, the auditor must have made his report on the accounts.
- (4) If that report was qualified –
 - (a) the auditor must have stated in writing (either at the time of his report or subsequently) whether in his opinion the matters in respect of which his report is qualified are material for determining whether a distribution would contravene this Part, and
 - (b) a copy of that statement must –
 - (i) in the case of a private company, have been circulated to members in accordance with section 423, or
 - (ii) in the case of a public company, have been laid before the company in general meeting.
- (5) An auditor's statement is sufficient for the purposes of a distribution if it relates to distributions of a description that includes the distribution in question, even if at the time of the statement it had not been proposed.

838 Requirements where interim accounts used

- (1) Interim accounts must be accounts that enable a reasonable judgment to be made as to the amounts of the items mentioned in section 836(1).
- (2) Where interim accounts are prepared for a proposed distribution by a public company, the following requirements apply.

- (3) The accounts must have been properly prepared, or have been so prepared subject to matters that are not material for determining (by reference to the items mentioned in section 836(1)) whether the distribution would contravene this Part.
- (4) “Properly prepared” means prepared in accordance with sections 395 to 397 (requirements for company individual accounts), applying those requirements with such modifications as are necessary because the accounts are prepared otherwise than in respect of an accounting reference period.
- (5) The balance sheet comprised in the accounts must have been signed in accordance with section 414.
- (6) A copy of the accounts must have been delivered to the registrar.
Any requirement of Part 35 of this Act as to the delivery of a certified translation into English of any document forming part of the accounts must also have been met.

839 Requirements where initial accounts used

- (1) Initial accounts must be accounts that enable a reasonable judgment to be made as to the amounts of the items mentioned in section 836(1).
- (2) Where initial accounts are prepared for a proposed distribution by a public company, the following requirements apply.
- (3) The accounts must have been properly prepared, or have been so prepared subject to matters that are not material for determining (by reference to the items mentioned in section 836(1)) whether the distribution would contravene this Part.
- (4) “Properly prepared” means prepared in accordance with sections 395 to 397 (requirements for company individual accounts), applying those requirements with such modifications as are necessary because the accounts are prepared otherwise than in respect of an accounting reference period.
- (5) The company’s auditor must have made a report stating whether, in his opinion, the accounts have been properly prepared.
- (6) If that report was qualified –
 - (a) the auditor must have stated in writing (either at the time of his report or subsequently) whether in his opinion the matters in respect of which his report is qualified are material for determining whether a distribution would contravene this Part, and
 - (b) a copy of that statement must –
 - (i) in the case of a private company, have been circulated to members in accordance with section 423, or
 - (ii) in the case of a public company, have been laid before the company in general meeting.
- (7) A copy of the accounts, of the auditor’s report and of any auditor’s statement must have been delivered to the registrar.
Any requirement of Part 35 of this Act as to the delivery of a certified translation into English of any of those documents must also have been met.

*Application of provisions to successive distributions etc***840 Successive distributions etc by reference to the same accounts**

- (1) In determining whether a proposed distribution may be made by a company in a case where –
 - (a) one or more previous distributions have been made in pursuance of a determination made by reference to the same relevant accounts, or
 - (b) relevant financial assistance has been given, or other relevant payments have been made, since those accounts were prepared,the provisions of this Part apply as if the amount of the proposed distribution was increased by the amount of the previous distributions, financial assistance and other payments.
- (2) The financial assistance and other payments that are relevant for this purpose are –
 - (a) financial assistance lawfully given by the company out of its distributable profits;
 - (b) financial assistance given by the company in contravention of section 678 or 679 (prohibited financial assistance) in a case where the giving of that assistance reduces the company's net assets or increases its net liabilities;
 - (c) payments made by the company in respect of the purchase by it of shares in the company, except a payment lawfully made otherwise than out of distributable profits;
 - (d) payments of any description specified in section 705 (payments apart from purchase price of shares to be made out of distributable profits).
- (3) In this section “financial assistance” has the same meaning as in Chapter 2 of Part 18 (see section 677).
- (4) For the purpose of applying subsection (2)(b) in relation to any financial assistance –
 - (a) “net assets” means the amount by which the aggregate amount of the company's assets exceeds the aggregate amount of its liabilities, and
 - (b) “net liabilities” means the amount by which the aggregate amount of the company's liabilities exceeds the aggregate amount of its assets,taking the amount of the assets and liabilities to be as stated in the company's accounting records immediately before the financial assistance is given.
- (5) For this purpose a company's liabilities include any amount retained as reasonably necessary for the purposes of providing for any liability –
 - (a) the nature of which is clearly defined, and
 - (b) which is either likely to be incurred or certain to be incurred but uncertain as to amount or as to the date on which it will arise.

CHAPTER 3

SUPPLEMENTARY PROVISIONS

Accounting matters

841 Realised losses and profits and revaluation of fixed assets

- (1) The following provisions have effect for the purposes of this Part.
- (2) The following are treated as realised losses –
 - (a) in the case of Companies Act accounts, provisions of a kind specified for the purposes of this paragraph by regulations under section 396 (except revaluation provisions);
 - (b) in the case of IAS accounts, provisions of any kind (except revaluation provisions).
- (3) A “revaluation provision” means a provision in respect of a diminution in value of a fixed asset appearing on a revaluation of all the fixed assets of the company, or of all of its fixed assets other than goodwill.
- (4) For the purpose of subsections (2) and (3) any consideration by the directors of the value at a particular time of a fixed asset is treated as a revaluation provided –
 - (a) the directors are satisfied that the aggregate value at that time of the fixed assets of the company that have not actually been revalued is not less than the aggregate amount at which they are then stated in the company’s accounts, and
 - (b) it is stated in a note to the accounts –
 - (i) that the directors have considered the value of some or all of the fixed assets of the company without actually revaluing them,
 - (ii) that they are satisfied that the aggregate value of those assets at the time of their consideration was not less than the aggregate amount at which they were then stated in the company’s accounts, and
 - (iii) that accordingly, by virtue of this subsection, amounts are stated in the accounts on the basis that a revaluation of fixed assets of the company is treated as having taken place at that time.
- (5) Where –
 - (a) on the revaluation of a fixed asset, an unrealised profit is shown to have been made, and
 - (b) on or after the revaluation, a sum is written off or retained for depreciation of that asset over a period,

an amount equal to the amount by which that sum exceeds the sum which would have been so written off or retained for the depreciation of that asset over that period, if that profit had not been made, is treated as a realised profit made over that period.

842 Determination of profit or loss in respect of asset where records incomplete

In determining for the purposes of this Part whether a company has made a profit or loss in respect of an asset where –

- (a) there is no record of the original cost of the asset, or
 - (b) a record cannot be obtained without unreasonable expense or delay,
- its cost is taken to be the value ascribed to it in the earliest available record of its value made on or after its acquisition by the company.

843 Realised profits and losses of long-term insurance business

- (1) The provisions of this section have effect for the purposes of this Part as it applies in relation to an authorised insurance company carrying on long-term business.
- (2) An amount included in the relevant part of the company's balance sheet that—
 - (a) represents a surplus in the fund or funds maintained by it in respect of its long-term business, and
 - (b) has not been allocated to policy holders or, as the case may be, carried forward unappropriated in accordance with asset identification rules made under section 142(2) of the Financial Services and Markets Act 2000 (c. 8),is treated as a realised profit.
- (3) For the purposes of subsection (2)—
 - (a) the relevant part of the balance sheet is that part of the balance sheet that represents accumulated profit or loss;
 - (b) a surplus in the fund or funds maintained by the company in respect of its long-term business means an excess of the assets representing that fund or those funds over the liabilities of the company attributable to its long-term business, as shown by an actuarial investigation.
- (4) A deficit in the fund or funds maintained by the company in respect of its long-term business is treated as a realised loss.

For this purpose a deficit in any such fund or funds means an excess of the liabilities of the company attributable to its long-term business over the assets representing that fund or those funds, as shown by an actuarial investigation.
- (5) Subject to subsections (2) and (4), any profit or loss arising in the company's long-term business is to be left out of account.
- (6) For the purposes of this section an “actuarial investigation” means an investigation made into the financial condition of an authorised insurance company in respect of its long-term business—
 - (a) carried out once in every period of twelve months in accordance with rules made under Part 10 of the Financial Services and Markets Act 2000, or
 - (b) carried out in accordance with a requirement imposed under section 166 of that Act,by an actuary appointed as actuary to the company.
- (7) In this section “long-term business” means business that consists of effecting or carrying out contracts of long-term insurance.

This definition must be read with section 22 of the Financial Services and Markets Act 2000, any relevant order under that section and Schedule 2 to that Act.

844 Treatment of development costs

- (1) Where development costs are shown or included as an asset in a company's accounts, any amount shown or included in respect of those costs is treated –
 - (a) for the purposes of section 830 (distributions to be made out of profits available for the purpose) as a realised loss, and
 - (b) for the purposes of section 832 (distributions by investment companies out of accumulated revenue profits) as a realised revenue loss.

This is subject to the following exceptions.

- (2) Subsection (1) does not apply to any part of that amount representing an unrealised profit made on revaluation of those costs.
- (3) Subsection (1) does not apply if –
 - (a) there are special circumstances in the company's case justifying the directors in deciding that the amount there mentioned is not to be treated as required by subsection (1),
 - (b) it is stated –
 - (i) in the case of Companies Act accounts, in the note required by regulations under section 396 as to the reasons for showing development costs as an asset, or
 - (ii) in the case of IAS accounts, in any note to the accounts, that the amount is not to be so treated, and
 - (c) the note explains the circumstances relied upon to justify the decision of the directors to that effect.

Distributions in kind

845 Distributions in kind: determination of amount

- (1) This section applies for determining the amount of a distribution consisting of or including, or treated as arising in consequence of, the sale, transfer or other disposition by a company of a non-cash asset where –
 - (a) at the time of the distribution the company has profits available for distribution, and
 - (b) if the amount of the distribution were to be determined in accordance with this section, the company could make the distribution without contravening this Part.
- (2) The amount of the distribution (or the relevant part of it) is taken to be –
 - (a) in a case where the amount or value of the consideration for the disposition is not less than the book value of the asset, zero;
 - (b) in any other case, the amount by which the book value of the asset exceeds the amount or value of any consideration for the disposition.
- (3) For the purposes of subsection (1)(a) the company's profits available for distribution are treated as increased by the amount (if any) by which the amount or value of any consideration for the disposition exceeds the book value of the asset.
- (4) In this section "book value", in relation to an asset, means –
 - (a) the amount at which the asset is stated in the relevant accounts, or
 - (b) where the asset is not stated in those accounts at any amount, zero.

- (5) The provisions of Chapter 2 (justification of distribution by reference to accounts) have effect subject to this section.

846 Distributions in kind: treatment of unrealised profits

- (1) This section applies where –
- (a) a company makes a distribution consisting of or including, or treated as arising in consequence of, the sale, transfer or other disposition by the company of a non-cash asset, and
 - (b) any part of the amount at which that asset is stated in the relevant accounts represents an unrealised profit.
- (2) That profit is treated as a realised profit –
- (a) for the purpose of determining the lawfulness of the distribution in accordance with this Part (whether before or after the distribution takes place), and
 - (b) for the purpose of the application, in relation to anything done with a view to or in connection with the making of the distribution, of any provision of regulations under section 396 under which only realised profits are to be included in or transferred to the profit and loss account.

Consequences of unlawful distribution

847 Consequences of unlawful distribution

- (1) This section applies where a distribution, or part of one, made by a company to one of its members is made in contravention of this Part.
- (2) If at the time of the distribution the member knows or has reasonable grounds for believing that it is so made, he is liable –
- (a) to repay it (or that part of it, as the case may be) to the company, or
 - (b) in the case of a distribution made otherwise than in cash, to pay the company a sum equal to the value of the distribution (or part) at that time.
- (3) This is without prejudice to any obligation imposed apart from this section on a member of a company to repay a distribution unlawfully made to him.
- (4) This section does not apply in relation to –
- (a) financial assistance given by a company in contravention of section 678 or 679, or
 - (b) any payment made by a company in respect of the redemption or purchase by the company of shares in itself.

Other matters

848 Saving for certain older provisions in articles

- (1) Where immediately before the relevant date a company was authorised by a provision of its articles to apply its unrealised profits in paying up in full or in part unissued shares to be allotted to members of the company as fully or partly paid bonus shares, that provision continues (subject to any alteration of the articles) as authority for those profits to be so applied after that date.

- (2) For this purpose the relevant date is –
 - (a) for companies registered in Great Britain, 22nd December 1980;
 - (b) for companies registered in Northern Ireland, 1st July 1983.

849 Restriction on application of unrealised profits

A company must not apply an unrealised profit in paying up debentures or any amounts unpaid on its issued shares.

850 Treatment of certain older profits or losses

- (1) Where the directors of a company are, after making all reasonable enquiries, unable to determine whether a particular profit made before the relevant date is realised or unrealised, they may treat the profit as realised.
- (2) Where the directors of a company, after making all reasonable enquiries, are unable to determine whether a particular loss made before the relevant date is realised or unrealised, they may treat the loss as unrealised.
- (3) For the purposes of this section the relevant date is –
 - (a) for companies registered in Great Britain, 22nd December 1980;
 - (b) for companies registered in Northern Ireland, 1st July 1983.

851 Application of rules of law restricting distributions

- (1) Except as provided in this section, the provisions of this Part are without prejudice to any rule of law restricting the sums out of which, or the cases in which, a distribution may be made.
- (2) For the purposes of any rule of law requiring distributions to be paid out of profits or restricting the return of capital to members –
 - (a) section 845 (distributions in kind: determination of amount) applies to determine the amount of any distribution or return of capital consisting of or including, or treated as arising in consequence of the sale, transfer or other disposition by a company of a non-cash asset; and
 - (b) section 846 (distributions in kind: treatment of unrealised profits) applies as it applies for the purposes of this Part.
- (3) In this section references to distributions are to amounts regarded as distributions for the purposes of any such rule of law as is referred to in subsection (1).

852 Saving for other restrictions on distributions

The provisions of this Part are without prejudice to any enactment, or any provision of a company's articles, restricting the sums out of which, or the cases in which, a distribution may be made.

853 Minor definitions

- (1) The following provisions apply for the purposes of this Part.
- (2) References to profit or losses of any description –
 - (a) are to profits or losses of that description made at any time, and

- (b) except where the context otherwise requires, are to profits or losses of a revenue or capital character.
- (3) “Capitalisation”, in relation to a company’s profits, means any of the following operations (whenever carried out) –
 - (a) applying the profits in wholly or partly paying up unissued shares in the company to be allotted to members of the company as fully or partly paid bonus shares, or
 - (b) transferring the profits to capital redemption reserve.
- (4) References to “realised profits” and “realised losses”, in relation to a company’s accounts, are to such profits or losses of the company as fall to be treated as realised in accordance with principles generally accepted at the time when the accounts are prepared, with respect to the determination for accounting purposes of realised profits or losses.
- (5) Subsection (4) is without prejudice to –
 - (a) the construction of any other expression (where appropriate) by reference to accepted accounting principles or practice, or
 - (b) any specific provision for the treatment of profits or losses of any description as realised.
- (6) “Fixed assets” means assets of a company which are intended for use on a continuing basis in the company’s activities.

PART 24

A COMPANY’S ANNUAL RETURN

854 Duty to deliver annual returns

- (1) Every company must deliver to the registrar successive annual returns each of which is made up to a date not later than the date that is from time to time the company’s return date.
- (2) The company’s return date is –
 - (a) the anniversary of the company’s incorporation, or
 - (b) if the company’s last return delivered in accordance with this Part was made up to a different date, the anniversary of that date.
- (3) Each return must –
 - (a) contain the information required by or under the following provisions of this Part, and
 - (b) be delivered to the registrar within 28 days after the date to which it is made up.

855 Contents of annual return: general

- (1) Every annual return must state the date to which it is made up and contain the following information –
 - (a) the address of the company’s registered office;
 - (b) the type of company it is and its principal business activities;
 - (c) the prescribed particulars of –
 - (i) the directors of the company, and

- (ii) in the case of a private company with a secretary or a public company, the secretary or joint secretaries;
 - (d) if the register of members is not kept available for inspection at the company's registered office, the address of the place where it is kept available for inspection;
 - (e) if any register of debenture holders (or a duplicate of any such register or a part of it) is not kept available for inspection at the company's registered office, the address of the place where it is kept available for inspection.
- (2) The information as to the company's type must be given by reference to the classification scheme prescribed for the purposes of this section.
- (3) The information as to the company's principal business activities may be given by reference to one or more categories of any prescribed system of classifying business activities.

856 Contents of annual return: information about share capital and shareholders

- (1) The annual return of a company having a share capital must also contain –
- (a) a statement of capital, and
 - (b) the particulars required by subsections (3) to (6) about the members of the company.
- (2) The statement of capital must state with respect to the company's share capital at the date to which the return is made up –
- (a) the total number of shares of the company,
 - (b) the aggregate nominal value of those shares,
 - (c) for each class of shares –
 - (i) prescribed particulars of the rights attached to the shares,
 - (ii) the total number of shares of that class, and
 - (iii) the aggregate nominal value of shares of that class, and
 - (d) the amount paid up and the amount (if any) unpaid on each share (whether on account of the nominal value of the share or by way of premium).
- (3) The return must contain the prescribed particulars of every person who –
- (a) is a member of the company on the date to which the return is made up, or
 - (b) has ceased to be a member of the company since the date to which the last return was made up (or, in the case of the first return, since the incorporation of the company).

The return must conform to such requirements as may be prescribed for the purpose of enabling the entries relating to any given person to be easily found.

- (4) The return must also state –
- (a) the number of shares of each class held by each member of the company at the date to which the return is made up,
 - (b) the number of shares of each class transferred –
 - (i) since the date to which the last return was made up, or
 - (ii) in the case of the first return, since the incorporation of the company,
- by each member or person who has ceased to be a member, and

- (c) the dates of registration of the transfers.
- (5) If either of the two immediately preceding returns has given the full particulars required by subsections (3) and (4), the return need only give such particulars as relate –
 - (a) to persons ceasing to be or becoming members since the date of the last return, and
 - (b) to shares transferred since that date.
- (6) Where the company has converted any of its shares into stock, the return must give the corresponding information in relation to that stock, stating the amount of stock instead of the number or nominal value of shares.

857 Contents of annual return: power to make further provision by regulations

- (1) The Secretary of State may by regulations make further provision as to the information to be given in a company's annual return.
- (2) The regulations may –
 - (a) amend or repeal the provisions of sections 855 and 856, and
 - (b) provide for exceptions from the requirements of those sections as they have effect from time to time.
- (3) Regulations under this section are subject to negative resolution procedure.

858 Failure to deliver annual return

- (1) If a company fails to deliver an annual return before the end of the period of 28 days after a return date, an offence is committed by –
 - (a) the company,
 - (b) subject to subsection (4) –
 - (i) every director of the company, and
 - (ii) in the case of a private company with a secretary or a public company, every secretary of the company, and
 - (c) every other officer of the company who is in default.
- (2) A person guilty of an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 5 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 5 on the standard scale.
- (3) The contravention continues until such time as an annual return made up to that return date is delivered by the company to the registrar.
- (4) It is a defence for a director or secretary charged with an offence under subsection (1)(b) to prove that he took all reasonable steps to avoid the commission or continuation of the offence.
- (5) In the case of continued contravention, an offence is also committed by every officer of the company who did not commit an offence under subsection (1) in relation to the initial contravention but is in default in relation to the continued contravention.

A person guilty of an offence under this subsection is liable on summary conviction to a fine not exceeding one-tenth of level 5 on the standard scale for each day on which the contravention continues and he is in default.

859 Application of provisions to shadow directors

For the purposes of this Part a shadow director is treated as a director.

PART 25

COMPANY CHARGES

CHAPTER 1

COMPANIES REGISTERED IN ENGLAND AND WALES OR IN NORTHERN IRELAND

Requirement to register company charges

860 Charges created by a company

- (1) A company that creates a charge to which this section applies must deliver the prescribed particulars of the charge, together with the instrument (if any) by which the charge is created or evidenced, to the registrar for registration before the end of the period allowed for registration.
- (2) Registration of a charge to which this section applies may instead be effected on the application of a person interested in it.
- (3) Where registration is effected on the application of some person other than the company, that person is entitled to recover from the company the amount of any fees properly paid by him to the registrar on registration.
- (4) If a company fails to comply with subsection (1), an offence is committed by –
 - (a) the company, and
 - (b) every officer of it who is in default.
- (5) A person guilty of an offence under this section is liable –
 - (a) on conviction on indictment, to a fine;
 - (b) on summary conviction, to a fine not exceeding the statutory maximum.
- (6) Subsection (4) does not apply if registration of the charge has been effected on the application of some other person.
- (7) This section applies to the following charges –
 - (a) a charge on land or any interest in land, other than a charge for any rent or other periodical sum issuing out of land,
 - (b) a charge created or evidenced by an instrument which, if executed by an individual, would require registration as a bill of sale,
 - (c) a charge for the purposes of securing any issue of debentures,
 - (d) a charge on uncalled share capital of the company,
 - (e) a charge on calls made but not paid,
 - (f) a charge on book debts of the company,
 - (g) a floating charge on the company's property or undertaking,
 - (h) a charge on a ship or aircraft, or any share in a ship,
 - (i) a charge on goodwill or on any intellectual property.

861 Charges which have to be registered: supplementary

- (1) The holding of debentures entitling the holder to a charge on land is not, for the purposes of section 860(7)(a), an interest in the land.
- (2) It is immaterial for the purposes of this Chapter where land subject to a charge is situated.
- (3) The deposit by way of security of a negotiable instrument given to secure the payment of book debts is not, for the purposes of section 860(7)(f), a charge on those book debts.
- (4) For the purposes of section 860(7)(i), “intellectual property” means –
 - (a) any patent, trade mark, registered design, copyright or design right;
 - (b) any licence under or in respect of any such right.
- (5) In this Chapter –
 - “charge” includes mortgage, and
 - “company” means a company registered in England and Wales or in Northern Ireland.

862 Charges existing on property acquired

- (1) This section applies where a company acquires property which is subject to a charge of a kind which would, if it had been created by the company after the acquisition of the property, have been required to be registered under this Chapter.
- (2) The company must deliver the prescribed particulars of the charge, together with a certified copy of the instrument (if any) by which the charge is created or evidenced, to the registrar for registration.
- (3) Subsection (2) must be complied with before the end of the period allowed for registration.
- (4) If default is made in complying with this section, an offence is committed by –
 - (a) the company, and
 - (b) every officer of it who is in default.
- (5) A person guilty of an offence under this section is liable –
 - (a) on conviction on indictment, to a fine;
 - (b) on summary conviction, to a fine not exceeding the statutory maximum.

*Special rules about debentures***863 Charge in series of debentures**

- (1) Where a series of debentures containing, or giving by reference to another instrument, any charge to the benefit of which debenture holders of that series are entitled *pari passu* is created by a company, it is for the purposes of section 860(1) sufficient if the required particulars, together with the deed containing the charge (or, if there is no such deed, one of the debentures of the series), are delivered to the registrar before the end of the period allowed for registration.
- (2) The following are the required particulars –

- (a) the total amount secured by the whole series, and
 - (b) the dates of the resolutions authorising the issue of the series and the date of the covering deed (if any) by which the series is created or defined, and
 - (c) a general description of the property charged, and
 - (d) the names of the trustees (if any) for the debenture holders.
- (3) Particulars of the date and amount of each issue of debentures of a series of the kind mentioned in subsection (1) must be sent to the registrar for entry in the register of charges.
- (4) Failure to comply with subsection (3) does not affect the validity of the debentures issued.
- (5) Subsections (2) to (6) of section 860 apply for the purposes of this section as they apply for the purposes of that section, but as if references to the registration of a charge were references to the registration of a series of debentures.

864 Additional registration requirement for commission etc in relation to debentures

- (1) Where any commission, allowance or discount has been paid or made either directly or indirectly by a company to a person in consideration of his—
- (a) subscribing or agreeing to subscribe, whether absolutely or conditionally, for debentures in a company, or
 - (b) procuring or agreeing to procure subscriptions, whether absolute or conditional, for such debentures,
- the particulars required to be sent for registration under section 860 shall include particulars as to the amount or rate per cent. of the commission, discount or allowance so paid or made.
- (2) The deposit of debentures as security for a debt of the company is not, for the purposes of this section, treated as the issue of debentures at a discount.
- (3) Failure to comply with this section does not affect the validity of the debentures issued.

865 Endorsement of certificate on debentures

- (1) The company shall cause a copy of every certificate of registration given under section 869 to be endorsed on every debenture or certificate of debenture stock which is issued by the company, and the payment of which is secured by the charge so registered.
- (2) But this does not require a company to cause a certificate of registration of any charge so given to be endorsed on any debenture or certificate of debenture stock issued by the company before the charge was created.
- (3) If a person knowingly and wilfully authorises or permits the delivery of a debenture or certificate of debenture stock which under this section is required to have endorsed on it a copy of a certificate of registration, without the copy being so endorsed upon it, he commits an offence.
- (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.

*Charges in other jurisdictions***866 Charges created in, or over property in, jurisdictions outside the United Kingdom**

- (1) Where a charge is created outside the United Kingdom comprising property situated outside the United Kingdom, the delivery to the registrar of a verified copy of the instrument by which the charge is created or evidenced has the same effect for the purposes of this Chapter as the delivery of the instrument itself.
- (2) Where a charge is created in the United Kingdom but comprises property outside the United Kingdom, the instrument creating or purporting to create the charge may be sent for registration under section 860 even if further proceedings may be necessary to make the charge valid or effectual according to the law of the country in which the property is situated.

867 Charges created in, or over property in, another United Kingdom jurisdiction

- (1) Subsection (2) applies where –
 - (a) a charge comprises property situated in a part of the United Kingdom other than the part in which the company is registered, and
 - (b) registration in that other part is necessary to make the charge valid or effectual under the law of that part of the United Kingdom.
- (2) The delivery to the registrar of a verified copy of the instrument by which the charge is created or evidenced, together with a certificate stating that the charge was presented for registration in that other part of the United Kingdom on the date on which it was so presented has, for the purposes of this Chapter, the same effect as the delivery of the instrument itself.

*Orders charging land: Northern Ireland***868 Northern Ireland: registration of certain charges etc. affecting land**

- (1) Where a charge imposed by an order under Article 46 of the 1981 Order or notice of such a charge is registered in the Land Registry against registered land or any estate in registered land of a company, the Registrar of Titles shall as soon as may be cause two copies of the order made under Article 46 of that Order or of any notice under Article 48 of that Order to be delivered to the registrar.
- (2) Where a charge imposed by an order under Article 46 of the 1981 Order is registered in the Registry of Deeds against any unregistered land or estate in land of a company, the Registrar of Deeds shall as soon as may be cause two copies of the order to be delivered to the registrar.
- (3) On delivery of copies under this section, the registrar shall –
 - (a) register one of them in accordance with section 869, and
 - (b) not later than 7 days from that date of delivery, cause the other copy together with a certificate of registration under section 869(5) to be sent to the company against which judgment was given.
- (4) Where a charge to which subsection (1) or (2) applies is vacated, the Registrar of Titles or, as the case may be, the Registrar of Deeds shall cause a certified

copy of the certificate of satisfaction lodged under Article 132(1) of the 1981 Order to be delivered to the registrar for entry of a memorandum of satisfaction in accordance with section 872.

- (5) In this section –
- “the 1981 Order” means the Judgments Enforcement (Northern Ireland) Order 1981 (S.I. 1981/226 (N.I. 6));
 - “the Registrar of Deeds” means the registrar appointed under the Registration of Deeds Act (Northern Ireland) 1970 (c. 25);
 - “Registry of Deeds” has the same meaning as in the Registration of Deeds Acts;
 - “Registration of Deeds Acts” means the Registration of Deeds Act (Northern Ireland) 1970 and every statutory provision for the time being in force amending that Act or otherwise relating to the registry of deeds, or the registration of deeds, orders or other instruments or documents in such registry;
 - “the Land Registry” and “the Registrar of Titles” are to be construed in accordance with section 1 of the Land Registration Act (Northern Ireland) 1970 (c. 18);
 - “registered land” and “unregistered land” have the same meaning as in Part 3 of the Land Registration Act (Northern Ireland) 1970.

The register of charges

869 Register of charges to be kept by registrar

- (1) The registrar shall keep, with respect to each company, a register of all the charges requiring registration under this Chapter.
- (2) In the case of a charge to the benefit of which holders of a series of debentures are entitled, the registrar shall enter in the register the required particulars specified in section 863(2).
- (3) In the case of a charge imposed by the Enforcement of Judgments Office under Article 46 of the Judgments Enforcement (Northern Ireland) Order 1981, the registrar shall enter in the register the date on which the charge became effective.
- (4) In the case of any other charge, the registrar shall enter in the register the following particulars –
 - (a) if it is a charge created by a company, the date of its creation and, if it is a charge which was existing on property acquired by the company, the date of the acquisition,
 - (b) the amount secured by the charge,
 - (c) short particulars of the property charged, and
 - (d) the persons entitled to the charge.
- (5) The registrar shall give a certificate of the registration of any charge registered in pursuance of this Chapter, stating the amount secured by the charge.
- (6) The certificate –
 - (a) shall be signed by the registrar or authenticated by the registrar’s official seal, and

- (b) is conclusive evidence that the requirements of this Chapter as to registration have been satisfied.
- (7) The register kept in pursuance of this section shall be open to inspection by any person.

870 The period allowed for registration

- (1) The period allowed for registration of a charge created by a company is –
 - (a) 21 days beginning with the day after the day on which the charge is created, or
 - (b) if the charge is created outside the United Kingdom, 21 days beginning with the day after the day on which the instrument by which the charge is created or evidenced (or a copy of it) could, in due course of post (and if despatched with due diligence) have been received in the United Kingdom.
- (2) The period allowed for registration of a charge to which property acquired by a company is subject is –
 - (a) 21 days beginning with the day after the day on which the acquisition is completed, or
 - (b) if the property is situated and the charge was created outside the United Kingdom, 21 days beginning with the day after the day on which the instrument by which the charge is created or evidenced (or a copy of it) could, in due course of post (and if despatched with due diligence) have been received in the United Kingdom.
- (3) The period allowed for registration of particulars of a series of debentures as a result of section 863 is –
 - (a) if there is a deed containing the charge mentioned in section 863(1), 21 days beginning with the day after the day on which that deed is executed, or
 - (b) if there is no such deed, 21 days beginning with the day after the day on which the first debenture of the series is executed.

871 Registration of enforcement of security

- (1) If a person obtains an order for the appointment of a receiver or manager of a company's property, or appoints such a receiver or manager under powers contained in an instrument, he shall within 7 days of the order or of the appointment under those powers, give notice of the fact to the registrar.
- (2) Where a person appointed receiver or manager of a company's property under powers contained in an instrument ceases to act as such receiver or manager, he shall, on so ceasing, give the registrar notice to that effect.
- (3) The registrar must enter a fact of which he is given notice under this section in the register of charges.
- (4) A person who makes default in complying with the requirements of this section commits an offence.
- (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.

872 Entries of satisfaction and release

- (1) Subsection (2) applies if a statement is delivered to the registrar verifying with respect to a registered charge –
 - (a) that the debt for which the charge was given has been paid or satisfied in whole or in part, or
 - (b) that part of the property or undertaking charged has been released from the charge or has ceased to form part of the company's property or undertaking.
- (2) The registrar may enter on the register a memorandum of satisfaction in whole or in part, or of the fact part of the property or undertaking has been released from the charge or has ceased to form part of the company's property or undertaking (as the case may be).
- (3) Where the registrar enters a memorandum of satisfaction in whole, the registrar shall if required send the company a copy of it.

873 Rectification of register of charges

- (1) Subsection (2) applies if the court is satisfied –
 - (a) that the failure to register a charge before the end of the period allowed for registration, or the omission or mis-statement of any particular with respect to any such charge or in a memorandum of satisfaction –
 - (i) was accidental or due to inadvertence or to some other sufficient cause, or
 - (ii) is not of a nature to prejudice the position of creditors or shareholders of the company, or
 - (b) that on other grounds it is just and equitable to grant relief.
- (2) The court may, on the application of the company or a person interested, and on such terms and conditions as seem to the court just and expedient, order that the period allowed for registration shall be extended or, as the case may be, that the omission or mis-statement shall be rectified.

Avoidance of certain charges

874 Consequence of failure to register charges created by a company

- (1) If a company creates a charge to which section 860 applies, the charge is void (so far as any security on the company's property or undertaking is conferred by it) against –
 - (a) a liquidator of the company,
 - (b) an administrator of the company, and
 - (c) a creditor of the company,unless that section is complied with.
- (2) Subsection (1) is subject to the provisions of this Chapter.
- (3) Subsection (1) is without prejudice to any contract or obligation for repayment of the money secured by the charge; and when a charge becomes void under this section, the money secured by it immediately becomes payable.

*Companies' records and registers***875 Companies to keep copies of instruments creating charges**

- (1) A company must keep available for inspection a copy of every instrument creating a charge requiring registration under this Chapter, including any document delivered to the company under section 868(3)(b) (Northern Ireland: orders imposing charges affecting land).
- (2) In the case of a series of uniform debentures, a copy of one of the debentures of the series is sufficient.

876 Company's register of charges

- (1) Every limited company shall keep available for inspection a register of charges and enter in it –
 - (a) all charges specifically affecting property of the company, and
 - (b) all floating charges on the whole or part of the company's property or undertaking.
- (2) The entry shall in each case give a short description of the property charged, the amount of the charge and, except in the cases of securities to bearer, the names of the persons entitled to it.
- (3) If an officer of the company knowingly and wilfully authorises or permits the omission of an entry required to be made in pursuance of this section, he commits an offence.
- (4) A person guilty of an offence under this section is liable –
 - (a) on conviction on indictment, to a fine;
 - (b) on summary conviction, to a fine not exceeding the statutory maximum.

877 Instruments creating charges and register of charges to be available for inspection

- (1) This section applies to –
 - (a) documents required to be kept available for inspection under section 875 (copies of instruments creating charges), and
 - (b) a company's register of charges kept in pursuance of section 876.
- (2) The documents and register must be kept available for inspection –
 - (a) at the company's registered office, or
 - (b) at a place specified in regulations under section 1136.
- (3) The company must give notice to the registrar –
 - (a) of the place at which the documents and register are kept available for inspection, and
 - (b) of any change in that place,unless they have at all times been kept at the company's registered office.
- (4) The documents and register shall be open to the inspection –
 - (a) of any creditor or member of the company without charge, and
 - (b) of any other person on payment of such fee as may be prescribed.

- (5) If default is made for 14 days in complying with subsection (3) or an inspection required under subsection (4) is refused, 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.
- (7) If an inspection required under subsection (4) is refused the court may by order compel an immediate inspection.

CHAPTER 2

COMPANIES REGISTERED IN SCOTLAND

Charges requiring registration

878 Charges created by a company

- (1) A company that creates a charge to which this section applies must deliver the prescribed particulars of the charge, together with a copy certified as a correct copy of the instrument (if any) by which the charge is created or evidenced, to the registrar for registration before the end of the period allowed for registration.
- (2) Registration of a charge to which this section applies may instead be effected on the application of a person interested in it.
- (3) Where registration is effected on the application of some person other than the company, that person is entitled to recover from the company the amount of any fees properly paid by him to the registrar on the registration.
- (4) If a company fails to comply with subsection (1), 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 –
 - (a) on conviction on indictment, to a fine;
 - (b) on summary conviction, to a fine not exceeding the statutory maximum.
- (6) Subsection (4) does not apply if registration of the charge has been effected on the application of some other person.
- (7) This section applies to the following charges –
 - (a) a charge on land or any interest in such land, other than a charge for any rent or other periodical sum payable in respect of the land,
 - (b) a security over incorporeal moveable property of any of the following categories –
 - (i) goodwill,
 - (ii) a patent or a licence under a patent,
 - (iii) a trademark,
 - (iv) a copyright or a licence under a copyright,

- (v) a registered design or a licence in respect of such a design,
 - (vi) a design right or a licence under a design right,
 - (vii) the book debts (whether book debts of the company or assigned to it), and
 - (viii) uncalled share capital of the company or calls made but not paid,
- (c) a security over a ship or aircraft or any share in a ship,
 - (d) a floating charge.

879 Charges which have to be registered: supplementary

- (1) A charge on land, for the purposes of section 878(7)(a), includes a charge created by a heritable security within the meaning of section 9(8) of the Conveyancing and Feudal Reform (Scotland) Act 1970 (c. 35).
- (2) The holding of debentures entitling the holder to a charge on land is not, for the purposes of section 878(7)(a), deemed to be an interest in land.
- (3) It is immaterial for the purposes of this Chapter where land subject to a charge is situated.
- (4) The deposit by way of security of a negotiable instrument given to secure the payment of book debts is not, for the purposes of section 878(7)(b)(vii), to be treated as a charge on those book debts.
- (5) References in this Chapter to the date of the creation of a charge are—
 - (a) in the case of a floating charge, the date on which the instrument creating the floating charge was executed by the company creating the charge, and
 - (b) in any other case, the date on which the right of the person entitled to the benefit of the charge was constituted as a real right.
- (6) In this Chapter “company” means an incorporated company registered in Scotland.

880 Duty to register charges existing on property acquired

- (1) Subsection (2) applies where a company acquires any property which is subject to a charge of any kind as would, if it had been created by the company after the acquisition of the property, have been required to be registered under this Chapter.
- (2) The company must deliver the prescribed particulars of the charge, together with a copy (certified to be a correct copy) of the instrument (if any) by which the charge was created or is evidenced, to the registrar for registration before the end of the period allowed for registration.
- (3) If default is made in complying with this section, an offence is committed by—
 - (a) the company, and
 - (b) every officer of it who is in default.
- (4) A person guilty of an offence under this section is liable—
 - (a) on conviction on indictment, to a fine;
 - (b) on summary conviction, to a fine not exceeding the statutory maximum.

881 Charge by way of *ex facie* absolute disposition, etc

- (1) For the avoidance of doubt, it is hereby declared that, in the case of a charge created by way of an *ex facie* absolute disposition or assignation qualified by a back letter or other agreement, or by a standard security qualified by an agreement, compliance with section 878(1) does not of itself render the charge unavailable as security for indebtedness incurred after the date of compliance.
- (2) Where the amount secured by a charge so created is purported to be increased by a further back letter or agreement, a further charge is held to have been created by the *ex facie* absolute disposition or assignation or (as the case may be) by the standard security, as qualified by the further back letter or agreement.
- (3) In that case, the provisions of this Chapter apply to the further charge as if—
 - (a) references in this Chapter (other than in this section) to a charge were references to the further charge, and
 - (b) references to the date of the creation of a charge were references to the date on which the further back letter or agreement was executed.

Special rules about debentures

882 Charge in series of debentures

- (1) Where a series of debentures containing, or giving by reference to any other instrument, any charge to the benefit of which the debenture-holders of that series are entitled *pari passu*, is created by a company, it is sufficient for purposes of section 878 if the required particulars, together with a copy of the deed containing the charge (or, if there is no such deed, of one of the debentures of the series) are delivered to the registrar before the end of the period allowed for registration.
- (2) The following are the required particulars—
 - (a) the total amount secured by the whole series,
 - (b) the dates of the resolutions authorising the issue of the series and the date of the covering deed (if any) by which the security is created or defined,
 - (c) a general description of the property charged,
 - (d) the names of the trustees (if any) for the debenture-holders, and
 - (e) in the case of a floating charge, a statement of any provisions of the charge and of any instrument relating to it which prohibit or restrict or regulate the power of the company to grant further securities ranking in priority to, or *pari passu* with, the floating charge, or which vary or otherwise regulate the order of ranking of the floating charge in relation to subsisting securities.
- (3) Where more than one issue is made of debentures in the series, particulars of the date and amount of each issue of debentures of the series must be sent to the registrar for entry in the register of charges.
- (4) Failure to comply with subsection (3) does not affect the validity of any of those debentures.
- (5) Subsections (2) to (6) of section 878 apply for the purposes of this section as they apply for the purposes of that section but as if for the reference to the

registration of the charge there was substituted a reference to the registration of the series of debentures.

883 Additional registration requirement for commission etc in relation to debentures

- (1) Where any commission, allowance or discount has been paid or made either directly or indirectly by a company to a person in consideration of his—
 - (a) subscribing or agreeing to subscribe, whether absolutely or conditionally, for debentures in a company, or
 - (b) procuring or agreeing to procure subscriptions, whether absolute or conditional, for such debentures,the particulars required to be sent for registration under section 878 shall include particulars as to the amount or rate per cent. of the commission, discount or allowance so paid or made.
- (2) The deposit of debentures as security for a debt of the company is not, for the purposes of this section, treated as the issue of debentures at a discount.
- (3) Failure to comply with this section does not affect the validity of the debentures issued.

Charges on property outside the United Kingdom

884 Charges on property outside United Kingdom

Where a charge is created in the United Kingdom but comprises property outside the United Kingdom, the copy of the instrument creating or purporting to create the charge may be sent for registration under section 878 even if further proceedings may be necessary to make the charge valid or effectual according to the law of the country in which the property is situated.

The register of charges

885 Register of charges to be kept by registrar

- (1) The registrar shall keep, with respect to each company, a register of all the charges requiring registration under this Chapter.
- (2) In the case of a charge to the benefit of which holders of a series of debentures are entitled, the registrar shall enter in the register the required particulars specified in section 882(2).
- (3) In the case of any other charge, the registrar shall enter in the register the following particulars—
 - (a) if it is a charge created by a company, the date of its creation and, if it is a charge which was existing on property acquired by the company, the date of the acquisition,
 - (b) the amount secured by the charge,
 - (c) short particulars of the property charged,
 - (d) the persons entitled to the charge, and
 - (e) in the case of a floating charge, a statement of any of the provisions of the charge and of any instrument relating to it which prohibit or restrict or regulate the company's power to grant further securities ranking in

priority to, or *pari passu* with, the floating charge, or which vary or otherwise regulate the order of ranking of the floating charge in relation to subsisting securities.

- (4) The registrar shall give a certificate of the registration of any charge registered in pursuance of this Chapter, stating –
 - (a) the name of the company and the person first-named in the charge among those entitled to the benefit of the charge (or, in the case of a series of debentures, the name of the holder of the first such debenture issued), and
 - (b) the amount secured by the charge.
- (5) The certificate –
 - (a) shall be signed by the registrar or authenticated by the registrar's official seal, and
 - (b) is conclusive evidence that the requirements of this Chapter as to registration have been satisfied.
- (6) The register kept in pursuance of this section shall be open to inspection by any person.

886 The period allowed for registration

- (1) The period allowed for registration of a charge created by a company is –
 - (a) 21 days beginning with the day after the day on which the charge is created, or
 - (b) if the charge is created outside the United Kingdom, 21 days beginning with the day after the day on which a copy of the instrument by which the charge is created or evidenced could, in due course of post (and if despatched with due diligence) have been received in the United Kingdom.
- (2) The period allowed for registration of a charge to which property acquired by a company is subject is –
 - (a) 21 days beginning with the day after the day on which the transaction is settled, or
 - (b) if the property is situated and the charge was created outside the United Kingdom, 21 days beginning with the day after the day on which a copy of the instrument by which the charge is created or evidenced could, in due course of post (and if despatched with due diligence) have been received in the United Kingdom.
- (3) The period allowed for registration of particulars of a series of debentures as a result of section 882 is –
 - (a) if there is a deed containing the charge mentioned in section 882(1), 21 days beginning with the day after the day on which that deed is executed, or
 - (b) if there is no such deed, 21 days beginning with the day after the day on which the first debenture of the series is executed.

887 Entries of satisfaction and relief

- (1) Subsection (2) applies if a statement is delivered to the registrar verifying with respect to any registered charge –

- (a) that the debt for which the charge was given has been paid or satisfied in whole or in part, or
 - (b) that part of the property charged has been released from the charge or has ceased to form part of the company's property.
- (2) If the charge is a floating charge, the statement must be accompanied by either –
- (a) a statement by the creditor entitled to the benefit of the charge, or a person authorised by him for the purpose, verifying that the statement mentioned in subsection (1) is correct, or
 - (b) a direction obtained from the court, on the ground that the statement by the creditor mentioned in paragraph (a) could not be readily obtained, dispensing with the need for that statement.
- (3) The registrar may enter on the register a memorandum of satisfaction (in whole or in part) regarding the fact contained in the statement mentioned in subsection (1).
- (4) Where the registrar enters a memorandum of satisfaction in whole, he shall, if required, furnish the company with a copy of the memorandum.
- (5) Nothing in this section requires the company to submit particulars with respect to the entry in the register of a memorandum of satisfaction where the company, having created a floating charge over all or any part of its property, disposes of part of the property subject to the floating charge.

888 Rectification of register of charges

- (1) Subsection (2) applies if the court is satisfied –
- (a) that the failure to register a charge before the end of the period allowed for registration, or the omission or mis-statement of any particular with respect to any such charge or in a memorandum of satisfaction –
 - (i) was accidental or due to inadvertence or to some other sufficient cause, or
 - (ii) is not of a nature to prejudice the position of creditors or shareholders of the company, or
 - (b) that on other grounds it is just and equitable to grant relief.
- (2) The court may, on the application of the company or a person interested, and on such terms and conditions as seem to the court just and expedient, order that the period allowed for registration shall be extended or, as the case may be, that the omission or mis-statement shall be rectified.

Avoidance of certain charges

889 Charges void unless registered

- (1) If a company creates a charge to which section 878 applies, the charge is void (so far as any security on the company's property or any part of it is conferred by the charge) against –
- (a) the liquidator of the company,
 - (b) an administrator of the company, and
 - (c) any creditor of the company
- unless that section is complied with.

- (2) Subsection (1) is without prejudice to any contract or obligation for repayment of the money secured by the charge; and when a charge becomes void under this section the money secured by it immediately becomes payable.

Companies' records and registers

890 Copies of instruments creating charges to be kept by company

- (1) Every company shall cause a copy of every instrument creating a charge requiring registration under this Chapter to be kept available for inspection.
- (2) In the case of a series of uniform debentures, a copy of one debenture of the series is sufficient.

891 Company's register of charges

- (1) Every company shall keep available for inspection a register of charges and enter in it all charges specifically affecting property of the company, and all floating charges on any property of the company.
- (2) There shall be given in each case a short description of the property charged, the amount of the charge and, except in the case of securities to bearer, the names of the persons entitled to it.
- (3) If an officer of the company knowingly and wilfully authorises or permits the omission of an entry required to be made in pursuance of this section, he commits an offence.
- (4) A person guilty of an offence under this section is liable –
 - (a) on conviction on indictment, to a fine;
 - (b) on summary conviction, to a fine not exceeding the statutory maximum.

892 Instruments creating charges and register of charges to be available for inspection

- (1) This section applies to –
 - (a) documents required to be kept available for inspection under section 890 (copies of instruments creating charges), and
 - (b) a company's register of charges kept in pursuance of section 891.
- (2) The documents and register must be kept available for inspection –
 - (a) at the company's registered office, or
 - (b) at a place specified in regulations under section 1136.
- (3) The company must give notice to the registrar –
 - (a) of the place at which the documents and register are kept available for inspection, and
 - (b) of any change in that place,unless they have at all times been kept at the company's registered office.
- (4) The documents and register shall be open to the inspection –
 - (a) of any creditor or member of the company without charge, and
 - (b) of any other person on payment of such fee as may be prescribed.

- (5) If default is made for 14 days in complying with subsection (3) or an inspection required under subsection (4) is refused, 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.
- (7) If an inspection required under subsection (4) is refused the court may by order compel an immediate inspection.

CHAPTER 3

POWERS OF THE SECRETARY OF STATE

893 Power to make provision for effect of registration in special register

- (1) In this section a “special register” means a register, other than the register of charges kept under this Part, in which a charge to which Chapter 1 or Chapter 2 applies is required or authorised to be registered.
- (2) The Secretary of State may by order make provision for facilitating the making of information-sharing arrangements between the person responsible for maintaining a special register (“the responsible person”) and the registrar that meet the requirement in subsection (4).
 “Information-sharing arrangements” are arrangements to share and make use of information held by the registrar or by the responsible person.
- (3) If the Secretary of State is satisfied that appropriate information-sharing arrangements have been made, he may by order provide that –
 - (a) the registrar is authorised not to register a charge of a specified description under Chapter 1 or Chapter 2,
 - (b) a charge of a specified description that is registered in the special register within a specified period is to be treated as if it had been registered (and certified by the registrar as registered) in accordance with the requirements of Chapter 1 or, as the case may be, Chapter 2, and
 - (c) the other provisions of Chapter 1 or, as the case may be, Chapter 2 apply to a charge so treated with specified modifications.
- (4) The information-sharing arrangements must ensure that persons inspecting the register of charges –
 - (a) are made aware, in a manner appropriate to the inspection, of the existence of charges in the special register which are treated in accordance with provision so made, and
 - (b) are able to obtain information from the special register about any such charge.
- (5) An order under this section may –
 - (a) modify any enactment or rule of law which would otherwise restrict or prevent the responsible person from entering into or giving effect to information-sharing arrangements,

- (b) authorise the responsible person to require information to be provided to him for the purposes of the arrangements,
 - (c) make provision about—
 - (i) the charging by the responsible person of fees in connection with the arrangements and the destination of such fees (including provision modifying any enactment which would otherwise apply in relation to fees payable to the responsible person), and
 - (ii) the making of payments under the arrangements by the registrar to the responsible person,
 - (d) require the registrar to make copies of the arrangements available to the public (in hard copy or electronic form).
- (6) In this section “specified” means specified in an order under this section.
- (7) A description of charge may be specified, in particular, by reference to one or more of the following—
- (a) the type of company by which it is created,
 - (b) the form of charge which it is,
 - (c) the description of assets over which it is granted,
 - (d) the length of the period between the date of its registration in the special register and the date of its creation.
- (8) Provision may be made under this section relating to registers maintained under the law of a country or territory outside the United Kingdom.
- (9) An order under this section is subject to negative resolution procedure.

894 General power to make amendments to this Part

- (1) The Secretary of State may by regulations under this section—
 - (a) amend this Part by altering, adding or repealing provisions,
 - (b) make consequential amendments or repeals in this Act or any other enactment (whether passed or made before or after this Act).
- (2) Regulations under this section are subject to affirmative resolution procedure.

PART 26

ARRANGEMENTS AND RECONSTRUCTIONS

Application of this Part

895 Application of this Part

- (1) The provisions of this Part apply where a compromise or arrangement is proposed between a company and—
 - (a) its creditors, or any class of them, or
 - (b) its members, or any class of them.
- (2) In this Part—

“arrangement” includes a reorganisation of the company’s share capital by the consolidation of shares of different classes or by the division of shares into shares of different classes, or by both of those methods; and

“company” –

- (a) in section 900 (powers of court to facilitate reconstruction or amalgamation) means a company within the meaning of this Act, and
 - (b) elsewhere in this Part means any company liable to be wound up under the Insolvency Act 1986 (c. 45) or the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)).
- (3) The provisions of this Part have effect subject to Part 27 (mergers and divisions of public companies) where that Part applies (see sections 902 and 903).

Meeting of creditors or members

896 Court order for holding of meeting

- (1) The court may, on an application under this section, order a meeting of the creditors or class of creditors, or of the members of the company or class of members (as the case may be), to be summoned in such manner as the court directs.
- (2) An application under this section may be made by –
 - (a) the company,
 - (b) any creditor or member of the company, or
 - (c) if the company is being wound up or an administration order is in force in relation to it, the liquidator or administrator.

897 Statement to be circulated or made available

- (1) Where a meeting is summoned under section 896 –
 - (a) every notice summoning the meeting that is sent to a creditor or member must be accompanied by a statement complying with this section, and
 - (b) every notice summoning the meeting that is given by advertisement must either –
 - (i) include such a statement, or
 - (ii) state where and how creditors or members entitled to attend the meeting may obtain copies of such a statement.
- (2) The statement must –
 - (a) explain the effect of the compromise or arrangement, and
 - (b) in particular, state –
 - (i) any material interests of the directors of the company (whether as directors or as members or as creditors of the company or otherwise), and
 - (ii) the effect on those interests of the compromise or arrangement, in so far as it is different from the effect on the like interests of other persons.
- (3) Where the compromise or arrangement affects the rights of debenture holders of the company, the statement must give the like explanation as respects the trustees of any deed for securing the issue of the debentures as it is required to give as respects the company’s directors.

- (4) Where a notice given by advertisement states that copies of an explanatory statement can be obtained by creditors or members entitled to attend the meeting, every such creditor or member is entitled, on making application in the manner indicated by the notice, to be provided by the company with a copy of the statement free of charge.
- (5) If a company makes default in complying with any requirement of this section, an offence is committed by –
 - (a) the company, and
 - (b) every officer of the company who is in default.This is subject to subsection (7) below.
- (6) For this purpose the following are treated as officers of the company –
 - (a) a liquidator or administrator of the company, and
 - (b) a trustee of a deed for securing the issue of debentures of the company.
- (7) A person is not guilty of an offence under this section if he shows that the default was due to the refusal of a director or trustee for debenture holders to supply the necessary particulars of his interests.
- (8) A person guilty of an offence under this section is liable –
 - (a) on conviction on indictment, to a fine;
 - (b) on summary conviction, to a fine not exceeding the statutory maximum.

898 Duty of directors and trustees to provide information

- (1) It is the duty of –
 - (a) any director of the company, and
 - (b) any trustee for its debenture holders,to give notice to the company of such matters relating to himself as may be necessary for the purposes of section 897 (explanatory statement to be circulated or made available).
- (2) Any person who makes default in complying with this section commits an offence.
- (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.

Court sanction for compromise or arrangement

899 Court sanction for compromise or arrangement

- (1) If a majority in number representing 75% in value of the creditors or class of creditors or members or class of members (as the case may be), present and voting either in person or by proxy at the meeting summoned under section 896, agree a compromise or arrangement, the court may, on an application under this section, sanction the compromise or arrangement.
- (2) An application under this section may be made by –
 - (a) the company,
 - (b) any creditor or member of the company, or

- (c) if the company is being wound up or an administration order is in force in relation to it, the liquidator or administrator.
- (3) A compromise or agreement sanctioned by the court is binding on –
 - (a) all creditors or the class of creditors or on the members or class of members (as the case may be), and
 - (b) the company or, in the case of a company in the course of being wound up, the liquidator and contributories of the company.
- (4) The court's order has no effect until a copy of it has been delivered to the registrar.

Reconstructions and amalgamations

900 Powers of court to facilitate reconstruction or amalgamation

- (1) This section applies where application is made to the court under section 899 to sanction a compromise or arrangement and it is shown that –
 - (a) the compromise or arrangement is proposed for the purposes of, or in connection with, a scheme for the reconstruction of any company or companies, or the amalgamation of any two or more companies, and
 - (b) under the scheme the whole or any part of the undertaking or the property of any company concerned in the scheme (“a transferor company”) is to be transferred to another company (“the transferee company”).
- (2) The court may, either by the order sanctioning the compromise or arrangement or by a subsequent order, make provision for all or any of the following matters –
 - (a) the transfer to the transferee company of the whole or any part of the undertaking and of the property or liabilities of any transferor company;
 - (b) the allotting or appropriation by the transferee company of any shares, debentures, policies or other like interests in that company which under the compromise or arrangement are to be allotted or appropriated by that company to or for any person;
 - (c) the continuation by or against the transferee company of any legal proceedings pending by or against any transferor company;
 - (d) the dissolution, without winding up, of any transferor company;
 - (e) the provision to be made for any persons who, within such time and in such manner as the court directs, dissent from the compromise or arrangement;
 - (f) such incidental, consequential and supplemental matters as are necessary to secure that the reconstruction or amalgamation is fully and effectively carried out.
- (3) If an order under this section provides for the transfer of property or liabilities –
 - (a) the property is by virtue of the order transferred to, and vests in, the transferee company, and
 - (b) the liabilities are, by virtue of the order, transferred to and become liabilities of that company.

- (4) The property (if the order so directs) vests freed from any charge that is by virtue of the compromise or arrangement to cease to have effect.
- (5) In this section –
 - “property” includes property, rights and powers of every description; and
 - “liabilities” includes duties.
- (6) Every company in relation to which an order is made under this section must cause a copy of the order to be delivered to the registrar within seven days after its making.
- (7) 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.
- (8) A person guilty of an offence under subsection (7) 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.

Obligations of company with respect to articles etc

901 Obligations of company with respect to articles etc

- (1) This section applies –
 - (a) to any order under section 899 (order sanctioning compromise or arrangement), and
 - (b) to any order under section 900 (order facilitating reconstruction or amalgamation) that alters the company’s constitution.
- (2) If the order amends –
 - (a) the company’s articles, or
 - (b) any resolution or agreement to which Chapter 3 of Part 3 applies (resolution or agreement affecting a company’s constitution),the copy of the order delivered to the registrar by the company under section 899(4) or section 900(6) must be accompanied by a copy of the company’s articles, or the resolution or agreement in question, as amended.
- (3) Every copy of the company’s articles issued by the company after the order is made must be accompanied by a copy of the order, unless the effect of the order has been incorporated into the articles by amendment.
- (4) In this section –
 - (a) references to the effect of the order include the effect of the compromise or arrangement to which the order relates; and
 - (b) in the case of a company not having articles, references to its articles shall be read as references to the instrument constituting the company or defining its constitution.
- (5) 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.

- (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.

PART 27

MERGERS AND DIVISIONS OF PUBLIC COMPANIES

CHAPTER 1

INTRODUCTORY

902 Application of this Part

- (1) This Part applies where—
- (a) a compromise or arrangement is proposed between a public company and—
 - (i) its creditors or any class of them, or
 - (ii) its members or any class of them,for the purposes of, or in connection with, a scheme for the reconstruction of any company or companies or the amalgamation of any two or more companies,
 - (b) the scheme involves—
 - (i) a merger (as defined in section 904), or
 - (ii) a division (as defined in section 919), and
 - (c) the consideration for the transfer (or each of the transfers) envisaged is to be shares in the transferee company (or one or more of the transferee companies) receivable by members of the transferor company (or transferor companies), with or without any cash payment to members.
- (2) In this Part—
- (a) a “new company” means a company formed for the purposes of, or in connection with, the scheme, and
 - (b) an “existing company” means a company other than one formed for the purposes of, or in connection with, the scheme.
- (3) This Part does not apply where the company in respect of which the compromise or arrangement is proposed is being wound up.

903 Relationship of this Part to Part 26

- (1) The court must not sanction the compromise or arrangement under Part 26 (arrangements and reconstructions) unless the relevant requirements of this Part have been complied with.
- (2) The requirements applicable to a merger are specified in sections 905 to 914. Certain of those requirements, and certain general requirements of Part 26, are modified or excluded by the provisions of sections 915 to 918.
- (3) The requirements applicable to a division are specified in sections 920 to 930. Certain of those requirements, and certain general requirements of Part 26, are modified or excluded by the provisions of sections 931 to 934.

CHAPTER 2

MERGER

Introductory

904 Mergers and merging companies

- (1) The scheme involves a merger where under the scheme –
 - (a) the undertaking, property and liabilities of one or more public companies, including the company in respect of which the compromise or arrangement is proposed, are to be transferred to another existing public company (a “merger by absorption”), or
 - (b) the undertaking, property and liabilities of two or more public companies, including the company in respect of which the compromise or arrangement is proposed, are to be transferred to a new company, whether or not a public company, (a “merger by formation of a new company”).
- (2) References in this Part to “the merging companies” are –
 - (a) in relation to a merger by absorption, to the transferor and transferee companies;
 - (b) in relation to a merger by formation of a new company, to the transferor companies.

Requirements applicable to merger

905 Draft terms of scheme (merger)

- (1) A draft of the proposed terms of the scheme must be drawn up and adopted by the directors of the merging companies.
- (2) The draft terms must give particulars of at least the following matters –
 - (a) in respect of each transferor company and the transferee company –
 - (i) its name,
 - (ii) the address of its registered office, and
 - (iii) whether it is a company limited by shares or a company limited by guarantee and having a share capital;
 - (b) the number of shares in the transferee company to be allotted to members of a transferor company for a given number of their shares (the “share exchange ratio”) and the amount of any cash payment;
 - (c) the terms relating to the allotment of shares in the transferee company;
 - (d) the date from which the holding of shares in the transferee company will entitle the holders to participate in profits, and any special conditions affecting that entitlement;
 - (e) the date from which the transactions of a transferor company are to be treated for accounting purposes as being those of the transferee company;
 - (f) any rights or restrictions attaching to shares or other securities in the transferee company to be allotted under the scheme to the holders of shares or other securities in a transferor company to which any special

rights or restrictions attach, or the measures proposed concerning them;

- (g) any amount of benefit paid or given or intended to be paid or given –
 - (i) to any of the experts referred to in section 909 (expert's report),
or
 - (ii) to any director of a merging company,
and the consideration for the payment of benefit.
- (3) The requirements in subsection (2)(b), (c) and (d) are subject to section 915 (circumstances in which certain particulars not required).

906 Publication of draft terms (merger)

- (1) The directors of each of the merging companies must deliver a copy of the draft terms to the registrar.
- (2) The registrar must publish in the Gazette notice of receipt by him from that company of a copy of the draft terms.
- (3) That notice must be published at least one month before the date of any meeting of that company summoned for the purpose of approving the scheme.

907 Approval of members of merging companies

- (1) The scheme must be approved by a majority in number, representing 75% in value, of each class of members of each of the merging companies, present and voting either in person or by proxy at a meeting.
- (2) This requirement is subject to sections 916, 917 and 918 (circumstances in which meetings of members not required).

908 Directors' explanatory report (merger)

- (1) The directors of each of the merging companies must draw up and adopt a report.
- (2) The report must consist of –
 - (a) the statement required by section 897 (statement explaining effect of compromise or arrangement), and
 - (b) insofar as that statement does not deal with the following matters, a further statement –
 - (i) setting out the legal and economic grounds for the draft terms, and in particular for the share exchange ratio, and
 - (ii) specifying any special valuation difficulties.
- (3) The requirement in this section is subject to section 915 (circumstances in which reports not required).

909 Expert's report (merger)

- (1) An expert's report must be drawn up on behalf of each of the merging companies.
- (2) The report required is a written report on the draft terms to the members of the company.

- (3) The court may on the joint application of all the merging companies approve the appointment of a joint expert to draw up a single report on behalf of all those companies.
If no such appointment is made, there must be a separate expert's report to the members of each merging company drawn up by a separate expert appointed on behalf of that company.
- (4) The expert must be a person who –
 - (a) is eligible for appointment as a statutory auditor (see section 1212), and
 - (b) meets the independence requirement in section 936.
- (5) The expert's report must –
 - (a) indicate the method or methods used to arrive at the share exchange ratio;
 - (b) give an opinion as to whether the method or methods used are reasonable in all the circumstances of the case, indicate the values arrived at using each such method and (if there is more than one method) give an opinion on the relative importance attributed to such methods in arriving at the value decided on;
 - (c) describe any special valuation difficulties that have arisen;
 - (d) state whether in the expert's opinion the share exchange ratio is reasonable; and
 - (e) in the case of a valuation made by a person other than himself (see section 935), state that it appeared to him reasonable to arrange for it to be so made or to accept a valuation so made.
- (6) The expert (or each of them) has –
 - (a) the right of access to all such documents of all the merging companies, and
 - (b) the right to require from the companies' officers all such information, as he thinks necessary for the purposes of making his report.
- (7) The requirement in this section is subject to section 915 (circumstances in which reports not required).

910 Supplementary accounting statement (merger)

- (1) If the last annual accounts of any of the merging companies relate to a financial year ending more than seven months before the first meeting of the company summoned for the purposes of approving the scheme, the directors of that company must prepare a supplementary accounting statement.
- (2) That statement must consist of –
 - (a) a balance sheet dealing with the state of affairs of the company as at a date not more than three months before the draft terms were adopted by the directors, and
 - (b) where the company would be required under section 399 to prepare group accounts if that date were the last day of a financial year, a consolidated balance sheet dealing with the state of affairs of the company and the undertakings that would be included in such a consolidation.
- (3) The requirements of this Act (and where relevant Article 4 of the IAS Regulation) as to the balance sheet forming part of a company's annual accounts, and the matters to be included in notes to it, apply to the balance

sheet required for an accounting statement under this section, with such modifications as are necessary by reason of its being prepared otherwise than as at the last day of a financial year.

- (4) The provisions of section 414 as to the approval and signing of accounts apply to the balance sheet required for an accounting statement under this section.

911 Inspection of documents (merger)

- (1) The members of each of the merging companies must be able, during the period specified below –
- (a) to inspect at the registered office of that company copies of the documents listed below relating to that company and every other merging company, and
 - (b) to obtain copies of those documents or any part of them on request free of charge.
- (2) The period referred to above is the period –
- (a) beginning one month before, and
 - (b) ending on the date of,
- the first meeting of the members, or any class of members, of the company for the purposes of approving the scheme.
- (3) The documents referred to above are –
- (a) the draft terms;
 - (b) the directors' explanatory report;
 - (c) the expert's report;
 - (d) the company's annual accounts and reports for the last three financial years ending on or before the first meeting of the members, or any class of members, of the company summoned for the purposes of approving the scheme; and
 - (e) any supplementary accounting statement required by section 910.
- (4) The requirements of subsection (3)(b) and (c) are subject to section 915 (circumstances in which reports not required).

912 Approval of articles of new transferee company (merger)

In the case of a merger by formation of a new company, the articles of the transferee company, or a draft of them, must be approved by ordinary resolution of the transferor company or, as the case may be, each of the transferor companies.

913 Protection of holders of securities to which special rights attached (merger)

- (1) The scheme must provide that where any securities of a transferor company (other than shares) to which special rights are attached are held by a person otherwise than as a member or creditor of the company, that person is to receive rights in the transferee company of equivalent value.
- (2) Subsection (1) does not apply if –
- (a) the holder has agreed otherwise, or

- (b) the holder is, or under the scheme is to be, entitled to have the securities purchased by the transferee company on terms that the court considers reasonable.

914 No allotment of shares to transferor company or its nominee (merger)

The scheme must not provide for shares in the transferee company to be allotted to a transferor company (or its nominee) in respect of shares in the transferor company held by it (or its nominee).

Exceptions where shares of transferor company held by transferee company

915 Circumstances in which certain particulars and reports not required (merger)

- (1) This section applies in the case of a merger by absorption where all of the relevant securities of the transferor company (or, if there is more than one transferor company, of each of them) are held by or on behalf of the transferee company.
- (2) The draft terms of the scheme need not give the particulars mentioned in section 905(2)(b), (c) or (d) (particulars relating to allotment of shares to members of transferor company).
- (3) Section 897 (explanatory statement to be circulated or made available) does not apply.
- (4) The requirements of the following sections do not apply –
 - section 908 (directors' explanatory report),
 - section 909 (expert's report).
- (5) The requirements of section 911 (inspection of documents) so far as relating to any document required to be drawn up under the provisions mentioned in subsection (3) above do not apply.
- (6) In this section “relevant securities”, in relation to a company, means shares or other securities carrying the right to vote at general meetings of the company.

916 Circumstances in which meeting of members of transferee company not required (merger)

- (1) This section applies in the case of a merger by absorption where 90% or more (but not all) of the relevant securities of the transferor company (or, if there is more than one transferor company, of each of them) are held by or on behalf of the transferee company.
- (2) It is not necessary for the scheme to be approved at a meeting of the members, or any class of members, of the transferee company if the court is satisfied that the following conditions have been complied with.
- (3) The first condition is that publication of notice of receipt of the draft terms by the registrar took place in respect of the transferee company at least one month before the date of the first meeting of members, or any class of members, of the transferor company summoned for the purpose of agreeing to the scheme.
- (4) The second condition is that the members of the transferee company were able during the period beginning one month before, and ending on, that date –

- (a) to inspect at the registered office of the transferee company copies of the documents listed in section 911(3)(a), (d) and (e) relating to that company and the transferor company (or, if there is more than one transferor company, each of them), and
 - (b) to obtain copies of those documents or any part of them on request free of charge.
- (5) The third condition is that—
- (a) one or more members of the transferee company, who together held not less than 5% of the paid-up capital of the company which carried the right to vote at general meetings of the company (excluding any shares in the company held as treasury shares) would have been able, during that period, to require a meeting of each class of members to be called for the purpose of deciding whether or not to agree to the scheme, and
 - (b) no such requirement was made.
- (6) In this section “relevant securities”, in relation to a company, means shares or other securities carrying the right to vote at general meetings of the company.

917 Circumstances in which no meetings required (merger)

- (1) This section applies in the case of a merger by absorption where all of the relevant securities of the transferor company (or, if there is more than one transferor company, of each of them) are held by or on behalf of the transferee company.
- (2) It is not necessary for the scheme to be approved at a meeting of the members, or any class of members, of any of the merging companies if the court is satisfied that the following conditions have been complied with.
- (3) The first condition is that publication of notice of receipt of the draft terms by the registrar took place in respect of all the merging companies at least one month before the date of the court’s order.
- (4) The second condition is that the members of the transferee company were able during the period beginning one month before, and ending on, that date—
 - (a) to inspect at the registered office of that company copies of the documents listed in section 911(3) relating to that company and the transferor company (or, if there is more than one transferor company, each of them), and
 - (b) to obtain copies of those documents or any part of them on request free of charge.
- (5) The third condition is that—
 - (a) one or more members of the transferee company, who together held not less than 5% of the paid-up capital of the company which carried the right to vote at general meetings of the company (excluding any shares in the company held as treasury shares) would have been able, during that period, to require a meeting of each class of members to be called for the purpose of deciding whether or not to agree to the scheme, and
 - (b) no such requirement was made.
- (6) In this section “relevant securities”, in relation to a company, means shares or other securities carrying the right to vote at general meetings of the company.

Other exceptions

918 Other circumstances in which meeting of members of transferee company not required (merger)

- (1) In the case of any merger by absorption, it is not necessary for the scheme to be approved by the members of the transferee company if the court is satisfied that the following conditions have been complied with.
- (2) The first condition is that publication of notice of receipt of the draft terms by the registrar took place in respect of that company at least one month before the date of the first meeting of members, or any class of members, of the transferor company (or, if there is more than one transferor company, any of them) summoned for the purposes of agreeing to the scheme.
- (3) The second condition is that the members of that company were able during the period beginning one month before, and ending on, the date of any such meeting –
 - (a) to inspect at the registered office of that company copies of the documents specified in section 911(3) relating to that company and the transferor company (or, if there is more than one transferor company, each of them), and
 - (b) to obtain copies of those documents or any part of them on request free of charge.
- (4) The third condition is that –
 - (a) one or more members of that company, who together held not less than 5% of the paid-up capital of the company which carried the right to vote at general meetings of the company (excluding any shares in the company held as treasury shares) would have been able, during that period, to require a meeting of each class of members to be called for the purpose of deciding whether or not to agree to the scheme, and
 - (b) no such requirement was made.

CHAPTER 3

DIVISION

Introductory

919 Divisions and companies involved in a division

- (1) The scheme involves a division where under the scheme the undertaking, property and liabilities of the company in respect of which the compromise or arrangement is proposed are to be divided among and transferred to two or more companies each of which is either –
 - (a) an existing public company, or
 - (b) a new company (whether or not a public company).
- (2) References in this Part to the companies involved in the division are to the transferor company and any existing transferee companies.

*Requirements to be complied with in case of division***920 Draft terms of scheme (division)**

- (1) A draft of the proposed terms of the scheme must be drawn up and adopted by the directors of each of the companies involved in the division.
- (2) The draft terms must give particulars of at least the following matters –
 - (a) in respect of the transferor company and each transferee company –
 - (i) its name,
 - (ii) the address of its registered office, and
 - (iii) whether it is a company limited by shares or a company limited by guarantee and having a share capital;
 - (b) the number of shares in a transferee company to be allotted to members of the transferor company for a given number of their shares (the “share exchange ratio”) and the amount of any cash payment;
 - (c) the terms relating to the allotment of shares in a transferee company;
 - (d) the date from which the holding of shares in a transferee company will entitle the holders to participate in profits, and any special conditions affecting that entitlement;
 - (e) the date from which the transactions of the transferor company are to be treated for accounting purposes as being those of a transferee company;
 - (f) any rights or restrictions attaching to shares or other securities in a transferee company to be allotted under the scheme to the holders of shares or other securities in the transferor company to which any special rights or restrictions attach, or the measures proposed concerning them;
 - (g) any amount of benefit paid or given or intended to be paid or given –
 - (i) to any of the experts referred to in section 924 (expert’s report),
or
 - (ii) to any director of a company involved in the division,
and the consideration for the payment of benefit.
- (3) The draft terms must also –
 - (a) give particulars of the property and liabilities to be transferred (to the extent that these are known to the transferor company) and their allocation among the transferee companies;
 - (b) make provision for the allocation among and transfer to the transferee companies of any other property and liabilities that the transferor company has acquired or may subsequently acquire; and
 - (c) specify the allocation to members of the transferor company of shares in the transferee companies and the criteria upon which that allocation is based.

921 Publication of draft terms (division)

- (1) The directors of each company involved in the division must deliver a copy of the draft terms to the registrar.
- (2) The registrar must publish in the Gazette notice of receipt by him from that company of a copy of the draft terms.

- (3) That notice must be published at least one month before the date of any meeting of that company summoned for the purposes of approving the scheme.
- (4) The requirements in this section are subject to section 934 (power of court to exclude certain requirements).

922 Approval of members of companies involved in the division

- (1) The compromise or arrangement must be approved by a majority in number, representing 75% in value, of each class of members of each of the companies involved in the division, present and voting either in person or by proxy at a meeting.
- (2) This requirement is subject to sections 931 and 932 (circumstances in which meeting of members not required).

923 Directors' explanatory report (division)

- (1) The directors of the transferor and each existing transferee company must draw up and adopt a report.
- (2) The report must consist of –
 - (a) the statement required by section 897 (statement explaining effect of compromise or arrangement), and
 - (b) insofar as that statement does not deal with the following matters, a further statement –
 - (i) setting out the legal and economic grounds for the draft terms, and in particular for the share exchange ratio and for the criteria on which the allocation to the members of the transferor company of shares in the transferee companies was based, and
 - (ii) specifying any special valuation difficulties.
- (3) The report must also state –
 - (a) whether a report has been made to any transferee company under section 593 (valuation of non-cash consideration for shares), and
 - (b) if so, whether that report has been delivered to the registrar of companies.
- (4) The requirement in this section is subject to section 933 (agreement to dispense with reports etc).

924 Expert's report (division)

- (1) An expert's report must be drawn up on behalf of each company involved in the division.
- (2) The report required is a written report on the draft terms to the members of the company.
- (3) The court may on the joint application of the companies involved in the division approve the appointment of a joint expert to draw up a single report on behalf of all those companies.

If no such appointment is made, there must be a separate expert's report to the members of each company involved in the division drawn up by a separate expert appointed on behalf of that company.

- (4) The expert must be a person who –
 - (a) is eligible for appointment as a statutory auditor (see section 1212), and
 - (b) meets the independence requirement in section 936.
- (5) The expert's report must –
 - (a) indicate the method or methods used to arrive at the share exchange ratio;
 - (b) give an opinion as to whether the method or methods used are reasonable in all the circumstances of the case, indicate the values arrived at using each such method and (if there is more than one method) give an opinion on the relative importance attributed to such methods in arriving at the value decided on;
 - (c) describe any special valuation difficulties that have arisen;
 - (d) state whether in the expert's opinion the share exchange ratio is reasonable; and
 - (e) in the case of a valuation made by a person other than himself (see section 935), state that it appeared to him reasonable to arrange for it to be so made or to accept a valuation so made.
- (6) The expert (or each of them) has –
 - (a) the right of access to all such documents of the companies involved in the division, and
 - (b) the right to require from the companies' officers all such information, as he thinks necessary for the purposes of making his report.
- (7) The requirement in this section is subject to section 933 (agreement to dispense with reports etc).

925 Supplementary accounting statement (division)

- (1) If the last annual accounts of a company involved in the division relate to a financial year ending more than seven months before the first meeting of the company summoned for the purposes of approving the scheme, the directors of that company must prepare a supplementary accounting statement.
- (2) That statement must consist of –
 - (a) a balance sheet dealing with the state of affairs of the company as at a date not more than three months before the draft terms were adopted by the directors, and
 - (b) where the company would be required under section 399 to prepare group accounts if that date were the last day of a financial year, a consolidated balance sheet dealing with the state of affairs of the company and the undertakings that would be included in such a consolidation.
- (3) The requirements of this Act (and where relevant Article 4 of the IAS Regulation) as to the balance sheet forming part of a company's annual accounts, and the matters to be included in notes to it, apply to the balance sheet required for an accounting statement under this section, with such modifications as are necessary by reason of its being prepared otherwise than as at the last day of a financial year.
- (4) The provisions of section 414 as to the approval and signing of accounts apply to the balance sheet required for an accounting statement under this section.

- (5) The requirement in this section is subject to section 933 (agreement to dispense with reports etc).

926 Inspection of documents (division)

- (1) The members of each company involved in the division must be able, during the period specified below –
- (a) to inspect at the registered office of that company copies of the documents listed below relating to that company and every other company involved in the division, and
 - (b) to obtain copies of those documents or any part of them on request free of charge.
- (2) The period referred to above is the period –
- (a) beginning one month before, and
 - (b) ending on the date of,
- the first meeting of the members, or any class of members, of the company for the purposes of approving the scheme.
- (3) The documents referred to above are –
- (a) the draft terms;
 - (b) the directors' explanatory report;
 - (c) the expert's report;
 - (d) the company's annual accounts and reports for the last three financial years ending on or before the first meeting of the members, or any class of members, of the company summoned for the purposes of approving the scheme; and
 - (e) any supplementary accounting statement required by section 925.
- (4) The requirements in subsection (3)(b), (c) and (e) are subject to section 933 (agreement to dispense with reports etc) and section 934 (power of court to exclude certain requirements).

927 Report on material changes of assets of transferor company (division)

- (1) The directors of the transferor company must report –
- (a) to every meeting of the members, or any class of members, of that company summoned for the purpose of agreeing to the scheme, and
 - (b) to the directors of each existing transferee company,
- any material changes in the property and liabilities of the transferor company between the date when the draft terms were adopted and the date of the meeting in question.
- (2) The directors of each existing transferee company must in turn –
- (a) report those matters to every meeting of the members, or any class of members, of that company summoned for the purpose of agreeing to the scheme, or
 - (b) send a report of those matters to every member entitled to receive notice of such a meeting.
- (3) The requirement in this section is subject to section 933 (agreement to dispense with reports etc).

928 Approval of articles of new transferee company (division)

The articles of every new transferee company, or a draft of them, must be approved by ordinary resolution of the transferor company.

929 Protection of holders of securities to which special rights attached (division)

- (1) The scheme must provide that where any securities of the transferor company (other than shares) to which special rights are attached are held by a person otherwise than as a member or creditor of the company, that person is to receive rights in a transferee company of equivalent value.
- (2) Subsection (1) does not apply if—
 - (a) the holder has agreed otherwise, or
 - (b) the holder is, or under the scheme is to be, entitled to have the securities purchased by a transferee company on terms that the court considers reasonable.

930 No allotment of shares to transferor company or its nominee (division)

The scheme must not provide for shares in a transferee company to be allotted to the transferor company (or its nominee) in respect of shares in the transferor company held by it (or its nominee).

Exceptions where shares of transferor company held by transferee company

931 Circumstances in which meeting of members of transferor company not required (division)

- (1) This section applies in the case of a division where all of the shares or other securities of the transferor company carrying the right to vote at general meetings of the company are held by or on behalf of one or more existing transferee companies.
- (2) It is not necessary for the scheme to be approved by a meeting of the members, or any class of members, of the transferor company if the court is satisfied that the following conditions have been complied with.
- (3) The first condition is that publication of notice of receipt of the draft terms by the registrar took place in respect of all the companies involved in the division at least one month before the date of the court's order.
- (4) The second condition is that the members of every company involved in the division were able during the period beginning one month before, and ending on, that date—
 - (a) to inspect at the registered office of their company copies of the documents listed in section 926(3) relating to every company involved in the division, and
 - (b) to obtain copies of those documents or any part of them on request free of charge.
- (5) The third condition is that—
 - (a) one or more members of the transferor company, who together held not less than 5% of the paid-up capital of the company (excluding any shares in the company held as treasury shares) would have been able,

during that period, to require a meeting of each class of members to be called for the purpose of deciding whether or not to agree to the scheme, and

- (b) no such requirement was made.
- (6) The fourth condition is that the directors of the transferor company have sent –
- (a) to every member who would have been entitled to receive notice of a meeting to agree to the scheme (had any such meeting been called), and
 - (b) to the directors of every existing transferee company,
- a report of any material change in the property and liabilities of the transferor company between the date when the terms were adopted by the directors and the date one month before the date of the court's order.

Other exceptions

932 Circumstances in which meeting of members of transferee company not required (division)

- (1) In the case of a division, it is not necessary for the scheme to be approved by the members of a transferee company if the court is satisfied that the following conditions have been complied with in relation to that company.
- (2) The first condition is that publication of notice of receipt of the draft terms by the registrar took place in respect of that company at least one month before the date of the first meeting of members of the transferor company summoned for the purposes of agreeing to the scheme.
- (3) The second condition is that the members of that company were able during the period beginning one month before, and ending on, that date –
 - (a) to inspect at the registered office of that company copies of the documents specified in section 926(3) relating to that company and every other company involved in the division, and
 - (b) to obtain copies of those documents or any part of them on request free of charge.
- (4) The third condition is that –
 - (a) one or more members of that company, who together held not less than 5% of the paid-up capital of the company which carried the right to vote at general meetings of the company (excluding any shares in the company held as treasury shares) would have been able, during that period, to require a meeting of each class of members to be called for the purpose of deciding whether or not to agree to the scheme, and
 - (b) no such requirement was made.
- (5) The first and second conditions above are subject to section 934 (power of court to exclude certain requirements).

933 Agreement to dispense with reports etc (division)

- (1) If all members holding shares in, and all persons holding other securities of, the companies involved in the division, being shares or securities that carry a right to vote in general meetings of the company in question, so agree, the following requirements do not apply.
- (2) The requirements that may be dispensed with under this section are –

- (a) the requirements of—
 - (i) section 923 (directors' explanatory report),
 - (ii) section 924 (expert's report),
 - (iii) section 925 (supplementary accounting statement), and
 - (iv) section 927 (report on material changes in assets of transferor company); and
 - (b) the requirements of section 926 (inspection of documents) so far as relating to any document required to be drawn up under the provisions mentioned in paragraph (a)(i), (ii) or (iii) above.
- (3) For the purposes of this section—
- (a) the members, or holders of other securities, of a company, and
 - (b) whether shares or other securities carry a right to vote in general meetings of the company,
- are determined as at the date of the application to the court under section 896.

934 Power of court to exclude certain requirements (division)

- (1) In the case of a division, the court may by order direct that—
- (a) in relation to any company involved in the division, the requirements of—
 - (i) section 921 (publication of draft terms), and
 - (ii) section 926 (inspection of documents),do not apply, and
 - (b) in relation to an existing transferee company, section 932 (circumstances in which meeting of members of transferee company not required) has effect with the omission of the first and second conditions specified in that section,
- if the court is satisfied that the following conditions will be fulfilled in relation to that company.
- (2) The first condition is that the members of that company will have received, or will have been able to obtain free of charge, copies of the documents listed in section 926—
- (a) in time to examine them before the date of the first meeting of the members, or any class of members, of that company summoned for the purposes of agreeing to the scheme, or
 - (b) in the case of an existing transferee company where in the circumstances described in section 932 no meeting is held, in time to require a meeting as mentioned in subsection (4) of that section.
- (3) The second condition is that the creditors of that company will have received or will have been able to obtain free of charge copies of the draft terms in time to examine them—
- (a) before the date of the first meeting of the members, or any class of members, of the company summoned for the purposes of agreeing to the scheme, or
 - (b) in the circumstances mentioned in subsection (2)(b) above, at the same time as the members of the company.
- (4) The third condition is that no prejudice would be caused to the members or creditors of the transferor company or any transferee company by making the order in question.

CHAPTER 4

SUPPLEMENTARY PROVISIONS

Expert's report and related matters

935 Expert's report: valuation by another person

- (1) Where it appears to an expert –
 - (a) that a valuation is reasonably necessary to enable him to draw up his report, and
 - (b) that it is reasonable for that valuation, or part of it, to be made by (or for him to accept a valuation made by) another person who –
 - (i) appears to him to have the requisite knowledge and experience to make the valuation or that part of it, and
 - (ii) meets the independence requirement in section 936,he may arrange for or accept such a valuation, together with a report which will enable him to make his own report under section 909 or 924.
- (2) Where any valuation is made by a person other than the expert himself, the latter's report must state that fact and must also –
 - (a) state the former's name and what knowledge and experience he has to carry out the valuation, and
 - (b) describe so much of the undertaking, property and liabilities as was valued by the other person, and the method used to value them, and specify the date of the valuation.

936 Experts and valuers: independence requirement

- (1) A person meets the independence requirement for the purposes of section 909 or 924 (expert's report) or section 935 (valuation by another person) only if –
 - (a) he is not –
 - (i) an officer or employee of any of the companies concerned in the scheme, or
 - (ii) a partner or employee of such a person, or a partnership of which such a person is a partner;
 - (b) he is not –
 - (i) an officer or employee of an associated undertaking of any of the companies concerned in the scheme, or
 - (ii) a partner or employee of such a person, or a partnership of which such a person is a partner; and
 - (c) there does not exist between –
 - (i) the person or an associate of his, and
 - (ii) any of the companies concerned in the scheme or an associated undertaking of such a company,a connection of any such description as may be specified by regulations made by the Secretary of State.
- (2) An auditor of a company is not regarded as an officer or employee of the company for this purpose.
- (3) For the purposes of this section –

- (a) the “companies concerned in the scheme” means every transferor and existing transferee company;
 - (b) “associated undertaking”, in relation to a company, means –
 - (i) a parent undertaking or subsidiary undertaking of the company, or
 - (ii) a subsidiary undertaking of a parent undertaking of the company; and
 - (c) “associate” has the meaning given by section 937.
- (4) Regulations under this section are subject to negative resolution procedure.

937 Experts and valuers: meaning of “associate”

- (1) This section defines “associate” for the purposes of section 936 (experts and valuers: independence requirement).
- (2) In relation to an individual, “associate” means –
 - (a) that individual’s spouse or civil partner or minor child or step-child,
 - (b) any body corporate of which that individual is a director, and
 - (c) any employee or partner of that individual.
- (3) In relation to a body corporate, “associate” means –
 - (a) any body corporate of which that body is a director,
 - (b) any body corporate in the same group as that body, and
 - (c) any employee or partner of that body or of any body corporate in the same group.
- (4) In relation to a partnership that is a legal person under the law by which it is governed, “associate” means –
 - (a) any body corporate of which that partnership is a director,
 - (b) any employee of or partner in that partnership, and
 - (c) any person who is an associate of a partner in that partnership.
- (5) In relation to a partnership that is not a legal person under the law by which it is governed, “associate” means any person who is an associate of any of the partners.
- (6) In this section, in relation to a limited liability partnership, for “director” read “member”.

Powers of the court

938 Power of court to summon meeting of members or creditors of existing transferee company

- (1) The court may order a meeting of –
 - (a) the members of an existing transferee company, or any class of them, or
 - (b) the creditors of an existing transferee company, or any class of them, to be summoned in such manner as the court directs.
- (2) An application for such an order may be made by –
 - (a) the company concerned,
 - (b) a member or creditor of the company, or

- (c) if an administration order is in force in relation to the company, the administrator.

939 Court to fix date for transfer of undertaking etc of transferor company

- (1) Where the court sanctions the compromise or arrangement, it must –
 - (a) in the order sanctioning the compromise or arrangement, or
 - (b) in a subsequent order under section 900 (powers of court to facilitate reconstruction or amalgamation),fix a date on which the transfer (or transfers) to the transferee company (or transferee companies) of the undertaking, property and liabilities of the transferor company is (or are) to take place.
- (2) Any such order that provides for the dissolution of the transferor company must fix the same date for the dissolution.
- (3) If it is necessary for the transferor company to take steps to ensure that the undertaking, property and liabilities are fully transferred, the court must fix a date, not later than six months after the date fixed under subsection (1), by which such steps must be taken.
- (4) In that case, the court may postpone the dissolution of the transferor company until that date.
- (5) The court may postpone or further postpone the date fixed under subsection (3) if it is satisfied that the steps mentioned cannot be completed by the date (or latest date) fixed under that subsection.

Liability of transferee companies

940 Liability of transferee companies for each other's defaults

- (1) In the case of a division, each transferee company is jointly and severally liable for any liability transferred to any other transferee company under the scheme to the extent that the other company has made default in satisfying that liability.
This is subject to the following provisions.
- (2) If a majority in number representing 75% in value of the creditors or any class of creditors of the transferor company, present and voting either in person or by proxy at a meeting summoned for the purposes of agreeing to the scheme, so agree, subsection (1) does not apply in relation to the liabilities owed to the creditors or that class of creditors.
- (3) A transferee company is not liable under this section for an amount greater than the net value transferred to it under the scheme.
The “net value transferred” is the value at the time of the transfer of the property transferred to it under the scheme less the amount at that date of the liabilities so transferred.

Interpretation

941 Meaning of “liabilities” and “property”

In this Part –

“liabilities” includes duties;

“property” includes property, rights and powers of every description.

PART 28

TAKEOVERS ETC

CHAPTER 1

THE TAKEOVER PANEL

The Panel and its rules

942 The Panel

- (1) The body known as the Panel on Takeovers and Mergers (“the Panel”) is to have the functions conferred on it by or under this Chapter.
- (2) The Panel may do anything that it considers necessary or expedient for the purposes of, or in connection with, its functions.
- (3) The Panel may make arrangements for any of its functions to be discharged by—
 - (a) a committee or sub-committee of the Panel, or
 - (b) an officer or member of staff of the Panel, or a person acting as such.This is subject to section 943(4) and (5).

943 Rules

- (1) The Panel must make rules giving effect to Articles 3.1, 4.2, 5, 6.1 to 6.3, 7 to 9 and 13 of the Takeovers Directive.
- (2) Rules made by the Panel may also make other provision—
 - (a) for or in connection with the regulation of—
 - (i) takeover bids,
 - (ii) merger transactions, and
 - (iii) transactions (not falling within sub-paragraph (i) or (ii)) that have or may have, directly or indirectly, an effect on the ownership or control of companies;
 - (b) for or in connection with the regulation of things done in consequence of, or otherwise in relation to, any such bid or transaction;
 - (c) about cases where—
 - (i) any such bid or transaction is, or has been, contemplated or apprehended, or
 - (ii) an announcement is made denying that any such bid or transaction is intended.
- (3) The provision that may be made under subsection (2) includes, in particular, provision for a matter that is, or is similar to, a matter provided for by the Panel in the City Code on Takeovers and Mergers as it had effect immediately before the passing of this Act.

- (4) In relation to rules made by virtue of section 957 (fees and charges), functions under this section may be discharged either by the Panel itself or by a committee of the Panel (but not otherwise).
- (5) In relation to rules of any other description, the Panel must discharge its functions under this section by a committee of the Panel.
- (6) Section 1 (meaning of “company”) does not apply for the purposes of this section.
- (7) In this section “takeover bid” includes a takeover bid within the meaning of the Takeovers Directive.
- (8) In this Chapter “the Takeovers Directive” means Directive 2004/25/EC of the European Parliament and of the Council.
- (9) A reference to rules in the following provisions of this Chapter is to rules under this section.

944 Further provisions about rules

- (1) Rules may –
 - (a) make different provision for different purposes;
 - (b) make provision subject to exceptions or exemptions;
 - (c) contain incidental, supplemental, consequential or transitional provision;
 - (d) authorise the Panel to dispense with or modify the application of rules in particular cases and by reference to any circumstances.Rules made by virtue of paragraph (d) must require the Panel to give reasons for acting as mentioned in that paragraph.
- (2) Rules must be made by an instrument in writing.
- (3) Immediately after an instrument containing rules is made, the text must be made available to the public, with or without payment, in whatever way the Panel thinks appropriate.
- (4) A person is not to be taken to have contravened a rule if he shows that at the time of the alleged contravention the text of the rule had not been made available as required by subsection (3).
- (5) The production of a printed copy of an instrument purporting to be made by the Panel on which is endorsed a certificate signed by an officer of the Panel authorised by it for that purpose and stating –
 - (a) that the instrument was made by the Panel,
 - (b) that the copy is a true copy of the instrument, and
 - (c) that on a specified date the text of the instrument was made available to the public as required by subsection (3),is evidence (or in Scotland sufficient evidence) of the facts stated in the certificate.
- (6) A certificate purporting to be signed as mentioned in subsection (5) is to be treated as having been properly signed unless the contrary is shown.
- (7) A person who wishes in any legal proceedings to rely on an instrument by which rules are made may require the Panel to endorse a copy of the instrument with a certificate of the kind mentioned in subsection (5).

945 Rulings

- (1) The Panel may give rulings on the interpretation, application or effect of rules.
- (2) To the extent and in the circumstances specified in rules, and subject to any review or appeal, a ruling has binding effect.

946 Directions

Rules may contain provision conferring power on the Panel to give any direction that appears to the Panel to be necessary in order –

- (a) to restrain a person from acting (or continuing to act) in breach of rules;
- (b) to restrain a person from doing (or continuing to do) a particular thing, pending determination of whether that or any other conduct of his is or would be a breach of rules;
- (c) otherwise to secure compliance with rules.

Information

947 Power to require documents and information

- (1) The Panel may by notice in writing require a person –
 - (a) to produce any documents that are specified or described in the notice;
 - (b) to provide, in the form and manner specified in the notice, such information as may be specified or described in the notice.
- (2) A requirement under subsection (1) must be complied with –
 - (a) at a place specified in the notice, and
 - (b) before the end of such reasonable period as may be so specified.
- (3) This section applies only to documents and information reasonably required in connection with the exercise by the Panel of its functions.
- (4) The Panel may require –
 - (a) any document produced to be authenticated, or
 - (b) any information provided (whether in a document or otherwise) to be verified,in such manner as it may reasonably require.
- (5) The Panel may authorise a person to exercise any of its powers under this section.
- (6) A person exercising a power by virtue of subsection (5) must, if required to do so, produce evidence of his authority to exercise the power.
- (7) The production of a document in pursuance of this section does not affect any lien that a person has on the document.
- (8) The Panel may take copies of or extracts from a document produced in pursuance of this section.
- (9) A reference in this section to the production of a document includes a reference to the production of –
 - (a) a hard copy of information recorded otherwise than in hard copy form, or
 - (b) information in a form from which a hard copy can be readily obtained.

- (10) A person is not required by this section to disclose documents or information in respect of which a claim to legal professional privilege (in Scotland, to confidentiality of communications) could be maintained in legal proceedings.

948 Restrictions on disclosure

- (1) This section applies to information (in whatever form) –
- (a) relating to the private affairs of an individual, or
 - (b) relating to any particular business,
- that is provided to the Panel in connection with the exercise of its functions.
- (2) No such information may, during the lifetime of the individual or so long as the business continues to be carried on, be disclosed without the consent of that individual or (as the case may be) the person for the time being carrying on that business.
- (3) Subsection (2) does not apply to any disclosure of information that –
- (a) is made for the purpose of facilitating the carrying out by the Panel of any of its functions,
 - (b) is made to a person specified in Part 1 of Schedule 2,
 - (c) is of a description specified in Part 2 of that Schedule, or
 - (d) is made in accordance with Part 3 of that Schedule.
- (4) The Secretary of State may amend Schedule 2 by order subject to negative resolution procedure.
- (5) An order under subsection (4) must not –
- (a) amend Part 1 of Schedule 2 by specifying a person unless the person exercises functions of a public nature (whether or not he exercises any other function);
 - (b) amend Part 2 of Schedule 2 by adding or modifying a description of disclosure unless the purpose for which the disclosure is permitted is likely to facilitate the exercise of a function of a public nature;
 - (c) amend Part 3 of Schedule 2 so as to have the effect of permitting disclosures to be made to a body other than one that exercises functions of a public nature in a country or territory outside the United Kingdom.
- (6) Subsection (2) does not apply to –
- (a) the disclosure by an authority within subsection (7) of information disclosed to it by the Panel in reliance on subsection (3);
 - (b) the disclosure of such information by anyone who has obtained it directly or indirectly from an authority within subsection (7).
- (7) The authorities within this subsection are –
- (a) the Financial Services Authority;
 - (b) an authority designated as a supervisory authority for the purposes of Article 4.1 of the Takeovers Directive;
 - (c) any other person or body that exercises functions of a public nature, under legislation in an EEA State other than the United Kingdom, that are similar to the Panel’s functions or those of the Financial Services Authority.
- (8) This section does not prohibit the disclosure of information if the information is or has been available to the public from any other source.

- (9) Nothing in this section authorises the making of a disclosure in contravention of the Data Protection Act 1998 (c. 29).

949 Offence of disclosure in contravention of section 948

- (1) A person who discloses information in contravention of section 948 is guilty of an offence, unless –
- (a) he did not know, and had no reason to suspect, that the information had been provided as mentioned in section 948(1), or
 - (b) he took all reasonable steps and exercised all due diligence to avoid the commission of the offence.
- (2) 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).
- (3) Where a company or other body corporate commits an offence under this section, an offence is also committed by every officer of the company or other body corporate who is in default.

Co-operation

950 Panel's duty of co-operation

- (1) The Panel must take such steps as it considers appropriate to co-operate with –
- (a) the Financial Services Authority;
 - (b) an authority designated as a supervisory authority for the purposes of Article 4.1 of the Takeovers Directive;
 - (c) any other person or body that exercises functions of a public nature, under legislation in any country or territory outside the United Kingdom, that appear to the Panel to be similar to its own functions or those of the Financial Services Authority.
- (2) Co-operation may include the sharing of information that the Panel is not prevented from disclosing.

Hearings and appeals

951 Hearings and appeals

- (1) Rules must provide for a decision of the Panel to be subject to review by a committee of the Panel (the “Hearings Committee”) at the instance of such persons affected by the decision as are specified in the rules.
- (2) Rules may also confer other functions on the Hearings Committee.

- (3) Rules must provide for there to be a right of appeal against a decision of the Hearings Committee to an independent tribunal (the “Takeover Appeal Board”) in such circumstances and subject to such conditions as are specified in the rules.
- (4) Rules may contain –
 - (a) provision as to matters of procedure in relation to proceedings before the Hearings Committee (including provision imposing time limits);
 - (b) provision about evidence in such proceedings;
 - (c) provision as to the powers of the Hearings Committee dealing with a matter referred to it;
 - (d) provision about enforcement of decisions of the Hearings Committee and the Takeover Appeal Board.
- (5) Rules must contain provision –
 - (a) requiring the Panel, when acting in relation to any proceedings before the Hearings Committee or the Takeover Appeal Board, to do so by an officer or member of staff of the Panel (or a person acting as such);
 - (b) preventing a person who is or has been a member of the committee mentioned in section 943(5) from being a member of the Hearings Committee or the Takeover Appeal Board;
 - (c) preventing a person who is a member of the committee mentioned in section 943(5), of the Hearings Committee or of the Takeover Appeal Board from acting as mentioned in paragraph (a).

Contravention of rules etc

952 Sanctions

- (1) Rules may contain provision conferring power on the Panel to impose sanctions on a person who has –
 - (a) acted in breach of rules, or
 - (b) failed to comply with a direction given by virtue of section 946.
- (2) Subsection (3) applies where rules made by virtue of subsection (1) confer power on the Panel to impose a sanction of a kind not provided for by the City Code on Takeovers and Mergers as it had effect immediately before the passing of this Act.
- (3) The Panel must prepare a statement (a “policy statement”) of its policy with respect to –
 - (a) the imposition of the sanction in question, and
 - (b) where the sanction is in the nature of a financial penalty, the amount of the penalty that may be imposed.

An element of the policy must be that, in making a decision about any such matter, the Panel has regard to the factors mentioned in subsection (4).

- (4) The factors are –
 - (a) the seriousness of the breach or failure in question in relation to the nature of the rule or direction contravened;
 - (b) the extent to which the breach or failure was deliberate or reckless;
 - (c) whether the person on whom the sanction is to be imposed is an individual.

- (5) The Panel may at any time revise a policy statement.
- (6) The Panel must prepare a draft of any proposed policy statement (or revised policy statement) and consult such persons about the draft as the Panel considers appropriate.
- (7) The Panel must publish, in whatever way it considers appropriate, any policy statement (or revised policy statement) that it prepares.
- (8) In exercising, or deciding whether to exercise, its power to impose a sanction within subsection (2) in the case of any particular breach or failure, the Panel must have regard to any relevant policy statement published and in force at the time when the breach or failure occurred.

953 Failure to comply with rules about bid documentation

- (1) This section applies where a takeover bid is made for a company that has securities carrying voting rights admitted to trading on a regulated market in the United Kingdom.
- (2) Where an offer document published in respect of the bid does not comply with offer document rules, an offence is committed by –
 - (a) the person making the bid, and
 - (b) where the person making the bid is a body of persons, any director, officer or member of that body who caused the document to be published.
- (3) A person commits an offence under subsection (2) only if –
 - (a) he knew that the offer document did not comply, or was reckless as to whether it complied, and
 - (b) he failed to take all reasonable steps to secure that it did comply.
- (4) Where a response document published in respect of the bid does not comply with response document rules, an offence is committed by any director or other officer of the company referred to in subsection (1) who –
 - (a) knew that the response document did not comply, or was reckless as to whether it complied, and
 - (b) failed to take all reasonable steps to secure that it did comply.
- (5) Where an offence is committed under subsection (2)(b) or (4) by a company or other body corporate (“the relevant body”) –
 - (a) subsection (2)(b) has effect as if the reference to a director, officer or member of the person making the bid included a reference to a director, officer or member of the relevant body;
 - (b) subsection (4) has effect as if the reference to a director or other officer of the company referred to in subsection (1) included a reference to a director, officer or member of the relevant body.
- (6) A person guilty of an offence under this section is liable –
 - (a) on conviction on indictment, to a fine;
 - (b) on summary conviction, to a fine not exceeding the statutory maximum.
- (7) Nothing in this section affects any power of the Panel in relation to the enforcement of its rules.

- (8) Section 1 (meaning of “company”) does not apply for the purposes of this section.
- (9) In this section –
- “designated” means designated in rules;
 - “offer document” means a document required to be published by rules giving effect to Article 6.2 of the Takeovers Directive;
 - “offer document rules” means rules designated as rules that give effect to Article 6.3 of that Directive;
 - “response document” means a document required to be published by rules giving effect to Article 9.5 of that Directive;
 - “response document rules” means rules designated as rules that give effect to the first sentence of Article 9.5 of that Directive;
 - “securities” means shares or debentures;
 - “takeover bid” has the same meaning as in that Directive;
 - “voting rights” means rights to vote at general meetings of the company in question, including rights that arise only in certain circumstances.

954 Compensation

- (1) Rules may confer power on the Panel to order a person to pay such compensation as it thinks just and reasonable if he is in breach of a rule the effect of which is to require the payment of money.
- (2) Rules made by virtue of this section may include provision for the payment of interest (including compound interest).

955 Enforcement by the court

- (1) If, on the application of the Panel, the court is satisfied –
- (a) that there is a reasonable likelihood that a person will contravene a rule-based requirement, or
 - (b) that a person has contravened a rule-based requirement or a disclosure requirement,
- the court may make any order it thinks fit to secure compliance with the requirement.
- (2) In subsection (1) “the court” means the High Court or, in Scotland, the Court of Session.
- (3) Except as provided by subsection (1), no person –
- (a) has a right to seek an injunction, or
 - (b) in Scotland, has title or interest to seek an interdict or an order for specific performance,
- to prevent a person from contravening (or continuing to contravene) a rule-based requirement or a disclosure requirement.
- (4) In this section –
- “contravene” includes fail to comply;
 - “disclosure requirement” means a requirement imposed under section 947;
 - “rule-based requirement” means a requirement imposed by or under rules.

956 No action for breach of statutory duty etc

- (1) Contravention of a rule-based requirement or a disclosure requirement does not give rise to any right of action for breach of statutory duty.
- (2) Contravention of a rule-based requirement does not make any transaction void or unenforceable or (subject to any provision made by rules) affect the validity of any other thing.
- (3) In this section –
 - (a) “contravention” includes failure to comply;
 - (b) “disclosure requirement” and “rule-based requirement” have the same meaning as in section 955.

Funding

957 Fees and charges

- (1) Rules may provide for fees or charges to be payable to the Panel for the purpose of meeting any part of its expenses.
- (2) A reference in this section or section 958 to expenses of the Panel is to any expenses that have been or are to be incurred by the Panel in, or in connection with, the discharge of its functions, including in particular –
 - (a) payments in respect of the expenses of the Takeover Appeal Board;
 - (b) the cost of repaying the principal of, and of paying any interest on, any money borrowed by the Panel;
 - (c) the cost of maintaining adequate reserves.

958 Levy

- (1) For the purpose of meeting any part of the expenses of the Panel, the Secretary of State may by regulations provide for a levy to be payable to the Panel –
 - (a) by specified persons or bodies, or persons or bodies of a specified description, or
 - (b) on transactions, of a specified description, in securities on specified markets.

In this subsection “specified” means specified in the regulations.

- (2) The power to specify (or to specify descriptions of) persons or bodies must be exercised in such a way that the levy is payable only by persons or bodies that appear to the Secretary of State –
 - (a) to be capable of being directly affected by the exercise of any of the functions of the Panel, or
 - (b) otherwise to have a substantial interest in the exercise of any of those functions.
- (3) Regulations under this section may in particular –
 - (a) specify the rate of the levy and the period in respect of which it is payable at that rate;
 - (b) make provision as to the times when, and the manner in which, payments are to be made in respect of the levy.
- (4) In determining the rate of the levy payable in respect of a particular period, the Secretary of State –

- (a) must take into account any other income received or expected by the Panel in respect of that period;
 - (b) may take into account estimated as well as actual expenses of the Panel in respect of that period.
- (5) The Panel must –
- (a) keep proper accounts in respect of any amounts of levy received by virtue of this section;
 - (b) prepare, in relation to each period in respect of which any such amounts are received, a statement of account relating to those amounts in such form and manner as is specified in the regulations.
- Those accounts must be audited, and the statement certified, by persons appointed by the Secretary of State.
- (6) Regulations under this section –
- (a) are subject to affirmative resolution procedure if subsection (7) applies to them;
 - (b) otherwise, are subject to negative resolution procedure.
- (7) This subsection applies to –
- (a) the first regulations under this section;
 - (b) any other regulations under this section that would result in a change in the persons or bodies by whom, or the transactions on which, the levy is payable.
- (8) If a draft of an instrument containing regulations under this section would, apart from this subsection, be treated for the purposes of the Standing Orders of either House of Parliament as a hybrid instrument, it is to proceed in that House as if it were not such an instrument.

959 Recovery of fees, charges or levy

An amount payable by any person or body by virtue of section 957 or 958 is a debt due from that person or body to the Panel, and is recoverable accordingly.

Miscellaneous and supplementary

960 Panel as party to proceedings

The Panel is capable (despite being an unincorporated body) of –

- (a) bringing proceedings under this Chapter in its own name;
- (b) bringing or defending any other proceedings in its own name.

961 Exemption from liability in damages

- (1) Neither the Panel, nor any person within subsection (2), is to be liable in damages for anything done (or omitted to be done) in, or in connection with, the discharge or purported discharge of the Panel's functions.
- (2) A person is within this subsection if –
 - (a) he is (or is acting as) a member, officer or member of staff of the Panel, or
 - (b) he is a person authorised under section 947(5).

- (3) Subsection (1) does not apply –
- (a) if the act or omission is shown to have been in bad faith, or
 - (b) so as to prevent an award of damages in respect of the act or omission on the ground that it was unlawful as a result of section 6(1) of the Human Rights Act 1998 (c. 42) (acts of public authorities incompatible with Convention rights).

962 Privilege against self-incrimination

- (1) A statement made by a person in response to –
- (a) a requirement under section 947(1), or
 - (b) an order made by the court under section 955 to secure compliance with such a requirement,
- may not be used against him in criminal proceedings in which he is charged with an offence to which this subsection applies.
- (2) Subsection (1) applies to any offence other than an offence under one of the following provisions (which concern false statements made otherwise than on oath) –
- (a) section 5 of the Perjury Act 1911 (c. 6);
 - (b) section 44(2) of the Criminal Law (Consolidation) (Scotland) Act 1995 (c. 39);
 - (c) Article 10 of the Perjury (Northern Ireland) Order 1979 (S.I. 1979/1714 (N.I. 19)).

963 Annual reports

- (1) After the end of each financial year the Panel must publish a report.
- (2) The report must –
- (a) set out how the Panel’s functions were discharged in the year in question;
 - (b) include the Panel’s accounts for that year;
 - (c) mention any matters the Panel considers to be of relevance to the discharge of its functions.

964 Amendments to Financial Services and Markets Act 2000

- (1) The Financial Services and Markets Act 2000 (c. 8) is amended as follows.
- (2) Section 143 (power to make rules endorsing the City Code on Takeovers and Mergers etc) is repealed.
- (3) In section 144 (power to make price stabilising rules), for subsection (7) substitute –
- “(7) “Consultation procedures” means procedures designed to provide an opportunity for persons likely to be affected by alterations to those provisions to make representations about proposed alterations to any of those provisions.”.
- (4) In section 349 (exceptions from restrictions on disclosure of confidential information), after subsection (3) insert –
- “(3A) Section 348 does not apply to –

- (a) the disclosure by a recipient to which subsection (3B) applies of confidential information disclosed to it by the Authority in reliance on subsection (1);
 - (b) the disclosure of such information by a person obtaining it directly or indirectly from a recipient to which subsection (3B) applies.
- (3B) This subsection applies to –
- (a) the Panel on Takeovers and Mergers;
 - (b) an authority designated as a supervisory authority for the purposes of Article 4.1 of the Takeovers Directive;
 - (c) any other person or body that exercises public functions, under legislation in an EEA State other than the United Kingdom, that are similar to the Authority’s functions or those of the Panel on Takeovers and Mergers.”.
- (5) In section 354 (Financial Services Authority’s duty to co-operate with others), after subsection (1) insert –
- “(1A) The Authority must take such steps as it considers appropriate to co-operate with –
- (a) the Panel on Takeovers and Mergers;
 - (b) an authority designated as a supervisory authority for the purposes of Article 4.1 of the Takeovers Directive;
 - (c) any other person or body that exercises functions of a public nature, under legislation in any country or territory outside the United Kingdom, that appear to the Authority to be similar to those of the Panel on Takeovers and Mergers.”.
- (6) In section 417(1) (definitions), insert at the appropriate place –
- ““Takeovers Directive” means Directive 2004/25/EC of the European Parliament and of the Council;”.

965 Power to extend to Isle of Man and Channel Islands

Her Majesty may by Order in Council direct that any of the provisions of this Chapter extend, with such modifications as may be specified in the Order, to the Isle of Man or any of the Channel Islands.

CHAPTER 2

IMPEDIMENTS TO TAKEOVERS

Opting in and opting out

966 Opting in and opting out

- (1) A company may by special resolution (an “opting-in resolution”) opt in for the purposes of this Chapter if the following three conditions are met in relation to the company.
- (2) The first condition is that the company has voting shares admitted to trading on a regulated market.

- (3) The second condition is that—
- (a) the company’s articles of association—
 - (i) do not contain any such restrictions as are mentioned in Article 11 of the Takeovers Directive, or
 - (ii) if they do contain any such restrictions, provide for the restrictions not to apply at a time when, or in circumstances in which, they would be disapplied by that Article,
 and
 - (b) those articles do not contain any other provision which would be incompatible with that Article.
- (4) The third condition is that—
- (a) no shares conferring special rights in the company are held by—
 - (i) a minister,
 - (ii) a nominee of, or any other person acting on behalf of, a minister, or
 - (iii) a company directly or indirectly controlled by a minister,
 and
 - (b) no such rights are exercisable by or on behalf of a minister under any enactment.
- (5) A company may revoke an opting-in resolution by a further special resolution (an “opting-out resolution”).
- (6) For the purposes of subsection (3), a reference in Article 11 of the Takeovers Directive to Article 7.1 or 9 of that Directive is to be read as referring to rules under section 943(1) giving effect to the relevant Article.
- (7) In subsection (4) “minister” means—
- (a) the holder of an office in Her Majesty’s Government in the United Kingdom;
 - (b) the Scottish Ministers;
 - (c) a Minister within the meaning given by section 7(3) of the Northern Ireland Act 1998 (c. 47);
- and for the purposes of that subsection “minister” also includes the Treasury, the Board of Trade, the Defence Council and the National Assembly for Wales.
- (8) The Secretary of State may by order subject to negative resolution procedure provide that subsection (4) applies in relation to a specified person or body that exercises functions of a public nature as it applies in relation to a minister. “Specified” means specified in the order.

967 Further provision about opting-in and opting-out resolutions

- (1) An opting-in resolution or an opting-out resolution must specify the date from which it is to have effect (the “effective date”).
- (2) The effective date of an opting-in resolution may not be earlier than the date on which the resolution is passed.
- (3) The second and third conditions in section 966 must be met at the time when an opting-in resolution is passed, but the first one does not need to be met until the effective date.

- (4) An opting-in resolution passed before the time when voting shares of the company are admitted to trading on a regulated market complies with the requirement in subsection (1) if, instead of specifying a particular date, it provides for the resolution to have effect from that time.
- (5) An opting-in resolution passed before the commencement of this section complies with the requirement in subsection (1) if, instead of specifying a particular date, it provides for the resolution to have effect from that commencement.
- (6) The effective date of an opting-out resolution may not be earlier than the first anniversary of the date on which a copy of the opting-in resolution was forwarded to the registrar.
- (7) Where a company has passed an opting-in resolution, any alteration of its articles of association that would prevent the second condition in section 966 from being met is of no effect until the effective date of an opting-out resolution passed by the company.

Consequences of opting in

968 Effect on contractual restrictions

- (1) The following provisions have effect where a takeover bid is made for an opted-in company.
- (2) An agreement to which this section applies is invalid in so far as it places any restriction –
 - (a) on the transfer to the offeror, or at his direction to another person, of shares in the company during the offer period;
 - (b) on the transfer to any person of shares in the company at a time during the offer period when the offeror holds shares amounting to not less than 75% in value of all the voting shares in the company;
 - (c) on rights to vote at a general meeting of the company that decides whether to take any action which might result in the frustration of the bid;
 - (d) on rights to vote at a general meeting of the company that –
 - (i) is the first such meeting to be held after the end of the offer period, and
 - (ii) is held at a time when the offeror holds shares amounting to not less than 75% in value of all the voting shares in the company.
- (3) This section applies to an agreement –
 - (a) entered into between a person holding shares in the company and another such person on or after 21st April 2004, or
 - (b) entered into at any time between such a person and the company,and it applies to such an agreement even if the law applicable to the agreement (apart from this section) is not the law of a part of the United Kingdom.
- (4) The reference in subsection (2)(c) to rights to vote at a general meeting of the company that decides whether to take any action which might result in the frustration of the bid includes a reference to rights to vote on a written resolution concerned with that question.

- (5) For the purposes of subsection (2)(c), action which might result in the frustration of a bid is any action of that kind specified in rules under section 943(1) giving effect to Article 9 of the Takeovers Directive.
- (6) If a person suffers loss as a result of any act or omission that would (but for this section) be a breach of an agreement to which this section applies, he is entitled to compensation, of such amount as the court considers just and equitable, from any person who would (but for this section) be liable to him for committing or inducing the breach.
- (7) In subsection (6) “the court” means the High Court or, in Scotland, the Court of Session.
- (8) A reference in this section to voting shares in the company does not include—
 - (a) debentures, or
 - (b) shares that, under the company’s articles of association, do not normally carry rights to vote at its general meetings (for example, shares carrying rights to vote that, under those articles, arise only where specified pecuniary advantages are not provided).

969 Power of offeror to require general meeting to be called

- (1) Where a takeover bid is made for an opted-in company, the offeror may by making a request to the directors of the company require them to call a general meeting of the company if, at the date at which the request is made, he holds shares amounting to not less than 75% in value of all the voting shares in the company.
- (2) The reference in subsection (1) to voting shares in the company does not include—
 - (a) debentures, or
 - (b) shares that, under the company’s articles of association, do not normally carry rights to vote at its general meetings (for example, shares carrying rights to vote that, under those articles, arise only where specified pecuniary advantages are not provided).
- (3) Sections 303 to 305 (members’ power to require general meetings to be called) apply as they would do if subsection (1) above were substituted for subsections (1) to (3) of section 303, and with any other necessary modifications.

Supplementary

970 Communication of decisions

- (1) A company that has passed an opting-in resolution or an opting-out resolution must notify—
 - (a) the Panel, and
 - (b) where the company—
 - (i) has voting shares admitted to trading on a regulated market in an EEA State other than the United Kingdom, or
 - (ii) has requested such admission,the authority designated by that state as the supervisory authority for the purposes of Article 4.1 of the Takeovers Directive.

- (2) Notification must be given within 15 days after the resolution is passed and, if any admission or request such as is mentioned in subsection (1)(b) occurs at a later time, within 15 days after that time.
- (3) If a company fails to comply with this section, an offence is committed by –
 - (a) the company, and
 - (b) every officer of it 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 and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.

971 Interpretation of this Chapter

- (1) In this Chapter –
 - “offeror” and “takeover bid” have the same meaning as in the Takeovers Directive;
 - “offer period”, in relation to a takeover bid, means the time allowed for acceptance of the bid by –
 - (a) rules under section 943(1) giving effect to Article 7.1 of the Takeovers Directive, or
 - (b) where the rules giving effect to that Article which apply to the bid are those of an EEA State other than the United Kingdom, those rules;
 - “opted-in company” means a company in relation to which –
 - (a) an opting-in resolution has effect, and
 - (b) the conditions in section 966(2) and (4) continue to be met;
 - “opting-in resolution” has the meaning given by section 966(1);
 - “opting-out resolution” has the meaning given by section 966(5);
 - “the Takeovers Directive” means Directive 2004/25/EC of the European Parliament and of the Council;
 - “voting rights” means rights to vote at general meetings of the company in question, including rights that arise only in certain circumstances;
 - “voting shares” means shares carrying voting rights.
- (2) For the purposes of this Chapter –
 - (a) securities of a company are treated as shares in the company if they are convertible into or entitle the holder to subscribe for such shares;
 - (b) debentures issued by a company are treated as shares in the company if they carry voting rights.

972 Transitory provision

- (1) Where a takeover bid is made for an opted-in company, section 368 of the Companies Act 1985 (c. 6) (extraordinary general meeting on members’ requisition) and section 378 of that Act (extraordinary and special resolutions) have effect as follows until their repeal by this Act.
- (2) Section 368 has effect as if a members’ requisition included a requisition of a person who –
 - (a) is the offeror in relation to the takeover bid, and

- (b) holds at the date of the deposit of the requisition shares amounting to not less than 75% in value of all the voting shares in the company.
- (3) In relation to a general meeting of the company that –
 - (a) is the first such meeting to be held after the end of the offer period, and
 - (b) is held at a time when the offeror holds shares amounting to not less than 75% in value of all the voting shares in the company,
 section 378(2) (meaning of “special resolution”) has effect as if “14 days’ notice” were substituted for “21 days’ notice”.
- (4) A reference in this section to voting shares in the company does not include –
 - (a) debentures, or
 - (b) shares that, under the company’s articles of association, do not normally carry rights to vote at its general meetings (for example, shares carrying rights to vote that, under those articles, arise only where specified pecuniary advantages are not provided).

973 Power to extend to Isle of Man and Channel Islands

Her Majesty may by Order in Council direct that any of the provisions of this Chapter extend, with such modifications as may be specified in the Order, to the Isle of Man or any of the Channel Islands.

CHAPTER 3

“SQUEEZE-OUT” AND “SELL-OUT”

Takeover offers

974 Meaning of “takeover offer”

- (1) For the purposes of this Chapter an offer to acquire shares in a company is a “takeover offer” if the following two conditions are satisfied in relation to the offer.
- (2) The first condition is that it is an offer to acquire –
 - (a) all the shares in a company, or
 - (b) where there is more than one class of shares in a company, all the shares of one or more classes,
 other than shares that at the date of the offer are already held by the offeror. Section 975 contains provision supplementing this subsection.
- (3) The second condition is that the terms of the offer are the same –
 - (a) in relation to all the shares to which the offer relates, or
 - (b) where the shares to which the offer relates include shares of different classes, in relation to all the shares of each class.
 Section 976 contains provision treating this condition as satisfied in certain circumstances.
- (4) In subsections (1) to (3) “shares” means shares, other than relevant treasury shares, that have been allotted on the date of the offer (but see subsection (5)).
- (5) A takeover offer may include among the shares to which it relates –

- (a) all or any shares that are allotted after the date of the offer but before a specified date;
 - (b) all or any relevant treasury shares that cease to be held as treasury shares before a specified date;
 - (c) all or any other relevant treasury shares.
- (6) In this section –
- “relevant treasury shares” means shares that –
 - (a) are held by the company as treasury shares on the date of the offer, or
 - (b) become shares held by the company as treasury shares after that date but before a specified date;
 - “specified date” means a date specified in or determined in accordance with the terms of the offer.
- (7) Where the terms of an offer make provision for their revision and for acceptances on the previous terms to be treated as acceptances on the revised terms, then, if the terms of the offer are revised in accordance with that provision –
- (a) the revision is not to be regarded for the purposes of this Chapter as the making of a fresh offer, and
 - (b) references in this Chapter to the date of the offer are accordingly to be read as references to the date of the original offer.

975 Shares already held by the offeror etc

- (1) The reference in section 974(2) to shares already held by the offeror includes a reference to shares that he has contracted to acquire, whether unconditionally or subject to conditions being met.
This is subject to subsection (2).
- (2) The reference in section 974(2) to shares already held by the offeror does not include a reference to shares that are the subject of a contract –
- (a) intended to secure that the holder of the shares will accept the offer when it is made, and
 - (b) entered into –
 - (i) by deed and for no consideration,
 - (ii) for consideration of negligible value, or
 - (iii) for consideration consisting of a promise by the offeror to make the offer.
- (3) In relation to Scotland, this section applies as if the words “by deed and” in subsection (2)(b)(i) were omitted.
- (4) The condition in section 974(2) is treated as satisfied where –
- (a) the offer does not extend to shares that associates of the offeror hold or have contracted to acquire (whether unconditionally or subject to conditions being met), and
 - (b) the condition would be satisfied if the offer did extend to those shares.
- (For further provision about such shares, see section 977(2)).

976 Cases where offer treated as being on same terms

- (1) The condition in section 974(3) (terms of offer to be the same for all shares or all shares of particular classes) is treated as satisfied where subsection (2) or (3) below applies.
- (2) This subsection applies where—
 - (a) shares carry an entitlement to a particular dividend which other shares of the same class, by reason of being allotted later, do not carry,
 - (b) there is a difference in the value of consideration offered for the shares allotted earlier as against that offered for those allotted later,
 - (c) that difference merely reflects the difference in entitlement to the dividend, and
 - (d) the condition in section 974(3) would be satisfied but for that difference.
- (3) This subsection applies where—
 - (a) the law of a country or territory outside the United Kingdom—
 - (i) precludes an offer of consideration in the form, or any of the forms, specified in the terms of the offer (“the specified form”), or
 - (ii) precludes it except after compliance by the offeror with conditions with which he is unable to comply or which he regards as unduly onerous,
 - (b) the persons to whom an offer of consideration in the specified form is precluded are able to receive consideration in another form that is of substantially equivalent value, and
 - (c) the condition in section 974(3) would be satisfied but for the fact that an offer of consideration in the specified form to those persons is precluded.

977 Shares to which an offer relates

- (1) Where a takeover offer is made and, during the period beginning with the date of the offer and ending when the offer can no longer be accepted, the offeror—
 - (a) acquires or unconditionally contracts to acquire any of the shares to which the offer relates, but
 - (b) does not do so by virtue of acceptances of the offer,those shares are treated for the purposes of this Chapter as excluded from those to which the offer relates.
- (2) For the purposes of this Chapter shares that an associate of the offeror holds or has contracted to acquire, whether at the date of the offer or subsequently, are not treated as shares to which the offer relates, even if the offer extends to such shares.
In this subsection “contracted” means contracted unconditionally or subject to conditions being met.
- (3) This section is subject to section 979(8) and (9).

978 Effect of impossibility etc of communicating or accepting offer

- (1) Where there are holders of shares in a company to whom an offer to acquire shares in the company is not communicated, that does not prevent the offer from being a takeover offer for the purposes of this Chapter if—

- (a) those shareholders have no registered address in the United Kingdom,
 - (b) the offer was not communicated to those shareholders in order not to contravene the law of a country or territory outside the United Kingdom, and
 - (c) either –
 - (i) the offer is published in the Gazette, or
 - (ii) the offer can be inspected, or a copy of it obtained, at a place in an EEA State or on a website, and a notice is published in the Gazette specifying the address of that place or website.
- (2) Where an offer is made to acquire shares in a company and there are persons for whom, by reason of the law of a country or territory outside the United Kingdom, it is impossible to accept the offer, or more difficult to do so, that does not prevent the offer from being a takeover offer for the purposes of this Chapter.
- (3) It is not to be inferred –
- (a) that an offer which is not communicated to every holder of shares in the company cannot be a takeover offer for the purposes of this Chapter unless the requirements of paragraphs (a) to (c) of subsection (1) are met, or
 - (b) that an offer which is impossible, or more difficult, for certain persons to accept cannot be a takeover offer for those purposes unless the reason for the impossibility or difficulty is the one mentioned in subsection (2).

“Squeeze-out”

979 Right of offeror to buy out minority shareholder

- (1) Subsection (2) applies in a case where a takeover offer does not relate to shares of different classes.
- (2) If the offeror has, by virtue of acceptances of the offer, acquired or unconditionally contracted to acquire –
 - (a) not less than 90% in value of the shares to which the offer relates, and
 - (b) in a case where the shares to which the offer relates are voting shares, not less than 90% of the voting rights carried by those shares,he may give notice to the holder of any shares to which the offer relates which the offeror has not acquired or unconditionally contracted to acquire that he desires to acquire those shares.
- (3) Subsection (4) applies in a case where a takeover offer relates to shares of different classes.
- (4) If the offeror has, by virtue of acceptances of the offer, acquired or unconditionally contracted to acquire –
 - (a) not less than 90% in value of the shares of any class to which the offer relates, and
 - (b) in a case where the shares of that class are voting shares, not less than 90% of the voting rights carried by those shares,he may give notice to the holder of any shares of that class to which the offer relates which the offeror has not acquired or unconditionally contracted to acquire that he desires to acquire those shares.

- (5) In the case of a takeover offer which includes among the shares to which it relates –
- (a) shares that are allotted after the date of the offer, or
 - (b) relevant treasury shares (within the meaning of section 974) that cease to be held as treasury shares after the date of the offer,
- the offeror’s entitlement to give a notice under subsection (2) or (4) on any particular date shall be determined as if the shares to which the offer relates did not include any allotted, or ceasing to be held as treasury shares, on or after that date.
- (6) Subsection (7) applies where –
- (a) the requirements for the giving of a notice under subsection (2) or (4) are satisfied, and
 - (b) there are shares in the company which the offeror, or an associate of his, has contracted to acquire subject to conditions being met, and in relation to which the contract has not become unconditional.
- (7) The offeror’s entitlement to give a notice under subsection (2) or (4) shall be determined as if –
- (a) the shares to which the offer relates included shares falling within paragraph (b) of subsection (6), and
 - (b) in relation to shares falling within that paragraph, the words “by virtue of acceptances of the offer” in subsection (2) or (4) were omitted.
- (8) Where –
- (a) a takeover offer is made,
 - (b) during the period beginning with the date of the offer and ending when the offer can no longer be accepted, the offeror –
 - (i) acquires or unconditionally contracts to acquire any of the shares to which the offer relates, but
 - (ii) does not do so by virtue of acceptances of the offer, and
 - (c) subsection (10) applies,
- then for the purposes of this section those shares are not excluded by section 977(1) from those to which the offer relates, and the offeror is treated as having acquired or contracted to acquire them by virtue of acceptances of the offer.
- (9) Where –
- (a) a takeover offer is made,
 - (b) during the period beginning with the date of the offer and ending when the offer can no longer be accepted, an associate of the offeror acquires or unconditionally contracts to acquire any of the shares to which the offer relates, and
 - (c) subsection (10) applies,
- then for the purposes of this section those shares are not excluded by section 977(2) from those to which the offer relates.
- (10) This subsection applies if –
- (a) at the time the shares are acquired or contracted to be acquired as mentioned in subsection (8) or (9) (as the case may be), the value of the consideration for which they are acquired or contracted to be acquired (“the acquisition consideration”) does not exceed the value of the consideration specified in the terms of the offer, or
 - (b) those terms are subsequently revised so that when the revision is announced the value of the acquisition consideration, at the time

mentioned in paragraph (a), no longer exceeds the value of the consideration specified in those terms.

980 Further provision about notices given under section 979

- (1) A notice under section 979 must be given in the prescribed manner.
- (2) No notice may be given under section 979(2) or (4) after the end of –
 - (a) the period of three months beginning with the day after the last day on which the offer can be accepted, or
 - (b) the period of six months beginning with the date of the offer, where that period ends earlier and the offer is one to which subsection (3) below applies.
- (3) This subsection applies to an offer if the time allowed for acceptance of the offer is not governed by rules under section 943(1) that give effect to Article 7 of the Takeovers Directive.
In this subsection “the Takeovers Directive” has the same meaning as in section 943.
- (4) At the time when the offeror first gives a notice under section 979 in relation to an offer, he must send to the company –
 - (a) a copy of the notice, and
 - (b) a statutory declaration by him in the prescribed form, stating that the conditions for the giving of the notice are satisfied.
- (5) Where the offeror is a company (whether or not a company within the meaning of this Act) the statutory declaration must be signed by a director.
- (6) A person commits an offence if –
 - (a) he fails to send a copy of a notice or a statutory declaration as required by subsection (4), or
 - (b) he makes such a declaration for the purposes of that subsection knowing it to be false or without having reasonable grounds for believing it to be true.
- (7) It is a defence for a person charged with an offence for failing to send a copy of a notice as required by subsection (4) to prove that he took reasonable steps for securing compliance with that subsection.
- (8) 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) and, for continued contravention, a daily default fine not exceeding one-fiftieth of the statutory maximum;
 - (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) and, for continued contravention, a daily default fine not exceeding one-fiftieth of the statutory maximum.

981 Effect of notice under section 979

- (1) Subject to section 986 (applications to the court), this section applies where the offeror gives a shareholder a notice under section 979.
- (2) The offeror is entitled and bound to acquire the shares to which the notice relates on the terms of the offer.
- (3) Where the terms of an offer are such as to give the shareholder a choice of consideration, the notice must give particulars of the choice and state—
 - (a) that the shareholder may, within six weeks from the date of the notice, indicate his choice by a written communication sent to the offeror at an address specified in the notice, and
 - (b) which consideration specified in the offer will apply if he does not indicate a choice.

The reference in subsection (2) to the terms of the offer is to be read accordingly.

- (4) Subsection (3) applies whether or not any time-limit or other conditions applicable to the choice under the terms of the offer can still be complied with.
- (5) If the consideration offered to or (as the case may be) chosen by the shareholder—
 - (a) is not cash and the offeror is no longer able to provide it, or
 - (b) was to have been provided by a third party who is no longer bound or able to provide it,

the consideration is to be taken to consist of an amount of cash, payable by the offeror, which at the date of the notice is equivalent to the consideration offered or (as the case may be) chosen.

- (6) At the end of six weeks from the date of the notice the offeror must immediately—
 - (a) send a copy of the notice to the company, and
 - (b) pay or transfer to the company the consideration for the shares to which the notice relates.

Where the consideration consists of shares or securities to be allotted by the offeror, the reference in paragraph (b) to the transfer of the consideration is to be read as a reference to the allotment of the shares or securities to the company.

- (7) If the shares to which the notice relates are registered, the copy of the notice sent to the company under subsection (6)(a) must be accompanied by an instrument of transfer executed on behalf of the holder of the shares by a person appointed by the offeror.

On receipt of that instrument the company must register the offeror as the holder of those shares.

- (8) If the shares to which the notice relates are transferable by the delivery of warrants or other instruments, the copy of the notice sent to the company under subsection (6)(a) must be accompanied by a statement to that effect.

On receipt of that statement the company must issue the offeror with warrants or other instruments in respect of the shares, and those already in issue in respect of the shares become void.

- (9) The company must hold any money or other consideration received by it under subsection (6)(b) on trust for the person who, before the offeror acquired

them, was entitled to the shares in respect of which the money or other consideration was received.

Section 982 contains further provision about how the company should deal with such money or other consideration.

982 Further provision about consideration held on trust under section 981(9)

- (1) This section applies where an offeror pays or transfers consideration to the company under section 981(6).
- (2) The company must pay into a separate bank account that complies with subsection (3) –
 - (a) any money it receives under paragraph (b) of section 981(6), and
 - (b) any dividend or other sum accruing from any other consideration it receives under that paragraph.
- (3) A bank account complies with this subsection if the balance on the account –
 - (a) bears interest at an appropriate rate, and
 - (b) can be withdrawn by such notice (if any) as is appropriate.
- (4) If –
 - (a) the person entitled to the consideration held on trust by virtue of section 981(9) cannot be found, and
 - (b) subsection (5) applies,the consideration (together with any interest, dividend or other benefit that has accrued from it) must be paid into court.
- (5) This subsection applies where –
 - (a) reasonable enquiries have been made at reasonable intervals to find the person, and
 - (b) twelve years have elapsed since the consideration was received, or the company is wound up.
- (6) In relation to a company registered in Scotland, subsections (7) and (8) apply instead of subsection (4).
- (7) If the person entitled to the consideration held on trust by virtue of section 981(9) cannot be found and subsection (5) applies –
 - (a) the trust terminates,
 - (b) the company or (if the company is wound up) the liquidator must sell any consideration other than cash and any benefit other than cash that has accrued from the consideration, and
 - (c) a sum representing –
 - (i) the consideration so far as it is cash,
 - (ii) the proceeds of any sale under paragraph (b), and
 - (iii) any interest, dividend or other benefit that has accrued from the consideration,must be deposited in the name of the Accountant of Court in a separate bank account complying with subsection (3) and the receipt for the deposit must be transmitted to the Accountant of Court.
- (8) Section 58 of the Bankruptcy (Scotland) Act 1985 (c. 66) (so far as consistent with this Act) applies (with any necessary modifications) to sums deposited

under subsection (7) as it applies to sums deposited under section 57(1)(a) of that Act.

- (9) The expenses of any such enquiries as are mentioned in subsection (5) may be paid out of the money or other property held on trust for the person to whom the enquiry relates.

“Sell-out”

983 Right of minority shareholder to be bought out by offeror

- (1) Subsections (2) and (3) apply in a case where a takeover offer relates to all the shares in a company.
 For this purpose a takeover offer relates to all the shares in a company if it is an offer to acquire all the shares in the company within the meaning of section 974.
- (2) The holder of any voting shares to which the offer relates who has not accepted the offer may require the offeror to acquire those shares if, at any time before the end of the period within which the offer can be accepted –
- (a) the offeror has by virtue of acceptances of the offer acquired or unconditionally contracted to acquire some (but not all) of the shares to which the offer relates, and
 - (b) those shares, with or without any other shares in the company which he has acquired or contracted to acquire (whether unconditionally or subject to conditions being met) –
 - (i) amount to not less than 90% in value of all the voting shares in the company (or would do so but for section 990(1)), and
 - (ii) carry not less than 90% of the voting rights in the company (or would do so but for section 990(1)).
- (3) The holder of any non-voting shares to which the offer relates who has not accepted the offer may require the offeror to acquire those shares if, at any time before the end of the period within which the offer can be accepted –
- (a) the offeror has by virtue of acceptances of the offer acquired or unconditionally contracted to acquire some (but not all) of the shares to which the offer relates, and
 - (b) those shares, with or without any other shares in the company which he has acquired or contracted to acquire (whether unconditionally or subject to conditions being met), amount to not less than 90% in value of all the shares in the company (or would do so but for section 990(1)).
- (4) If a takeover offer relates to shares of one or more classes and at any time before the end of the period within which the offer can be accepted –
- (a) the offeror has by virtue of acceptances of the offer acquired or unconditionally contracted to acquire some (but not all) of the shares of any class to which the offer relates, and
 - (b) those shares, with or without any other shares of that class which he has acquired or contracted to acquire (whether unconditionally or subject to conditions being met) –
 - (i) amount to not less than 90% in value of all the shares of that class, and
 - (ii) in a case where the shares of that class are voting shares, carry not less than 90% of the voting rights carried by the shares of that class,

the holder of any shares of that class to which the offer relates who has not accepted the offer may require the offeror to acquire those shares.

- (5) For the purposes of subsections (2) to (4), in calculating 90% of the value of any shares, shares held by the company as treasury shares are to be treated as having been acquired by the offeror.
- (6) Subsection (7) applies where –
 - (a) a shareholder exercises rights conferred on him by subsection (2), (3) or (4),
 - (b) at the time when he does so, there are shares in the company which the offeror has contracted to acquire subject to conditions being met, and in relation to which the contract has not become unconditional, and
 - (c) the requirement imposed by subsection (2)(b), (3)(b) or (4)(b) (as the case may be) would not be satisfied if those shares were not taken into account.
- (7) The shareholder is treated for the purposes of section 985 as not having exercised his rights under this section unless the requirement imposed by paragraph (b) of subsection (2), (3) or (4) (as the case may be) would be satisfied if –
 - (a) the reference in that paragraph to other shares in the company which the offeror has contracted to acquire unconditionally or subject to conditions being met were a reference to such shares which he has unconditionally contracted to acquire, and
 - (b) the reference in that subsection to the period within which the offer can be accepted were a reference to the period referred to in section 984(2).
- (8) A reference in subsection (2)(b), (3)(b), (4)(b), (6) or (7) to shares which the offeror has acquired or contracted to acquire includes a reference to shares which an associate of his has acquired or contracted to acquire.

984 Further provision about rights conferred by section 983

- (1) Rights conferred on a shareholder by subsection (2), (3) or (4) of section 983 are exercisable by a written communication addressed to the offeror.
- (2) Rights conferred on a shareholder by subsection (2), (3) or (4) of that section are not exercisable after the end of the period of three months from –
 - (a) the end of the period within which the offer can be accepted, or
 - (b) if later, the date of the notice that must be given under subsection (3) below.
- (3) Within one month of the time specified in subsection (2), (3) or (4) (as the case may be) of that section, the offeror must give any shareholder who has not accepted the offer notice in the prescribed manner of –
 - (a) the rights that are exercisable by the shareholder under that subsection, and
 - (b) the period within which the rights are exercisable.If the notice is given before the end of the period within which the offer can be accepted, it must state that the offer is still open for acceptance.
- (4) Subsection (3) does not apply if the offeror has given the shareholder a notice in respect of the shares in question under section 979.
- (5) An offeror who fails to comply with subsection (3) commits an offence.

If the offeror is a company, every officer of that company who is in default or to whose neglect the failure is attributable also commits an offence.

- (6) If an offeror other than a company is charged with an offence for failing to comply with subsection (3), it is a defence for him to prove that he took all reasonable steps for securing compliance with that subsection.
- (7) A person guilty of an offence under this section is liable –
 - (a) on conviction on indictment, to a fine;
 - (b) on summary conviction, to a fine not exceeding the statutory maximum and, for continued contravention, a daily default fine not exceeding one-fiftieth of the statutory maximum.

985 Effect of requirement under section 983

- (1) Subject to section 986, this section applies where a shareholder exercises his rights under section 983 in respect of any shares held by him.
- (2) The offeror is entitled and bound to acquire those shares on the terms of the offer or on such other terms as may be agreed.
- (3) Where the terms of an offer are such as to give the shareholder a choice of consideration –
 - (a) the shareholder may indicate his choice when requiring the offeror to acquire the shares, and
 - (b) the notice given to the shareholder under section 984(3) –
 - (i) must give particulars of the choice and of the rights conferred by this subsection, and
 - (ii) may state which consideration specified in the offer will apply if he does not indicate a choice.

The reference in subsection (2) to the terms of the offer is to be read accordingly.

- (4) Subsection (3) applies whether or not any time-limit or other conditions applicable to the choice under the terms of the offer can still be complied with.
- (5) If the consideration offered to or (as the case may be) chosen by the shareholder –
 - (a) is not cash and the offeror is no longer able to provide it, or
 - (b) was to have been provided by a third party who is no longer bound or able to provide it,

the consideration is to be taken to consist of an amount of cash, payable by the offeror, which at the date when the shareholder requires the offeror to acquire the shares is equivalent to the consideration offered or (as the case may be) chosen.

Supplementary

986 Applications to the court

- (1) Where a notice is given under section 979 to a shareholder the court may, on an application made by him, order –
 - (a) that the offeror is not entitled and bound to acquire the shares to which the notice relates, or

- (b) that the terms on which the offeror is entitled and bound to acquire the shares shall be such as the court thinks fit.
- (2) An application under subsection (1) must be made within six weeks from the date on which the notice referred to in that subsection was given.
If an application to the court under subsection (1) is pending at the end of that period, section 981(6) does not have effect until the application has been disposed of.
- (3) Where a shareholder exercises his rights under section 983 in respect of any shares held by him, the court may, on an application made by him or the offeror, order that the terms on which the offeror is entitled and bound to acquire the shares shall be such as the court thinks fit.
- (4) On an application under subsection (1) or (3) –
 - (a) the court may not require consideration of a higher value than that specified in the terms of the offer (“the offer value”) to be given for the shares to which the application relates unless the holder of the shares shows that the offer value would be unfair;
 - (b) the court may not require consideration of a lower value than the offer value to be given for the shares.
- (5) No order for costs or expenses may be made against a shareholder making an application under subsection (1) or (3) unless the court considers that –
 - (a) the application was unnecessary, improper or vexatious,
 - (b) there has been unreasonable delay in making the application, or
 - (c) there has been unreasonable conduct on the shareholder’s part in conducting the proceedings on the application.
- (6) A shareholder who has made an application under subsection (1) or (3) must give notice of the application to the offeror.
- (7) An offeror who is given notice of an application under subsection (1) or (3) must give a copy of the notice to –
 - (a) any person (other than the applicant) to whom a notice has been given under section 979;
 - (b) any person who has exercised his rights under section 983.
- (8) An offeror who makes an application under subsection (3) must give notice of the application to –
 - (a) any person to whom a notice has been given under section 979;
 - (b) any person who has exercised his rights under section 983.
- (9) Where a takeover offer has not been accepted to the extent necessary for entitling the offeror to give notices under subsection (2) or (4) of section 979 the court may, on an application made by him, make an order authorising him to give notices under that subsection if it is satisfied that –
 - (a) the offeror has after reasonable enquiry been unable to trace one or more of the persons holding shares to which the offer relates,
 - (b) the requirements of that subsection would have been met if the person, or all the persons, mentioned in paragraph (a) above had accepted the offer, and
 - (c) the consideration offered is fair and reasonable.

This is subject to subsection (10).

- (10) The court may not make an order under subsection (9) unless it considers that it is just and equitable to do so having regard, in particular, to the number of shareholders who have been traced but who have not accepted the offer.

987 Joint offers

- (1) In the case of a takeover offer made by two or more persons jointly, this Chapter has effect as follows.
- (2) The conditions for the exercise of the rights conferred by section 979 are satisfied –
- (a) in the case of acquisitions by virtue of acceptances of the offer, by the joint offerors acquiring or unconditionally contracting to acquire the necessary shares jointly;
 - (b) in other cases, by the joint offerors acquiring or unconditionally contracting to acquire the necessary shares either jointly or separately.
- (3) The conditions for the exercise of the rights conferred by section 983 are satisfied –
- (a) in the case of acquisitions by virtue of acceptances of the offer, by the joint offerors acquiring or unconditionally contracting to acquire the necessary shares jointly;
 - (b) in other cases, by the joint offerors acquiring or contracting (whether unconditionally or subject to conditions being met) to acquire the necessary shares either jointly or separately.
- (4) Subject to the following provisions, the rights and obligations of the offeror under sections 979 to 985 are respectively joint rights and joint and several obligations of the joint offerors.
- (5) A provision of sections 979 to 986 that requires or authorises a notice or other document to be given or sent by or to the joint offerors is complied with if the notice or document is given or sent by or to any of them (but see subsection (6)).
- (6) The statutory declaration required by section 980(4) must be made by all of the joint offerors and, where one or more of them is a company, signed by a director of that company.
- (7) In sections 974 to 977, 979(9), 981(6), 983(8) and 988 references to the offeror are to be read as references to the joint offerors or any of them.
- (8) In section 981(7) and (8) references to the offeror are to be read as references to the joint offerors or such of them as they may determine.
- (9) In sections 981(5)(a) and 985(5)(a) references to the offeror being no longer able to provide the relevant consideration are to be read as references to none of the joint offerors being able to do so.
- (10) In section 986 references to the offeror are to be read as references to the joint offerors, except that –
- (a) an application under subsection (3) or (9) may be made by any of them, and
 - (b) the reference in subsection (9)(a) to the offeror having been unable to trace one or more of the persons holding shares is to be read as a reference to none of the offerors having been able to do so.

Interpretation

988 Associates

- (1) In this Chapter “associate”, in relation to an offeror, means—
 - (a) a nominee of the offeror,
 - (b) a holding company, subsidiary or fellow subsidiary of the offeror or a nominee of such a holding company, subsidiary or fellow subsidiary,
 - (c) a body corporate in which the offeror is substantially interested,
 - (d) a person who is, or is a nominee of, a party to a share acquisition agreement with the offeror, or
 - (e) (where the offeror is an individual) his spouse or civil partner and any minor child or step-child of his.
- (2) For the purposes of subsection (1)(b) a company is a fellow subsidiary of another body corporate if both are subsidiaries of the same body corporate but neither is a subsidiary of the other.
- (3) For the purposes of subsection (1)(c) an offeror has a substantial interest in a body corporate if—
 - (a) the body or its directors are accustomed to act in accordance with his directions or instructions, or
 - (b) he is entitled to exercise or control the exercise of one-third or more of the voting power at general meetings of the body.

Subsections (2) and (3) of section 823 (which contain provision about when a person is treated as entitled to exercise or control the exercise of voting power) apply for the purposes of this subsection as they apply for the purposes of that section.

- (4) For the purposes of subsection (1)(d) an agreement is a share acquisition agreement if—
 - (a) it is an agreement for the acquisition of, or of an interest in, shares to which the offer relates,
 - (b) it includes provisions imposing obligations or restrictions on any one or more of the parties to it with respect to their use, retention or disposal of such shares, or their interests in such shares, acquired in pursuance of the agreement (whether or not together with any other shares to which the offer relates or any other interests of theirs in such shares), and
 - (c) it is not an excluded agreement (see subsection (5)).
- (5) An agreement is an “excluded agreement”—
 - (a) if it is not legally binding, unless it involves mutuality in the undertakings, expectations or understandings of the parties to it, or
 - (b) if it is an agreement to underwrite or sub-underwrite an offer of shares in a company, provided the agreement is confined to that purpose and any matters incidental to it.
- (6) The reference in subsection (4)(b) to the use of interests in shares is to the exercise of any rights or of any control or influence arising from those interests (including the right to enter into an agreement for the exercise, or for control of the exercise, of any of those rights by another person).
- (7) In this section—
 - (a) “agreement” includes any agreement or arrangement;

- (b) references to provisions of an agreement include—
 - (i) undertakings, expectations or understandings operative under an arrangement, and
 - (ii) any provision whether express or implied and whether absolute or not.

989 Convertible securities

- (1) For the purposes of this Chapter securities of a company are treated as shares in the company if they are convertible into or entitle the holder to subscribe for such shares.
References to the holder of shares or a shareholder are to be read accordingly.
- (2) Subsection (1) is not to be read as requiring any securities to be treated—
 - (a) as shares of the same class as those into which they are convertible or for which the holder is entitled to subscribe, or
 - (b) as shares of the same class as other securities by reason only that the shares into which they are convertible or for which the holder is entitled to subscribe are of the same class.

990 Debentures carrying voting rights

- (1) For the purposes of this Chapter debentures issued by a company to which subsection (2) applies are treated as shares in the company if they carry voting rights.
- (2) This subsection applies to a company that has voting shares, or debentures carrying voting rights, which are admitted to trading on a regulated market.
- (3) In this Chapter, in relation to debentures treated as shares by virtue of subsection (1)—
 - (a) references to the holder of shares or a shareholder are to be read accordingly;
 - (b) references to shares being allotted are to be read as references to debentures being issued.

991 Interpretation

- (1) In this Chapter—
 - “the company” means the company whose shares are the subject of a takeover offer;
 - “date of the offer” means—
 - (a) where the offer is published, the date of publication;
 - (b) where the offer is not published, or where any notices of the offer are given before the date of publication, the date when notices of the offer (or the first such notices) are given;and references to the date of the offer are to be read in accordance with section 974(7) (revision of offer terms) where that applies;
 - “non-voting shares” means shares that are not voting shares;
 - “offeror” means (subject to section 987) the person making a takeover offer;
 - “voting rights” means rights to vote at general meetings of the company, including rights that arise only in certain circumstances;

“voting shares” means shares carrying voting rights.

- (2) For the purposes of this Chapter a person contracts unconditionally to acquire shares if his entitlement under the contract to acquire them is not (or is no longer) subject to conditions or if all conditions to which it was subject have been met.

A reference to a contract becoming unconditional is to be read accordingly.

CHAPTER 4

AMENDMENTS TO PART 7 OF THE COMPANIES ACT 1985

992 Matters to be dealt with in directors’ report

- (1) Part 7 of the Companies Act 1985 (c. 6) (accounts and audit) is amended as follows.
- (2) In Schedule 7 (matters to be dealt with in directors’ report), after Part 6 insert –

“PART 7

DISCLOSURE REQUIRED BY CERTAIN PUBLICLY-TRADED COMPANIES

- 13 (1) This Part of this Schedule applies to the directors’ report for a financial year if the company had securities carrying voting rights admitted to trading on a regulated market at the end of that year.
- (2) The report shall contain detailed information, by reference to the end of that year, on the following matters –
- (a) the structure of the company’s capital, including in particular –
 - (i) the rights and obligations attaching to the shares or, as the case may be, to each class of shares in the company, and
 - (ii) where there are two or more such classes, the percentage of the total share capital represented by each class;
 - (b) any restrictions on the transfer of securities in the company, including in particular –
 - (i) limitations on the holding of securities, and
 - (ii) requirements to obtain the approval of the company, or of other holders of securities in the company, for a transfer of securities;
 - (c) in the case of each person with a significant direct or indirect holding of securities in the company, such details as are known to the company of –
 - (i) the identity of the person,
 - (ii) the size of the holding, and
 - (iii) the nature of the holding;
 - (d) in the case of each person who holds securities carrying special rights with regard to control of the company –
 - (i) the identity of the person, and
 - (ii) the nature of the rights;

- (e) where—
 - (i) the company has an employees’ share scheme, and
 - (ii) shares to which the scheme relates have rights with regard to control of the company that are not exercisable directly by the employees,how those rights are exercisable;
 - (f) any restrictions on voting rights, including in particular—
 - (i) limitations on voting rights of holders of a given percentage or number of votes,
 - (ii) deadlines for exercising voting rights, and
 - (iii) arrangements by which, with the company’s cooperation, financial rights carried by securities are held by a person other than the holder of the securities;
 - (g) any agreements between holders of securities that are known to the company and may result in restrictions on the transfer of securities or on voting rights;
 - (h) any rules that the company has about—
 - (i) appointment and replacement of directors, or
 - (ii) amendment of the company’s articles of association;
 - (i) the powers of the company’s directors, including in particular any powers in relation to the issuing or buying back by the company of its shares;
 - (j) any significant agreements to which the company is a party that take effect, alter or terminate upon a change of control of the company following a takeover bid, and the effects of any such agreements;
 - (k) any agreements between the company and its directors or employees providing for compensation for loss of office or employment (whether through resignation, purported redundancy or otherwise) that occurs because of a takeover bid.
- (3) For the purposes of sub-paragraph (2)(a) a company’s capital includes any securities in the company that are not admitted to trading on a regulated market.
- (4) For the purposes of sub-paragraph (2)(c) a person has an indirect holding of securities if—
- (a) they are held on his behalf, or
 - (b) he is able to secure that rights carried by the securities are exercised in accordance with his wishes.
- (5) Sub-paragraph (2)(j) does not apply to an agreement if—
- (a) disclosure of the agreement would be seriously prejudicial to the company, and
 - (b) the company is not under any other obligation to disclose it.
- (6) In this paragraph—
- “securities” means shares or debentures;
 - “takeover bid” has the same meaning as in the Takeovers Directive;

“the Takeovers Directive” means Directive 2004/25/EC of the European Parliament and of the Council;

“voting rights” means rights to vote at general meetings of the company in question, including rights that arise only in certain circumstances.”.

- (3) In section 234ZZA (requirements of directors’ reports), at the end of subsection (4) (contents of Schedule 7) insert –
- “Part 7 specifies information to be disclosed by certain publicly-traded companies.”.
- (4) After that subsection insert –
- “(5) A directors’ report shall also contain any necessary explanatory material with regard to information that is required to be included in the report by Part 7 of Schedule 7.”.
- (5) In section 251 (summary financial statements), after subsection (2ZA) insert –
- “(2ZB) A company that sends to an entitled person a summary financial statement instead of a copy of its directors’ report shall –
- (a) include in the statement the explanatory material required to be included in the directors’ report by section 234ZZA(5), or
- (b) send that material to the entitled person at the same time as it sends the statement.
- For the purposes of paragraph (b), subsections (2A) to (2E) apply in relation to the material referred to in that paragraph as they apply in relation to a summary financial statement.”.
- (6) The amendments made by this section apply in relation to directors’ reports for financial years beginning on or after 20th May 2006.

PART 29

FRAUDULENT TRADING

993 Offence of fraudulent trading

- (1) If any business of a company is carried on with intent to defraud creditors of the company or creditors of any other person, or for any fraudulent purpose, every person who is knowingly a party to the carrying on of the business in that manner commits an offence.
- (2) This applies whether or not the company has been, or is in the course of being, wound up.
- (3) A person guilty of an offence under this section is liable –
- (a) on conviction on indictment, to imprisonment for a term not exceeding ten 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 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 a fine not exceeding the statutory maximum (or both).

PART 30

PROTECTION OF MEMBERS AGAINST UNFAIR PREJUDICE

*Main provisions***994 Petition by company member**

- (1) A member of a company may apply to the court by petition for an order under this Part on the ground –
 - (a) that the company's affairs are being or have been conducted in a manner that is unfairly prejudicial to the interests of members generally or of some part of its members (including at least himself), or
 - (b) that an actual or proposed act or omission of the company (including an act or omission on its behalf) is or would be so prejudicial.
- (2) The provisions of this Part apply to a person who is not a member of a company but to whom shares in the company have been transferred or transmitted by operation of law as they apply to a member of a company.
- (3) In this section, and so far as applicable for the purposes of this section in the other provisions of this Part, "company" means –
 - (a) a company within the meaning of this Act, or
 - (b) a company that is not such a company but is a statutory water company within the meaning of the Statutory Water Companies Act 1991 (c. 58).

995 Petition by Secretary of State

- (1) This section applies to a company in respect of which –
 - (a) the Secretary of State has received a report under section 437 of the Companies Act 1985 (c. 6) (inspector's report);
 - (b) the Secretary of State has exercised his powers under section 447 or 448 of that Act (powers to require documents and information or to enter and search premises);
 - (c) the Secretary of State or the Financial Services Authority has exercised his or its powers under Part 11 of the Financial Services and Markets Act 2000 (c. 8) (information gathering and investigations); or
 - (d) the Secretary of State has received a report from an investigator appointed by him or the Financial Services Authority under that Part.
- (2) If it appears to the Secretary of State that in the case of such a company –
 - (a) the company's affairs are being or have been conducted in a manner that is unfairly prejudicial to the interests of members generally or of some part of its members, or
 - (b) an actual or proposed act or omission of the company (including an act or omission on its behalf) is or would be so prejudicial,he may apply to the court by petition for an order under this Part.
- (3) The Secretary of State may do this in addition to, or instead of, presenting a petition for the winding up of the company.
- (4) In this section, and so far as applicable for the purposes of this section in the other provisions of this Part, "company" means any body corporate that is

liable to be wound up under the Insolvency Act 1986 (c. 45) or the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)).

996 Powers of the court under this Part

- (1) If the court is satisfied that a petition under this Part is well founded, it may make such order as it thinks fit for giving relief in respect of the matters complained of.
- (2) Without prejudice to the generality of subsection (1), the court's order may –
 - (a) regulate the conduct of the company's affairs in the future;
 - (b) require the company –
 - (i) to refrain from doing or continuing an act complained of, or
 - (ii) to do an act that the petitioner has complained it has omitted to do;
 - (c) authorise civil proceedings to be brought in the name and on behalf of the company by such person or persons and on such terms as the court may direct;
 - (d) require the company not to make any, or any specified, alterations in its articles without the leave of the court;
 - (e) provide for the purchase of the shares of any members of the company by other members or by the company itself and, in the case of a purchase by the company itself, the reduction of the company's capital accordingly.

Supplementary provisions

997 Application of general rule-making powers

The power to make rules under section 411 of the Insolvency Act 1986 (c. 45) or Article 359 of the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)), so far as relating to a winding-up petition, applies for the purposes of a petition under this Part.

998 Copy of order affecting company's constitution to be delivered to registrar

- (1) Where an order of the court under this Part –
 - (a) alters the company's constitution, or
 - (b) gives leave for the company to make any, or any specified, alterations to its constitution,the company must deliver a copy of the order to the registrar.
- (2) It must do so within 14 days from the making of the order or such longer period as the court may allow.
- (3) 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.
- (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 and, for

continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.

999 Supplementary provisions where company's constitution altered

- (1) This section applies where an order under this Part alters a company's constitution.
- (2) If the order amends –
 - (a) a company's articles, or
 - (b) any resolution or agreement to which Chapter 3 of Part 3 applies (resolution or agreement affecting a company's constitution),the copy of the order delivered to the registrar by the company under section 998 must be accompanied by a copy of the company's articles, or the resolution or agreement in question, as amended.
- (3) Every copy of a company's articles issued by the company after the order is made must be accompanied by a copy of the order, unless the effect of the order has been incorporated into the articles by amendment.
- (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.

PART 31

DISSOLUTION AND RESTORATION TO THE REGISTER

CHAPTER 1

STRIKING OFF

Registrar's power to strike off defunct company

1000 Power to strike off company not carrying on business or in operation

- (1) If the registrar has reasonable cause to believe that a company is not carrying on business or in operation, the registrar may send to the company by post a letter inquiring whether the company is carrying on business or in operation.
- (2) If the registrar does not within one month of sending the letter receive any answer to it, the registrar must within 14 days after the expiration of that month send to the company by post a registered letter referring to the first letter, and stating –
 - (a) that no answer to it has been received, and
 - (b) that if an answer is not received to the second letter within one month from its date, a notice will be published in the Gazette with a view to striking the company's name off the register.
- (3) If the registrar –

- (a) receives an answer to the effect that the company is not carrying on business or in operation, or
 - (b) does not within one month after sending the second letter receive any answer,
- the registrar may publish in the Gazette, and send to the company by post, a notice that at the expiration of three months from the date of the notice the name of the company mentioned in it will, unless cause is shown to the contrary, be struck off the register and the company will be dissolved.
- (4) At the expiration of the time mentioned in the notice the registrar may, unless cause to the contrary is previously shown by the company, strike its name off the register.
 - (5) The registrar must publish notice in the Gazette of the company's name having been struck off the register.
 - (6) On the publication of the notice in the Gazette the company is dissolved.
 - (7) However –
 - (a) the liability (if any) of every director, managing officer and member of the company continues and may be enforced as if the company had not been dissolved, and
 - (b) nothing in this section affects the power of the court to wind up a company the name of which has been struck off the register.

1001 Duty to act in case of company being wound up

- (1) If, in a case where a company is being wound up –
 - (a) the registrar has reasonable cause to believe –
 - (i) that no liquidator is acting, or
 - (ii) that the affairs of the company are fully wound up, and
 - (b) the returns required to be made by the liquidator have not been made for a period of six consecutive months,

the registrar must publish in the Gazette and send to the company or the liquidator (if any) a notice that at the expiration of three months from the date of the notice the name of the company mentioned in it will, unless cause is shown to the contrary, be struck off the register and the company will be dissolved.
- (2) At the expiration of the time mentioned in the notice the registrar may, unless cause to the contrary is previously shown by the company, strike its name off the register.
- (3) The registrar must publish notice in the Gazette of the company's name having been struck off the register.
- (4) On the publication of the notice in the Gazette the company is dissolved.
- (5) However –
 - (a) the liability (if any) of every director, managing officer and member of the company continues and may be enforced as if the company had not been dissolved, and
 - (b) nothing in this section affects the power of the court to wind up a company the name of which has been struck off the register.