These notes refer to the Companies Act 2006 (c.46)
which received Royal Assent on 8 November 2006

COMPANIES ACT 2006

EXPLANATORY NOTES

COMMENTARY

Part 17: a Company's Share Capital

831. This Part of the Act deals with various matters relating to a company's share capital. It replaces Part 4 and (in part) Part 5 of the 1985 Act and contains a mixture of new sections which replace corresponding provisions in the 1985 Act and sections which restate corresponding provisions in that Act. Sections 541, 543 to 544, 547 to 548, 552 to 553, 558, 561, 563 to 568, 570 to 572, 574 to 577, 579 to 582, 584 to 588, 590 to 605, 607 to 609, 611 to 616, 645 to 648 and 655 to 656 restate various provisions in the 1985 Act but do not make any changes to those provisions.

Chapter 1: Shares and Share Capital of a Company

Section 540: Shares

832. As now, generally speaking, references to a "share" in the Companies Acts (defined in section 2) includes stock. However, as recommended by the CLR, in future it will no longer be possible for a company to convert its shares into stock (see *subsection (2)*) but a company that has stock at the date that this provision comes into force will be able to reconvert its stock back into shares (see note on section 620).

Section 542: Nominal value of shares

833. This is a new provision, which is required as a result of the changes to the requirements with respect to the memorandum (see note on section 8).

834. Currently, section 2(5)(a) of the 1985 Act (requirements with respect to memorandum) requires that, in the case of a company having a share capital, the memorandum of a limited company must state the amount of the share capital with which the company proposes to be registered and the division of that share capital into shares of a fixed amount. This capital figure as stated in the memorandum (known as the "authorised share capital") acts as a ceiling on the amount of shares that a company may issue. Such authorised share capital may, however, be increased by ordinary resolution under section 121 of that Act. The CLR recommended that the requirement for a company to have an authorised share capital should be abolished (Final Report, paragraph 10.6), and so the Act does not require a company to state in its memorandum the amount of its authorised share capital.

835. This section is required as a consequence of the repeal of this requirement. It does two key things:

- it makes it clear that the shares in a limited company having a share capital must have a fixed nominal value, e.g. 1p, £1, $1 or 1 euro and therefore prevents a company from issuing shares of no par value (thereby implementing for public companies, Article 8 of the Second Company Law Directive (77/91/EEC)); and

- it places in statute the common law rule that shares may be denominated in any currency and that different classes of shares may be denominated in different currencies. However, this is subject to the requirement in section 765 that a public company may only satisfy its initial authorised minimum share capital requirement if its shares are denominated in either sterling or euros.

836. Where a company purports to allot shares without a fixed nominal value, every officer of the company who is in default commits an offence and is liable to a fine (see *subsections (4) and (5)*). Moreover, such a purported allotment is void (see *subsection (2)*).

837. This section needs to be read alongside section 9, which requires the application for registration of a company that is to be formed with a share capital to include a "statement of capital and initial shareholdings". The contents of this statement are prescribed in section 10 and this includes a requirement to set out the total number of shares and the aggregate nominal value of the shares which are to be taken by the subscribers to the memorandum on formation.

Section 545: Companies having a share capital

838. Section 545 is a new provision which makes it clear that references in the Companies Acts (defined in section 2) to a company having a share capital are to company that has power under its constitution to issue shares.

Section 546: Issued and allotted share capital

839. Section 546 is a new provision which makes it clear that references in the Companies Acts (defined in section 2) to issued or allotted shares include the shares taken by the subscribers to the memorandum on the formation of a company.

Chapter 2: Allotment of Shares: General Provisions

840. Generally speaking, the directors of a company may currently only allot shares (or grant rights to subscribe for shares or to convert any security into shares) if they are authorised to do so by ordinary resolution of the company's members or by the articles.

841. Such an authority may be general or specific (that is, it may, for example, be restricted to a specified allotment, an allotment of shares up to a specified value, or an allotment of shares of a particular class). In either case, the authority must state the "maximum amount of relevant securities that may be allotted under it" and the date when the authority will expire, (which must not be more than five years from the date on which the authority is given). The authority may be renewed for further periods not exceeding five years.

842. There is a relaxation for private companies from the requirement to state the date on which the authority will expire and so such companies may, by elective resolution under section 379A of the 1985 Act, give such authority either for an indefinite period or a fixed period of the company's choice.

843. The Act removes for private companies the requirement for prior authorisation in certain circumstances (described in section 550). It also abolishes the concept of authorised share capital (see note on section 542) and a company's constitution will therefore no longer have to contain a ceiling on the number of shares that the directors are authorised to allot.

Section 549: Exercise by directors of power to allot shares etc

844. This section replaces section 80(1), (2), (9) and (10) of the 1985 Act. It provides that the directors may not allot shares (or grant rights to subscribe for shares or to convert any security into shares) except in accordance with one of the following two sections.

845. *Subsection (2)* of this section provides that directors may allot shares in pursuance of an employees' share scheme without having to comply with one of the following two sections. This mirrors the current position (see section 80(2) of the 1985 Act).

846. Similarly, where a right to subscribe for, or to convert any security into, shares already exists, then the directors may allot shares pursuant to that right without having to comply with one of the following two sections (see *subsection 3*).

847. A director who knowingly allots shares in contravention of the requirements imposed by this section commits an offence. Such an allotment is not, however, invalid.

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

848. In line with the recommendations of the CLR (Final Report, paragraph 4.5), this is a new provision which empowers the directors to allot shares (or to grant rights to subscribe for or convert any security into shares) where the company is a private company which will have only one class of shares after the proposed allotment and removes the current requirement, contained in section 80 of the 1985 Act, for the directors to have prior authority from the company's members for such an allotment of shares. In addition, it provides that the members may, if they wish, restrict or prohibit this power through the articles. The definition of "class of shares" is contained in section 629.

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

849. This section replaces section 80(1) and (3) to (8) of the 1985 Act and applies both to private companies which will have more than one class of shares after a proposed allotment and to public companies. It provides that the directors may only allot shares (or grant rights to subscribe for shares or to convert any security into shares) if they have been given prior authorisation for the proposed allotment by ordinary resolution of the company's members or by the articles.

850. *Subsections (2) to (5)* set out details of the way in which prior authorisation (or a renewal of such authorisation) may be given and, in particular, provides that the authority may not be given for a period of more than five years. An authority given to the directors under this section, and any resolution of the company renewing such an authority, must state "the maximum amount of shares" to be allotted pursuant to the authority. This mirrors the formulation of words used in section 80 of the 1985 Act and enables the members to limit the authority to a specific number of shares or shares up to a given maximum nominal value.

851. *Subsection (8)* makes it clear that an ordinary resolution of the company's members will suffice for the purposes of giving authority to the directors, even where the effect of the resolution is to alter the company's articles of association (which would normally require a special resolution of the company's members).

Section 554: Registration of allotment

852. This is a new provision which requires the directors to register an allotment of shares as soon as practicable (but in any event within two months of the date of allotment). Whereas the 1985 Act imposes a duty on the company to issue certificates within two months after the allotment of its shares it does not stipulate a timescale relating to the step which is anterior to this, namely the registration of the allotment.

853. *Subsection (2)* makes it clear that the requirement to register an allotment of shares does not apply if the company has issued a share warrant in respect of the shares in question (see section 779).

854. Where a company fails to comply with this section, the company and every officer of the company who is in default commits an offence. The penalty for this offence is set out in *subsection (4)*.

Section 555: Return of allotment by limited company

855. This section replaces section 88 of the 1985 Act. As now, within one month of an allotment of new shares in a limited company, the company is required to make a return of allotments to the registrar. This return must contain "*prescribed information*" relating to the allotment (that is, prescribed by the Secretary of State by order or by regulations made under the Act).

856. A return of allotments made under this section must be accompanied by a statement of capital. A statement of capital is in essence a "snapshot" of a company's total subscribed capital at a particular point in time (in this context, the date to which the return of allotments is made up).

857. The requirement for a statement of capital when an allotment of new shares is made is new. It is based on a recommendation by the CLR (Final Report, paragraph 7.30) and for public companies, this implements a requirement in the Second Company Law Directive (77/91/EEC) which states:

"the statutes or instruments of incorporation of the company shall always give at least the following information…(c) when the company has no authorized capital, the amount of the subscribed capital….

"Statutes" and "instruments of incorporation" equate to the articles and memorandum and the need to disclose information pertaining to the aggregate of a company's subscribed capital flows from the abolition of the requirement for a company to have an authorised share capital (see note on section 542).

858. Whilst this Directive only applies to public companies, the requirement to provide a statement of capital, here and elsewhere in the Act, has been extended to private companies limited by shares (and in certain cases to unlimited companies having a share capital, for example, where such companies make their annual return to the registrar). This will mean that the public register will contain up-to-date information on a company's share capital (the requirement for a statement of capital supplements existing provisions which require a company to give notice to the registrar when it amends its share capital in any way).

859. The information which will in future be set out in the statement of capital includes prescribed particulars of the rights attached to each class of shares. Again this information will be prescribed in regulations or by order made under the Act. Such information is currently required to be filed under either section 123 of the 1985 Act (which relates to increases in authorised share capital) or section 128(1) and (2) of that Act (which relates to allotments of a new class of shares).

860. Currently, if shares are allotted as fully or partly paid up otherwise than in cash, the company must deliver the contract that it has with the allottee (or details of this contract if it is not in writing) to the registrar. Such a contract may contain commercially sensitive information which the company would not normally want to disclose. This section does not reproduce this requirement. It should be noted, however, that, in prescribing the information which must be included in the return of allotments, the Secretary of State may require details of any consideration received in respect of shares which are allotted as fully or partly paid up otherwise than in cash.

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

861. This section requires unlimited companies to make a return of allotments to the registrar where the directors allot a new class of shares. This carries forward the provisions of section 128(1) and (2) of the 1985 Act as they apply to unlimited companies. The return must contain "prescribed particulars of the rights attached to the shares", that is such information as may be prescribed by the Secretary of State in regulations or by order made under the Act.

Section 557: Offence of failure to make return

862. This section replaces section 88(5) and (insofar as it relates to a requirement for an unlimited company to register particulars of an allotment of a new class of shares) section 128(5) of the 1985 Act. Where a company fails to comply with the requirements to make a return of allotments to the registrar, every officer of the company who is in default commits an offence.

863. As now under section 88(6), where there is a default in making a return of allotments within the specified time (one month after the allotment) a person who is liable for the default may apply to the court for relief (see *subsection (3)* which extends the right to apply for relief to a person liable under section 556).

Section 559: Provisions about allotment not applicable to shares taken on formation

864. this provision replicates the effect of section 80(2)(a) of the 1985 Act and provides that the allotment provisions in Chapter 2 of this Part do not apply to the shares taken by the subscribers to the memorandum on the formation of a company. Such persons become members of the company in respect of the shares that are taken by them on formation by virtue of section 16 and the provisions of the Act on share allotments do not apply to them.

Chapter 3: Allotment of Equity Securities: Existing Shareholders' Right of Pre-Emption

Section 560: Meaning of "equity securities" and related expressions

865. This section sets out a definition of "equity securities" for the purposes of Chapter 3 of this Part (which is concerned with the allotment of equity securities and existing shareholders' right of pre-emption). It partially restates section 94(2), (3), (3A) and (5) of the 1985 Act. The exception for shares taken by a subscriber to the memorandum and for bonus shares provided in section 94(2) of the 1985 Act is contained in sections 577 and 564. The exclusion of the allotment of shares pursuant to the grant of a right to subscribe for such shares contained in section 93(3) of the 1985 Act is contained in section 561(3).

Section 561: Existing shareholders' right of pre-emption

866. Subject to some exceptions, under section 89(1) of the 1985 Act, a company that is proposing to allot equity securities (defined in section 560) must offer them to existing shareholders first (that is, on a pre-emptive basis). The basic principle (which is unchanged by the Act) is that a shareholder should be able to protect his proportion of the total equity of a company by having the opportunity to subscribe for any new issue of equity securities. This is subject to various exceptions and *subsection (5)* provides a pointer to these exceptions.

Section 562: Communication of pre-emption offers to shareholders

867. This section replaces section 90(1), (5) and (6) of the 1985 Act. Section 90(6) of the 1985 Act provides that where a company communicates a pre-emption offer to its existing shareholders the offer must state a period of not less than 21 days during which it may be accepted and it may not be withdrawn before the end of that period. This section contains a new provision which gives the Secretary of State the power to vary, in regulations made under the Act, the period of 21 days (but not so as to reduce it to fewer than 14 days) – see *subsection (6)*.

868. It also updates the 1985 Act provision to ensure that the communications of pre-emption offers to shareholders continue to be compatible with EU law: in particular, in future companies will be required to give individual notice (which may be in hard copy or

electronic form) to all shareholders who have a registered address in the EEA or who have given an address for service of notices in the EEA (under the 1985 Act, a company is only required to give individual notice to shareholders who have given a service address in the UK). As now, where no relevant address for service has been provided, the company may discharge its obligation by causing notice of the offer to be published in the London, Edinburgh or Belfast Gazette as appropriate.

Sections 569 to 573: Disapplication of pre-emption rights

869. This group of sections deals with the circumstances in which the statutory pre-emption requirements may be disapplied or modified by a power under the articles or by special resolution in accordance with the detailed rules in these sections. The rules replace or restate equivalent provisions in section 95 of the 1985 Act.

870. Section 569 is a new provision which sets out how members of a private company with only one class of shares may authorise the directors to allot shares without complying with the statutory pre-emption provisions.

871. Section 573 is concerned with the disapplication of pre-emption rights in connection with a sale of treasury shares. Generally speaking, where a company buys back its own shares, it is normally required to cancel those shares (see section 706(b)). Certain companies (principally those which are listed or those whose shares are traded on the Alternative Investment Market and equivalent companies in the EEA) may however elect not to cancel shares which have been bought back but may hold the shares "in treasury". A share which is held in treasury may be sold at a future point in time and this facility enables such companies to raise capital more quickly than they would otherwise be able to do, as the directors do not have to obtain prior authority from the company's members before selling treasury shares. However, the provisions of section 561 do apply to sales of treasury shares as they apply to allotments of shares (see section 560(2)(b)).

872. This section applies to a sale of shares which have been held in treasury by the company. It replaces section 95(2A) of the 1985 Act and reproduces the effect of that section by enabling a company's members to give a general power to the directors (through the company's articles or by special resolution of the company's members) to sell such shares as if statutory pre-emption rights did not apply, or applied with modifications.

873. This section also permits the members to confer upon the directors (by special resolution) a specific power which enables them to sell treasury shares as if statutory pre-emption rights did not apply to a specified sale, or applied with modifications.

Chapter 4: Public Companies: Allotment Where Issue Not Fully Subscribed

Section 578: Public companies: allotment where issue not fully subscribed

874. The provisions of this section restate section 84 of the 1985 Act and relate to the allotment of shares by public companies, and apply where not all the shares offered are taken up. A public company must not allot shares following an offer to subscribe for shares unless all the shares offered are taken up or the offer is made on the basis that it will go ahead even if all the shares offered are not taken up or if other conditions specified in the offer are met. It is not possible for the terms of the offer to override the requirements of this section (*subsection 6)*).

875. The purpose of this rule is to protect persons who apply for shares, by ensuring that if the increase in capital is not fully subscribed, the capital will be increased by the amount of the subscriptions received only if the conditions of the issue so provide (Article 28 of the Second Company Law Directive (77/91/EEC)).

876. If 40 days after first making the offer, the offer is unsuccessful because not enough shares have been applied for under the offer, any money or other consideration received

from those that did apply for shares under the offer must be repaid or returned (*subsection (2)*). Interest becomes payable after the expiration of the 48th day after the offer was first made (*subsection (3)*). The rate of interest will be as specified at the time under section 17 of the Judgments Act 1838 (currently 8%). This is a change from section 84(3) of the 1985 Act which sets the interest rate at 5% per annum.

877. The 40 day and 48 day time limits imposed by subsections (2) and (3) now run from the making of the offer rather than from the issue of any prospectus (as was the case under section 84 of the 1985 Act) given that the requirement or otherwise for a prospectus is a matter of securities law.

878. The regulation of public offers, especially requirements relating to prospectuses, is generally a matter of securities law. Sections 82 and 83 of the 1985 Act are, therefore, not restated in this Act.

Section 583: Meaning of payment in cash

879. This section replaces section 738(2) to (4) of the 1985 Act. It provides a definition of "payment in cash" for the purposes of the Companies Acts and is relevant to a number of provisions (for example section 593 requires public companies to obtain an independent valuation of any non-cash consideration where it allots shares otherwise than for cash).

880. *Subsection (3)* provides a definition of "cash consideration" which lists the items currently contained in section 738(2) of the 1985 Act. It is generally accepted that certain forms of payment, in addition to those listed in subsection (3), constitute "payment in cash" where shares in a company are deemed to be paid up or allotted for cash, for example an assured payment obligation under the CREST assured payment system, but this matter is not beyond doubt. (An assured payment obligation is the creation of an obligation to make payment to or for the account of the company in accordance with the rules and practices of the operator of a relevant system as defined by regulation 2(1) of the Uncertificated Securities Regulations 2001). The power contained in *subsection (4)*will enable the Secretary of State to make provision for other forms of payment to be regarded as falling within the definition of "payment in cash". This will eradicate the uncertainty which currently surrounds certain forms of payment and will also "future proof" the current definition should other settlement systems be developed in the future (or should other settlement systems within the EU be identified).

Section 589: Power of court to grant relief

881. Section 589 restates section 113(1) to (7) of the 1985 Act. It enables the court to grant relief, to the applicant, from a liability to the company which has arisen as a result of a contravention of section 585, 587(2) or (4) or 588. There is a minor change in the restatement insofar as the matters to which the court must have regard in applying the just and equitable test in *subsection (3)* also apply where the liability relates to the payment of interest (under section 113 (2)(b)) of the 1985 Act the court is not required to have regard to those matters in applying the just and equitable test).

Section 606: Power of court to grant relief

882. Section 606 restates section 113(1) to (8) of the 1985 Act. It enables the court to grant relief, to the applicant, from a liability to the company which has arisen (under any provision of Chapter 6) in relation to payment in respect of shares in a company or an undertaking given to the company in, or in connection with, payment for any shares in it. There is a minor change in the restatement insofar as the matters to which the court must have regard in applying the just and equitable test in *subsection (2)* also apply where the liability relates to the payment of interest (under section 113 (2)(b)) of the 1985 Act the court is not required to have regard to those matters in applying the just and equitable test).

Chapter 7: Share Premiums

883. Under section 130 of the 1985 Act, where shares in a company are issued at a premium, (that is, at a price which is greater than their nominal value), an amount equal to the premium paid on those shares must be transferred to a non-distributable reserve: the share premium account. This account can only be used in a limited number of circumstances described in section 130.

Section 610: Application of share premiums

884. In line with the recommendations of the CLR (Completing the Structure, paragraph 7.8), this section further restricts the application of the share premium account and in the future, companies will not be able to use the share premium account to write off preliminary expenses (that is, expenses incurred in connection with the company's formation). Companies will continue to be able to use the share premium account to write off any expenses incurred, or commission paid, in connection with an issue of shares but the application of the share premium account in these circumstances will be limited so that the company will only be able to use the share premium account arising on a particular issue of shares to write off expenses incurred or commission paid in respect of that issue. As now, companies will also be able to use the share premium account to pay up new shares to be allotted to existing members as fully paid bonus shares.

885. A further change is that in future companies will not be able to use the share premium account to write off any expenses incurred, commission paid or discount allowed in respect of an issue of debentures or in providing for the premium payable on a redemption of debentures.

Chapter 8: Alteration of Share Capital

Section 617: Alteration of share capital of limited company

886. This section prohibits a limited company from altering its share capital except in the ways permitted under the Act. It includes a signpost to a new provision which will enable companies limited by shares easily to convert (or "redenominate") their share capital from one currency to another (see section 622).

Section 618: Sub-division or consolidation of shares

887. Consolidation of a company's share capital involves combining a number of shares into a new share of commensurate nominal value: for example, ten £1 shares may be combined to make one £10 share. Sub-division of a company's share capital involves dividing a share into a number of new shares with a smaller nominal value: for example, a £10 share may be sub-divided into ten £1 shares.

888. Section 618 replaces section 121(2)(b) and (d) of the 1985 Act. It sets out the circumstances and manner in which a limited company may consolidate or sub-divide its share capital. Where shares in a company are sub-divided or consolidated, the proportion between the amount paid and the amount unpaid (if any) on the original share(s) must remain the same in relation to the share(s) resulting from the sub-division or consolidation. If, for example, £2 is unpaid on a £10 share that is subsequently sub-divided into ten £1 shares, there will now be 20p unpaid on each of those ten shares.

889. A company may exercise a power conferred on it under this section only if the members have passed a resolution authorising it to do so, which may be an ordinary resolution or a resolution requiring a higher majority (as the articles may require). Such a resolution may authorise a company to exercise more than one of the powers conferred on it under this section, for example, the resolution may authorise a sub-division of one class of the company's shares and a consolidation of another. It may also authorise the company to exercise a power conferred on it under this section on more than one occasion or at a

specified time or in specified circumstances. This avoids the directors having to obtain authorisation from the company's members on each and every occasion that a company alters its share capital under this section (which may be inconvenient to the directors and members alike or impractical due to timing constraints).

890. The flexibility to pass a conditional resolution (that is, a resolution that will only take effect if certain conditions are met) given in *subsection (4)(c)* is necessary as a sub-division or consolidation of share capital (or any class of it) may form part of a wider re-organisation of a company's share capital, for example, a reduction of share capital following a redenomination of share capital. It may, therefore, not be appropriate, or necessary, for a company's share capital to be altered in this way if the reorganisation of share capital that the sub-division or consolidation is linked to does not go ahead.

891. Under the 1985 Act a company may only sub-divide or consolidate its share capital if it is authorised to do so by the company's articles (see section 121 of that Act). This restriction has not been retained.

Section 619: Notice to registrar of sub-division or consolidation

892. The section replaces a similar requirement to notify the registrar contained in section 122(1)(a) and (d) of the 1985 Act. Where a company sub-divides or consolidates its share capital under section 618, it will continue to be required to give notice of this alteration to its share capital to the registrar within one month. However, there is a new requirement to file a statement of capital (see *subsections (2) and (3)*), which is in essence a "snap-shot" of the company's total share capital at a particular point in time: in this case following the consolidation/sub-division.

893. For public companies, the requirement for a statement of capital is linked to the abolition of authorised share capital: it implements Article 2 of the Second Company Law Directive (77/91/EEC) which states:

""the statutes or instruments of incorporation of the company shall always give at least the following information…(c) when the company has no authorized capital, the amount of the subscribed capital…".

894. The statement of capital will require the following information to be provided:

- the total number of shares of the company,
- the aggregate nominal value of those shares,
- for each class of shares, prescribed particulars of the rights attached to the shares, the total number of shares of that class and the aggregate nominal value of shares of that class, and
- 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).

895. Whilst this Directive applies only to public companies it is important that the information on the public register is up-to-date. A statement of capital will, therefore, be required where it is proposed that a company formed under the Act will have a share capital on formation and, with limited exceptions (in particular, where there has been a variation of class rights which does not affect the company's aggregate subscribed capital) whenever a limited company makes an alteration to its share capital. A statement of capital is also called for in certain circumstances where an unlimited company having a share capital makes a return to the registrar (see, section 856).

896. In making a statement of capital, a company is required to provide "prescribed particulars of the rights attached to the shares". Here, and elsewhere in the Act where a statement of capital is called for, "prescribed" means prescribed by the Secretary of State in regulations or by order made under the Act.

897. The power conferred on the Secretary of State under this section enables the Secretary of State to specify the particular detail of the information which he requires to be filed with the registrar by a company. A statutory instrument made pursuant to this power will not be subject to any form of Parliamentary scrutiny.

898. Criminal liability for any failure to comply with the procedural requirements as to notice is retained (see *subsection (4)*). The penalty for this offence is set out in *subsection (5)*.

Section 620: Re-conversion of stock into shares

899. Stock cannot be issued directly by a company but arises from a conversion of fully paid up shares into stock under section 121(2)(c) of the 1985 Act. This ability to convert shares into stock has not been retained. A company that currently has stock may, however, wish to re-convert this stock back into fully paid shares, and this is permitted by the following section.

900. Section 620 replaces section 121(2)(c) of the 1985 Act. It retains the ability to re-convert stock back into fully paid shares but removes the requirement for prior authorisation in the articles (currently a company may only re-convert stock back into shares if provision for this is made in its articles).

901. A re-conversion of stock into shares will require an ordinary resolution of the company's members. Such a resolution may give the directors power to convert stock into fully paid shares on more than one occasion; at a specified time; or only if certain conditions are met (see *subsection (3)*). The flexibility to pass a conditional resolution (that is, a resolution that will only take effect if certain conditions are met) is necessary as a re-conversion of stock into shares may form part of a wider re-organisation of a company's share capital.

Section 621: Notice to registrar of reconversion of stock into shares

902. Where a company re-converts stock into shares it must give notice of the alteration to its share capital to the registrar under the provisions in section 621. This requirement replaces a similar provision in section 122(1)(c) of the 1985 Act.

903. A statement of capital is required (see note on section 619).

904. Criminal liability for any failure to comply with the procedural requirements as to notice is retained (see *subsection (4)*). The penalty for this offence is set out in *subsection (5)*.

Section 622: Redenomination of share capital

905. Where a public company applies for a trading certificate under section 117 of the 1985 Act it must satisfy a minimum share capital requirement (known as the "authorised minimum"). There is a similar requirement where a private company re-registers as a public company under section 43 of that Act. The authorised minimum is currently set at £50,000 and must be expressed in sterling. This implements Article 6 of the Second Company Law Directive (77/91/EEC) which requires that, in order that a company may be incorporated or obtain authorisation to commence business, a minimum capital shall be subscribed the amount of which shall be not less than 25000 ECU (expressed in the domestic currency of the Member State). Under section 763, in future the authorised minimum will be capable of being satisfied in sterling (£50,000) or the euro equivalent to the sterling amount. Subject to this change, the Act retains the effect of the 1985 Act provisions on the authorised minimum (see, for example, section 91, section 650 and section 761).

906. Subject to the above qualification (and any restriction in a company's articles) a company is free to allot shares in any currency that it wishes (see section 542(3)). It may also have its share capital made up of shares of a mixture of denominations, for example, one class of a company's shares may be denominated in sterling, whereas another class may be denominated in dollars, euros or some other currency of the company's

choosing. What a company cannot currently do is easily redenominate its share capital (or any class of it) from one currency to another, for example, from dollars to sterling or vice versa. The current procedure involves cancelling existing shares under the court approved procedure for capital reductions set out in section 135 of the 1985 Act or, in the case of private companies only, buying back or redeeming shares out of capital under section 171 of that Act, and then issuing new shares in the desired currency.

907. Section 622 introduces a new procedure that will allow a company limited by shares to redenominate its share capital easily. This requires a resolution of the company's members. (Unlimited companies having a share capital are already free to redenominate their share capital as they see fit and no change to the legislation is required in respect of such companies).

908. *Subsection (2)* of this section provides that the spot rate used when converting a company's share capital from one currency to another must be specified in the resolution to redenominate the company's share capital. There is a choice of spot rates and this is set out in *subsection (3)*.

909. A company is free to pass a conditional resolution under this section (see *subsection (4)*). A resolution will, however, lapse if the redenomination of share capital has not taken effect within 28 days of the date on which the resolution is passed (see *subsection (6)*). Where a resolution lapses, the company will not be able to redenominate its capital unless it passes a new resolution and the redenomination is effected in accordance with the new resolution.

910. *Subsection (7)* makes it clear that, if it wishes, a company may restrict or prohibit a redenomination of its share capital by incorporating a provision to this effect in the company's articles.

911. It should be noted that this section does not make provision for the authorised minimum to continue to be denominated in sterling (or the euro equivalent). This means that once a public company has obtained a trading certificate under section 761 (or previously under section 117 of the 1985 Act) or where a private company has re-registered as a public company, such a company is free, if it wishes, to redenominate all of its share capital, including the authorised minimum into any currency of its choosing.

Section 623: Calculation of new nominal values

912. This section explains how the new nominal value of a share which has been redenominated from one currency to another should be calculated.

Section 624: Effect of redenomination

913. This section makes it clear that a redenomination of a company's share capital (or any class of it) does not affect any rights or obligations that the members may have under the company's constitution or any restrictions affecting members under the company's constitution. In particular, it does not affect entitlement to dividends, voting rights or any liability in respect of amounts unpaid on shares. If, for example, a dividend of 20p was declared on a £1 share prior to a redenomination of that share, and that £1 share is subsequently converted into a $1.5 share, the member who now owns a $1.5 share in the company will still be entitled to a 20p dividend (albeit that the company and the member in question may agree that the 20p dividend can be paid in cents – or indeed in some other currency). Similarly, where a company has issued partly paid shares, the member's liability to the company will remain in the currency in which the share was originally denominated.

Section 625: Notice to registrar of redenomination

914. This section sets out the requirements as to notice where a company redenominates its share capital (or any class of it). Notice must be given to the registrar in accordance

with *subsections (1) and (2)* of this section and there is a requirement for a statement of capital (see note on section 619).

915. A copy of the resolution to redenominate the company's share capital must be forwarded to the registrar within 15 days after it is passed notwithstanding that it may be an ordinary resolution (see section 622(8) which provides that Chapter 3 of Part 3 applies to the resolution and in particular section 30)

916. If a company fails to comply with the procedural requirements as to notice the company and every officer of the company commits an offence. The penalty for this offence is set out in *subsection (5)*.

Section 626: Reduction of capital in connection with redenomination

917. Following a redenomination of a company's share capital, it is likely that the company will be left with shares expressed in awkward fractions of the new currency, for example, 0.997 dollars or 1.01 euros. The company may therefore wish to renominalise the value of the shares affected (that is, alter the nominal value of these shares) to obtain share values in whole units of the new currency. It can do this in one of two ways: if the company has distributable reserves it may capitalise those reserves to increase the nominal value of the shares affected; alternatively, it may reduce its share capital using the procedure set out in section 626.

918. This section enables a company to renominalise the value of its shares by cancelling part of its share capital. A special resolution of the company's members is required but there is no need for the directors to make a solvency statement or for the company to go to court (as required where a company reduces its share capital under Chapter 10 of this Part).

919. Under *subsection (3)*, a resolution to reduce capital in connection with a redenomination must be passed within 3 months of the resolution to redenominate the company's share capital.

920. *Subsection (4)* provides that the amount by which a company can reduce its share capital using this new provision is capped at 10% of the nominal value of the company's share capital immediately after the reduction. This 10% cap is required by the Second Company Law Directive (77/91/EEC) and applies to any reduction of capital in a public company which is not approved by the court.

921. Where a company reduces its share capital under this section, the amount by which the company's share capital is reduced must be transferred to a new non-distributable reserve (see section 628).

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

922. This section sets out the requirements as to notice where a company reduces its share capital in connection with a redenomination of its share capital (that is, to renominalise the value of its shares). Notice must be given to the registrar in accordance with *subsection (1)* of this section. This notice must be accompanied by a statement of capital (see note on section 619).

923. The resolution to reduce the share capital must be filed with the registrar in accordance with section 30.

924. The reduction of capital will not take effect until the documents that are required to be delivered to the registrar under *subsections (1) and (2)* are registered by the registrar (see *subsection (5)).*

925. In addition to delivering the above documents to the registrar, within 15 days of the date that a resolution to reduce capital in connection with a redenomination is passed,

under *subsection (6)* the company must also deliver to the registrar a statement made by the directors confirming that the reduction of share capital was made in accordance with *subsection (4)* of section 626.

926. If a company fails to comply with the procedural requirements as to notice the company and every officer of the company commits an offence. The penalty for this offence is set out in *subsection (8)*. In addition, where the statement made by the directors under *subsection (6)* is misleading, false or deceptive in a material particular, the directors are liable to an offence under section 1112.

Section 628: Redenomination reserve

927. Where a company reduces its share capital under section 626 it must transfer an amount equal to the value of the reduction to a non-distributable reserve known as the redenomination reserve.

928. This section provides that amounts transferred to the redenomination reserve may be used by the company in paying up shares to be allotted to existing members as fully paid bonus shares. Subject to this, the provisions of the Companies Acts relating to the reduction of a company's share capital, apply to the redenomination reserve as if it were paid-up share capital. These provisions mirror those contained in section 733 (which restates section 170 of the 1985 Act).

Chapter 9: Classes of Shares and Class Rights

929. "Classes of shares" (or "class rights") is not defined in the 1985 Act but at common law this term is normally used where the rights that attach to a particular share relate to matters such as voting rights, a right to dividends and a right to a return of capital when a company is wound-up. Rights attach to a particular class of shares if the holders of shares in that class enjoy rights that are not enjoyed by the holders of shares in another class.

Section 629: Classes of shares

930. This section provides that for the purposes of the Act, shares are of one class if the rights attached to them are in all respects uniform. It reproduces the provision in section 128(2) of the 1985 Act. It is particularly relevant to the provisions of section 550 and section 569. This definition of "classes of shares" also applies in determining the extent to which shares constitute different classes for the purposes of the statement of capital required to be filed under various provisions of the Bill (see note on section 619).

Section 630: Variation of class rights: companies having a share capital

931. On variation of class rights the CLR recommended (Final Report, paragraph 7.28) that the current provisions should be retained with some simplification, and extended to companies without a share capital (see section 631).

932. Section 630 replaces section 125 of the 1985 Act. It is concerned with the manner in which rights attached to a class of shares may be varied. Class rights typically cover matters such as voting rights, rights to dividends and rights to a return of capital on a winding up.

933. Currently class rights may be set out in the memorandum or articles or elsewhere, and provision may or may not be made for their alteration. Under the Act it will not be possible for class rights to be set out in the memorandum (see section 8) and where class rights attaching to shares in an existing company are specified in the memorandum these will be deemed, by virtue of section 28, to be a provision in the company's articles.

934. Class rights are "attached to a class of shares" (see *subsection (1)*). Where all the shares in a company fall within the one class, there are no class rights, only shareholder rights.

What amounts to a class is not defined either in the current law or the Act (other than in section 629) and remains a matter for case law.

935. The current requirement for an extraordinary resolution where a company is proposing to vary the rights attached to a class of its shares is replaced with a requirement for a special resolution (see *subsection (4)(b)*). The Act abolishes the concept of an extraordinary resolution. Special resolution is defined in section 283.

936. *Subsections (2) and (4)* provide that rights may be varied in accordance with the company's articles or, where the articles make no provision for a variation of class rights, if the holders of at least three-quarters in nominal value of the issued shares of that class consent in writing or a special resolution passed by the holders of that class sanctions the variation. This means that the articles may specify a less demanding procedure for a variation of class rights than the statutory scheme (for example, that the holders of 51% by nominal value of the class consent in writing), or may permit a simple majority of the class at a class meeting.

937. The provisions of section 630 are expressed to be without prejudice to any other restriction on the variation of rights (see *subsection (3)*). This has two important effects. First, if and to the extent that the company has adopted a more onerous regime in its articles for the variation of class rights, for example requiring a higher percentage than the statutory minimum, the company must comply with the more onerous regime. Second, if and to the extent that the company has protected class rights by making provision for the entrenchment of those rights in its articles (see section 22), that protection cannot be circumvented by changing the rights attached to a class of shares under this section.

Section 631: Variation of class rights: companies without a share capital

938. This section extends the statutory provisions on variation of class rights to companies without a share capital. Companies limited by guarantee (which since December 1980 cannot be formed with a share capital) may, for example, have different classes of members with different voting rights.

939. At present the question of how members' rights may be varied will depend to a large extent on whether provision has been made, either in the memorandum or articles, for their variation. Under the Act class rights may also be varied in accordance with this section, which contains new provisions, comparable to those for companies with a share capital. Thus there is a minimum requirement that class rights may be varied if three-quarters of that class consent in writing or a special resolution of those members sanctions the variation, unless the company has made provision for a less onerous regime to apply in its articles. Again, a company may also make provision, in its articles, for a more onerous regime to apply than that provided in this section and where they do the company must comply with the regime set out in the articles.

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

940. This section preserves the court's powers under various other provisions of the Act and substantially restates section 126 of the 1985 Act.

Sections 633 and 634: Right to object to variation

941. Section 633 replaces section 127 (which confers a right on shareholders to object to a variation of class rights). It sets out the procedure that must be followed where there is an objection to a variation of the rights attached to a class of a company's shares and enables shareholders holding not less in 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 approving the variation) to apply to the court for the variation to be cancelled.

942. Section 634 makes similar provision in respect of a variation of class rights in companies not having a share capital. This is a new provision which enables members, amounting to not less than 15% of the members of the class affected (being persons who did not consent to or vote in favour of the resolution approving the variation), to apply to the court to have the variation cancelled and gives the court the power to confirm the variation, or disallow it if the court is satisfied that it would unfairly prejudice the members in that class.

Section 635: Copy of court order to be forwarded to the registrar

943. Section 635 sets out the procedural requirements as to notice where the court has made an order on an application under section 633 or 634. Where the court has made an order on application under these sections, the company must forward a copy of that order to the registrar within 15 days of the date on which the order is made. Where a company fails to comply with the provisions of this section, the company, and every officer of the company who is in default, commits an offence (see *subsections (2) and (3)*).

Section 636 to 640: Matters to be notified to the registrar

944. These sections replace various provisions in sections 128 and 129 of the 1985 Act which are concerned with notification to the registrar of the creation of, and variations to, rights attached to a class of a company's shares (section 128 of the 1985 Act) or class rights of members (section 129 of that Act).

945. Under the Act, where a limited company creates a new class of shares, it will be required to provide details of the rights attached to the shares in the return of allotment and statement of capital required under section 555. There is a similar requirement in section 556 where an unlimited company allots a new class of share. Those provisions replace section 128(1) and (2) of the 1985 Act.

946. In addition, where a company varies the rights attached to any of its shares (or assigns a name or other designation, or a new name or other designation to any class or description of its shares) it will in future be required to register particulars of the rights affected under section 637 (or 636) irrespective of how the variation in rights was achieved. Currently companies are not required to provide this information if the rights attached to a particular share or class of shares are varied by an amendment to the company's memorandum or articles or by special resolution or agreement of the company's members which is required to be filed under section 380 of the 1985 Act. Sections 638 to 640 make similar changes to the disclosure requirements which apply to companies limited by guarantee not having a share capital and unlimited companies not having a share capital which may, nevertheless, have different classes of members.

947. It should be noted, that, in contrast to other alterations to a company's share capital, there is no requirement in section 637 for a statement of capital (see note on section 619). Such a requirement would be superfluous, as a variation of class rights will not result in a change to the aggregate amount of a company's subscribed capital.

Chapter 10: Reduction of Share Capital

948. Section 135 of the 1985 Act lays down a statutory procedure under which a limited company may, if authorised by its articles, reduce its share capital. This requires a special resolution of the company's members and the reduction must be confirmed by the court. Companies limited by shares may also reduce their share capital under section 171 (private company redemption or purchase of own shares out of capital) and sections 146 to 147 of the 1985 Act (which require a public company which acquires shares in any of the specified ways, for example, through forfeiture for failure to pay up, to cancel those shares within a specified period), the provisions of both of which are carried forward by the Act. A reduction of capital may also occur as a result of the court making an order for the purchase by a company of its members' shares.

949. A company may wish to reduce its share capital for a variety of reasons, for example, where its capital is in excess of the company's wants or where the value of the company's net assets has fallen below the amount of its capital (as stated in the company's accounts) and the position is likely to be permanent.

Section 641: Circumstances in which a company may reduce its share capital

950. This section replaces section 135(1) and (2) of the 1985 Act. It sets out the circumstances and manner in which a company limited by shares may reduce its share capital. As recommended by the CLR (Final Report, paragraph 10.6), in future a private company limited by shares will be able to reduce its share capital using a new solvency statement procedure for capital reductions (see section 642).

951. A company may only reduce its share capital under section 135 of the 1985 Act if it is authorised to do so by its articles. In line with the recommendations of the CLR (Completing the Structure, paragraph 2.15), the requirement for prior authorisation in the articles has not been retained but, if it wishes, a company may restrict or prohibit a reduction of capital by making provision to this effect in its articles (see *subsection (6)*).

952. *Subsection (1)(a)* contains a signpost to a new provision, which will enable a private company limited by shares to reduce its share capital using the new solvency statement procedure (see above). In addition, private companies and public companies alike will continue to be able to use the current court approved procedure for capital reductions – which is retained in *subsection (1)(b)*.

953. In the case of a private company limited by shares which is proposing to use the new solvency statement procedure to effect a reduction of capital, the company may only reduce its share capital under *subsection (1)(a)* if it will have at least one member remaining after the proposed reduction (see *subsection (2)*). That member need only hold one share in the company but that share must not be a redeemable share. The principle behind this requirement is that a private company limited by shares should not be capable of reducing its share capital to zero unless the reduction of capital is sanctioned by the court. This mirrors the existing equivalent provision in section 162(3) of the 1985 Act – which applies to a purchase of own shares.

954. Both the solvency statement procedure for capital reductions and the court-approved procedure require a special resolution of the company's members. Under *subsection (5)* a special resolution to reduce a company's share capital may not provide for the proposed reduction to take effect on a date later than the date on which the resolution to reduce capital takes effect. Under the solvency statement procedure a resolution to reduce capital will take effect when the documents referred to in section 644 have been registered by the registrar (see section 644(4)). This would operate to prevent a company passing a resolution on, say, 1st January stating that the reduction is to take effect on 1st October. Under the court approved procedure, the resolution will take effect on the registration of the court order and statement of capital or, in the context of a reduction forming part of a compromise or arrangement under Part 26, on delivery of those documents to the registrar (unless the court orders otherwise) (see section 649).

Section 642: Reduction of capital supported by solvency statement

955. This section sets out the conditions that must be satisfied in order for a private company limited by shares to reduce its share capital using the new solvency statement procedure.

956. The procedural requirements that the directors must follow when they propose a capital reduction using the solvency statement route are set out in *subsections (1) to (3)* which provides that the solvency statement made in connection with a reduction of capital by a private company cannot be made more than 15 days before the date on which the resolution to reduce capital is passed. It also provides that both the resolution and the solvency statement must be filed with the registrar in accordance with the provisions of section 644.

957. The solvency statement must also be made available to the company's members when they vote on the resolution to reduce capital and the procedure for providing a copy of the solvency statement to the members varies according to whether the resolution to reduce capital is proposed as a written resolution or at a meeting of the company's members (see *subsections (2) and (3)*). Whilst a failure to observe these procedural requirements will not affect the validity of the resolution to reduce capital, if a solvency statement which has not been provided to the company's members in accordance with the provision of this section is subsequently filed with the registrar, every officer of the company who is in default commits an offence (see section 644).

Section 643: Solvency statement

958. A solvency statement made under section 643 must be made by all of the directors. If one or more of the directors is unable or unwilling to make this statement, the company will not be able to use the solvency statement procedure to effect a reduction of capital unless the dissenting director or directors resign (in which case the solvency statement must be made by all of the remaining directors).

959. The solvency statement must be in the "prescribed form" and "prescribed" in this context means prescribed by the Secretary of State in regulations or by order made under the Act.

960. The solvency statement must state the date on which it is made and the name of each director of the company but there is no requirement that the directors must all be in the same location when they make this statement. The registrar will be able to make rules under section 1068 as to the form of the solvency statement.

961. In forming their opinions, the directors must take account of all the company's liabilities including contingent and prospective liabilities (see *subsection (2)*). So, in circumstances where a company holds redeemable preference shares which, for the purposes of the accounting standards that applied to the company on the date that the directors made the solvency statement, are treated as liabilities, a proposed redemption or purchase of these shares in the relevant period should be treated as a contingent or prospective liability.

962. If the directors make a solvency statement without having reasonable grounds for the opinions expressed in it, and that statement is subsequently delivered to the registrar, every director who is in default commits an offence (see *subsection (4)*). The penalty for this offence is set out in *subsection (5)*.

Section 644: Registration of resolution and supporting documents

963. This section sets out the requirements as to delivery of the solvency statement and other key documents to the registrar. The resolution to reduce capital itself must be filed with the registrar within the same time period as currently applies – that is, within 15 days of the date that it is passed (see section 30) and it will not take effect until the solvency statement and statement of capital (see *subsections (1)* and *(2)*) are registered by the registrar. As with all circumstances where the company makes an alteration to its subscribed capital, the company is required to deliver a statement of capital to the registrar (see note on section 619).

964. In addition to making a solvency statement in accordance with section 643, the directors must also make a statement confirming that the solvency statement was made not more than 15 days before the date on which the resolution to reduce capital was passed and that this statement was provided to the company's members in accordance with section 642 – see *subsection (5)*.

965. In addition to the new offences which are set out in sections 643(4) (directors making solvency statement without reasonable grounds for the opinion expressed in it) and *subsection (7)* (company delivering solvency statement that was not provided

to members to registrar), where a company fails to comply with any of the filing requirements under section 644, an offence is committed by the company and every officer of the company who is in default (see *subsection (8)*). The penalty for this offence is set out *subsection (9)*.

Sections 645 to 649: Reduction of capital confirmed by the court

966. These sections replace or restate various provisions in the 1985 Act that are concerned with reductions of capital confirmed by order of the court.

967. Sections 645 and 646 restate section 136 of the 1985 Act which is concerned with the procedure for making an application to court to confirm a reduction of capital (including the creditors' right to object). If, on such an application, an officer of the company intentionally or recklessly conceals a creditor or misrepresents the nature or amount of a debt owed by the company, or is knowingly concerned in any such concealment or misrepresentation he commits an offence (see section 647). As now the court may make an order confirming the reduction of capital on such terms and conditions as it thinks fit (see section 648 which restates section 137 of the 1985 Act).

968. Section 649 replaces section 138(1) to (4) of the 1985 Act. Under section 138 of that Act, a resolution to reduce capital using the existing court approved scheme takes effect when the court order confirming the reduction and minute of the reduction are registered by the registrar. The minute (which must be approved by the court) sets out key information regarding the company's share capital immediately after the reduction. Section 649 updates the 1985 Act provisions by replacing the current requirement for a minute of the reduction with a statement of capital (see note on section 619). Like the minute confirming the reduction, this statement must be approved by the court.

969. In line with the CLR's recommendations (Final Report, paragraph 13.11), *subsection (3)(a)(i)* of this section provides that a reduction of capital that forms part of a compromise or arrangement under Part 26 of the Act will take effect at the same time as other aspects of that compromise or arrangement: namely on delivery of the court order confirming the reduction (and statement of capital approved by the court) to the registrar (unless the court orders that it should take effect on the registration of these documents) (see new *subsection (3)(a)(ii)*).

970. In all other cases, that is, where the reduction of capital does not form part of a compromise or scheme of arrangement under Part 26, where a company reduces its share capital using the court approved procedure the reduction will, as now, take effect on registration of the court order confirming the reduction (and statement of capital) by the registrar. *Subsection (5)* requires the registrar to certify the registration of the order and statement of capital. *Subsection (6)* restates section 138(4) of the 1985 Act in relation to such certificate.

Section 651: Expedited procedure for re-registration as a private company

971. This section, together with section 650, substantially restates section 139 of the 1985 Act and provides for the consequences where the court confirms the reduction by a public company of its share capital below the authorised minimum (defined in section 763): in particular they facilitate the re-registration of the company as private.

972. *Subsection (3)* replaces section 139(4) of the 1985 Act. It introduces a requirement to send a copy of the court's order (that is, the order authorising the company to be so re-registered without its having passed a special resolution) to the registrar, together with an application for re-registration. The current requirement for the application to be signed by a director (or secretary) has not been retained.

Sections 652 and 653: Effect of reduction of capital

973. These sections restate section 140 of the 1985 Act (with the exception of references to the "minute" being replaced with references to the statement of capital) which is concerned with the liability of a company's members in respect of any amounts unpaid on its shares following a reduction of capital. As now, there are special rules where a creditor was omitted from the list of creditors settled by the court.

Chapter 11: Miscellaneous and Supplementary Provisions

Section 654: Treatment of reserve arising from reduction of capital

974. This is a new provision which enables the Secretary of State, by order, to specify the circumstances in which a reserve arising from a reduction of capital will be distributable.

975. Whilst there is no requirement in the Act (or indeed the 1985 Act) to create a statutory reserve following such a reduction, we understand that it is usual for companies to create an accounting reserve in these circumstances to "balance the books" (that is, the section relates to reserves that arise as a result of generally accepted accounting treatments). Currently, the question whether a reserve arising from a reduction of capital (which, for a limited company, may currently only be made pursuant to a court order) may be treated as a realised profit for the purposes of computing whether a company has sufficient distributable profits to make a distribution, is the subject of technical guidance issued by the Institutes of Chartered Accountants. The Act introduces a new procedure which enables private companies to reduce their share capital without going to court (see section 641) which is not on all fours with the court approved route (in particular there is no requirement to settle a list of creditors or to provide security for the company's debts) and in the circumstances it is desirable to deal with the question of when amounts credited to such a reserve should be treated as a realised profit in statute. Owing to the technical nature of the rules that will need to be made this issue will be dealt with in secondary legislation. An order made under section 654 will however be subject to the affirmative resolution procedure – that is, the regulations will need to be approved by both Houses of Parliament.

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

976. Section 656 restates section 142(1) and (3) of the 1985 Act. It sets out the procedure that must be followed where the net assets of a public company fall below half (or less) of the company's called up share capital. *Subsection (4)* imposes liability on any director who knowingly authorised or permitted a failure to call a meeting as required by this section.

Section 657: General power to make further provision by regulations

977. This is a new provision which enables the Secretary of State, in regulations made under the Act, to modify various provisions in Part 17 of the Act (see *subsection (1)*).

978. Regulations made under this section may amend or repeal any of the specified provisions or make such other provision as appears to the Secretary of State appropriate in place of those provisions. This will enable the Secretary of State to future-proof the specified provisions in this Part of the Act.

979. Regulations made pursuant to the power in this section are subject to the affirmative resolution procedure.