

CHAPTER 3

SUPPLEMENTARY PROVISIONS

Accounting matters

841 Realised losses and profits and revaluation of fixed assets

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

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

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

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

843 Realised profits and losses of long-term insurance business

- (1) The provisions of this section have effect for the purposes of this Part as it applies in relation to an authorised insurance company carrying on long-term business.
- (2) An amount included in the relevant part of the company’s balance sheet that—
 - (a) represents a surplus in the fund or funds maintained by it in respect of its long-term business, and
 - (b) has not been allocated to policy holders or, as the case may be, carried forward unappropriated in accordance with asset identification rules made under section 142(2) of the Financial Services and Markets Act 2000 (c. 8),
 is treated as a realised profit.
- (3) For the purposes of subsection (2)—
 - (a) the relevant part of the balance sheet is that part of the balance sheet that represents accumulated profit or loss;
 - (b) a surplus in the fund or funds maintained by the company in respect of its long-term business means an excess of the assets representing that fund or those funds over the liabilities of the company attributable to its long-term business, as shown by an actuarial investigation.
- (4) A deficit in the fund or funds maintained by the company in respect of its long-term business is treated as a realised loss.
 For this purpose a deficit in any such fund or funds means an excess of the liabilities of the company attributable to its long-term business over the assets representing that fund or those funds, as shown by an actuarial investigation.
- (5) Subject to subsections (2) and (4), any profit or loss arising in the company’s long-term business is to be left out of account.
- (6) For the purposes of this section an “actuarial investigation” means an investigation made into the financial condition of an authorised insurance company in respect of its long-term business—
 - (a) carried out once in every period of twelve months in accordance with rules made under Part 10 of the Financial Services and Markets Act 2000, or
 - (b) carried out in accordance with a requirement imposed under section 166 of that Act,
 by an actuary appointed as actuary to the company.
- (7) In this section “long-term business” means business that consists of effecting or carrying out contracts of long-term insurance.
 This definition must be read with section 22 of the Financial Services and Markets Act 2000, any relevant order under that section and Schedule 2 to that Act.

844 Treatment of development costs

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

This is subject to the following exceptions.

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

Distributions in kind

845 Distributions in kind: determination of amount

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

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

846 Distributions in kind: treatment of unrealised profits

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

Consequences of unlawful distribution

847 Consequences of unlawful distribution

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

Other matters

848 Saving for certain older provisions in articles

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

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

849 Restriction on application of unrealised profits

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

850 Treatment of certain older profits or losses

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

851 Application of rules of law restricting distributions

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

852 Saving for other restrictions on distributions

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

853 Minor definitions

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

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

PART 24

A COMPANY’S ANNUAL RETURN

854 Duty to deliver annual returns

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

855 Contents of annual return: general

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

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

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

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

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

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

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

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

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

858 Failure to deliver annual return

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

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

859 Application of provisions to shadow directors

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

PART 25

COMPANY CHARGES

CHAPTER 1

COMPANIES REGISTERED IN ENGLAND AND WALES OR IN NORTHERN IRELAND

Requirement to register company charges

860 Charges created by a company

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

861 Charges which have to be registered: supplementary

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

862 Charges existing on property acquired

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

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

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

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

864 Additional registration requirement for commission etc in relation to debentures

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

865 Endorsement of certificate on debentures

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

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

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

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

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

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

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

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

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

The register of charges

869 Register of charges to be kept by registrar

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

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

870 The period allowed for registration

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

871 Registration of enforcement of security

- (1) If a person obtains an order for the appointment of a receiver or manager of a company's property, or appoints such a receiver or manager under powers contained in an instrument, he shall within 7 days of the order or of the appointment under those powers, give notice of the fact to the registrar.
- (2) Where a person appointed receiver or manager of a company's property under powers contained in an instrument ceases to act as such receiver or manager, he shall, on so ceasing, give the registrar notice to that effect.
- (3) The registrar must enter a fact of which he is given notice under this section in the register of charges.
- (4) A person who makes default in complying with the requirements of this section commits an offence.
- (5) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.

872 Entries of satisfaction and release

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

873 Rectification of register of charges

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

Avoidance of certain charges

874 Consequence of failure to register charges created by a company

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

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

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

876 Company's register of charges

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

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

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

- (5) If default is made for 14 days in complying with subsection (3) or an inspection required under subsection (4) is refused, an offence is committed by –
 - (a) the company, and
 - (b) every officer of the company who is in default.
- (6) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.
- (7) If an inspection required under subsection (4) is refused the court may by order compel an immediate inspection.

CHAPTER 2

COMPANIES REGISTERED IN SCOTLAND

Charges requiring registration

878 Charges created by a company

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

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

879 Charges which have to be registered: supplementary

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

880 Duty to register charges existing on property acquired

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

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

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

Special rules about debentures

882 Charge in series of debentures

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

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

883 Additional registration requirement for commission etc in relation to debentures

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

Charges on property outside the United Kingdom

884 Charges on property outside United Kingdom

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

The register of charges

885 Register of charges to be kept by registrar

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

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

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

886 The period allowed for registration

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

887 Entries of satisfaction and relief

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

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

888 Rectification of register of charges

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

Avoidance of certain charges

889 Charges void unless registered

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

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

Companies' records and registers

890 Copies of instruments creating charges to be kept by company

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

891 Company's register of charges

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

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

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

- (5) If default is made for 14 days in complying with subsection (3) or an inspection required under subsection (4) is refused, an offence is committed by –
 - (a) the company, and
 - (b) every officer of the company who is in default.
- (6) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.
- (7) If an inspection required under subsection (4) is refused the court may by order compel an immediate inspection.

CHAPTER 3

POWERS OF THE SECRETARY OF STATE

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

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

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

894 General power to make amendments to this Part

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

PART 26

ARRANGEMENTS AND RECONSTRUCTIONS

Application of this Part

895 Application of this Part

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

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

“company” –

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

Meeting of creditors or members

896 Court order for holding of meeting

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

897 Statement to be circulated or made available

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

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

898 Duty of directors and trustees to provide information

- (1) It is the duty of –
 - (a) any director of the company, and
 - (b) any trustee for its debenture holders,to give notice to the company of such matters relating to himself as may be necessary for the purposes of section 897 (explanatory statement to be circulated or made available).
- (2) Any person who makes default in complying with this section commits an offence.
- (3) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Court sanction for compromise or arrangement

899 Court sanction for compromise or arrangement

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

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

Reconstructions and amalgamations

900 Powers of court to facilitate reconstruction or amalgamation

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

- (4) The property (if the order so directs) vests freed from any charge that is by virtue of the compromise or arrangement to cease to have effect.
- (5) In this section –
 - “property” includes property, rights and powers of every description; and
 - “liabilities” includes duties.
- (6) Every company in relation to which an order is made under this section must cause a copy of the order to be delivered to the registrar within seven days after its making.
- (7) If default is made in complying with subsection (6) an offence is committed by –
 - (a) the company, and
 - (b) every officer of the company who is in default.
- (8) A person guilty of an offence under subsection (7) is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.

Obligations of company with respect to articles etc

901 Obligations of company with respect to articles etc

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

- (6) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

PART 27

MERGERS AND DIVISIONS OF PUBLIC COMPANIES

CHAPTER 1

INTRODUCTORY

902 Application of this Part

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

903 Relationship of this Part to Part 26

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

CHAPTER 2

MERGER

Introductory

904 Mergers and merging companies

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

Requirements applicable to merger

905 Draft terms of scheme (merger)

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

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

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

906 Publication of draft terms (merger)

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

907 Approval of members of merging companies

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

908 Directors' explanatory report (merger)

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

909 Expert's report (merger)

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

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

910 Supplementary accounting statement (merger)

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

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

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

911 Inspection of documents (merger)

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

912 Approval of articles of new transferee company (merger)

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

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

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

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

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

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

Exceptions where shares of transferor company held by transferee company

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

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

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

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

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

917 Circumstances in which no meetings required (merger)

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

Other exceptions

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

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

CHAPTER 3

DIVISION

Introductory

919 Divisions and companies involved in a division

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

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

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

921 Publication of draft terms (division)

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

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

922 Approval of members of companies involved in the division

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

923 Directors' explanatory report (division)

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

924 Expert's report (division)

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

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

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

925 Supplementary accounting statement (division)

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

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

926 Inspection of documents (division)

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

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

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

928 Approval of articles of new transferee company (division)

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

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

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

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

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

Exceptions where shares of transferor company held by transferee company

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

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

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

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

Other exceptions

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

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

933 Agreement to dispense with reports etc (division)

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

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

934 Power of court to exclude certain requirements (division)

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

CHAPTER 4

SUPPLEMENTARY PROVISIONS

Expert's report and related matters

935 Expert's report: valuation by another person

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

936 Experts and valuers: independence requirement

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

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

937 Experts and valuers: meaning of “associate”

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

Powers of the court

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

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

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

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

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

Liability of transferee companies

940 Liability of transferee companies for each other's defaults

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

Interpretation

941 Meaning of “liabilities” and “property”

In this Part –

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

PART 28

TAKEOVERS ETC

CHAPTER 1

THE TAKEOVER PANEL

The Panel and its rules

942 The Panel

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

943 Rules

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

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

944 Further provisions about rules

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

945 Rulings

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

946 Directions

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

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

*Information***947 Power to require documents and information**

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

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

948 Restrictions on disclosure

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

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

949 Offence of disclosure in contravention of section 948

- (1) A person who discloses information in contravention of section 948 is guilty of an offence, unless –
- (a) he did not know, and had no reason to suspect, that the information had been provided as mentioned in section 948(1), or
 - (b) he took all reasonable steps and exercised all due diligence to avoid the commission of the offence.
- (2) A person guilty of an offence under this section is liable –
- (a) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine (or both);
 - (b) on summary conviction –
 - (i) in England and Wales, to imprisonment for a term not exceeding twelve months or to a fine not exceeding the statutory maximum (or both);
 - (ii) in Scotland or Northern Ireland, to imprisonment for a term not exceeding six months, or to a fine not exceeding the statutory maximum (or both).
- (3) Where a company or other body corporate commits an offence under this section, an offence is also committed by every officer of the company or other body corporate who is in default.

Co-operation

950 Panel’s duty of co-operation

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

Hearings and appeals

951 Hearings and appeals

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

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

Contravention of rules etc

952 Sanctions

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

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

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

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

953 Failure to comply with rules about bid documentation

- (1) This section applies where a takeover bid is made for a company that has securities carrying voting rights admitted to trading on a regulated market in the United Kingdom.
- (2) Where an offer document published in respect of the bid does not comply with offer document rules, an offence is committed by –
 - (a) the person making the bid, and
 - (b) where the person making the bid is a body of persons, any director, officer or member of that body who caused the document to be published.
- (3) A person commits an offence under subsection (2) only if –
 - (a) he knew that the offer document did not comply, or was reckless as to whether it complied, and
 - (b) he failed to take all reasonable steps to secure that it did comply.
- (4) Where a response document published in respect of the bid does not comply with response document rules, an offence is committed by any director or other officer of the company referred to in subsection (1) who –
 - (a) knew that the response document did not comply, or was reckless as to whether it complied, and
 - (b) failed to take all reasonable steps to secure that it did comply.
- (5) Where an offence is committed under subsection (2)(b) or (4) by a company or other body corporate (“the relevant body”) –
 - (a) subsection (2)(b) has effect as if the reference to a director, officer or member of the person making the bid included a reference to a director, officer or member of the relevant body;
 - (b) subsection (4) has effect as if the reference to a director or other officer of the company referred to in subsection (1) included a reference to a director, officer or member of the relevant body.
- (6) A person guilty of an offence under this section is liable –
 - (a) on conviction on indictment, to a fine;
 - (b) on summary conviction, to a fine not exceeding the statutory maximum.
- (7) Nothing in this section affects any power of the Panel in relation to the enforcement of its rules.

- (8) Section 1 (meaning of “company”) does not apply for the purposes of this section.
- (9) In this section –
- “designated” means designated in rules;
 - “offer document” means a document required to be published by rules giving effect to Article 6.2 of the Takeovers Directive;
 - “offer document rules” means rules designated as rules that give effect to Article 6.3 of that Directive;
 - “response document” means a document required to be published by rules giving effect to Article 9.5 of that Directive;
 - “response document rules” means rules designated as rules that give effect to the first sentence of Article 9.5 of that Directive;
 - “securities” means shares or debentures;
 - “takeover bid” has the same meaning as in that Directive;
 - “voting rights” means rights to vote at general meetings of the company in question, including rights that arise only in certain circumstances.

954 Compensation

- (1) Rules may confer power on the Panel to order a person to pay such compensation as it thinks just and reasonable if he is in breach of a rule the effect of which is to require the payment of money.
- (2) Rules made by virtue of this section may include provision for the payment of interest (including compound interest).

955 Enforcement by the court

- (1) If, on the application of the Panel, the court is satisfied –
- (a) that there is a reasonable likelihood that a person will contravene a rule-based requirement, or
 - (b) that a person has contravened a rule-based requirement or a disclosure requirement,
- the court may make any order it thinks fit to secure compliance with the requirement.
- (2) In subsection (1) “the court” means the High Court or, in Scotland, the Court of Session.
- (3) Except as provided by subsection (1), no person –
- (a) has a right to seek an injunction, or
 - (b) in Scotland, has title or interest to seek an interdict or an order for specific performance,
- to prevent a person from contravening (or continuing to contravene) a rule-based requirement or a disclosure requirement.
- (4) In this section –
- “contravene” includes fail to comply;
 - “disclosure requirement” means a requirement imposed under section 947;
 - “rule-based requirement” means a requirement imposed by or under rules.

956 No action for breach of statutory duty etc

- (1) Contravention of a rule-based requirement or a disclosure requirement does not give rise to any right of action for breach of statutory duty.
- (2) Contravention of a rule-based requirement does not make any transaction void or unenforceable or (subject to any provision made by rules) affect the validity of any other thing.
- (3) In this section –
 - (a) “contravention” includes failure to comply;
 - (b) “disclosure requirement” and “rule-based requirement” have the same meaning as in section 955.

*Funding***957 Fees and charges**

- (1) Rules may provide for fees or charges to be payable to the Panel for the purpose of meeting any part of its expenses.
- (2) A reference in this section or section 958 to expenses of the Panel is to any expenses that have been or are to be incurred by the Panel in, or in connection with, the discharge of its functions, including in particular –
 - (a) payments in respect of the expenses of the Takeover Appeal Board;
 - (b) the cost of repaying the principal of, and of paying any interest on, any money borrowed by the Panel;
 - (c) the cost of maintaining adequate reserves.

958 Levy

- (1) For the purpose of meeting any part of the expenses of the Panel, the Secretary of State may by regulations provide for a levy to be payable to the Panel –
 - (a) by specified persons or bodies, or persons or bodies of a specified description, or
 - (b) on transactions, of a specified description, in securities on specified markets.

In this subsection “specified” means specified in the regulations.

- (2) The power to specify (or to specify descriptions of) persons or bodies must be exercised in such a way that the levy is payable only by persons or bodies that appear to the Secretary of State –
 - (a) to be capable of being directly affected by the exercise of any of the functions of the Panel, or
 - (b) otherwise to have a substantial interest in the exercise of any of those functions.
- (3) Regulations under this section may in particular –
 - (a) specify the rate of the levy and the period in respect of which it is payable at that rate;
 - (b) make provision as to the times when, and the manner in which, payments are to be made in respect of the levy.
- (4) In determining the rate of the levy payable in respect of a particular period, the Secretary of State –

- (a) must take into account any other income received or expected by the Panel in respect of that period;
 - (b) may take into account estimated as well as actual expenses of the Panel in respect of that period.
- (5) The Panel must—
- (a) keep proper accounts in respect of any amounts of levy received by virtue of this section;
 - (b) prepare, in relation to each period in respect of which any such amounts are received, a statement of account relating to those amounts in such form and manner as is specified in the regulations.
- Those accounts must be audited, and the statement certified, by persons appointed by the Secretary of State.
- (6) Regulations under this section—
- (a) are subject to affirmative resolution procedure if subsection (7) applies to them;
 - (b) otherwise, are subject to negative resolution procedure.
- (7) This subsection applies to—
- (a) the first regulations under this section;
 - (b) any other regulations under this section that would result in a change in the persons or bodies by whom, or the transactions on which, the levy is payable.
- (8) If a draft of an instrument containing regulations under this section would, apart from this subsection, be treated for the purposes of the Standing Orders of either House of Parliament as a hybrid instrument, it is to proceed in that House as if it were not such an instrument.

959 Recovery of fees, charges or levy

An amount payable by any person or body by virtue of section 957 or 958 is a debt due from that person or body to the Panel, and is recoverable accordingly.

Miscellaneous and supplementary

960 Panel as party to proceedings

The Panel is capable (despite being an unincorporated body) of—

- (a) bringing proceedings under this Chapter in its own name;
- (b) bringing or defending any other proceedings in its own name.

961 Exemption from liability in damages

- (1) Neither the Panel, nor any person within subsection (2), is to be liable in damages for anything done (or omitted to be done) in, or in connection with, the discharge or purported discharge of the Panel's functions.
- (2) A person is within this subsection if—
 - (a) he is (or is acting as) a member, officer or member of staff of the Panel,
or
 - (b) he is a person authorised under section 947(5).

- (3) Subsection (1) does not apply –
- (a) if the act or omission is shown to have been in bad faith, or
 - (b) so as to prevent an award of damages in respect of the act or omission on the ground that it was unlawful as a result of section 6(1) of the Human Rights Act 1998 (c. 42) (acts of public authorities incompatible with Convention rights).

962 Privilege against self-incrimination

- (1) A statement made by a person in response to –
- (a) a requirement under section 947(1), or
 - (b) an order made by the court under section 955 to secure compliance with such a requirement,
- may not be used against him in criminal proceedings in which he is charged with an offence to which this subsection applies.
- (2) Subsection (1) applies to any offence other than an offence under one of the following provisions (which concern false statements made otherwise than on oath) –
- (a) section 5 of the Perjury Act 1911 (c. 6);
 - (b) section 44(2) of the Criminal Law (Consolidation) (Scotland) Act 1995 (c. 39);
 - (c) Article 10 of the Perjury (Northern Ireland) Order 1979 (S.I. 1979/1714 (N.I. 19)).

963 Annual reports

- (1) After the end of each financial year the Panel must publish a report.
- (2) The report must –
- (a) set out how the Panel’s functions were discharged in the year in question;
 - (b) include the Panel’s accounts for that year;
 - (c) mention any matters the Panel considers to be of relevance to the discharge of its functions.

964 Amendments to Financial Services and Markets Act 2000

- (1) The Financial Services and Markets Act 2000 (c. 8) is amended as follows.
- (2) Section 143 (power to make rules endorsing the City Code on Takeovers and Mergers etc) is repealed.
- (3) In section 144 (power to make price stabilising rules), for subsection (7) substitute –
- “(7) “Consultation procedures” means procedures designed to provide an opportunity for persons likely to be affected by alterations to those provisions to make representations about proposed alterations to any of those provisions.”.
- (4) In section 349 (exceptions from restrictions on disclosure of confidential information), after subsection (3) insert –
- “(3A) Section 348 does not apply to –

- (a) the disclosure by a recipient to which subsection (3B) applies of confidential information disclosed to it by the Authority in reliance on subsection (1);
 - (b) the disclosure of such information by a person obtaining it directly or indirectly from a recipient to which subsection (3B) applies.
- (3B) This subsection applies to –
- (a) the Panel on Takeovers and Mergers;
 - (b) an authority designated as a supervisory authority for the purposes of Article 4.1 of the Takeovers Directive;
 - (c) any other person or body that exercises public functions, under legislation in an EEA State other than the United Kingdom, that are similar to the Authority’s functions or those of the Panel on Takeovers and Mergers.”.
- (5) In section 354 (Financial Services Authority’s duty to co-operate with others), after subsection (1) insert –
- “(1A) The Authority must take such steps as it considers appropriate to co-operate with –
- (a) the Panel on Takeovers and Mergers;
 - (b) an authority designated as a supervisory authority for the purposes of Article 4.1 of the Takeovers Directive;
 - (c) any other person or body that exercises functions of a public nature, under legislation in any country or territory outside the United Kingdom, that appear to the Authority to be similar to those of the Panel on Takeovers and Mergers.”.
- (6) In section 417(1) (definitions), insert at the appropriate place –
- ““Takeovers Directive” means Directive 2004/25/EC of the European Parliament and of the Council;”.

965 Power to extend to Isle of Man and Channel Islands

Her Majesty may by Order in Council direct that any of the provisions of this Chapter extend, with such modifications as may be specified in the Order, to the Isle of Man or any of the Channel Islands.

CHAPTER 2

IMPEDIMENTS TO TAKEOVERS

Opting in and opting out

966 Opting in and opting out

- (1) A company may by special resolution (an “opting-in resolution”) opt in for the purposes of this Chapter if the following three conditions are met in relation to the company.
- (2) The first condition is that the company has voting shares admitted to trading on a regulated market.

- (3) The second condition is that –
- (a) the company’s articles of association –
 - (i) do not contain any such restrictions as are mentioned in Article 11 of the Takeovers Directive, or
 - (ii) if they do contain any such restrictions, provide for the restrictions not to apply at a time when, or in circumstances in which, they would be disapplied by that Article,
 and
 - (b) those articles do not contain any other provision which would be incompatible with that Article.
- (4) The third condition is that –
- (a) no shares conferring special rights in the company are held by –
 - (i) a minister,
 - (ii) a nominee of, or any other person acting on behalf of, a minister, or
 - (iii) a company directly or indirectly controlled by a minister,
 and
 - (b) no such rights are exercisable by or on behalf of a minister under any enactment.
- (5) A company may revoke an opting-in resolution by a further special resolution (an “opting-out resolution”).
- (6) For the purposes of subsection (3), a reference in Article 11 of the Takeovers Directive to Article 7.1 or 9 of that Directive is to be read as referring to rules under section 943(1) giving effect to the relevant Article.
- (7) In subsection (4) “minister” means –
- (a) the holder of an office in Her Majesty’s Government in the United Kingdom;
 - (b) the Scottish Ministers;
 - (c) a Minister within the meaning given by section 7(3) of the Northern Ireland Act 1998 (c. 47);
- and for the purposes of that subsection “minister” also includes the Treasury, the Board of Trade, the Defence Council and the National Assembly for Wales.
- (8) The Secretary of State may by order subject to negative resolution procedure provide that subsection (4) applies in relation to a specified person or body that exercises functions of a public nature as it applies in relation to a minister.
- “Specified” means specified in the order.

967 Further provision about opting-in and opting-out resolutions

- (1) An opting-in resolution or an opting-out resolution must specify the date from which it is to have effect (the “effective date”).
- (2) The effective date of an opting-in resolution may not be earlier than the date on which the resolution is passed.
- (3) The second and third conditions in section 966 must be met at the time when an opting-in resolution is passed, but the first one does not need to be met until the effective date.

- (4) An opting-in resolution passed before the time when voting shares of the company are admitted to trading on a regulated market complies with the requirement in subsection (1) if, instead of specifying a particular date, it provides for the resolution to have effect from that time.
- (5) An opting-in resolution passed before the commencement of this section complies with the requirement in subsection (1) if, instead of specifying a particular date, it provides for the resolution to have effect from that commencement.
- (6) The effective date of an opting-out resolution may not be earlier than the first anniversary of the date on which a copy of the opting-in resolution was forwarded to the registrar.
- (7) Where a company has passed an opting-in resolution, any alteration of its articles of association that would prevent the second condition in section 966 from being met is of no effect until the effective date of an opting-out resolution passed by the company.

Consequences of opting in

968 Effect on contractual restrictions

- (1) The following provisions have effect where a takeover bid is made for an opted-in company.
- (2) An agreement to which this section applies is invalid in so far as it places any restriction –
 - (a) on the transfer to the offeror, or at his direction to another person, of shares in the company during the offer period;
 - (b) on the transfer to any person of shares in the company at a time during the offer period when the offeror holds shares amounting to not less than 75% in value of all the voting shares in the company;
 - (c) on rights to vote at a general meeting of the company that decides whether to take any action which might result in the frustration of the bid;
 - (d) on rights to vote at a general meeting of the company that –
 - (i) is the first such meeting to be held after the end of the offer period, and
 - (ii) is held at a time when the offeror holds shares amounting to not less than 75% in value of all the voting shares in the company.
- (3) This section applies to an agreement –
 - (a) entered into between a person holding shares in the company and another such person on or after 21st April 2004, or
 - (b) entered into at any time between such a person and the company,and it applies to such an agreement even if the law applicable to the agreement (apart from this section) is not the law of a part of the United Kingdom.
- (4) The reference in subsection (2)(c) to rights to vote at a general meeting of the company that decides whether to take any action which might result in the frustration of the bid includes a reference to rights to vote on a written resolution concerned with that question.

- (5) For the purposes of subsection (2)(c), action which might result in the frustration of a bid is any action of that kind specified in rules under section 943(1) giving effect to Article 9 of the Takeovers Directive.
- (6) If a person suffers loss as a result of any act or omission that would (but for this section) be a breach of an agreement to which this section applies, he is entitled to compensation, of such amount as the court considers just and equitable, from any person who would (but for this section) be liable to him for committing or inducing the breach.
- (7) In subsection (6) “the court” means the High Court or, in Scotland, the Court of Session.
- (8) A reference in this section to voting shares in the company does not include—
 - (a) debentures, or
 - (b) shares that, under the company’s articles of association, do not normally carry rights to vote at its general meetings (for example, shares carrying rights to vote that, under those articles, arise only where specified pecuniary advantages are not provided).

969 Power of offeror to require general meeting to be called

- (1) Where a takeover bid is made for an opted-in company, the offeror may by making a request to the directors of the company require them to call a general meeting of the company if, at the date at which the request is made, he holds shares amounting to not less than 75% in value of all the voting shares in the company.
- (2) The reference in subsection (1) to voting shares in the company does not include—
 - (a) debentures, or
 - (b) shares that, under the company’s articles of association, do not normally carry rights to vote at its general meetings (for example, shares carrying rights to vote that, under those articles, arise only where specified pecuniary advantages are not provided).
- (3) Sections 303 to 305 (members’ power to require general meetings to be called) apply as they would do if subsection (1) above were substituted for subsections (1) to (3) of section 303, and with any other necessary modifications.

Supplementary

970 Communication of decisions

- (1) A company that has passed an opting-in resolution or an opting-out resolution must notify—
 - (a) the Panel, and
 - (b) where the company—
 - (i) has voting shares admitted to trading on a regulated market in an EEA State other than the United Kingdom, or
 - (ii) has requested such admission,the authority designated by that state as the supervisory authority for the purposes of Article 4.1 of the Takeovers Directive.

- (2) Notification must be given within 15 days after the resolution is passed and, if any admission or request such as is mentioned in subsection (1)(b) occurs at a later time, within 15 days after that time.
- (3) If a company fails to comply with this section, an offence is committed by –
 - (a) the company, and
 - (b) every officer of it who is in default.
- (4) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.

971 Interpretation of this Chapter

- (1) In this Chapter –
 - “offeror” and “takeover bid” have the same meaning as in the Takeovers Directive;
 - “offer period”, in relation to a takeover bid, means the time allowed for acceptance of the bid by –
 - (a) rules under section 943(1) giving effect to Article 7.1 of the Takeovers Directive, or
 - (b) where the rules giving effect to that Article which apply to the bid are those of an EEA State other than the United Kingdom, those rules;
 - “opted-in company” means a company in relation to which –
 - (a) an opting-in resolution has effect, and
 - (b) the conditions in section 966(2) and (4) continue to be met;
 - “opting-in resolution” has the meaning given by section 966(1);
 - “opting-out resolution” has the meaning given by section 966(5);
 - “the Takeovers Directive” means Directive 2004/25/EC of the European Parliament and of the Council;
 - “voting rights” means rights to vote at general meetings of the company in question, including rights that arise only in certain circumstances;
 - “voting shares” means shares carrying voting rights.
- (2) For the purposes of this Chapter –
 - (a) securities of a company are treated as shares in the company if they are convertible into or entitle the holder to subscribe for such shares;
 - (b) debentures issued by a company are treated as shares in the company if they carry voting rights.

972 Transitory provision

- (1) Where a takeover bid is made for an opted-in company, section 368 of the Companies Act 1985 (c. 6) (extraordinary general meeting on members’ requisition) and section 378 of that Act (extraordinary and special resolutions) have effect as follows until their repeal by this Act.
- (2) Section 368 has effect as if a members’ requisition included a requisition of a person who –
 - (a) is the offeror in relation to the takeover bid, and

- (b) holds at the date of the deposit of the requisition shares amounting to not less than 75% in value of all the voting shares in the company.
- (3) In relation to a general meeting of the company that –
 - (a) is the first such meeting to be held after the end of the offer period, and
 - (b) is held at a time when the offeror holds shares amounting to not less than 75% in value of all the voting shares in the company,
 section 378(2) (meaning of “special resolution”) has effect as if “14 days’ notice” were substituted for “21 days’ notice”.
- (4) A reference in this section to voting shares in the company does not include –
 - (a) debentures, or
 - (b) shares that, under the company’s articles of association, do not normally carry rights to vote at its general meetings (for example, shares carrying rights to vote that, under those articles, arise only where specified pecuniary advantages are not provided).

973 Power to extend to Isle of Man and Channel Islands

Her Majesty may by Order in Council direct that any of the provisions of this Chapter extend, with such modifications as may be specified in the Order, to the Isle of Man or any of the Channel Islands.

CHAPTER 3

“SQUEEZE-OUT” AND “SELL-OUT”

Takeover offers

974 Meaning of “takeover offer”

- (1) For the purposes of this Chapter an offer to acquire shares in a company is a “takeover offer” if the following two conditions are satisfied in relation to the offer.
- (2) The first condition is that it is an offer to acquire –
 - (a) all the shares in a company, or
 - (b) where there is more than one class of shares in a company, all the shares of one or more classes,
 other than shares that at the date of the offer are already held by the offeror. Section 975 contains provision supplementing this subsection.
- (3) The second condition is that the terms of the offer are the same –
 - (a) in relation to all the shares to which the offer relates, or
 - (b) where the shares to which the offer relates include shares of different classes, in relation to all the shares of each class.
 Section 976 contains provision treating this condition as satisfied in certain circumstances.
- (4) In subsections (1) to (3) “shares” means shares, other than relevant treasury shares, that have been allotted on the date of the offer (but see subsection (5)).
- (5) A takeover offer may include among the shares to which it relates –

- (a) all or any shares that are allotted after the date of the offer but before a specified date;
 - (b) all or any relevant treasury shares that cease to be held as treasury shares before a specified date;
 - (c) all or any other relevant treasury shares.
- (6) In this section –
- “relevant treasury shares” means shares that –
 - (a) are held by the company as treasury shares on the date of the offer, or
 - (b) become shares held by the company as treasury shares after that date but before a specified date;
 - “specified date” means a date specified in or determined in accordance with the terms of the offer.
- (7) Where the terms of an offer make provision for their revision and for acceptances on the previous terms to be treated as acceptances on the revised terms, then, if the terms of the offer are revised in accordance with that provision –
- (a) the revision is not to be regarded for the purposes of this Chapter as the making of a fresh offer, and
 - (b) references in this Chapter to the date of the offer are accordingly to be read as references to the date of the original offer.

975 Shares already held by the offeror etc

- (1) The reference in section 974(2) to shares already held by the offeror includes a reference to shares that he has contracted to acquire, whether unconditionally or subject to conditions being met.
This is subject to subsection (2).
- (2) The reference in section 974(2) to shares already held by the offeror does not include a reference to shares that are the subject of a contract –
- (a) intended to secure that the holder of the shares will accept the offer when it is made, and
 - (b) entered into –
 - (i) by deed and for no consideration,
 - (ii) for consideration of negligible value, or
 - (iii) for consideration consisting of a promise by the offeror to make the offer.
- (3) In relation to Scotland, this section applies as if the words “by deed and” in subsection (2)(b)(i) were omitted.
- (4) The condition in section 974(2) is treated as satisfied where –
- (a) the offer does not extend to shares that associates of the offeror hold or have contracted to acquire (whether unconditionally or subject to conditions being met), and
 - (b) the condition would be satisfied if the offer did extend to those shares.
- (For further provision about such shares, see section 977(2)).

976 Cases where offer treated as being on same terms

- (1) The condition in section 974(3) (terms of offer to be the same for all shares or all shares of particular classes) is treated as satisfied where subsection (2) or (3) below applies.
- (2) This subsection applies where—
 - (a) shares carry an entitlement to a particular dividend which other shares of the same class, by reason of being allotted later, do not carry,
 - (b) there is a difference in the value of consideration offered for the shares allotted earlier as against that offered for those allotted later,
 - (c) that difference merely reflects the difference in entitlement to the dividend, and
 - (d) the condition in section 974(3) would be satisfied but for that difference.
- (3) This subsection applies where—
 - (a) the law of a country or territory outside the United Kingdom—
 - (i) precludes an offer of consideration in the form, or any of the forms, specified in the terms of the offer (“the specified form”), or
 - (ii) precludes it except after compliance by the offeror with conditions with which he is unable to comply or which he regards as unduly onerous,
 - (b) the persons to whom an offer of consideration in the specified form is precluded are able to receive consideration in another form that is of substantially equivalent value, and
 - (c) the condition in section 974(3) would be satisfied but for the fact that an offer of consideration in the specified form to those persons is precluded.

977 Shares to which an offer relates

- (1) Where a takeover offer is made and, during the period beginning with the date of the offer and ending when the offer can no longer be accepted, the offeror—
 - (a) acquires or unconditionally contracts to acquire any of the shares to which the offer relates, but
 - (b) does not do so by virtue of acceptances of the offer,those shares are treated for the purposes of this Chapter as excluded from those to which the offer relates.
- (2) For the purposes of this Chapter shares that an associate of the offeror holds or has contracted to acquire, whether at the date of the offer or subsequently, are not treated as shares to which the offer relates, even if the offer extends to such shares.

In this subsection “contracted” means contracted unconditionally or subject to conditions being met.
- (3) This section is subject to section 979(8) and (9).

978 Effect of impossibility etc of communicating or accepting offer

- (1) Where there are holders of shares in a company to whom an offer to acquire shares in the company is not communicated, that does not prevent the offer from being a takeover offer for the purposes of this Chapter if—

- (a) those shareholders have no registered address in the United Kingdom,
 - (b) the offer was not communicated to those shareholders in order not to contravene the law of a country or territory outside the United Kingdom, and
 - (c) either –
 - (i) the offer is published in the Gazette, or
 - (ii) the offer can be inspected, or a copy of it obtained, at a place in an EEA State or on a website, and a notice is published in the Gazette specifying the address of that place or website.
- (2) Where an offer is made to acquire shares in a company and there are persons for whom, by reason of the law of a country or territory outside the United Kingdom, it is impossible to accept the offer, or more difficult to do so, that does not prevent the offer from being a takeover offer for the purposes of this Chapter.
- (3) It is not to be inferred –
- (a) that an offer which is not communicated to every holder of shares in the company cannot be a takeover offer for the purposes of this Chapter unless the requirements of paragraphs (a) to (c) of subsection (1) are met, or
 - (b) that an offer which is impossible, or more difficult, for certain persons to accept cannot be a takeover offer for those purposes unless the reason for the impossibility or difficulty is the one mentioned in subsection (2).

“Squeeze-out”

979 Right of offeror to buy out minority shareholder

- (1) Subsection (2) applies in a case where a takeover offer does not relate to shares of different classes.
- (2) If the offeror has, by virtue of acceptances of the offer, acquired or unconditionally contracted to acquire –
- (a) not less than 90% in value of the shares to which the offer relates, and
 - (b) in a case where the shares to which the offer relates are voting shares, not less than 90% of the voting rights carried by those shares,
- he may give notice to the holder of any shares to which the offer relates which the offeror has not acquired or unconditionally contracted to acquire that he desires to acquire those shares.
- (3) Subsection (4) applies in a case where a takeover offer relates to shares of different classes.
- (4) If the offeror has, by virtue of acceptances of the offer, acquired or unconditionally contracted to acquire –
- (a) not less than 90% in value of the shares of any class to which the offer relates, and
 - (b) in a case where the shares of that class are voting shares, not less than 90% of the voting rights carried by those shares,
- he may give notice to the holder of any shares of that class to which the offer relates which the offeror has not acquired or unconditionally contracted to acquire that he desires to acquire those shares.

- (5) In the case of a takeover offer which includes among the shares to which it relates –
- (a) shares that are allotted after the date of the offer, or
 - (b) relevant treasury shares (within the meaning of section 974) that cease to be held as treasury shares after the date of the offer,
- the offeror’s entitlement to give a notice under subsection (2) or (4) on any particular date shall be determined as if the shares to which the offer relates did not include any allotted, or ceasing to be held as treasury shares, on or after that date.
- (6) Subsection (7) applies where –
- (a) the requirements for the giving of a notice under subsection (2) or (4) are satisfied, and
 - (b) there are shares in the company which the offeror, or an associate of his, has contracted to acquire subject to conditions being met, and in relation to which the contract has not become unconditional.
- (7) The offeror’s entitlement to give a notice under subsection (2) or (4) shall be determined as if –
- (a) the shares to which the offer relates included shares falling within paragraph (b) of subsection (6), and
 - (b) in relation to shares falling within that paragraph, the words “by virtue of acceptances of the offer” in subsection (2) or (4) were omitted.
- (8) Where –
- (a) a takeover offer is made,
 - (b) during the period beginning with the date of the offer and ending when the offer can no longer be accepted, the offeror –
 - (i) acquires or unconditionally contracts to acquire any of the shares to which the offer relates, but
 - (ii) does not do so by virtue of acceptances of the offer, and
 - (c) subsection (10) applies,
- then for the purposes of this section those shares are not excluded by section 977(1) from those to which the offer relates, and the offeror is treated as having acquired or contracted to acquire them by virtue of acceptances of the offer.
- (9) Where –
- (a) a takeover offer is made,
 - (b) during the period beginning with the date of the offer and ending when the offer can no longer be accepted, an associate of the offeror acquires or unconditionally contracts to acquire any of the shares to which the offer relates, and
 - (c) subsection (10) applies,
- then for the purposes of this section those shares are not excluded by section 977(2) from those to which the offer relates.
- (10) This subsection applies if –
- (a) at the time the shares are acquired or contracted to be acquired as mentioned in subsection (8) or (9) (as the case may be), the value of the consideration for which they are acquired or contracted to be acquired (“the acquisition consideration”) does not exceed the value of the consideration specified in the terms of the offer, or
 - (b) those terms are subsequently revised so that when the revision is announced the value of the acquisition consideration, at the time

mentioned in paragraph (a), no longer exceeds the value of the consideration specified in those terms.

980 Further provision about notices given under section 979

- (1) A notice under section 979 must be given in the prescribed manner.
- (2) No notice may be given under section 979(2) or (4) after the end of –
 - (a) the period of three months beginning with the day after the last day on which the offer can be accepted, or
 - (b) the period of six months beginning with the date of the offer, where that period ends earlier and the offer is one to which subsection (3) below applies.
- (3) This subsection applies to an offer if the time allowed for acceptance of the offer is not governed by rules under section 943(1) that give effect to Article 7 of the Takeovers Directive.
In this subsection “the Takeovers Directive” has the same meaning as in section 943.
- (4) At the time when the offeror first gives a notice under section 979 in relation to an offer, he must send to the company –
 - (a) a copy of the notice, and
 - (b) a statutory declaration by him in the prescribed form, stating that the conditions for the giving of the notice are satisfied.
- (5) Where the offeror is a company (whether or not a company within the meaning of this Act) the statutory declaration must be signed by a director.
- (6) A person commits an offence if –
 - (a) he fails to send a copy of a notice or a statutory declaration as required by subsection (4), or
 - (b) he makes such a declaration for the purposes of that subsection knowing it to be false or without having reasonable grounds for believing it to be true.
- (7) It is a defence for a person charged with an offence for failing to send a copy of a notice as required by subsection (4) to prove that he took reasonable steps for securing compliance with that subsection.
- (8) A person guilty of an offence under this section is liable –
 - (a) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine (or both);
 - (b) on summary conviction –
 - (i) in England and Wales, to imprisonment for a term not exceeding twelve months or to a fine not exceeding the statutory maximum (or both) and, for continued contravention, a daily default fine not exceeding one-fiftieth of the statutory maximum;
 - (ii) in Scotland or Northern Ireland, to imprisonment for a term not exceeding six months, or to a fine not exceeding the statutory maximum (or both) and, for continued contravention, a daily default fine not exceeding one-fiftieth of the statutory maximum.

981 Effect of notice under section 979

- (1) Subject to section 986 (applications to the court), this section applies where the offeror gives a shareholder a notice under section 979.
- (2) The offeror is entitled and bound to acquire the shares to which the notice relates on the terms of the offer.
- (3) Where the terms of an offer are such as to give the shareholder a choice of consideration, the notice must give particulars of the choice and state—
 - (a) that the shareholder may, within six weeks from the date of the notice, indicate his choice by a written communication sent to the offeror at an address specified in the notice, and
 - (b) which consideration specified in the offer will apply if he does not indicate a choice.

The reference in subsection (2) to the terms of the offer is to be read accordingly.

- (4) Subsection (3) applies whether or not any time-limit or other conditions applicable to the choice under the terms of the offer can still be complied with.
- (5) If the consideration offered to or (as the case may be) chosen by the shareholder—
 - (a) is not cash and the offeror is no longer able to provide it, or
 - (b) was to have been provided by a third party who is no longer bound or able to provide it,

the consideration is to be taken to consist of an amount of cash, payable by the offeror, which at the date of the notice is equivalent to the consideration offered or (as the case may be) chosen.

- (6) At the end of six weeks from the date of the notice the offeror must immediately—
 - (a) send a copy of the notice to the company, and
 - (b) pay or transfer to the company the consideration for the shares to which the notice relates.

Where the consideration consists of shares or securities to be allotted by the offeror, the reference in paragraph (b) to the transfer of the consideration is to be read as a reference to the allotment of the shares or securities to the company.

- (7) If the shares to which the notice relates are registered, the copy of the notice sent to the company under subsection (6)(a) must be accompanied by an instrument of transfer executed on behalf of the holder of the shares by a person appointed by the offeror.

On receipt of that instrument the company must register the offeror as the holder of those shares.

- (8) If the shares to which the notice relates are transferable by the delivery of warrants or other instruments, the copy of the notice sent to the company under subsection (6)(a) must be accompanied by a statement to that effect.

On receipt of that statement the company must issue the offeror with warrants or other instruments in respect of the shares, and those already in issue in respect of the shares become void.

- (9) The company must hold any money or other consideration received by it under subsection (6)(b) on trust for the person who, before the offeror acquired

them, was entitled to the shares in respect of which the money or other consideration was received.

Section 982 contains further provision about how the company should deal with such money or other consideration.

982 Further provision about consideration held on trust under section 981(9)

- (1) This section applies where an offeror pays or transfers consideration to the company under section 981(6).
- (2) The company must pay into a separate bank account that complies with subsection (3)—
 - (a) any money it receives under paragraph (b) of section 981(6), and
 - (b) any dividend or other sum accruing from any other consideration it receives under that paragraph.
- (3) A bank account complies with this subsection if the balance on the account—
 - (a) bears interest at an appropriate rate, and
 - (b) can be withdrawn by such notice (if any) as is appropriate.
- (4) If—
 - (a) the person entitled to the consideration held on trust by virtue of section 981(9) cannot be found, and
 - (b) subsection (5) applies,the consideration (together with any interest, dividend or other benefit that has accrued from it) must be paid into court.
- (5) This subsection applies where—
 - (a) reasonable enquiries have been made at reasonable intervals to find the person, and
 - (b) twelve years have elapsed since the consideration was received, or the company is wound up.
- (6) In relation to a company registered in Scotland, subsections (7) and (8) apply instead of subsection (4).
- (7) If the person entitled to the consideration held on trust by virtue of section 981(9) cannot be found and subsection (5) applies—
 - (a) the trust terminates,
 - (b) the company or (if the company is wound up) the liquidator must sell any consideration other than cash and any benefit other than cash that has accrued from the consideration, and
 - (c) a sum representing—
 - (i) the consideration so far as it is cash,
 - (ii) the proceeds of any sale under paragraph (b), and
 - (iii) any interest, dividend or other benefit that has accrued from the consideration,must be deposited in the name of the Accountant of Court in a separate bank account complying with subsection (3) and the receipt for the deposit must be transmitted to the Accountant of Court.
- (8) Section 58 of the Bankruptcy (Scotland) Act 1985 (c. 66) (so far as consistent with this Act) applies (with any necessary modifications) to sums deposited

under subsection (7) as it applies to sums deposited under section 57(1)(a) of that Act.

- (9) The expenses of any such enquiries as are mentioned in subsection (5) may be paid out of the money or other property held on trust for the person to whom the enquiry relates.

“Sell-out”

983 Right of minority shareholder to be bought out by offeror

- (1) Subsections (2) and (3) apply in a case where a takeover offer relates to all the shares in a company.
For this purpose a takeover offer relates to all the shares in a company if it is an offer to acquire all the shares in the company within the meaning of section 974.
- (2) The holder of any voting shares to which the offer relates who has not accepted the offer may require the offeror to acquire those shares if, at any time before the end of the period within which the offer can be accepted –
- (a) the offeror has by virtue of acceptances of the offer acquired or unconditionally contracted to acquire some (but not all) of the shares to which the offer relates, and
 - (b) those shares, with or without any other shares in the company which he has acquired or contracted to acquire (whether unconditionally or subject to conditions being met) –
 - (i) amount to not less than 90% in value of all the voting shares in the company (or would do so but for section 990(1)), and
 - (ii) carry not less than 90% of the voting rights in the company (or would do so but for section 990(1)).
- (3) The holder of any non-voting shares to which the offer relates who has not accepted the offer may require the offeror to acquire those shares if, at any time before the end of the period within which the offer can be accepted –
- (a) the offeror has by virtue of acceptances of the offer acquired or unconditionally contracted to acquire some (but not all) of the shares to which the offer relates, and
 - (b) those shares, with or without any other shares in the company which he has acquired or contracted to acquire (whether unconditionally or subject to conditions being met), amount to not less than 90% in value of all the shares in the company (or would do so but for section 990(1)).
- (4) If a takeover offer relates to shares of one or more classes and at any time before the end of the period within which the offer can be accepted –
- (a) the offeror has by virtue of acceptances of the offer acquired or unconditionally contracted to acquire some (but not all) of the shares of any class to which the offer relates, and
 - (b) those shares, with or without any other shares of that class which he has acquired or contracted to acquire (whether unconditionally or subject to conditions being met) –
 - (i) amount to not less than 90% in value of all the shares of that class, and
 - (ii) in a case where the shares of that class are voting shares, carry not less than 90% of the voting rights carried by the shares of that class,

the holder of any shares of that class to which the offer relates who has not accepted the offer may require the offeror to acquire those shares.

- (5) For the purposes of subsections (2) to (4), in calculating 90% of the value of any shares, shares held by the company as treasury shares are to be treated as having been acquired by the offeror.
- (6) Subsection (7) applies where –
 - (a) a shareholder exercises rights conferred on him by subsection (2), (3) or (4),
 - (b) at the time when he does so, there are shares in the company which the offeror has contracted to acquire subject to conditions being met, and in relation to which the contract has not become unconditional, and
 - (c) the requirement imposed by subsection (2)(b), (3)(b) or (4)(b) (as the case may be) would not be satisfied if those shares were not taken into account.
- (7) The shareholder is treated for the purposes of section 985 as not having exercised his rights under this section unless the requirement imposed by paragraph (b) of subsection (2), (3) or (4) (as the case may be) would be satisfied if –
 - (a) the reference in that paragraph to other shares in the company which the offeror has contracted to acquire unconditionally or subject to conditions being met were a reference to such shares which he has unconditionally contracted to acquire, and
 - (b) the reference in that subsection to the period within which the offer can be accepted were a reference to the period referred to in section 984(2).
- (8) A reference in subsection (2)(b), (3)(b), (4)(b), (6) or (7) to shares which the offeror has acquired or contracted to acquire includes a reference to shares which an associate of his has acquired or contracted to acquire.

984 Further provision about rights conferred by section 983

- (1) Rights conferred on a shareholder by subsection (2), (3) or (4) of section 983 are exercisable by a written communication addressed to the offeror.
- (2) Rights conferred on a shareholder by subsection (2), (3) or (4) of that section are not exercisable after the end of the period of three months from –
 - (a) the end of the period within which the offer can be accepted, or
 - (b) if later, the date of the notice that must be given under subsection (3) below.
- (3) Within one month of the time specified in subsection (2), (3) or (4) (as the case may be) of that section, the offeror must give any shareholder who has not accepted the offer notice in the prescribed manner of –
 - (a) the rights that are exercisable by the shareholder under that subsection, and
 - (b) the period within which the rights are exercisable.If the notice is given before the end of the period within which the offer can be accepted, it must state that the offer is still open for acceptance.
- (4) Subsection (3) does not apply if the offeror has given the shareholder a notice in respect of the shares in question under section 979.
- (5) An offeror who fails to comply with subsection (3) commits an offence.

If the offeror is a company, every officer of that company who is in default or to whose neglect the failure is attributable also commits an offence.

- (6) If an offeror other than a company is charged with an offence for failing to comply with subsection (3), it is a defence for him to prove that he took all reasonable steps for securing compliance with that subsection.
- (7) A person guilty of an offence under this section is liable –
 - (a) on conviction on indictment, to a fine;
 - (b) on summary conviction, to a fine not exceeding the statutory maximum and, for continued contravention, a daily default fine not exceeding one-fiftieth of the statutory maximum.

985 Effect of requirement under section 983

- (1) Subject to section 986, this section applies where a shareholder exercises his rights under section 983 in respect of any shares held by him.
- (2) The offeror is entitled and bound to acquire those shares on the terms of the offer or on such other terms as may be agreed.
- (3) Where the terms of an offer are such as to give the shareholder a choice of consideration –
 - (a) the shareholder may indicate his choice when requiring the offeror to acquire the shares, and
 - (b) the notice given to the shareholder under section 984(3) –
 - (i) must give particulars of the choice and of the rights conferred by this subsection, and
 - (ii) may state which consideration specified in the offer will apply if he does not indicate a choice.

The reference in subsection (2) to the terms of the offer is to be read accordingly.

- (4) Subsection (3) applies whether or not any time-limit or other conditions applicable to the choice under the terms of the offer can still be complied with.
- (5) If the consideration offered to or (as the case may be) chosen by the shareholder –
 - (a) is not cash and the offeror is no longer able to provide it, or
 - (b) was to have been provided by a third party who is no longer bound or able to provide it,

the consideration is to be taken to consist of an amount of cash, payable by the offeror, which at the date when the shareholder requires the offeror to acquire the shares is equivalent to the consideration offered or (as the case may be) chosen.

Supplementary

986 Applications to the court

- (1) Where a notice is given under section 979 to a shareholder the court may, on an application made by him, order –
 - (a) that the offeror is not entitled and bound to acquire the shares to which the notice relates, or

- (b) that the terms on which the offeror is entitled and bound to acquire the shares shall be such as the court thinks fit.
- (2) An application under subsection (1) must be made within six weeks from the date on which the notice referred to in that subsection was given.
If an application to the court under subsection (1) is pending at the end of that period, section 981(6) does not have effect until the application has been disposed of.
- (3) Where a shareholder exercises his rights under section 983 in respect of any shares held by him, the court may, on an application made by him or the offeror, order that the terms on which the offeror is entitled and bound to acquire the shares shall be such as the court thinks fit.
- (4) On an application under subsection (1) or (3) –
 - (a) the court may not require consideration of a higher value than that specified in the terms of the offer (“the offer value”) to be given for the shares to which the application relates unless the holder of the shares shows that the offer value would be unfair;
 - (b) the court may not require consideration of a lower value than the offer value to be given for the shares.
- (5) No order for costs or expenses may be made against a shareholder making an application under subsection (1) or (3) unless the court considers that –
 - (a) the application was unnecessary, improper or vexatious,
 - (b) there has been unreasonable delay in making the application, or
 - (c) there has been unreasonable conduct on the shareholder’s part in conducting the proceedings on the application.
- (6) A shareholder who has made an application under subsection (1) or (3) must give notice of the application to the offeror.
- (7) An offeror who is given notice of an application under subsection (1) or (3) must give a copy of the notice to –
 - (a) any person (other than the applicant) to whom a notice has been given under section 979;
 - (b) any person who has exercised his rights under section 983.
- (8) An offeror who makes an application under subsection (3) must give notice of the application to –
 - (a) any person to whom a notice has been given under section 979;
 - (b) any person who has exercised his rights under section 983.
- (9) Where a takeover offer has not been accepted to the extent necessary for entitling the offeror to give notices under subsection (2) or (4) of section 979 the court may, on an application made by him, make an order authorising him to give notices under that subsection if it is satisfied that –
 - (a) the offeror has after reasonable enquiry been unable to trace one or more of the persons holding shares to which the offer relates,
 - (b) the requirements of that subsection would have been met if the person, or all the persons, mentioned in paragraph (a) above had accepted the offer, and
 - (c) the consideration offered is fair and reasonable.This is subject to subsection (10).

- (10) The court may not make an order under subsection (9) unless it considers that it is just and equitable to do so having regard, in particular, to the number of shareholders who have been traced but who have not accepted the offer.

987 Joint offers

- (1) In the case of a takeover offer made by two or more persons jointly, this Chapter has effect as follows.
- (2) The conditions for the exercise of the rights conferred by section 979 are satisfied –
- (a) in the case of acquisitions by virtue of acceptances of the offer, by the joint offerors acquiring or unconditionally contracting to acquire the necessary shares jointly;
 - (b) in other cases, by the joint offerors acquiring or unconditionally contracting to acquire the necessary shares either jointly or separately.
- (3) The conditions for the exercise of the rights conferred by section 983 are satisfied –
- (a) in the case of acquisitions by virtue of acceptances of the offer, by the joint offerors acquiring or unconditionally contracting to acquire the necessary shares jointly;
 - (b) in other cases, by the joint offerors acquiring or contracting (whether unconditionally or subject to conditions being met) to acquire the necessary shares either jointly or separately.
- (4) Subject to the following provisions, the rights and obligations of the offeror under sections 979 to 985 are respectively joint rights and joint and several obligations of the joint offerors.
- (5) A provision of sections 979 to 986 that requires or authorises a notice or other document to be given or sent by or to the joint offerors is complied with if the notice or document is given or sent by or to any of them (but see subsection (6)).
- (6) The statutory declaration required by section 980(4) must be made by all of the joint offerors and, where one or more of them is a company, signed by a director of that company.
- (7) In sections 974 to 977, 979(9), 981(6), 983(8) and 988 references to the offeror are to be read as references to the joint offerors or any of them.
- (8) In section 981(7) and (8) references to the offeror are to be read as references to the joint offerors or such of them as they may determine.
- (9) In sections 981(5)(a) and 985(5)(a) references to the offeror being no longer able to provide the relevant consideration are to be read as references to none of the joint offerors being able to do so.
- (10) In section 986 references to the offeror are to be read as references to the joint offerors, except that –
- (a) an application under subsection (3) or (9) may be made by any of them, and
 - (b) the reference in subsection (9)(a) to the offeror having been unable to trace one or more of the persons holding shares is to be read as a reference to none of the offerors having been able to do so.

Interpretation

988 Associates

- (1) In this Chapter “associate”, in relation to an offeror, means—
 - (a) a nominee of the offeror,
 - (b) a holding company, subsidiary or fellow subsidiary of the offeror or a nominee of such a holding company, subsidiary or fellow subsidiary,
 - (c) a body corporate in which the offeror is substantially interested,
 - (d) a person who is, or is a nominee of, a party to a share acquisition agreement with the offeror, or
 - (e) (where the offeror is an individual) his spouse or civil partner and any minor child or step-child of his.
- (2) For the purposes of subsection (1)(b) a company is a fellow subsidiary of another body corporate if both are subsidiaries of the same body corporate but neither is a subsidiary of the other.
- (3) For the purposes of subsection (1)(c) an offeror has a substantial interest in a body corporate if—
 - (a) the body or its directors are accustomed to act in accordance with his directions or instructions, or
 - (b) he is entitled to exercise or control the exercise of one-third or more of the voting power at general meetings of the body.

Subsections (2) and (3) of section 823 (which contain provision about when a person is treated as entitled to exercise or control the exercise of voting power) apply for the purposes of this subsection as they apply for the purposes of that section.
- (4) For the purposes of subsection (1)(d) an agreement is a share acquisition agreement if—
 - (a) it is an agreement for the acquisition of, or of an interest in, shares to which the offer relates,
 - (b) it includes provisions imposing obligations or restrictions on any one or more of the parties to it with respect to their use, retention or disposal of such shares, or their interests in such shares, acquired in pursuance of the agreement (whether or not together with any other shares to which the offer relates or any other interests of theirs in such shares), and
 - (c) it is not an excluded agreement (see subsection (5)).
- (5) An agreement is an “excluded agreement”—
 - (a) if it is not legally binding, unless it involves mutuality in the undertakings, expectations or understandings of the parties to it, or
 - (b) if it is an agreement to underwrite or sub-underwrite an offer of shares in a company, provided the agreement is confined to that purpose and any matters incidental to it.
- (6) The reference in subsection (4)(b) to the use of interests in shares is to the exercise of any rights or of any control or influence arising from those interests (including the right to enter into an agreement for the exercise, or for control of the exercise, of any of those rights by another person).
- (7) In this section—
 - (a) “agreement” includes any agreement or arrangement;

- (b) references to provisions of an agreement include –
 - (i) undertakings, expectations or understandings operative under an arrangement, and
 - (ii) any provision whether express or implied and whether absolute or not.

989 Convertible securities

- (1) For the purposes of this Chapter securities of a company are treated as shares in the company if they are convertible into or entitle the holder to subscribe for such shares.
References to the holder of shares or a shareholder are to be read accordingly.
- (2) Subsection (1) is not to be read as requiring any securities to be treated –
 - (a) as shares of the same class as those into which they are convertible or for which the holder is entitled to subscribe, or
 - (b) as shares of the same class as other securities by reason only that the shares into which they are convertible or for which the holder is entitled to subscribe are of the same class.

990 Debentures carrying voting rights

- (1) For the purposes of this Chapter debentures issued by a company to which subsection (2) applies are treated as shares in the company if they carry voting rights.
- (2) This subsection applies to a company that has voting shares, or debentures carrying voting rights, which are admitted to trading on a regulated market.
- (3) In this Chapter, in relation to debentures treated as shares by virtue of subsection (1) –
 - (a) references to the holder of shares or a shareholder are to be read accordingly;
 - (b) references to shares being allotted are to be read as references to debentures being issued.

991 Interpretation

- (1) In this Chapter –
 - “the company” means the company whose shares are the subject of a takeover offer;
 - “date of the offer” means –
 - (a) where the offer is published, the date of publication;
 - (b) where the offer is not published, or where any notices of the offer are given before the date of publication, the date when notices of the offer (or the first such notices) are given;and references to the date of the offer are to be read in accordance with section 974(7) (revision of offer terms) where that applies;
 - “non-voting shares” means shares that are not voting shares;
 - “offeror” means (subject to section 987) the person making a takeover offer;
 - “voting rights” means rights to vote at general meetings of the company, including rights that arise only in certain circumstances;

“voting shares” means shares carrying voting rights.

- (2) For the purposes of this Chapter a person contracts unconditionally to acquire shares if his entitlement under the contract to acquire them is not (or is no longer) subject to conditions or if all conditions to which it was subject have been met.

A reference to a contract becoming unconditional is to be read accordingly.

CHAPTER 4

AMENDMENTS TO PART 7 OF THE COMPANIES ACT 1985

992 Matters to be dealt with in directors’ report

- (1) Part 7 of the Companies Act 1985 (c. 6) (accounts and audit) is amended as follows.
- (2) In Schedule 7 (matters to be dealt with in directors’ report), after Part 6 insert—

“PART 7

DISCLOSURE REQUIRED BY CERTAIN PUBLICLY-TRADED COMPANIES

- 13 (1) This Part of this Schedule applies to the directors’ report for a financial year if the company had securities carrying voting rights admitted to trading on a regulated market at the end of that year.
- (2) The report shall contain detailed information, by reference to the end of that year, on the following matters—
- (a) the structure of the company’s capital, including in particular—
 - (i) the rights and obligations attaching to the shares or, as the case may be, to each class of shares in the company, and
 - (ii) where there are two or more such classes, the percentage of the total share capital represented by each class;
 - (b) any restrictions on the transfer of securities in the company, including in particular—
 - (i) limitations on the holding of securities, and
 - (ii) requirements to obtain the approval of the company, or of other holders of securities in the company, for a transfer of securities;
 - (c) in the case of each person with a significant direct or indirect holding of securities in the company, such details as are known to the company of—
 - (i) the identity of the person,
 - (ii) the size of the holding, and
 - (iii) the nature of the holding;
 - (d) in the case of each person who holds securities carrying special rights with regard to control of the company—
 - (i) the identity of the person, and
 - (ii) the nature of the rights;

- (e) where—
 - (i) the company has an employees’ share scheme, and
 - (ii) shares to which the scheme relates have rights with regard to control of the company that are not exercisable directly by the employees,how those rights are exercisable;
 - (f) any restrictions on voting rights, including in particular—
 - (i) limitations on voting rights of holders of a given percentage or number of votes,
 - (ii) deadlines for exercising voting rights, and
 - (iii) arrangements by which, with the company’s co-operation, financial rights carried by securities are held by a person other than the holder of the securities;
 - (g) any agreements between holders of securities that are known to the company and may result in restrictions on the transfer of securities or on voting rights;
 - (h) any rules that the company has about—
 - (i) appointment and replacement of directors, or
 - (ii) amendment of the company’s articles of association;
 - (i) the powers of the company’s directors, including in particular any powers in relation to the issuing or buying back by the company of its shares;
 - (j) any significant agreements to which the company is a party that take effect, alter or terminate upon a change of control of the company following a takeover bid, and the effects of any such agreements;
 - (k) any agreements between the company and its directors or employees providing for compensation for loss of office or employment (whether through resignation, purported redundancy or otherwise) that occurs because of a takeover bid.
- (3) For the purposes of sub-paragraph (2)(a) a company’s capital includes any securities in the company that are not admitted to trading on a regulated market.
- (4) For the purposes of sub-paragraph (2)(c) a person has an indirect holding of securities if—
- (a) they are held on his behalf, or
 - (b) he is able to secure that rights carried by the securities are exercised in accordance with his wishes.
- (5) Sub-paragraph (2)(j) does not apply to an agreement if—
- (a) disclosure of the agreement would be seriously prejudicial to the company, and
 - (b) the company is not under any other obligation to disclose it.
- (6) In this paragraph—
- “securities” means shares or debentures;
 - “takeover bid” has the same meaning as in the Takeovers Directive;

“the Takeovers Directive” means Directive 2004/25/EC of the European Parliament and of the Council;

“voting rights” means rights to vote at general meetings of the company in question, including rights that arise only in certain circumstances.”.

- (3) In section 234ZZA (requirements of directors’ reports), at the end of subsection (4) (contents of Schedule 7) insert –
“Part 7 specifies information to be disclosed by certain publicly-traded companies.”.
- (4) After that subsection insert –
“(5) A directors’ report shall also contain any necessary explanatory material with regard to information that is required to be included in the report by Part 7 of Schedule 7.”.
- (5) In section 251 (summary financial statements), after subsection (2ZA) insert –
“(2ZB) A company that sends to an entitled person a summary financial statement instead of a copy of its directors’ report shall –
(a) include in the statement the explanatory material required to be included in the directors’ report by section 234ZZA(5), or
(b) send that material to the entitled person at the same time as it sends the statement.
For the purposes of paragraph (b), subsections (2A) to (2E) apply in relation to the material referred to in that paragraph as they apply in relation to a summary financial statement.”.
- (6) The amendments made by this section apply in relation to directors’ reports for financial years beginning on or after 20th May 2006.

PART 29

FRAUDULENT TRADING

993 Offence of fraudulent trading

- (1) If any business of a company is carried on with intent to defraud creditors of the company or creditors of any other person, or for any fraudulent purpose, every person who is knowingly a party to the carrying on of the business in that manner commits an offence.
- (2) This applies whether or not the company has been, or is in the course of being, wound up.
- (3) A person guilty of an offence under this section is liable –
(a) on conviction on indictment, to imprisonment for a term not exceeding ten years or a fine (or both);
(b) on summary conviction –
(i) in England and Wales, to imprisonment for a term not exceeding twelve months or a fine not exceeding the statutory maximum (or both);
(ii) in Scotland or Northern Ireland, to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum (or both).

PART 30

PROTECTION OF MEMBERS AGAINST UNFAIR PREJUDICE

*Main provisions***994 Petition by company member**

- (1) A member of a company may apply to the court by petition for an order under this Part on the ground –
 - (a) that the company’s affairs are being or have been conducted in a manner that is unfairly prejudicial to the interests of members generally or of some part of its members (including at least himself), or
 - (b) that an actual or proposed act or omission of the company (including an act or omission on its behalf) is or would be so prejudicial.
- (2) The provisions of this Part apply to a person who is not a member of a company but to whom shares in the company have been transferred or transmitted by operation of law as they apply to a member of a company.
- (3) In this section, and so far as applicable for the purposes of this section in the other provisions of this Part, “company” means –
 - (a) a company within the meaning of this Act, or
 - (b) a company that is not such a company but is a statutory water company within the meaning of the Statutory Water Companies Act 1991 (c. 58).

995 Petition by Secretary of State

- (1) This section applies to a company in respect of which –
 - (a) the Secretary of State has received a report under section 437 of the Companies Act 1985 (c. 6) (inspector’s report);
 - (b) the Secretary of State has exercised his powers under section 447 or 448 of that Act (powers to require documents and information or to enter and search premises);
 - (c) the Secretary of State or the Financial Services Authority has exercised his or its powers under Part 11 of the Financial Services and Markets Act 2000 (c. 8) (information gathering and investigations); or
 - (d) the Secretary of State has received a report from an investigator appointed by him or the Financial Services Authority under that Part.
- (2) If it appears to the Secretary of State that in the case of such a company –
 - (a) the company’s affairs are being or have been conducted in a manner that is unfairly prejudicial to the interests of members generally or of some part of its members, or
 - (b) an actual or proposed act or omission of the company (including an act or omission on its behalf) is or would be so prejudicial,he may apply to the court by petition for an order under this Part.
- (3) The Secretary of State may do this in addition to, or instead of, presenting a petition for the winding up of the company.
- (4) In this section, and so far as applicable for the purposes of this section in the other provisions of this Part, “company” means any body corporate that is

liable to be wound up under the Insolvency Act 1986 (c. 45) or the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)).

996 Powers of the court under this Part

- (1) If the court is satisfied that a petition under this Part is well founded, it may make such order as it thinks fit for giving relief in respect of the matters complained of.
- (2) Without prejudice to the generality of subsection (1), the court's order may –
 - (a) regulate the conduct of the company's affairs in the future;
 - (b) require the company –
 - (i) to refrain from doing or continuing an act complained of, or
 - (ii) to do an act that the petitioner has complained it has omitted to do;
 - (c) authorise civil proceedings to be brought in the name and on behalf of the company by such person or persons and on such terms as the court may direct;
 - (d) require the company not to make any, or any specified, alterations in its articles without the leave of the court;
 - (e) provide for the purchase of the shares of any members of the company by other members or by the company itself and, in the case of a purchase by the company itself, the reduction of the company's capital accordingly.

Supplementary provisions

997 Application of general rule-making powers

The power to make rules under section 411 of the Insolvency Act 1986 (c. 45) or Article 359 of the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)), so far as relating to a winding-up petition, applies for the purposes of a petition under this Part.

998 Copy of order affecting company's constitution to be delivered to registrar

- (1) Where an order of the court under this Part –
 - (a) alters the company's constitution, or
 - (b) gives leave for the company to make any, or any specified, alterations to its constitution,the company must deliver a copy of the order to the registrar.
- (2) It must do so within 14 days from the making of the order or such longer period as the court may allow.
- (3) If a company makes default in complying with this section, an offence is committed by –
 - (a) the company, and
 - (b) every officer of the company who is in default.
- (4) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for

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

999 Supplementary provisions where company's constitution altered

- (1) This section applies where an order under this Part alters a company's constitution.
- (2) If the order amends—
 - (a) a company's articles, or
 - (b) any resolution or agreement to which Chapter 3 of Part 3 applies (resolution or agreement affecting a company's constitution),
 the copy of the order delivered to the registrar by the company under section 998 must be accompanied by a copy of the company's articles, or the resolution or agreement in question, as amended.
- (3) Every copy of a company's articles issued by the company after the order is made must be accompanied by a copy of the order, unless the effect of the order has been incorporated into the articles by amendment.
- (4) If a company makes default in complying with this section an offence is committed by—
 - (a) the company, and
 - (b) every officer of the company who is in default.
- (5) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

PART 31

DISSOLUTION AND RESTORATION TO THE REGISTER

CHAPTER 1

STRIKING OFF

Registrar's power to strike off defunct company

1000 Power to strike off company not carrying on business or in operation

- (1) If the registrar has reasonable cause to believe that a company is not carrying on business or in operation, the registrar may send to the company by post a letter inquiring whether the company is carrying on business or in operation.
- (2) If the registrar does not within one month of sending the letter receive any answer to it, the registrar must within 14 days after the expiration of that month send to the company by post a registered letter referring to the first letter, and stating—
 - (a) that no answer to it has been received, and
 - (b) that if an answer is not received to the second letter within one month from its date, a notice will be published in the Gazette with a view to striking the company's name off the register.
- (3) If the registrar—

- (a) receives an answer to the effect that the company is not carrying on business or in operation, or
 - (b) does not within one month after sending the second letter receive any answer,
- the registrar may publish in the Gazette, and send to the company by post, a notice that at the expiration of three months from the date of the notice the name of the company mentioned in it will, unless cause is shown to the contrary, be struck off the register and the company will be dissolved.
- (4) At the expiration of the time mentioned in the notice the registrar may, unless cause to the contrary is previously shown by the company, strike its name off the register.
 - (5) The registrar must publish notice in the Gazette of the company's name having been struck off the register.
 - (6) On the publication of the notice in the Gazette the company is dissolved.
 - (7) However –
 - (a) the liability (if any) of every director, managing officer and member of the company continues and may be enforced as if the company had not been dissolved, and
 - (b) nothing in this section affects the power of the court to wind up a company the name of which has been struck off the register.

1001 Duty to act in case of company being wound up

- (1) If, in a case where a company is being wound up –
 - (a) the registrar has reasonable cause to believe –
 - (i) that no liquidator is acting, or
 - (ii) that the affairs of the company are fully wound up, and
 - (b) the returns required to be made by the liquidator have not been made for a period of six consecutive months,

the registrar must publish in the Gazette and send to the company or the liquidator (if any) a notice that at the expiration of three months from the date of the notice the name of the company mentioned in it will, unless cause is shown to the contrary, be struck off the register and the company will be dissolved.
- (2) At the expiration of the time mentioned in the notice the registrar may, unless cause to the contrary is previously shown by the company, strike its name off the register.
- (3) The registrar must publish notice in the Gazette of the company's name having been struck off the register.
- (4) On the publication of the notice in the Gazette the company is dissolved.
- (5) However –
 - (a) the liability (if any) of every director, managing officer and member of the company continues and may be enforced as if the company had not been dissolved, and
 - (b) nothing in this section affects the power of the court to wind up a company the name of which has been struck off the register.

1002 Supplementary provisions as to service of letter or notice

- (1) A letter or notice to be sent under section 1000 or 1001 to a company may be addressed to the company at its registered office or, if no office has been registered, to the care of some officer of the company.
- (2) If there is no officer of the company whose name and address are known to the registrar, the letter or notice may be sent to each of the persons who subscribed the memorandum (if their addresses are known to the registrar).
- (3) A notice to be sent to a liquidator under section 1001 may be addressed to him at his last known place of business.

*Voluntary striking off***1003 Striking off on application by company**

- (1) On application by a company, the registrar of companies may strike the company's name off the register.
- (2) The application –
 - (a) must be made on the company's behalf by its directors or by a majority of them, and
 - (b) must contain the prescribed information.
- (3) The registrar may not strike a company off under this section until after the expiration of three months from the publication by the registrar in the Gazette of a notice –
 - (a) stating that the registrar may exercise the power under this section in relation to the company, and
 - (b) inviting any person to show cause why that should not be done.
- (4) The registrar must publish notice in the Gazette of the company's name having been struck off.
- (5) On the publication of the notice in the Gazette the company is dissolved.
- (6) However –
 - (a) the liability (if any) of every director, managing officer and member of the company continues and may be enforced as if the company had not been dissolved, and
 - (b) nothing in this section affects the power of the court to wind up a company the name of which has been struck off the register.

1004 Circumstances in which application not to be made: activities of company

- (1) An application under section 1003 (application for voluntary striking off) on behalf of a company must not be made if, at any time in the previous three months, the company has –
 - (a) changed its name,
 - (b) traded or otherwise carried on business,
 - (c) made a disposal for value of property or rights that, immediately before ceasing to trade or otherwise carry on business, it held for the purpose of disposal for gain in the normal course of trading or otherwise carrying on business, or

- (d) engaged in any other activity, except one which is –
 - (i) necessary or expedient for the purpose of making an application under that section, or deciding whether to do so,
 - (ii) necessary or expedient for the purpose of concluding the affairs of the company,
 - (iii) necessary or expedient for the purpose of complying with any statutory requirement, or
 - (iv) specified by the Secretary of State by order for the purposes of this sub-paragraph.
- (2) For the purposes of this section, a company is not to be treated as trading or otherwise carrying on business by virtue only of the fact that it makes a payment in respect of a liability incurred in the course of trading or otherwise carrying on business.
- (3) The Secretary of State may by order amend subsection (1) for the purpose of altering the period in relation to which the doing of the things mentioned in paragraphs (a) to (d) of that subsection is relevant.
- (4) An order under this section is subject to negative resolution procedure.
- (5) It is an offence for a person to make an application in contravention of this section.
- (6) In proceedings for such an offence it is a defence for the accused to prove that he did not know, and could not reasonably have known, of the existence of the facts that led to the contravention.
- (7) A person guilty of an offence under this section is liable –
 - (a) on conviction on indictment, to a fine;
 - (b) on summary conviction, to a fine not exceeding the statutory maximum.

1005 Circumstances in which application not to be made: other proceedings not concluded

- (1) An application under section 1003 (application for voluntary striking off) on behalf of a company must not be made at a time when –
 - (a) an application to the court under Part 26 has been made on behalf of the company for the sanctioning of a compromise or arrangement and the matter has not been finally concluded;
 - (b) a voluntary arrangement in relation to the company has been proposed under Part 1 of the Insolvency Act 1986 (c. 45) or Part 2 of the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)) and the matter has not been finally concluded;
 - (c) the company is in administration under Part 2 of that Act or Part 3 of that Order;
 - (d) paragraph 44 of Schedule B1 to that Act or paragraph 45 of Schedule B1 to that Order applies (interim moratorium on proceedings where application to the court for an administration order has been made or notice of intention to appoint administrator has been filed);
 - (e) the company is being wound up under Part 4 of that Act or Part 5 of that Order, whether voluntarily or by the court, or a petition under that Part for winding up of the company by the court has been presented and not finally dealt with or withdrawn;

- (f) there is a receiver or manager of the company's property;
 - (g) the company's estate is being administered by a judicial factor.
- (2) For the purposes of subsection (1)(a), the matter is finally concluded if –
- (a) the application has been withdrawn,
 - (b) the application has been finally dealt with without a compromise or arrangement being sanctioned by the court, or
 - (c) a compromise or arrangement has been sanctioned by the court and has, together with anything required to be done under any provision made in relation to the matter by order of the court, been fully carried out.
- (3) For the purposes of subsection (1)(b), the matter is finally concluded if –
- (a) no meetings are to be summoned under section 3 of the Insolvency Act 1986 (c. 45) or Article 16 of the Insolvency (Northern Ireland) Order 1989,
 - (b) meetings summoned under that section or Article fail to approve the arrangement with no, or the same, modifications,
 - (c) an arrangement approved by meetings summoned under that section, or in consequence of a direction under section 6(4)(b) of that Act or Article 19(4)(b) of that Order, has been fully implemented, or
 - (d) the court makes an order under section 6(5) of that Act or Article 19(5) of that Order revoking approval given at previous meetings and, if the court gives any directions under section 6(6) of that Act or Article 19(6) of that Order, the company has done whatever it is required to do under those directions.
- (4) It is an offence for a person to make an application in contravention of this section.
- (5) In proceedings for such an offence it is a defence for the accused to prove that he did not know, and could not reasonably have known, of the existence of the facts that led to the contravention.
- (6) A person guilty of an offence under this section is liable –
- (a) on conviction on indictment, to a fine;
 - (b) on summary conviction, to a fine not exceeding the statutory maximum.

1006 Copy of application to be given to members, employees, etc

- (1) A person who makes an application under section 1003 (application for voluntary striking off) on behalf of a company must secure that, within seven days from the day on which the application is made, a copy of it is given to every person who at any time on that day is –
- (a) a member of the company,
 - (b) an employee of the company,
 - (c) a creditor of the company,
 - (d) a director of the company,
 - (e) a manager or trustee of any pension fund established for the benefit of employees of the company, or
 - (f) a person of a description specified for the purposes of this paragraph by regulations made by the Secretary of State.

Regulations under paragraph (f) are subject to negative resolution procedure.

- (2) Subsection (1) does not require a copy of the application to be given to a director who is a party to the application.
- (3) The duty imposed by this section ceases to apply if the application is withdrawn before the end of the period for giving the copy application.
- (4) A person who fails to perform the duty imposed on him by this section commits an offence.
If he does so with the intention of concealing the making of the application from the person concerned, he commits an aggravated offence.
- (5) In proceedings for an offence under this section it is a defence for the accused to prove that he took all reasonable steps to perform the duty.
- (6) A person guilty of an offence under this section (other than an aggravated offence) is liable—
 - (a) on conviction on indictment, to a fine;
 - (b) on summary conviction, to a fine not exceeding the statutory maximum.
- (7) A person guilty of an aggravated offence under this section is liable—
 - (a) on conviction on indictment, to imprisonment for a term not exceeding seven years or a fine (or both);
 - (b) on summary conviction—
 - (i) in England and Wales, to imprisonment for a term not exceeding twelve months or to a fine not exceeding the statutory maximum (or both);
 - (ii) in Scotland or Northern Ireland, to imprisonment for a term not exceeding six months, or to a fine not exceeding the statutory maximum (or both).

1007 Copy of application to be given to new members, employees, etc

- (1) This section applies in relation to any time after the day on which a company makes an application under section 1003 (application for voluntary striking off) and before the day on which the application is finally dealt with or withdrawn.
- (2) A person who is a director of the company at the end of a day on which a person (other than himself) becomes—
 - (a) a member of the company,
 - (b) an employee of the company,
 - (c) a creditor of the company,
 - (d) a director of the company,
 - (e) a manager or trustee of any pension fund established for the benefit of employees of the company, or
 - (f) a person of a description specified for the purposes of this paragraph by regulations made by the Secretary of State,must secure that a copy of the application is given to that person within seven days from that day.
Regulations under paragraph (f) are subject to negative resolution procedure.
- (3) The duty imposed by this section ceases to apply if the application is finally dealt with or withdrawn before the end of the period for giving the copy application.

- (4) A person who fails to perform the duty imposed on him by this section commits an offence.
 If he does so with the intention of concealing the making of the application from the person concerned, he commits an aggravated offence.
- (5) In proceedings for an offence under this section it is a defence for the accused to prove –
- (a) that at the time of the failure he was not aware of the fact that the company had made an application under section 1003, or
 - (b) that he took all reasonable steps to perform the duty.
- (6) A person guilty of an offence under this section (other than an aggravated offence) is liable –
- (a) on conviction on indictment, to a fine;
 - (b) on summary conviction, to a fine not exceeding the statutory maximum.
- (7) A person guilty of an aggravated offence under this section is liable –
- (a) on conviction on indictment, to imprisonment for a term not exceeding seven years or a fine (or both);
 - (b) on summary conviction –
 - (i) in England and Wales, to imprisonment for a term not exceeding twelve months or to a fine not exceeding the statutory maximum (or both);
 - (ii) in Scotland or Northern Ireland, to imprisonment for a term not exceeding six months, or to a fine not exceeding the statutory maximum (or both).

1008 Copy of application: provisions as to service of documents

- (1) The following provisions have effect for the purposes of –
 section 1006 (copy of application to be given to members, employees, etc),
 and
 section 1007 (copy of application to be given to new members, employees, etc).
- (2) A document is treated as given to a person if it is –
- (a) delivered to him, or
 - (b) left at his proper address, or
 - (c) sent by post to him at that address.
- (3) For the purposes of subsection (2) and section 7 of the Interpretation Act 1978 (c. 30) (service of documents by post) as it applies in relation to that subsection, the proper address of a person is –
- (a) in the case of a firm incorporated or formed in the United Kingdom, its registered or principal office;
 - (b) in the case of a firm incorporated or formed outside the United Kingdom –
 - (i) if it has a place of business in the United Kingdom, its principal office in the United Kingdom, or
 - (ii) if it does not have a place of business in the United Kingdom, its registered or principal office;
 - (c) in the case of an individual, his last known address.

- (4) In the case of a creditor of the company a document is treated as given to him if it is left or sent by post to him –
 - (a) at the place of business of his with which the company has had dealings by virtue of which he is a creditor of the company, or
 - (b) if there is more than one such place of business, at each of them.

1009 Circumstances in which application to be withdrawn

- (1) This section applies where, at any time on or after the day on which a company makes an application under section 1003 (application for voluntary striking off) and before the day on which the application is finally dealt with or withdrawn –
 - (a) the company –
 - (i) changes its name,
 - (ii) trades or otherwise carries on business,
 - (iii) makes a disposal for value of any property or rights other than those which it was necessary or expedient for it to hold for the purpose of making, or proceeding with, an application under that section, or
 - (iv) engages in any activity, except one to which subsection (4) applies;
 - (b) an application is made to the court under Part 26 on behalf of the company for the sanctioning of a compromise or arrangement;
 - (c) a voluntary arrangement in relation to the company is proposed under Part 1 of the Insolvency Act 1986 (c. 45) or Part 2 of the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19));
 - (d) an application to the court for an administration order in respect of the company is made under paragraph 12 of Schedule B1 to that Act or paragraph 13 of Schedule B1 to that Order;
 - (e) an administrator is appointed in respect of the company under paragraph 14 or 22 of Schedule B1 to that Act or paragraph 15 or 23 of Schedule B1 to that Order, or a copy of notice of intention to appoint an administrator of the company under any of those provisions is filed with the court;
 - (f) there arise any of the circumstances in which, under section 84(1) of that Act or Article 70 of that Order, the company may be voluntarily wound up;
 - (g) a petition is presented for the winding up of the company by the court under Part 4 of that Act or Part 5 of that Order;
 - (h) a receiver or manager of the company's property is appointed; or
 - (i) a judicial factor is appointed to administer the company's estate.
- (2) A person who, at the end of a day on which any of the events mentioned in subsection (1) occurs, is a director of the company must secure that the company's application is withdrawn forthwith.
- (3) For the purposes of subsection (1)(a), a company is not treated as trading or otherwise carrying on business by virtue only of the fact that it makes a payment in respect of a liability incurred in the course of trading or otherwise carrying on business.
- (4) The excepted activities referred to in subsection (1)(a)(iv) are –
 - (a) any activity necessary or expedient for the purposes of –

- (i) making, or proceeding with, an application under section 1003 (application for voluntary striking off),
- (ii) concluding affairs of the company that are outstanding because of what has been necessary or expedient for the purpose of making, or proceeding with, such an application, or
- (iii) complying with any statutory requirement;
- (b) any activity specified by the Secretary of State by order for the purposes of this subsection.

An order under paragraph (b) is subject to negative resolution procedure.

- (5) A person who fails to perform the duty imposed on him by this section commits an offence.
- (6) In proceedings for an offence under this section it is a defence for the accused to prove –
 - (a) that at the time of the failure he was not aware of the fact that the company had made an application under section 1003, or
 - (b) that he took all reasonable steps to perform the duty.
- (7) A person guilty of an offence under this section is liable –
 - (a) on conviction on indictment, to a fine;
 - (b) on summary conviction, to a fine not exceeding the statutory maximum.

1010 Withdrawal of application

An application under section 1003 is withdrawn by notice to the registrar.

1011 Meaning of “creditor”

In this Chapter “creditor” includes a contingent or prospective creditor.

CHAPTER 2

PROPERTY OF DISSOLVED COMPANY

Property vesting as bona vacantia

1012 Property of dissolved company to be bona vacantia

- (1) When a company is dissolved, all property and rights whatsoever vested in or held on trust for the company immediately before its dissolution (including leasehold property, but not including property held by the company on trust for another person) are deemed to be *bona vacantia* and –
 - (a) accordingly belong to the Crown, or to the Duchy of Lancaster or to the Duke of Cornwall for the time being (as the case may be), and
 - (b) vest and may be dealt with in the same manner as other *bona vacantia* accruing to the Crown, to the Duchy of Lancaster or to the Duke of Cornwall.
- (2) Subsection (1) has effect subject to the possible restoration of the company to the register under Chapter 3 (see section 1034).

1013 Crown disclaimer of property vesting as bona vacantia

- (1) Where property vests in the Crown under section 1012, the Crown's title to it under that section may be disclaimed by a notice signed by the Crown representative, that is to say the Treasury Solicitor, or, in relation to property in Scotland, the Queen's and Lord Treasurer's Remembrancer.
- (2) The right to execute a notice of disclaimer under this section may be waived by or on behalf of the Crown either expressly or by taking possession.
- (3) A notice of disclaimer must be executed within three years after –
 - (a) the date on which the fact that the property may have vested in the Crown under section 1012 first comes to the notice of the Crown representative, or
 - (b) if ownership of the property is not established at that date, the end of the period reasonably necessary for the Crown representative to establish the ownership of the property.
- (4) If an application in writing is made to the Crown representative by a person interested in the property requiring him to decide whether he will or will not disclaim, any notice of disclaimer must be executed within twelve months after the making of the application or such further period as may be allowed by the court.
- (5) A notice of disclaimer under this section is of no effect if it is shown to have been executed after the end of the period specified by subsection (3) or (4).
- (6) A notice of disclaimer under this section must be delivered to the registrar and retained and registered by him.
- (7) Copies of it must be published in the Gazette and sent to any persons who have given the Crown representative notice that they claim to be interested in the property.
- (8) This section applies to property vested in the Duchy of Lancaster or the Duke of Cornwall under section 1012 as if for references to the Crown and the Crown representative there were respectively substituted references to the Duchy of Lancaster and to the Solicitor to that Duchy, or to the Duke of Cornwall and to the Solicitor to the Duchy of Cornwall, as the case may be.

1014 Effect of Crown disclaimer

- (1) Where notice of disclaimer is executed under section 1013 as respects any property, that property is deemed not to have vested in the Crown under section 1012.
- (2) The following sections contain provisions as to the effect of the Crown disclaimer –
 - sections 1015 to 1019 apply in relation to property in England and Wales or Northern Ireland;
 - sections 1020 to 1022 apply in relation to property in Scotland.

Effect of Crown disclaimer: England and Wales and Northern Ireland

1015 General effect of disclaimer

- (1) The Crown's disclaimer operates so as to terminate, as from the date of the disclaimer, the rights, interests and liabilities of the company in or in respect of the property disclaimed.
- (2) It does not, except so far as is necessary for the purpose of releasing the company from any liability, affect the rights or liabilities of any other person.

1016 Disclaimer of leaseholds

- (1) The disclaimer of any property of a leasehold character does not take effect unless a copy of the disclaimer has been served (so far as the Crown representative is aware of their addresses) on every person claiming under the company as underlessee or mortgagee, and either –
 - (a) no application under section 1017 (power of court to make vesting order) is made with respect to that property before the end of the period of 14 days beginning with the day on which the last notice under this paragraph was served, or
 - (b) where such an application has been made, the court directs that the disclaimer shall take effect.
- (2) Where the court gives a direction under subsection (1)(b) it may also, instead of or in addition to any order it makes under section 1017, make such order as it thinks fit with respect to fixtures, tenant's improvements and other matters arising out of the lease.
- (3) In this section the "Crown representative" means –
 - (a) in relation to property vested in the Duchy of Lancaster, the Solicitor to that Duchy;
 - (b) in relation to property vested in the Duke of Cornwall, the Solicitor to the Duchy of Cornwall;
 - (c) in relation to property in Scotland, the Queen's and Lord Treasurer's Remembrancer;
 - (d) in relation to other property, the Treasury Solicitor.

1017 Power of court to make vesting order

- (1) The court may on application by a person who –
 - (a) claims an interest in the disclaimed property, or
 - (b) is under a liability in respect of the disclaimed property that is not discharged by the disclaimer,make an order under this section in respect of the property.
- (2) An order under this section is an order for the vesting of the disclaimed property in, or its delivery to –
 - (a) a person entitled to it (or a trustee for such a person), or
 - (b) a person subject to such a liability as is mentioned in subsection (1)(b) (or a trustee for such a person).

- (3) An order under subsection (2)(b) may only be made where it appears to the court that it would be just to do so for the purpose of compensating the person subject to the liability in respect of the disclaimer.
- (4) An order under this section may be made on such terms as the court thinks fit.
- (5) On a vesting order being made under this section, the property comprised in it vests in the person named in that behalf in the order without conveyance, assignment or transfer.

1018 Protection of persons holding under a lease

- (1) The court must not make an order under section 1017 vesting property of a leasehold nature in a person claiming under the company as underlessee or mortgagee except on terms making that person –
 - (a) subject to the same liabilities and obligations as those to which the company was subject under the lease, or
 - (b) if the court thinks fit, subject to the same liabilities and obligations as if the lease had been assigned to him.
- (2) Where the order relates to only part of the property comprised in the lease, subsection (1) applies as if the lease had comprised only the property comprised in the vesting order.
- (3) A person claiming under the company as underlessee or mortgagee who declines to accept a vesting order on such terms is excluded from all interest in the property.
- (4) If there is no person claiming under the company who is willing to accept an order on such terms, the court has power to vest the company's estate and interest in the property in any person who is liable (whether personally or in a representative character, and whether alone or jointly with the company) to perform the lessee's covenants in the lease.
- (5) The court may vest that estate and interest in such a person freed and discharged from all estates, incumbrances and interests created by the company.

1019 Land subject to rentcharge

Where in consequence of the disclaimer land that is subject to a rentcharge vests in any person, neither he nor his successors in title are subject to any personal liability in respect of sums becoming due under the rentcharge, except sums becoming due after he, or some person claiming under or through him, has taken possession or control of the land or has entered into occupation of it.

Effect of Crown disclaimer: Scotland

1020 General effect of disclaimer

- (1) The Crown's disclaimer operates to determine, as from the date of the disclaimer, the rights, interests and liabilities of the company, and the property of the company, in or in respect of the property disclaimed.

- (2) It does not (except so far as is necessary for the purpose of releasing the company and its property from liability) affect the rights or liabilities of any other person.

1021 Power of court to make vesting order

- (1) The court may –
- (a) on application by a person who either claims an interest in disclaimed property or is under a liability not discharged by this Act in respect of disclaimed property, and
 - (b) on hearing such persons as it thinks fit,
- make an order for the vesting of the property in or its delivery to any persons entitled to it, or to whom it may seem just that the property should be delivered by way of compensation for such liability, or a trustee for him.
- (2) The order may be made on such terms as the court thinks fit.
- (3) On a vesting order being made under this section, the property comprised in it vests accordingly in the person named in that behalf in the order, without conveyance or assignation for that purpose.

1022 Protection of persons holding under a lease

- (1) Where the property disclaimed is held under a lease the court must not make a vesting order in favour of a person claiming under the company, whether –
- (a) as sub-lessee, or
 - (b) as creditor in a duly registered or (as the case may be) recorded heritable security over a lease,
- except on the following terms.
- (2) The person must by the order be made subject –
- (a) to the same liabilities and obligations as those to which the company was subject under the lease in respect of the property, or
 - (b) if the court thinks fit, only to the same liabilities and obligations as if the lease had been assigned to him.
- In either event (if the case so requires) the liabilities and obligations must be as if the lease had comprised only the property comprised in the vesting order.
- (3) A sub-lessee or creditor declining to accept a vesting order on such terms is excluded from all interest in and security over the property.
- (4) If there is no person claiming under the company who is willing to accept an order on such terms, the court has power to vest the company's estate and interest in the property in any person liable (either personally or in a representative character, and either alone or jointly with the company) to perform the lessee's obligations under the lease.
- (5) The court may vest that estate and interest in such a person freed and discharged from all interests, rights and obligations created by the company in the lease or in relation to the lease.
- (6) For the purposes of this section a heritable security –
- (a) is duly recorded if it is recorded in the Register of Sasines, and
 - (b) is duly registered if registered in accordance with the Land Registration (Scotland) Act 1979 (c. 33).

Supplementary provisions

1023 Liability for rentcharge on company's land after dissolution

- (1) This section applies where on the dissolution of a company land in England and Wales or Northern Ireland that is subject to a rentcharge vests by operation of law in the Crown or any other person (“the proprietor”).
- (2) Neither the proprietor nor his successors in title are subject to any personal liability in respect of sums becoming due under the rentcharge, except sums becoming due after the proprietor, or some person claiming under or through him, has taken possession or control of the land or has entered into occupation of it.
- (3) In this section “company” includes any body corporate.

CHAPTER 3

RESTORATION TO THE REGISTER

Administrative restoration to the register

1024 Application for administrative restoration to the register

- (1) An application may be made to the registrar to restore to the register a company that has been struck off the register under section 1000 or 1001 (power of registrar to strike off defunct company).
- (2) An application under this section may be made whether or not the company has in consequence been dissolved.
- (3) An application under this section may only be made by a former director or former member of the company.
- (4) An application under this section may not be made after the end of the period of six years from the date of the dissolution of the company.
For this purpose an application is made when it is received by the registrar.

1025 Requirements for administrative restoration

- (1) On an application under section 1024 the registrar shall restore the company to the register if, and only if, the following conditions are met.
- (2) The first condition is that the company was carrying on business or in operation at the time of its striking off.
- (3) The second condition is that, if any property or right previously vested in or held on trust for the company has vested as *bona vacantia*, the Crown representative has signified to the registrar in writing consent to the company's restoration to the register.
- (4) It is the applicant's responsibility to obtain that consent and to pay any costs (in Scotland, expenses) of the Crown representative –
 - (a) in dealing with the property during the period of dissolution, or
 - (b) in connection with the proceedings on the application,that may be demanded as a condition of giving consent.

- (5) The third condition is that the applicant has –
 - (a) delivered to the registrar such documents relating to the company as are necessary to bring up to date the records kept by the registrar, and
 - (b) paid any penalties under section 453 or corresponding earlier provisions (civil penalty for failure to deliver accounts) that were outstanding at the date of dissolution or striking off.
- (6) In this section the “Crown representative” means –
 - (a) in relation to property vested in the Duchy of Lancaster, the Solicitor to that Duchy;
 - (b) in relation to property vested in the Duke of Cornwall, the Solicitor to the Duchy of Cornwall;
 - (c) in relation to property in Scotland, the Queen’s and Lord Treasurer’s Remembrancer;
 - (d) in relation to other property, the Treasury Solicitor.

1026 Application to be accompanied by statement of compliance

- (1) An application under section 1024 (application for administrative restoration to the register) must be accompanied by a statement of compliance.
- (2) The statement of compliance required is a statement –
 - (a) that the person making the application has standing to apply (see subsection (3) of that section), and
 - (b) that the requirements for administrative restoration (see section 1025) are met.
- (3) The registrar may accept the statement of compliance as sufficient evidence of those matters.

1027 Registrar’s decision on application for administrative restoration

- (1) The registrar must give notice to the applicant of the decision on an application under section 1024 (application for administrative restoration to the register).
- (2) If the decision is that the company should be restored to the register, the restoration takes effect as from the date that notice is sent.
- (3) In the case of such a decision, the registrar must –
 - (a) enter on the register a note of the date as from which the company’s restoration to the register takes effect, and
 - (b) cause notice of the restoration to be published in the Gazette.
- (4) The notice under subsection (3)(b) must state –
 - (a) the name of the company or, if the company is restored to the register under a different name (see section 1033), that name and its former name,
 - (b) the company’s registered number, and
 - (c) the date as from which the restoration of the company to the register takes effect.

1028 Effect of administrative restoration

- (1) The general effect of administrative restoration to the register is that the company is deemed to have continued in existence as if it had not been dissolved or struck off the register.
- (2) The company is not liable to a penalty under section 453 or any corresponding earlier provision (civil penalty for failure to deliver accounts) for a financial year in relation to which the period for filing accounts and reports ended –
 - (a) after the date of dissolution or striking off, and
 - (b) before the restoration of the company to the register.
- (3) The court may give such directions and make such provision as seems just for placing the company and all other persons in the same position (as nearly as may be) as if the company had not been dissolved or struck off the register.
- (4) An application to the court for such directions or provision may be made any time within three years after the date of restoration of the company to the register.

Restoration to the register by the court

1029 Application to court for restoration to the register

- (1) An application may be made to the court to restore to the register a company –
 - (a) that has been dissolved under Chapter 9 of Part 4 of the Insolvency Act 1986 (c. 45) or Chapter 9 of Part 5 of the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)) (dissolution of company after winding up),
 - (b) that is deemed to have been dissolved under paragraph 84(6) of Schedule B1 to that Act or paragraph 85(6) of Schedule B1 to that Order (dissolution of company following administration), or
 - (c) that has been struck off the register –
 - (i) under section 1000 or 1001 (power of registrar to strike off defunct company), or
 - (ii) under section 1003 (voluntary striking off),whether or not the company has in consequence been dissolved.
- (2) An application under this section may be made by –
 - (a) the Secretary of State,
 - (b) any former director of the company,
 - (c) any person having an interest in land in which the company had a superior or derivative interest,
 - (d) any person having an interest in land or other property –
 - (i) that was subject to rights vested in the company, or
 - (ii) that was benefited by obligations owed by the company,
 - (e) any person who but for the company's dissolution would have been in a contractual relationship with it,
 - (f) any person with a potential legal claim against the company,
 - (g) any manager or trustee of a pension fund established for the benefit of employees of the company,
 - (h) any former member of the company (or the personal representatives of such a person),

- (i) any person who was a creditor of the company at the time of its striking off or dissolution,
 - (j) any former liquidator of the company,
 - (k) where the company was struck off the register under section 1003 (voluntary striking off), any person of a description specified by regulations under section 1006(1)(f) or 1007(2)(f) (persons entitled to notice of application for voluntary striking off),
- or by any other person appearing to the court to have an interest in the matter.

1030 When application to the court may be made

- (1) An application to the court for restoration of a company to the register may be made at any time for the purpose of bringing proceedings against the company for damages for personal injury.
- (2) No order shall be made on such an application if it appears to the court that the proceedings would fail by virtue of any enactment as to the time within which proceedings must be brought.
- (3) In making that decision the court must have regard to its power under section 1032(3) (power to give consequential directions etc) to direct that the period between the dissolution (or striking off) of the company and the making of the order is not to count for the purposes of any such enactment.
- (4) In any other case an application to the court for restoration of a company to the register may not be made after the end of the period of six years from the date of the dissolution of the company, subject as follows.
- (5) In a case where –
 - (a) the company has been struck off the register under section 1000 or 1001 (power of registrar to strike off defunct company),
 - (b) an application to the registrar has been made under section 1024 (application for administrative restoration to the register) within the time allowed for making such an application, and
 - (c) the registrar has refused the application,
 an application to the court under this section may be made within 28 days of notice of the registrar’s decision being issued by the registrar, even if the period of six years mentioned in subsection (4) above has expired.
- (6) For the purposes of this section –
 - (a) “personal injury” includes any disease and any impairment of a person’s physical or mental condition; and
 - (b) references to damages for personal injury include –
 - (i) any sum claimed by virtue of section 1(2)(c) of the Law Reform (Miscellaneous Provisions) Act 1934 (c. 41) or section 14(2)(c) of the Law Reform (Miscellaneous Provisions) Act (Northern Ireland) 1937 (1937 c. 9 (N.I.)) (funeral expenses)), and
 - (ii) damages under the Fatal Accidents Act 1976 (c. 30), the Damages (Scotland) Act 1976 (c. 13) or the Fatal Accidents (Northern Ireland) Order 1977 (S.I. 1977/1251 (N.I. 18)).

1031 Decision on application for restoration by the court

- (1) On an application under section 1029 the court may order the restoration of the company to the register –