

## SCHEDULE 4

### CONSEQUENTIAL AMENDMENTS

#### PART 1

#### AMENDMENTS OF THE 1985 ACT

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

**1.—**(1) In section 31(2) (resolution of directors changing of name of company to comply with direction of Secretary of State), omit the second sentence and after that subsection insert—

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

(2B) Where a company changes its name under this section, the registrar of companies shall (subject to section 26) enter the new name on the register in place of the former name, and shall issue a certificate of incorporation altered to meet the circumstances of the case; and the change of name has effect from the date on which the altered certificate is issued.

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

(2) In section 51(4) (re-registration of unlimited company as limited: procedural requirements)—

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

(b) for “under section 380” substitute “under section 30 of the Companies Act 2006”.

(3) In section 80(8) (resolution of company giving, varying, revoking or renewing authority of directors to allot shares), omit the words from “but it is in any case subject to section 380” to the end and substitute “but in any case Chapter 3 of Part 3 of the Companies Act 2006 (resolutions affecting a company's constitution) applies to it.”.

(4) In section 128(1) (registration of particulars of special rights) for “section 380” substitute “section 30 of the Companies Act 2006”.

(5) In section 129(1) (registration of newly created class rights) for “section 380” substitute “section 30 of the Companies Act 2006”.

(6) In section 147(2) (resolution of directors altering memorandum on company ceasing to be public company following acquisition of its own shares), for the second sentence substitute “Chapter 3 of Part 3 of the Companies Act 2006 (resolutions affecting a company's constitution) applies to such a resolution.”.

(7) In section 156(5)(a) (financial assistance by private company for acquisition of its own shares: statutory declaration to be delivered to registrar along with copy of special resolution), for “section 380” substitute “section 30 of the Companies Act 2006”.

(8) In section 166 (authority for market purchase of own shares), for subsection (7) substitute—

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

(9) In section 380(2) (resolutions or agreements to be embodied in copies of articles issued by the company), for “every such resolution or agreement” substitute “every resolution or agreement to

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

(10) In section 699 (oversea companies: provisions applying to Channel Islands and Isle of Man companies)—

- (a) in subsection (1) after "of this Act" insert "and the Companies Act 2006"; and
- (b) in subsection (3) for the words from "section 380" to "15 days" substitute "Chapter 3 of Part 3 of the Companies Act 2006 (resolutions and agreements affecting a company's constitution)".

### **Reference to extraordinary resolution**

2.—(1) In section 125(2) (variation of class rights) for "an extraordinary resolution" substitute "a special resolution".

(2) This amendment applies—

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

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

3.—(1) In section 235(1) (auditors' report on company's annual accounts), for the words from "are to be laid before the company" to the end substitute—

"are, during their tenure of office—

- (a) in the case of a private company, to be sent out to members under section 238(1);
- (b) in the case of a public company, to be laid before the company in general meeting under section 241."

(2) In section 238 (persons entitled to receive copies of accounts and reports)—

- (a) in subsection (1) omit the words from "not less than 21 days" to the end;
- (b) omit subsection (4); and
- (c) in subsection (5) after "this section" insert "or section 238A".

(3) After that section insert—

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

**238A.**—(1) The time allowed for sending out copies of the company's annual accounts and reports is as follows.

(2) A private company must comply with section 238(1) not later than—

- (a) the end of the period for delivering accounts and reports (see section 244), or
- (b) if earlier, the date on which it actually delivers its accounts and reports under section 242.

(3) A public company must comply with section 238(1) not less than 21 days before the date of the meeting at which copies of the documents are to be laid in accordance with section 241.

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

(4) References in any enactment or instrument to the period for laying and delivering accounts, and reports including those in section 244 (which defines that period), shall be read in relation to a private company as references to the period for delivering accounts and reports.

(5) In section 241 (accounts and reports to be laid before company in general meeting), in subsection (1) for “a company” substitute “a public company”.

(6) In section 270(3) (distributions: justification by reference to company’s last annual accounts) for the words from “that is to say” to the end substitute—

“that is to say—

(a) in the case of a private company, those prepared under Part 7 that were last sent to members in accordance with section 238(1);

(b) in the case of a public company, those prepared under Part 7 which were laid in respect of the last preceding accounting reference period in respect of which accounts so prepared were laid (and for this purpose accounts are laid if section 241(1) has been complied with in relation to them).”.

(7) In section 271 (distributions: auditors’ report on accounts), in subsection (4) omit the words from “and a copy” to the end and after that subsection insert—

“(4A) A copy of the auditors’ statement under subsection (4) must—

(a) in the case of a private company, have been circulated to members along with the copies of the accounts sent to them under section 238(1);

(b) in the case of a public company, have been laid before the company in general meeting.”.

(8) These amendments have effect for financial years ending on or after 1st October 2007.

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

4.—(1) Section 390 (right of auditors to attend company meetings etc) is amended as follows.

(2) Omit subsection (1A).

(3) In subsection (2)—

(a) in the opening words, omit “in accordance with section 381A”, and

(b) in paragraph (a), for “Schedule 15A” substitute “Chapter 2 of Part 13 of the Companies Act 2006”.

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

5. In section 317 (directors to disclose interest in contracts), in subsection (6) for “section 330” substitute “section 197, 198, 200, 201 or 203 of the Companies Act 2006”.

6.—(1) Parts 2 and 3 of Schedule 6 (disclosure of information: loans, quasi-loans and other transactions in favour of directors etc) are amended as follows.

(2) In paragraphs 15(a) and 16(a) for “section 330” substitute “section 197, 198, 200, 201 or 203 of the Companies Act 2006”.

(3) In paragraph 19(a) for “was prohibited by section 330” substitute “was one in respect of which approval was required under section 197, 198, 200, 201 or 203 of the Companies Act 2006”.

(4) In paragraph 22(2)—

(a) in paragraph (d) for “section 330(6) or (7) of this Act” substitute “section 203 of the Companies Act 2006”; and

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- (b) in paragraph (e) for “section 330(6)” substitute “section 203(1)(b) of the Companies Act 2006”.
- (5) In paragraph 24(2)(c) for “subsection (6) or (7) of section 330” substitute “section 203 of the Companies Act 2006”.
- (6) In paragraph 26—
  - (a) for “Section 345 of this Act” substitute “Section 258 of the Companies Act 2006”, and
  - (b) for “Part 10” substitute “Part 10 of that Act”.
- (7) In paragraph 27, for sub-paragraph (1) substitute—
  - “(1) The following provisions of the Companies Act 2006 apply for the purposes of this Part of this Schedule—
    - (a) section 202 (meaning of “credit transaction”);
    - (b) section 211 (value of transactions and arrangements);
    - (c) section 212 (person for whom a transaction or arrangement is entered into);
    - (d) sections 252 to 255 and Schedule 1 (persons connected with a director).”.
- (8) In paragraph 28—
  - (a) in paragraph (a) for “subsection (6) or (7) of section 330 of this Act” substitute “section 203 of the Companies Act 2006”;
  - (b) in paragraphs (b) and (c) for “either of those subsections” substitute “that section”.
- (9) In paragraph 29(3)—
  - (a) for “Section 345 of this Act” substitute “Section 258 of the Companies Act 2006”, and
  - (b) for “Part 10” substitute “Part 10 of that Act”.
- (10) In paragraph 30 for the words from “of this Act” to the end of paragraph (b) substitute—
  - “of the Companies Act 2006 apply for the purposes of this Part of this Schedule—
    - (a) section 199 (meaning of “quasi-loan”),
    - (b) section 202 (meaning of “credit transaction”), and
    - (c) section 212 (person for whom a transaction or arrangement is entered into);”.
- (11) These amendments apply in relation to arrangements and transactions entered into on or after 1st October 2007.

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

- (a) in paragraph 2 (loans, quasi-loans and other dealings), for “section 330” substitute “section 197, 198, 200, 201 or 203 of the Companies Act 2006”;
- (b) in paragraph 3(5) (other transactions, arrangements and agreements: meaning of “connected person”), for “Section 346 of this Act applies” substitute “Sections 252 to 255 of, and Schedule 1 to, the Companies Act 2006 apply”.

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

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

**8.—(1)** In section 384 (duty to appoint auditors)—

- (a) in subsection (1) for “Every company” substitute “Every public company”;
- (b) in subsection (2) omit the words from “except in the case of a private company” to the end;

- (c) in subsection (3) omit the words from “or 385A(2)” to the end; and
  - (d) omit subsection (4).
- (2) In section 385 (appointment at general meeting at which accounts laid), in subsection (1) omit the words from “and to a private company” to the end.
- (3) In section 387 (appointment by Secretary of State in default of appointment by company), in subsection (1) for “If in any case” substitute “If in the case of a public company”.
- (4) In section 388 (filling of casual vacancies)—
- (a) in subsection (1) after “The directors” insert “of a public company”;
  - (b) in subsection (3) for “a company” substitute “a public company”.
- (5) In section 388A (certain companies exempt from obligation to appoint auditors)—
- (a) in subsection (1) for “A company” substitute “A public company”;
  - (b) in subsection (2) for “a company” substitute “a public company”;
  - (c) omit subsection (4); and
  - (d) in subsection (5), omit “or (4)”.
- (6) These amendments have effect in relation to appointments for financial years beginning on or after 1st October 2007.

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

- 9.** In section 126 (saving for court’s powers under other provisions), for “sections 459 to 461 (protection of minorities)” substitute “Part 30 of the Companies Act 2006 (protection of members against unfair prejudice)”.
- 10.** In paragraph 9 of Schedule 21 (effect of registration under section 680: saving for powers of company to alter its constitution etc), for “None of the provisions of this Act (except section 461(3))” substitute “None of the provisions of this Act, and none of the provisions of the Companies Act 2006 (except section 996(2)),”.

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

- 11.—**(1) Part 15 (orders imposing restrictions on shares) is amended as follows.
- (2) In the Part heading for “SECTIONS 210, 216, 445” substitute “SECTION 445”.
- (3) In section 454(1), in the opening words, for the words from “pursuant to sections 210(5A)” to “of that order)” substitute “pursuant to section 445(1A) or 456(1A)”.
- (4) In section 454(2) for the words from “sections 210(5A)” to “section 216(1A)” substitute “section 445(1A) or 456(1A)”.
- (5) In section 454(3) for the words from “sections 210(5A)” to “section 216(1A)” substitute “section 445(1A) or 456(1A)”.
- (6) In section 455(1), in the opening words, for the words from “sections 210(5A)” to “section 216(1A)” substitute “section 445(1A) or 456”.
- (7) In section 455(2) for the words from “sections 210(5A)” to “section 216(1A)” substitute “section 445(1A) or 456”.
- (8) In section 456(2) omit the words from “and if the order” to the end.
- (9) In section 456(3)(b) omit “210 or”.
- (10) In section 456(4), in the second sentence, omit the words from “(unless” to “section 216)”.
- (11) In section 456(5)(a) omit the words from “(unless” to “section 216)”.

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### **Supplementary provisions relating to offences**

**12.** In section 730(1) (punishment of offences) after “offences under this Act” substitute “(other than an offence under Part 14 or 15)”.

**13.** Omit section 730(5) (meaning of “officer in default”) and after that section insert—

#### **“Meaning of “officer in default”**

**730A.**—(1) This section applies to—

- (a) offences under this Act (other than an offence under Part 14 or 15),
- (b) offences under the insider dealing legislation, and
- (c) offences under the Companies Consolidation (Consequential Provisions) Act 1985.

(2) For the purposes of an offence to which this section applies “officer who is in default” means any officer who knowingly and wilfully authorises or permits the default, refusal or contravention in question.”.

**14.**—(1) Section 731 (summary proceedings) is amended as follows.

(2) Before subsection (1) insert—

“(A1) This section applies to—

- (a) offences under this Act (other than an offence under Part 14 or 15),
- (b) offences under the insider dealing legislation, and
- (c) offences under the Companies Consolidation (Consequential Provisions) Act 1985.

(3) In subsection (1) for “any offence under the Companies Acts” substitute “an offence to which this section applies”.

(4) In subsections (2) and (3) for “an offence under the Companies Acts” substitute “an offence to which this section applies”.

**15.** In section 732 (prosecution by public authorities), for subsections (1) and (2) substitute—

“(1) Proceedings in England and Wales for an offence under section 245E or 245G may only be brought by or with the consent of the Secretary of State or the Director of Public Prosecutions.”.

**16.**—(1) In section 733 (offences by bodies corporate)—

- (a) in subsection (1) for the words from “any of sections 210” to “453A” substitute “section 245E(3), 245G(7) or 394A(1)”; and
- (b) omit subsection (4).

(2) In section 734(1) (criminal proceedings against unincorporated bodies) for the words from “section 245E(3)” to “453A” substitute “section 245E(3), 245G(7) or 394A(1)”.