

## SCHEDULE 4

Article 220(4)

### Modified application of the Companies Act 2006 to banks etc in resolution

#### Modifications etc. (not altering text)

- C1** [Sch. 4](#) applied (with modifications) (31.12.2023) by [The Resolution of Central Counterparties \(Modified Application of Corporate Law and Consequential Amendments\) Regulations 2023 \(S.I. 2023/1313\)](#), regs. 1(2), **5**

## PART 1

### Provisions concerning the exercise of certain rights of shareholders in listed companies

**1.** In relation to a company under resolution, this Part modifies the application of provisions of the Companies Act 2006 <sup>M1</sup> which concern the exercise of certain rights of shareholders in listed companies <sup>M2</sup>.

#### Marginal Citations

- M1** [2006 c. 46](#).  
**M2** The modifications have effect in relation to provisions of the Act inserted, substituted or amended by [S.I. 2009/1632](#).

**2.** Section 145 (effect of provisions of articles as to enjoyment or exercise of members' rights) has effect as if, in subsection (3), paragraphs (ea) and (ga) were omitted.

**3.** Section 153 (exercise of rights where shares held on behalf of others: members' requests) has effect as if, in subsection (1), paragraph (ba) were omitted.

**4.** Section 282 (ordinary resolutions) has effect as if, in subsection (4), for “, by proxy or in advance (see section 322A)” there were substituted “ or by proxy ”.

**5.** Section 283 (special resolutions) has effect as if, in subsection (5), for “, by proxy or in advance (see section 322A)” there were substituted “ or by proxy ”.

**6.** Section 284 (votes: general rules) has effect as if, in subsection (5), the entry for section 322A were omitted.

**7.** Section 303 (members' power to require directors to call general meeting) has effect as if—

(a) in subsection (2)(a) and (b) for “5%” there were substituted “ the required percentage ”; and

(b) after subsection (2) there were inserted—

“(3A) The required percentage is 10%, except that in the case of a private company it is 5% if more than twelve months have elapsed since the end of the last general meeting—

(a) which was called in pursuance of a requirement under this section, or

(b) in relation to which any members of the company had (by virtue of an enactment, the company's articles or otherwise) rights with respect to the circulation of a resolution no less extensive than they would have had if the meeting had been so called at their request.”.

8. Section 307 (notice required of general meeting) has effect as if subsections (A1) and (A2) were omitted.
9. Part 13 (resolutions and meetings) has effect as if section 307A (notice required of general meeting: certain meetings of traded companies) were omitted.
10. Section 311 (contents of notices of meetings) has effect as if—
- (a) in subsection (2) the words “In relation to a company other than a traded company,” were omitted; and
  - (b) subsection (3) were omitted.
11. Part 13 has effect as if the following sections were omitted—
- (a) section 311A (traded companies: publication of information in advance of general meeting); and
  - (b) section 319A (traded companies: questions at meetings).
12. Section 327 (notice required of appointment of proxy etc) has effect as if—
- (a) subsection (A1) were omitted; and
  - (b) in subsection (1) for “The following provisions apply in the case of traded companies and other companies as regards” there were substituted “ This section applies to ”.
13. Section 330 (notice required of termination of proxy's authority) has effect as if—
- (a) subsection (A1) were omitted; and
  - (b) in subsection (1) for “The following provisions apply in the case of traded companies and other companies as regards” there were substituted “ This section applies to ”.
14. Part 13 has effect as if section 333A (traded company: duty to provide electronic address for receipt of proxies etc) were omitted.
15. Section 334 (application to class meetings) has effect as if—
- (a) in subsection (1) for “subsections (2) to (3)” there were substituted “ subsections (2) and (3) ”;
  - (b) in subsection (2)—
    - (i) after paragraph (a) there were inserted “and”; and
    - (ii) after paragraph (b) the word “and” and paragraph (c) were omitted; and
  - (c) subsection (2A) were omitted.
16. Section 336 (public companies and traded companies: annual general meeting) has effect as if—
- (a) subsection (1A) were omitted;
  - (b) in subsections (2) and (3), in each place where they appear, the words “or (1A)” were omitted; and
  - (c) in the heading the words “and traded companies” were omitted.
17. Section 337 (public companies and traded companies: notice of AGM) has effect as if—
- (a) in subsection (1) the words “or a private company that is a traded company” were omitted;
  - (b) in subsection (2) the words “of a public company that is not a traded company” were omitted;
  - (c) subsection (3) were omitted; and
  - (d) in the heading the words “and traded companies” were omitted.

- 18.** Part 13 has effect as if the following sections were omitted—
- (a) section 338 (public companies: members' power to require circulation of resolutions for AGMs); and
  - (b) section 338A (traded companies: members' power to include other matters in business dealt with at AGM).
- 19.** Section 341 (results of poll to be made available on website) has effect as if—
- (a) in subsection (1) the words “that is not a traded company” were omitted; and
  - (b) subsections (1A) and (1B) were omitted.
- 20.** Section 352 (application of provisions to class meetings) has effect as if for subsections (1) and (1A) there were substituted—
- “(1) The provisions of—
- (a) section 341 (results of poll to be made available on website), and
  - (b) sections 342 to 351 (independent report on poll),
- apply (with any necessary modifications) in relation to a meeting of holders of a class of shares of a quoted company in connection with the variation of the rights attached to such shares as they apply in relation to a general meeting of the company.”.
- 21.** Section 360 (computation of periods of notice etc: clear day rule) has effect as if, in subsection (1)—
- (a) the entry for section 307A(1), (4), (5) and (7)(b) were omitted
  - (b) after the entry for section 314(4)(d) there were inserted “and”; and
  - (c) the entries for sections 337(3), 338(4)(d)(i) and 338A(5) were omitted.
- 22.** Section 360A (electronic meetings and voting) has effect as if subsections (2) and (3) were omitted.
- [<sup>F1</sup>23.** Part 13 has effect as if the following sections were omitted—
- (a) section 360AA (traded companies: confirmation of receipt of electronic voting);
  - (b) section 360B (traded companies: requirements for participating in and voting at general meetings); and
  - (c) section 360BA (traded companies: right to confirmation of vote after a general meeting).]

#### Textual Amendments

- F1** Sch. 4 para. 23 substituted (28.12.2020) by [The Bank Recovery and Resolution \(Amendment\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1350\)](#), regs. 1(2), 60

## PART 2

### Provisions concerning mergers and divisions of public limited liability companies

**24.** In relation to a company under resolution, Part 27 of the Companies Act 2006 (mergers and divisions of public companies) has effect as if, in section 902 (application of this Part), for subsection (3) there were substituted—

“(3) This Part does not apply where the company in respect of which the compromise or arrangement is proposed—

- (a) is being wound up; or
- (b) is a company under resolution for the purposes of Part 17 of the Bank Recovery and Resolution (No. 2) Order 2014 <sup>M3</sup>.”.

#### **Marginal Citations**

**M3** See article 216(3) of this Order.

## **PART 3**

### Provisions concerning the maintenance and alteration of a company's share capital

**25.** In relation to a company under resolution, this Part modifies the application of provisions of the Companies Act 2006 made—

- (a) for the co-ordination of safeguards in respect of the formation of public limited liability companies and the maintenance and alteration of their capital; or
- (b) for equivalent purposes in relation to companies to which the Safeguards Directive does not apply.

**26.** Section 550 (power of directors to allot shares etc: private company with only one class of shares) has effect as if—

- (a) the existing provision were subsection (1); and
- (b) after that provision there were inserted—

“(2) In relation to a company which is a company under resolution for the purposes of Part 17 of the Bank Recovery and Resolution (No. 2) Order 2014, any provision in the company's articles which prohibits the directors from exercising the power referred to in subsection (1) is to be disregarded.”.

**27.** Section 551 (power of directors to allot shares etc: authorisation by company) has effect as if after subsection (9) there were inserted—

“(10) In relation to a company which is a company under resolution for the purposes of Part 17 of the Bank Recovery and Resolution (No. 2) Order 2014—

- (a) the maximum amount of shares that may be allotted under the authorisation may be exceeded where necessary for the use of resolution tools, powers and mechanisms (within the meaning given in article 216 of that Order) in relation to the company;
- (b) if the maximum amount is exceeded, the statement of that amount made in the authorisation is deemed to have been increased under subsection (4) by the amount of the excess;
- (c) the authorisation does not expire until it is renewed or revoked after the company has ceased to be a company under resolution; and
- (d) the authorisation may not be revoked or varied while the company is a company under resolution.”.

**28.** Part 17 (a company's share capital) has effect as if the following sections were omitted—

- (a) section 561 (existing shareholders' right of pre-emption); and
- (b) section 568 (exclusion of pre-emption right: articles conferring corresponding right).

**29.** Section 569 (disapplication of pre-emption rights: private company with only one class of shares) has effect as if it provided that a determination made under subsection (1)(b) does not have effect.

**30.** Section 570 (disapplication of pre-emption rights: directors acting under general authorisation) has effect as if it provided that a determination made under subsection (1)(b) does not have effect.

**31.** Section 571 (disapplication of pre-emption rights by special resolution) has effect as if, in subsection (1)—

- (a) after paragraph (a) “, or” were omitted; and
- (b) paragraph (b) were omitted.

**32.** Section 586 (public companies: shares must be at least one-quarter paid-up) has effect as if for subsection (2) there were substituted—

“(2) This does not apply to shares allotted—

- (a) in pursuance of an employers' share scheme; or
- (b) by the use of resolution tools, powers and mechanisms (within the meaning given in article 216 of the Bank Recovery and Resolution (No. 2) Order 2014) in relation to a company which is a company under resolution for the purposes of Part 17 of that Order.”.

**33.** Section 593 (public company: valuation of non-cash consideration for shares) has effect as if after subsection (2) there were inserted—

“(2A) In relation to a company which is a company under resolution for the purposes of Part 17 of the Bank Recovery and Resolution (No. 2) Order 2014, subsection (1) does not prevent the allotment of shares by the use of resolution tools, powers and mechanisms (within the meaning given in article 216 of that Order), and for the purposes of the Companies Acts such a share is deemed to be fully paid up.”.

**34.** Section 617 (alteration of share capital of limited company) has effect as if, in subsection (5), at the end there were inserted—

“(f) the alteration of the share capital of a company, which is a company under resolution for the purposes of Part 17 of the Bank Recovery and Resolution (No. 2) Order 2014, by the use of resolution tools, powers and mechanisms (within the meaning given in article 216 of that Order)”.

**35.** Section 618 (sub-division or consolidation of shares) has effect—

- (a) as if subsection (3) were omitted; and
- (b) where the articles of a company under resolution would otherwise exclude or restrict the exercise of any power conferred by that section, as if that section provided that the exclusion or restriction does not have effect.

**36.** Section 656 (public companies: duty of directors to call meeting on serious loss of capital) has effect as if at the end there were inserted—

“(7) This section does not apply to a company which is a company under resolution for the purposes of Part 17 of the Bank Recovery and Resolution (No. 2) Order 2014 (“the Order”).

(8) Where the net assets of such a company became half or less of its called-up share capital before the date on which the company became a company under resolution—

- (a) the duty of the directors to call a general meeting of the company under subsection (1) ceases to have effect on that date;

**Changes to legislation:** There are currently no known outstanding effects for the The Bank Recovery and Resolution (No. 2) Order 2014, SCHEDULE 4. (See end of Document for details)

- (b) a general meeting which has been called under subsection (1) but has not yet taken place is deemed to have been cancelled on that date; and
- (c) any resolution passed at such a meeting which has taken place is subject to the use of resolution tools, powers and mechanisms (within the meaning given in article 216 of the Order) in relation to the company.”.

**Changes to legislation:**

There are currently no known outstanding effects for the The Bank Recovery and Resolution ( No. 2) Order 2014, SCHEDULE 4.