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- Schedule 1 – Connected persons: references to an interest in shares or debentures
 - Schedule 2 – Specified persons, descriptions of disclosures etc for the purposes of section 948
 - Part 1 – Specified persons
 - Part 2 – Specified descriptions of disclosures
 - Part 3 – Overseas regulatory bodies
 - Schedule 3 – Amendments of remaining provisions of the Companies Act 1985 relating to offences
 - Schedule 4 – Documents and information sent or supplied to a company
 - Part 1 – Introduction
 - Part 2 – Communications in hard copy form
 - Part 3 – Communications in electronic form
 - Part 4 – Other agreed forms of communication
 - Schedule 5 – Communications by a company
 - Part 1 – Introduction
 - Part 2 – Communications in hard copy form
 - Part 3 – Communications in electronic form
 - Part 4 – Communications by means of a website
 - Part 5 – Other agreed forms of communication
 - Part 6 – Supplementary provisions
 - Schedule 6 – Meaning of “subsidiary” etc: supplementary provisions
 - Schedule 7 – Parent and subsidiary undertakings: supplementary provisions
 - Schedule 8 – Index of defined expressions
 - Schedule 9 – Removal of special provisions about accounts and audit of charitable companies
 - Part 1 – The Companies Act 1985 (c. 6)
 - Part 2 – The Companies (Northern Ireland) Order 1986 (S.I. 1986/1032 (N.I. 6))
 - Schedule 10 – Recognised supervisory bodies
 - Part 1 – Grant and revocation of recognition of a supervisory body
 - Part 2 – Requirements for recognition of a supervisory body
 - Part 3 – Arrangements in which recognised supervisory bodies are required to participate
 - Schedule 11 – Recognised professional qualifications
 - Part 1 – Grant and revocation of recognition of a professional qualification
 - Part 2 – Requirements for recognition of a professional qualification
 - Schedule 12 – Arrangements in which registered third country auditors are required to participate
 - Schedule 13 – Supplementary provisions with respect to delegation order
 - Schedule 14 – Statutory auditors: consequential amendments
 - Schedule 15 – Transparency obligations and related matters: minor and consequential amendments
 - Part 1 – Amendments of the Financial Services and Markets Act 2000
 - Part 2 – Amendments of the Companies (Audit, Investigations and Community Enterprise) Act 2004
 - Schedule 16 – Repeals



Companies Act 2006

2006 CHAPTER 46

An Act to reform company law and restate the greater part of the enactments relating to companies; to make other provision relating to companies and other forms of business organisation; to make provision about directors' disqualification, business names, auditors and actuaries; to amend Part 9 of the Enterprise Act 2002; and for connected purposes. [8th November 2006]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

PART 1

GENERAL INTRODUCTORY PROVISIONS

Companies and Companies Acts

1 Companies

- (1) In the Companies Acts, unless the context otherwise requires—
“company” means a company formed and registered under this Act, that is—
- (a) a company so formed and registered after the commencement of this Part, or
 - (b) a company that immediately before the commencement of this Part—
 - (i) was formed and registered under the Companies Act 1985 (c. 6) or the Companies (Northern Ireland) Order 1986 (S.I. 1986/1032 (N.I. 6)), or
 - (ii) was an existing company for the purposes of that Act or that Order,

(which is to be treated on commencement as if formed and registered under this Act).

- (2) Certain provisions of the Companies Acts apply to—
 - (a) companies registered, but not formed, under this Act (see Chapter 1 of Part 33), and
 - (b) bodies incorporated in the United Kingdom but not registered under this Act (see Chapter 2 of that Part).
- (3) For provisions applying to companies incorporated outside the United Kingdom, see Part 34 (overseas companies).

2 The Companies Acts

- (1) In this Act “the Companies Acts” means—
 - (a) the company law provisions of this Act,
 - (b) Part 2 of the Companies (Audit, Investigations and Community Enterprise) Act 2004 (c. 27) (community interest companies), and
 - (c) the provisions of the Companies Act 1985 (c. 6) and the Companies Consolidation (Consequential Provisions) Act 1985 (c. 9) that remain in force.
- (2) The company law provisions of this Act are—
 - (a) the provisions of Parts 1 to 39 of this Act, and
 - (b) the provisions of Parts 45 to 47 of this Act so far as they apply for the purposes of those Parts.

Types of company

3 Limited and unlimited companies

- (1) A company is a “limited company” if the liability of its members is limited by its constitution.
It may be limited by shares or limited by guarantee.
- (2) If their liability is limited to the amount, if any, unpaid on the shares held by them, the company is “limited by shares”.
- (3) If their liability is limited to such amount as the members undertake to contribute to the assets of the company in the event of its being wound up, the company is “limited by guarantee”.
- (4) If there is no limit on the liability of its members, the company is an “unlimited company”.

4 Private and public companies

- (1) A “private company” is any company that is not a public company.
- (2) A “public company” is a company limited by shares or limited by guarantee and having a share capital—
 - (a) whose certificate of incorporation states that it is a public company, and
 - (b) in relation to which the requirements of this Act, or the former Companies Acts, as to registration or re-registration as a public company have been complied with on or after the relevant date.

- (3) For the purposes of subsection (2)(b) the relevant date is—
 - (a) in relation to registration or re-registration in Great Britain, 22nd December 1980;
 - (b) in relation to registration or re-registration in Northern Ireland, 1st July 1983.
- (4) For the two major differences between private and public companies, see Part 20.

5 Companies limited by guarantee and having share capital

- (1) A company cannot be formed as, or become, a company limited by guarantee with a share capital.
- (2) Provision to this effect has been in force—
 - (a) in Great Britain since 22nd December 1980, and
 - (b) in Northern Ireland since 1st July 1983.
- (3) Any provision in the constitution of a company limited by guarantee that purports to divide the company's undertaking into shares or interests is a provision for a share capital.
This applies whether or not the nominal value or number of the shares or interests is specified by the provision.

6 Community interest companies

- (1) In accordance with Part 2 of the Companies (Audit, Investigations and Community Enterprise) Act 2004 (c. 27)—
 - (a) a company limited by shares or a company limited by guarantee and not having a share capital may be formed as or become a community interest company, and
 - (b) a company limited by guarantee and having a share capital may become a community interest company.
- (2) The other provisions of the Companies Acts have effect subject to that Part.

PART 2

COMPANY FORMATION

General

7 Method of forming company

- (1) A company is formed under this Act by one or more persons—
 - (a) subscribing their names to a memorandum of association (see section 8), and
 - (b) complying with the requirements of this Act as to registration (see sections 9 to 13).
- (2) A company may not be so formed for an unlawful purpose.

8 Memorandum of association

- (1) A memorandum of association is a memorandum stating that the subscribers –
 - (a) wish to form a company under this Act, and
 - (b) agree to become members of the company and, in the case of a company that is to have a share capital, to take at least one share each.
- (2) The memorandum must be in the prescribed form and must be authenticated by each subscriber.

Requirements for registration

9 Registration documents

- (1) The memorandum of association must be delivered to the registrar together with an application for registration of the company, the documents required by this section and a statement of compliance.
- (2) The application for registration must state –
 - (a) the company's proposed name,
 - (b) whether the company's registered office is to be situated in England and Wales (or in Wales), in Scotland or in Northern Ireland,
 - (c) whether the liability of the members of the company is to be limited, and if so whether it is to be limited by shares or by guarantee, and
 - (d) whether the company is to be a private or a public company.
- (3) If the application is delivered by a person as agent for the subscribers to the memorandum of association, it must state his name and address.
- (4) The application must contain –
 - (a) in the case of a company that is to have a share capital, a statement of capital and initial shareholdings (see section 10);
 - (b) in the case of a company that is to be limited by guarantee, a statement of guarantee (see section 11);
 - (c) a statement of the company's proposed officers (see section 12).
- (5) The application must also contain –
 - (a) a statement of the intended address of the company's registered office; and
 - (b) a copy of any proposed articles of association (to the extent that these are not supplied by the default application of model articles: see section 20).
- (6) The application must be delivered –
 - (a) to the registrar of companies for England and Wales, if the registered office of the company is to be situated in England and Wales (or in Wales);
 - (b) to the registrar of companies for Scotland, if the registered office of the company is to be situated in Scotland;
 - (c) to the registrar of companies for Northern Ireland, if the registered office of the company is to be situated in Northern Ireland.

10 Statement of capital and initial shareholdings

- (1) The statement of capital and initial shareholdings required to be delivered in the case of a company that is to have a share capital must comply with this section.
- (2) It must state—
 - (a) the total number of shares of the company to be taken on formation by the subscribers to the memorandum of association,
 - (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 to be paid up and the amount (if any) to be unpaid on each share (whether on account of the nominal value of the share or by way of premium).
- (3) It must contain such information as may be prescribed for the purpose of identifying the subscribers to the memorandum of association.
- (4) It must state, with respect to each subscriber to the memorandum—
 - (a) the number, nominal value (of each share) and class of shares to be taken by him on formation, and
 - (b) the amount to be paid up and the amount (if any) to be unpaid on each share (whether on account of the nominal value of the share or by way of premium).
- (5) Where a subscriber to the memorandum is to take shares of more than one class, the information required under subsection (4)(a) is required for each class.

11 Statement of guarantee

- (1) The statement of guarantee required to be delivered in the case of a company that is to be limited by guarantee must comply with this section.
- (2) It must contain such information as may be prescribed for the purpose of identifying the subscribers to the memorandum of association.
- (3) It must state that each member undertakes that, if the company is wound up while he is a member, or within one year after he ceases to be a member, he will contribute to the assets of the company such amount as may be required for—
 - (a) payment of the debts and liabilities of the company contracted before he ceases to be a member,
 - (b) payment of the costs, charges and expenses of winding up, and
 - (c) adjustment of the rights of the contributories among themselves,not exceeding a specified amount.

12 Statement of proposed officers

- (1) The statement of the company's proposed officers required to be delivered to the registrar must contain the required particulars of—
 - (a) the person who is, or persons who are, to be the first director or directors of the company;

- (b) in the case of a company that is to be a private company, any person who is (or any persons who are) to be the first secretary (or joint secretaries) of the company;
 - (c) in the case of a company that is to be a public company, the person who is (or the persons who are) to be the first secretary (or joint secretaries) of the company.
- (2) The required particulars are the particulars that will be required to be stated –
- (a) in the case of a director, in the company’s register of directors and register of directors’ residential addresses (see sections 162 to 166);
 - (b) in the case of a secretary, in the company’s register of secretaries (see sections 277 to 279).
- (3) The statement must also contain a consent by each of the persons named as a director, as secretary or as one of joint secretaries, to act in the relevant capacity.
- If all the partners in a firm are to be joint secretaries, consent may be given by one partner on behalf of all of them.

13 Statement of compliance

- (1) The statement of compliance required to be delivered to the registrar is a statement that the requirements of this Act as to registration have been complied with.
- (2) The registrar may accept the statement of compliance as sufficient evidence of compliance.

Registration and its effect

14 Registration

If the registrar is satisfied that the requirements of this Act as to registration are complied with, he shall register the documents delivered to him.

15 Issue of certificate of incorporation

- (1) On the registration of a company, the registrar of companies shall give a certificate that the company is incorporated.
- (2) The certificate must state –
 - (a) the name and registered number of the company,
 - (b) the date of its incorporation,
 - (c) whether it is a limited or unlimited company, and if it is limited whether it is limited by shares or limited by guarantee,
 - (d) whether it is a private or a public company, and
 - (e) whether the company’s registered office is situated in England and Wales (or in Wales), in Scotland or in Northern Ireland.
- (3) The certificate must be signed by the registrar or authenticated by the registrar’s official seal.
- (4) The certificate is conclusive evidence that the requirements of this Act as to registration have been complied with and that the company is duly registered under this Act.

16 Effect of registration

- (1) The registration of a company has the following effects as from the date of incorporation.
- (2) The subscribers to the memorandum, together with such other persons as may from time to time become members of the company, are a body corporate by the name stated in the certificate of incorporation.
- (3) That body corporate is capable of exercising all the functions of an incorporated company.
- (4) The status and registered office of the company are as stated in, or in connection with, the application for registration.
- (5) In the case of a company having a share capital, the subscribers to the memorandum become holders of the shares specified in the statement of capital and initial shareholdings.
- (6) The persons named in the statement of proposed officers –
 - (a) as director, or
 - (b) as secretary or joint secretary of the company,are deemed to have been appointed to that office.

PART 3

A COMPANY'S CONSTITUTION

CHAPTER 1

INTRODUCTORY

17 A company's constitution

Unless the context otherwise requires, references in the Companies Acts to a company's constitution include –

- (a) the company's articles, and
- (b) any resolutions and agreements to which Chapter 3 applies (see section 29).

CHAPTER 2

ARTICLES OF ASSOCIATION

General

18 Articles of association

- (1) A company must have articles of association prescribing regulations for the company.
- (2) Unless it is a company to which model articles apply by virtue of section 20 (default application of model articles in case of limited company), it must register articles of association.
- (3) Articles of association registered by a company must –

- (a) be contained in a single document, and
 - (b) be divided into paragraphs numbered consecutively.
- (4) References in the Companies Acts to a company’s “articles” are to its articles of association.

19 Power of Secretary of State to prescribe model articles

- (1) The Secretary of State may by regulations prescribe model articles of association for companies.
- (2) Different model articles may be prescribed for different descriptions of company.
- (3) A company may adopt all or any of the provisions of model articles.
- (4) Any amendment of model articles by regulations under this section does not affect a company registered before the amendment takes effect.
“Amendment” here includes addition, alteration or repeal.
- (5) Regulations under this section are subject to negative resolution procedure.

20 Default application of model articles

- (1) On the formation of a limited company –
 - (a) if articles are not registered, or
 - (b) if articles are registered, in so far as they do not exclude or modify the relevant model articles,the relevant model articles (so far as applicable) form part of the company’s articles in the same manner and to the same extent as if articles in the form of those articles had been duly registered.
- (2) The “relevant model articles” means the model articles prescribed for a company of that description as in force at the date on which the company is registered.

Alteration of articles

21 Amendment of articles

- (1) A company may amend its articles by special resolution.
- (2) In the case of a company that is a charity, this is subject to –
 - (a) in England and Wales, section 64 of the Charities Act 1993 (c. 10);
 - (b) in Northern Ireland, Article 9 of the Charities (Northern Ireland) Order 1987 (S.I. 1987/2048 (N.I. 19)).
- (3) In the case of a company that is registered in the Scottish Charity Register, this is subject to –
 - (a) section 112 of the Companies Act 1989 (c. 40), and
 - (b) section 16 of the Charities and Trustee Investment (Scotland) Act 2005 (asp 10).

22 Entrenched provisions of the articles

- (1) A company’s articles may contain provision (“provision for entrenchment”) to the effect that specified provisions of the articles may be amended or repealed only if conditions are met, or procedures are complied with, that are more restrictive than those applicable in the case of a special resolution.
- (2) Provision for entrenchment may only be made –
 - (a) in the company’s articles on formation, or
 - (b) by an amendment of the company’s articles agreed to by all the members of the company.
- (3) Provision for entrenchment does not prevent amendment of the company’s articles –
 - (a) by agreement of all the members of the company, or
 - (b) by order of a court or other authority having power to alter the company’s articles.
- (4) Nothing in this section affects any power of a court or other authority to alter a company’s articles.

23 Notice to registrar of existence of restriction on amendment of articles

- (1) Where a company’s articles –
 - (a) on formation contain provision for entrenchment,
 - (b) are amended so as to include such provision, or
 - (c) are altered by order of a court or other authority so as to restrict or exclude the power of the company to amend its articles,the company must give notice of that fact to the registrar.
- (2) Where a company’s articles –
 - (a) are amended so as to remove provision for entrenchment, or
 - (b) are altered by order of a court or other authority –
 - (i) so as to remove such provision, or
 - (ii) so as to remove any other restriction on, or any exclusion of, the power of the company to amend its articles,the company must give notice of that fact to the registrar.

24 Statement of compliance where amendment of articles restricted

- (1) This section applies where a company’s articles are subject –
 - (a) to provision for entrenchment, or
 - (b) to an order of a court or other authority restricting or excluding the company’s power to amend the articles.
- (2) If the company –
 - (a) amends its articles, and
 - (b) is required to send to the registrar a document making or evidencing the amendment,the company must deliver with that document a statement of compliance.
- (3) The statement of compliance required is a statement certifying that the amendment has been made in accordance with the company’s articles and, where relevant, any applicable order of a court or other authority.

- (4) The registrar may rely on the statement of compliance as sufficient evidence of the matters stated in it.

25 Effect of alteration of articles on company's members

- (1) A member of a company is not bound by an alteration to its articles after the date on which he became a member, if and so far as the alteration –
- (a) requires him to take or subscribe for more shares than the number held by him at the date on which the alteration is made, or
 - (b) in any way increases his liability as at that date to contribute to the company's share capital or otherwise to pay money to the company.
- (2) Subsection (1) does not apply in a case where the member agrees in writing, either before or after the alteration is made, to be bound by the alteration.

26 Registrar to be sent copy of amended articles

- (1) Where a company amends its articles it must send to the registrar a copy of the articles as amended not later than 15 days after the amendment takes effect.
- (2) This section does not require a company to set out in its articles any provisions of model articles that –
- (a) are applied by the articles, or
 - (b) apply by virtue of section 20 (default application of model articles).
- (3) If a company fails to comply with this section an offence is committed by –
- (a) the company, and
 - (b) every officer of the company who is in default.
- (4) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.

27 Registrar's notice to comply in case of failure with respect to amended articles

- (1) If it appears to the registrar that a company has failed to comply with any enactment requiring it –
- (a) to send to the registrar a document making or evidencing an alteration in the company's articles, or
 - (b) to send to the registrar a copy of the company's articles as amended,
- the registrar may give notice to the company requiring it to comply.
- (2) The notice must –
- (a) state the date on which it is issued, and
 - (b) require the company to comply within 28 days from that date.
- (3) If the company complies with the notice within the specified time, no criminal proceedings may be brought in respect of the failure to comply with the enactment mentioned in subsection (1).
- (4) If the company does not comply with the notice within the specified time, it is liable to a civil penalty of £200.
This is in addition to any liability to criminal proceedings in respect of the failure mentioned in subsection (1).

- (5) The penalty may be recovered by the registrar and is to be paid into the Consolidated Fund.

Supplementary

28 Existing companies: provisions of memorandum treated as provisions of articles

- (1) Provisions that immediately before the commencement of this Part were contained in a company's memorandum but are not provisions of the kind mentioned in section 8 (provisions of new-style memorandum) are to be treated after the commencement of this Part as provisions of the company's articles.
- (2) This applies not only to substantive provisions but also to provision for entrenchment (as defined in section 22).
- (3) The provisions of this Part about provision for entrenchment apply to such provision as they apply to provision made on the company's formation, except that the duty under section 23(1)(a) to give notice to the registrar does not apply.

CHAPTER 3

RESOLUTIONS AND AGREEMENTS AFFECTING A COMPANY'S CONSTITUTION

29 Resolutions and agreements affecting a company's constitution

- (1) This Chapter applies to—
 - (a) any special resolution;
 - (b) any resolution or agreement agreed to by all the members of a company that, if not so agreed to, would not have been effective for its purpose unless passed as a special resolution;
 - (c) any resolution or agreement agreed to by all the members of a class of shareholders that, if not so agreed to, would not have been effective for its purpose unless passed by some particular majority or otherwise in some particular manner;
 - (d) any resolution or agreement that effectively binds all members of a class of shareholders though not agreed to by all those members;
 - (e) any other resolution or agreement to which this Chapter applies by virtue of any enactment.
- (2) References in subsection (1) to a member of a company, or of a class of members of a company, do not include the company itself where it is such a member by virtue only of its holding shares as treasury shares.

30 Copies of resolutions or agreements to be forwarded to registrar

- (1) A copy of every resolution or agreement to which this Chapter applies, or (in the case of a resolution or agreement that is not in writing) a written memorandum setting out its terms, must be forwarded to the registrar within 15 days after it is passed or made.
- (2) 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.
- (3) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.
- (4) For the purposes of this section, a liquidator of the company is treated as an officer of it.

CHAPTER 4

MISCELLANEOUS AND SUPPLEMENTARY PROVISIONS

Statement of company’s objects

31 Statement of company’s objects

- (1) Unless a company’s articles specifically restrict the objects of the company, its objects are unrestricted.
- (2) Where a company amends its articles so as to add, remove or alter a statement of the company’s objects –
- (a) it must give notice to the registrar,
 - (b) on receipt of the notice, the registrar shall register it, and
 - (c) the amendment is not effective until entry of that notice on the register.
- (3) Any such amendment does not affect any rights or obligations of the company or render defective any legal proceedings by or against it.
- (4) In the case of a company that is a charity, the provisions of this section have effect subject to –
- (a) in England and Wales, section 64 of the Charities Act 1993 (c. 10);
 - (b) in Northern Ireland, Article 9 of the Charities (Northern Ireland) Order 1987 (S.I. 1987/2048 (N.I. 19)).
- (5) In the case of a company that is entered in the Scottish Charity Register, the provisions of this section have effect subject to the provisions of the Charities and Trustee Investment (Scotland) Act 2005 (asp 10).

Other provisions with respect to a company’s constitution

32 Constitutional documents to be provided to members

- (1) A company must, on request by any member, send to him the following documents –
- (a) an up-to-date copy of the company’s articles;
 - (b) a copy of any resolution or agreement relating to the company to which Chapter 3 applies (resolutions and agreements affecting a company’s constitution) and that is for the time being in force;
 - (c) a copy of any document required to be sent to the registrar under –
 - (i) section 34(2) (notice where company’s constitution altered by enactment), or

- (ii) section 35(2)(a) (notice where order of court or other authority alters company’s constitution);
 - (d) a copy of any court order under section 899 (order sanctioning compromise or arrangement) or section 900 (order facilitating reconstruction or amalgamation);
 - (e) a copy of any court order under section 996 (protection of members against unfair prejudice: powers of the court) that alters the company’s constitution;
 - (f) a copy of the company’s current certificate of incorporation, and of any past certificates of incorporation;
 - (g) in the case of a company with a share capital, a current statement of capital;
 - (h) in the case of a company limited by guarantee, a copy of the statement of guarantee.
- (2) The statement of capital required by subsection (1)(g) is a statement of –
- (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) If a company makes default in complying with this section, an offence is committed by every officer of the company who is in default.
- (4) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

33 Effect of company’s constitution

- (1) The provisions of a company’s constitution bind the company and its members to the same extent as if there were covenants on the part of the company and of each member to observe those provisions.
- (2) Money payable by a member to the company under its constitution is a debt due from him to the company.
In England and Wales and Northern Ireland it is of the nature of an ordinary contract debt.

34 Notice to registrar where company’s constitution altered by enactment

- (1) This section applies where a company’s constitution is altered by an enactment, other than an enactment amending the general law.
- (2) The company must give notice of the alteration to the registrar, specifying the enactment, not later than 15 days after the enactment comes into force.
In the case of a special enactment the notice must be accompanied by a copy of the enactment.
- (3) If the enactment amends –

- (a) the company's articles, or
 - (b) a resolution or agreement to which Chapter 3 applies (resolutions and agreements affecting a company's constitution),
- the notice must be accompanied by a copy of the company's articles, or the resolution or agreement in question, as amended.
- (4) A "special enactment" means an enactment that is not a public general enactment, and includes –
 - (a) an Act for confirming a provisional order,
 - (b) any provision of a public general Act in relation to the passing of which any of the standing orders of the House of Lords or the House of Commons relating to Private Business applied, or
 - (c) any enactment to the extent that it is incorporated in or applied for the purposes of a special enactment.
 - (5) If a company fails to comply with this section an offence is committed by –
 - (a) the company, and
 - (b) every officer of the company who is in default.
 - (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.

35 Notice to registrar where company's constitution altered by order

- (1) Where a company's constitution is altered by an order of a court or other authority, the company must give notice to the registrar of the alteration not later than 15 days after the alteration takes effect.
- (2) The notice must be accompanied by –
 - (a) a copy of the order, and
 - (b) if the order amends –
 - (i) the company's articles, or
 - (ii) a resolution or agreement to which Chapter 3 applies (resolutions and agreements affecting the company's constitution),

a copy of the company's articles, or the resolution or agreement in question, as amended.
- (3) If a company fails to comply with this section an offence is committed by –
 - (a) the company, and
 - (b) every officer of the company who is in default.
- (4) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.
- (5) This section does not apply where provision is made by another enactment for the delivery to the registrar of a copy of the order in question.

36 Documents to be incorporated in or accompany copies of articles issued by company

- (1) Every copy of a company’s articles issued by the company must be accompanied by –
 - (a) a copy of any resolution or agreement relating to the company to which Chapter 3 applies (resolutions and agreements affecting a company’s constitution),
 - (b) where the company has been required to give notice to the registrar under section 34(2) (notice where company’s constitution altered by enactment), a statement that the enactment in question alters the effect of the company’s constitution,
 - (c) where the company’s constitution is altered by a special enactment (see section 34(4)), a copy of the enactment, and
 - (d) a copy of any order required to be sent to the registrar under section 35(2)(a) (order of court or other authority altering company’s constitution).
- (2) This does not require the articles to be accompanied by a copy of a document or by a statement if –
 - (a) the effect of the resolution, agreement, enactment or order (as the case may be) on the company’s constitution has been incorporated into the articles by amendment, or
 - (b) the resolution, agreement, enactment or order (as the case may be) is not for the time being in force.
- (3) If the company fails to comply with this section, an offence is committed by every officer of the company who is in default.
- (4) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale for each occasion on which copies are issued, or, as the case may be, requested.
- (5) For the purposes of this section, a liquidator of the company is treated as an officer of it.

Supplementary provisions

37 Right to participate in profits otherwise than as member void

In the case of a company limited by guarantee and not having a share capital any provision in the company’s articles, or in any resolution of the company, purporting to give a person a right to participate in the divisible profits of the company otherwise than as a member is void.

38 Application to single member companies of enactments and rules of law

Any enactment or rule of law applicable to companies formed by two or more persons or having two or more members applies with any necessary modification in relation to a company formed by one person or having only one person as a member.

PART 4

A COMPANY'S CAPACITY AND RELATED MATTERS

*Capacity of company and power of directors to bind it***39 A company's capacity**

- (1) The validity of an act done by a company shall not be called into question on the ground of lack of capacity by reason of anything in the company's constitution.
- (2) This section has effect subject to section 42 (companies that are charities).

40 Power of directors to bind the company

- (1) In favour of a person dealing with a company in good faith, the power of the directors to bind the company, or authorise others to do so, is deemed to be free of any limitation under the company's constitution.
- (2) For this purpose—
 - (a) a person “deals with” a company if he is a party to any transaction or other act to which the company is a party,
 - (b) a person dealing with a company—
 - (i) is not bound to enquire as to any limitation on the powers of the directors to bind the company or authorise others to do so,
 - (ii) is presumed to have acted in good faith unless the contrary is proved, and
 - (iii) is not to be regarded as acting in bad faith by reason only of his knowing that an act is beyond the powers of the directors under the company's constitution.
- (3) The references above to limitations on the directors' powers under the company's constitution include limitations deriving—
 - (a) from a resolution of the company or of any class of shareholders, or
 - (b) from any agreement between the members of the company or of any class of shareholders.
- (4) This section does not affect any right of a member of the company to bring proceedings to restrain the doing of an action that is beyond the powers of the directors.
But no such proceedings lie in respect of an act to be done in fulfilment of a legal obligation arising from a previous act of the company.
- (5) This section does not affect any liability incurred by the directors, or any other person, by reason of the directors' exceeding their powers.
- (6) This section has effect subject to—
 - section 41 (transactions with directors or their associates), and
 - section 42 (companies that are charities).

41 Constitutional limitations: transactions involving directors or their associates

- (1) This section applies to a transaction if or to the extent that its validity depends on section 40 (power of directors deemed to be free of limitations under company's constitution in favour of person dealing with company in good faith).
- Nothing in this section shall be read as excluding the operation of any other enactment or rule of law by virtue of which the transaction may be called in question or any liability to the company may arise.
- (2) Where –
- (a) a company enters into such a transaction, and
 - (b) the parties to the transaction include –
 - (i) a director of the company or of its holding company, or
 - (ii) a person connected with any such director,
- the transaction is voidable at the instance of the company.
- (3) Whether or not it is avoided, any such party to the transaction as is mentioned in subsection (2)(b)(i) or (ii), and any director of the company who authorised the transaction, is liable –
- (a) to account to the company for any gain he has made directly or indirectly by the transaction, and
 - (b) to indemnify the company for any loss or damage resulting from the transaction.
- (4) The transaction ceases to be voidable if –
- (a) restitution of any money or other asset which was the subject matter of the transaction is no longer possible, or
 - (b) the company is indemnified for any loss or damage resulting from the transaction, or
 - (c) rights acquired bona fide for value and without actual notice of the directors' exceeding their powers by a person who is not party to the transaction would be affected by the avoidance, or
 - (d) the transaction is affirmed by the company.
- (5) A person other than a director of the company is not liable under subsection (3) if he shows that at the time the transaction was entered into he did not know that the directors were exceeding their powers.
- (6) Nothing in the preceding provisions of this section affects the rights of any party to the transaction not within subsection (2)(b)(i) or (ii).
- But the court may, on the application of the company or any such party, make an order affirming, severing or setting aside the transaction on such terms as appear to the court to be just.
- (7) In this section –
- (a) "transaction" includes any act; and
 - (b) the reference to a person connected with a director has the same meaning as in Part 10 (company directors).

42 Constitutional limitations: companies that are charities

- (1) Sections 39 and 40 (company's capacity and power of directors to bind company) do not apply to the acts of a company that is a charity except in favour of a person who –

- (a) does not know at the time the act is done that the company is a charity, or
 - (b) gives full consideration in money or money's worth in relation to the act in question and does not know (as the case may be) –
 - (i) that the act is not permitted by the company's constitution, or
 - (ii) that the act is beyond the powers of the directors.
- (2) Where a company that is a charity purports to transfer or grant an interest in property, the fact that (as the case may be) –
- (a) the act was not permitted by the company's constitution, or
 - (b) the directors in connection with the act exceeded any limitation on their powers under the company's constitution,
- does not affect the title of a person who subsequently acquires the property or any interest in it for full consideration without actual notice of any such circumstances affecting the validity of the company's act.
- (3) In any proceedings arising out of subsection (1) or (2) the burden of proving –
- (a) that a person knew that the company was a charity, or
 - (b) that a person knew that an act was not permitted by the company's constitution or was beyond the powers of the directors,
- lies on the person asserting that fact.
- (4) In the case of a company that is a charity the affirmation of a transaction to which section 41 applies (transactions with directors or their associates) is ineffective without the prior written consent of –
- (a) in England and Wales, the Charity Commission;
 - (b) in Northern Ireland, the Department for Social Development.
- (5) This section does not extend to Scotland (but see section 112 of the Companies Act 1989 (c. 40)).

Formalities of doing business under the law of England and Wales or Northern Ireland

43 Company contracts

- (1) Under the law of England and Wales or Northern Ireland a contract may be made –
- (a) by a company, by writing under its common seal, or
 - (b) on behalf of a company, by a person acting under its authority, express or implied.
- (2) Any formalities required by law in the case of a contract made by an individual also apply, unless a contrary intention appears, to a contract made by or on behalf of a company.

44 Execution of documents

- (1) Under the law of England and Wales or Northern Ireland a document is executed by a company –
- (a) by the affixing of its common seal, or
 - (b) by signature in accordance with the following provisions.
- (2) A document is validly executed by a company if it is signed on behalf of the company –

- (a) by two authorised signatories, or
 - (b) by a director of the company in the presence of a witness who attests the signature.
- (3) The following are “authorised signatories” for the purposes of subsection (2)—
- (a) every director of the company, and
 - (b) in the case of a private company with a secretary or a public company, the secretary (or any joint secretary) of the company.
- (4) A document signed in accordance with subsection (2) and expressed, in whatever words, to be executed by the company has the same effect as if executed under the common seal of the company.
- (5) In favour of a purchaser a document is deemed to have been duly executed by a company if it purports to be signed in accordance with subsection (2).
A “purchaser” means a purchaser in good faith for valuable consideration and includes a lessee, mortgagee or other person who for valuable consideration acquires an interest in property.
- (6) Where a document is to be signed by a person on behalf of more than one company, it is not duly signed by that person for the purposes of this section unless he signs it separately in each capacity.
- (7) References in this section to a document being (or purporting to be) signed by a director or secretary are to be read, in a case where that office is held by a firm, as references to its being (or purporting to be) signed by an individual authorised by the firm to sign on its behalf.
- (8) This section applies to a document that is (or purports to be) executed by a company in the name of or on behalf of another person whether or not that person is also a company.

45 Common seal

- (1) A company may have a common seal, but need not have one.
- (2) A company which has a common seal shall have its name engraved in legible characters on the seal.
- (3) If a company fails to comply with subsection (2) an offence is committed by—
- (a) the company, and
 - (b) every officer of the company who is in default.
- (4) An officer of a company, or a person acting on behalf of a company, commits an offence if he uses, or authorises the use of, a seal purporting to be a seal of the company on which its name is not engraved as required by subsection (2).
- (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.
- (6) This section does not form part of the law of Scotland.

46 Execution of deeds

- (1) A document is validly executed by a company as a deed for the purposes of section 1(2)(b) of the Law of Property (Miscellaneous Provisions) Act 1989 (c. 34) and for the purposes of the law of Northern Ireland if, and only if—

- (a) it is duly executed by the company, and
 - (b) it is delivered as a deed.
- (2) For the purposes of subsection (1)(b) a document is presumed to be delivered upon its being executed, unless a contrary intention is proved.

47 Execution of deeds or other documents by attorney

- (1) Under the law of England and Wales or Northern Ireland a company may, by instrument executed as a deed, empower a person, either generally or in respect of specified matters, as its attorney to execute deeds or other documents on its behalf.
- (2) A deed or other document so executed, whether in the United Kingdom or elsewhere, has effect as if executed by the company.

Formalities of doing business under the law of Scotland

48 Execution of documents by companies

- (1) The following provisions form part of the law of Scotland only.
- (2) Notwithstanding the provisions of any enactment, a company need not have a company seal.
- (3) For the purposes of any enactment –
- (a) providing for a document to be executed by a company by affixing its common seal, or
 - (b) referring (in whatever terms) to a document so executed,
- a document signed or subscribed by or on behalf of the company in accordance with the provisions of the Requirements of Writing (Scotland) Act 1995 (c. 7) has effect as if so executed.

Other matters

49 Official seal for use abroad

- (1) A company that has a common seal may have an official seal for use outside the United Kingdom.
- (2) The official seal must be a facsimile of the company's common seal, with the addition on its face of the place or places where it is to be used.
- (3) The official seal when duly affixed to a document has the same effect as the company's common seal.
This subsection does not extend to Scotland.
- (4) A company having an official seal for use outside the United Kingdom may –
- (a) by writing under its common seal, or
 - (b) as respects Scotland, by writing subscribed in accordance with the Requirements of Writing (Scotland) Act 1995,
- authorise any person appointed for the purpose to affix the official seal to any deed or other document to which the company is party.

- (5) As between the company and a person dealing with such an agent, the agent's authority continues –
 - (a) during the period mentioned in the instrument conferring the authority, or
 - (b) if no period is mentioned, until notice of the revocation or termination of the agent's authority has been given to the person dealing with him.
- (6) The person affixing the official seal must certify in writing on the deed or other document to which the seal is affixed the date on which, and place at which, it is affixed.

50 Official seal for share certificates etc

- (1) A company that has a common seal may have an official seal for use –
 - (a) for sealing securities issued by the company, or
 - (b) for sealing documents creating or evidencing securities so issued.
- (2) The official seal –
 - (a) must be a facsimile of the company's common seal, with the addition on its face of the word "Securities", and
 - (b) when duly affixed to the document has the same effect as the company's common seal.

51 Pre-incorporation contracts, deeds and obligations

- (1) A contract that purports to be made by or on behalf of a company at a time when the company has not been formed has effect, subject to any agreement to the contrary, as one made with the person purporting to act for the company or as agent for it, and he is personally liable on the contract accordingly.
- (2) Subsection (1) applies –
 - (a) to the making of a deed under the law of England and Wales or Northern Ireland, and
 - (b) to the undertaking of an obligation under the law of Scotland, as it applies to the making of a contract.

52 Bills of exchange and promissory notes

A bill of exchange or promissory note is deemed to have been made, accepted or endorsed on behalf of a company if made, accepted or endorsed in the name of, or by or on behalf or on account of, the company by a person acting under its authority.

PART 5

A COMPANY’S NAME

CHAPTER 1

GENERAL REQUIREMENTS

Prohibited names

53 Prohibited names

A company must not be registered under this Act by a name if, in the opinion of the Secretary of State –

- (a) its use by the company would constitute an offence, or
- (b) it is offensive.

Sensitive words and expressions

54 Names suggesting connection with government or public authority

- (1) The approval of the Secretary of State is required for a company to be registered under this Act by a name that would be likely to give the impression that the company is connected with –
 - (a) Her Majesty’s Government, any part of the Scottish administration or Her Majesty’s Government in Northern Ireland,
 - (b) a local authority, or
 - (c) any public authority specified for the purposes of this section by regulations made by the Secretary of State.
- (2) For the purposes of this section –
 - “local authority” means –
 - (a) a local authority within the meaning of the Local Government Act 1972 (c. 70), the Common Council of the City of London or the Council of the Isles of Scilly,
 - (b) a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 (c. 39), or
 - (c) a district council in Northern Ireland;
 - “public authority” includes any person or body having functions of a public nature.
- (3) Regulations under this section are subject to affirmative resolution procedure.

55 Other sensitive words or expressions

- (1) The approval of the Secretary of State is required for a company to be registered under this Act by a name that includes a word or expression for the time being specified in regulations made by the Secretary of State under this section.
- (2) Regulations under this section are subject to approval after being made.

56 Duty to seek comments of government department or other specified body

- (1) The Secretary of State may by regulations under –
 - (a) section 54 (name suggesting connection with government or public authority), or
 - (b) section 55 (other sensitive words or expressions),require that, in connection with an application for the approval of the Secretary of State under that section, the applicant must seek the view of a specified Government department or other body.
- (2) Where such a requirement applies, the applicant must request the specified department or other body (in writing) to indicate whether (and if so why) it has any objections to the proposed name.
- (3) Where a request under this section is made in connection with an application for the registration of a company under this Act, the application must –
 - (a) include a statement that a request under this section has been made, and
 - (b) be accompanied by a copy of any response received.
- (4) Where a request under this section is made in connection with a change in a company’s name, the notice of the change sent to the registrar must be accompanied by –
 - (a) a statement by a director or secretary of the company that a request under this section has been made, and
 - (b) a copy of any response received.
- (5) In this section “specified” means specified in the regulations.

Permitted characters etc

57 Permitted characters etc

- (1) The Secretary of State may make provision by regulations –
 - (a) as to the letters or other characters, signs or symbols (including accents and other diacritical marks) and punctuation that may be used in the name of a company registered under this Act; and
 - (b) specifying a standard style or format for the name of a company for the purposes of registration.
- (2) The regulations may prohibit the use of specified characters, signs or symbols when appearing in a specified position (in particular, at the beginning of a name).
- (3) A company may not be registered under this Act by a name that consists of or includes anything that is not permitted in accordance with regulations under this section.
- (4) Regulations under this section are subject to negative resolution procedure.
- (5) In this section “specified” means specified in the regulations.

CHAPTER 2

INDICATIONS OF COMPANY TYPE OR LEGAL FORM

Required indications for limited companies

58 Public limited companies

- (1) The name of a limited company that is a public company must end with “public limited company” or “p.l.c.”.
- (2) In the case of a Welsh company, its name may instead end with “cwmni cyfyngedig cyhoeddus” or “c.c.c.”.
- (3) This section does not apply to community interest companies (but see section 33(3) and (4) of the Companies (Audit, Investigations and Community Enterprise) Act 2004 (c. 27)).

59 Private limited companies

- (1) The name of a limited company that is a private company must end with “limited” or “ltd.”.
- (2) In the case of a Welsh company, its name may instead end with “cyfyngedig” or “cyf.”.
- (3) Certain companies are exempt from this requirement (see section 60).
- (4) This section does not apply to community interest companies (but see section 33(1) and (2) of the Companies (Audit, Investigations and Community Enterprise) Act 2004).

60 Exemption from requirement as to use of “limited”

- (1) A private company is exempt from section 59 (requirement to have name ending with “limited” or permitted alternative) if—
 - (a) it is a charity,
 - (b) it is exempted from the requirement of that section by regulations made by the Secretary of State, or
 - (c) it meets the conditions specified in—
 - section 61 (continuation of existing exemption: companies limited by shares), or
 - section 62 (continuation of existing exemption: companies limited by guarantee).
- (2) The registrar may refuse to register a private limited company by a name that does not include the word “limited” (or a permitted alternative) unless a statement has been delivered to him that the company meets the conditions for exemption.
- (3) The registrar may accept the statement as sufficient evidence of the matters stated in it.
- (4) Regulations under this section are subject to negative resolution procedure.

61 Continuation of existing exemption: companies limited by shares

- (1) This section applies to a private company limited by shares –
 - (a) that on 25th February 1982 –
 - (i) was registered in Great Britain, and
 - (ii) had a name that, by virtue of a licence under section 19 of the Companies Act 1948 (c. 38) (or corresponding earlier legislation), did not include the word “limited” or any of the permitted alternatives, or
 - (b) that on 30th June 1983 –
 - (i) was registered in Northern Ireland, and
 - (ii) had a name that, by virtue of a licence under section 19 of the Companies Act (Northern Ireland) 1960 (c. 22 (N.I.)) (or corresponding earlier legislation), did not include the word “limited” or any of the permitted alternatives.
- (2) A company to which this section applies is exempt from section 59 (requirement to have name ending with “limited” or permitted alternative) so long as –
 - (a) it continues to meet the following two conditions, and
 - (b) it does not change its name.
- (3) The first condition is that the objects of the company are the promotion of commerce, art, science, education, religion, charity or any profession, and anything incidental or conducive to any of those objects.
- (4) The second condition is that the company's articles –
 - (a) require its income to be applied in promoting its objects,
 - (b) prohibit the payment of dividends, or any return of capital, to its members, and
 - (c) require all the assets that would otherwise be available to its members generally to be transferred on its winding up either –
 - (i) to another body with objects similar to its own, or
 - (ii) to another body the objects of which are the promotion of charity and anything incidental or conducive thereto,(whether or not the body is a member of the company).

62 Continuation of existing exemption: companies limited by guarantee

- (1) A private company limited by guarantee that immediately before the commencement of this Part –
 - (a) was exempt by virtue of section 30 of the Companies Act 1985 (c. 6) or Article 40 of the Companies (Northern Ireland) Order 1986 (S.I. 1986/1032 (N.I. 6)) from the requirement to have a name including the word “limited” or a permitted alternative, and
 - (b) had a name that did not include the word “limited” or any of the permitted alternatives,is exempt from section 59 (requirement to have name ending with “limited” or permitted alternative) so long as it continues to meet the following two conditions and does not change its name.
- (2) The first condition is that the objects of the company are the promotion of commerce, art, science, education, religion, charity or any profession, and anything incidental or conducive to any of those objects.

- (3) The second condition is that the company’s articles –
- (a) require its income to be applied in promoting its objects,
 - (b) prohibit the payment of dividends to its members, and
 - (c) require all the assets that would otherwise be available to its members generally to be transferred on its winding up either –
 - (i) to another body with objects similar to its own, or
 - (ii) to another body the objects of which are the promotion of charity and anything incidental or conducive thereto,
 (whether or not the body is a member of the company).

63 Exempt company: restriction on amendment of articles

- (1) A private company –
- (a) that is exempt under section 61 or 62 from the requirement to use “limited” (or a permitted alternative) as part of its name, and
 - (b) whose name does not include “limited” or any of the permitted alternatives,
- must not amend its articles so that it ceases to comply with the conditions for exemption under that section.
- (2) If subsection (1) above is contravened an offence is committed by –
- (a) the company, and
 - (b) every officer of the company who is in default.
- For this purpose a shadow director is treated as an officer of the company.
- (3) A person guilty of an offence under this section 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.
- (4) Where immediately before the commencement of this section –
- (a) a company was exempt by virtue of section 30 of the Companies Act 1985 (c. 6) or Article 40 of the Companies (Northern Ireland) Order 1986 (S.I. 1986/1032 (N.I. 6)) from the requirement to have a name including the word “limited” (or a permitted alternative), and
 - (b) the company’s memorandum or articles contained provision preventing an alteration of them without the approval of –
 - (i) the Board of Trade or a Northern Ireland department (or any other department or Minister), or
 - (ii) the Charity Commission,
 that provision, and any condition of any such licence as is mentioned in section 61(1)(a)(ii) or (b)(ii) requiring such provision, shall cease to have effect. This does not apply if, or to the extent that, the provision is required by or under any other enactment.
- (5) It is hereby declared that any such provision as is mentioned in subsection (4)(b) formerly contained in a company’s memorandum was at all material times capable, with the appropriate approval, of being altered or removed under section 17 of the Companies Act 1985 or Article 28 of the Companies (Northern Ireland) Order 1986 (S.I. 1986/1032 (N.I. 6)) (or corresponding earlier enactments).

64 Power to direct change of name in case of company ceasing to be entitled to exemption

- (1) If it appears to the Secretary of State that a company whose name does not include “limited” or any of the permitted alternatives –
 - (a) has ceased to be entitled to exemption under section 60(1)(a) or (b), or
 - (b) in the case of a company within section 61 or 62 (which impose conditions as to the objects and articles of the company) –
 - (i) has carried on any business other than the promotion of any of the objects mentioned in subsection (3) of section 61 or, as the case may be, subsection (2) of section 62, or
 - (ii) has acted inconsistently with the provision required by subsection (4)(a) or (b) of section 61 or, as the case may be, subsection (3)(a) or (b) of section 62,the Secretary of State may direct the company to change its name so that it ends with “limited” or one of the permitted alternatives.
- (2) The direction must be in writing and must specify the period within which the company is to change its name.
- (3) A change of name in order to comply with a direction under this section may be made by resolution of the directors.

This is without prejudice to any other method of changing the company’s name.
- (4) Where a resolution of the directors is passed in accordance with subsection (3), the company must give notice to the registrar of the change.

Sections 80 and 81 apply as regards the registration and effect of the change.
- (5) If the company fails to comply with a direction under 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 5 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 5 on the standard scale.
- (7) A company that has been directed to change its name under this section may not, without the approval of the Secretary of State, subsequently change its name so that it does not include “limited” or one of the permitted alternatives.

This does not apply to a change of name on re-registration or on conversion to a community interest company.

Inappropriate use of indications of company type or legal form

65 Inappropriate use of indications of company type or legal form

- (1) The Secretary of State may make provision by regulations prohibiting the use in a company name of specified words, expressions or other indications –
 - (a) that are associated with a particular type of company or form of organisation, or
 - (b) that are similar to words, expressions or other indications associated with a particular type of company or form of organisation.

- (2) The regulations may prohibit the use of words, expressions or other indications –
 - (a) in a specified part, or otherwise than in a specified part, of a company’s name;
 - (b) in conjunction with, or otherwise than in conjunction with, such other words, expressions or indications as may be specified.
- (3) A company must not be registered under this Act by a name that consists of or includes anything prohibited by regulations under this section.
- (4) In this section “specified” means specified in the regulations.
- (5) Regulations under this section are subject to negative resolution procedure.

CHAPTER 3

SIMILARITY TO OTHER NAMES

Similarity to other name on registrar’s index

66 Name not to be the same as another in the index

- (1) A company must not be registered under this Act by a name that is the same as another name appearing in the registrar’s index of company names.
- (2) The Secretary of State may make provision by regulations supplementing this section.
- (3) The regulations may make provision –
 - (a) as to matters that are to be disregarded, and
 - (b) as to words, expressions, signs or symbols that are, or are not, to be regarded as the same,
 for the purposes of this section.
- (4) The regulations may provide –
 - (a) that registration by a name that would otherwise be prohibited under this section is permitted –
 - (i) in specified circumstances, or
 - (ii) with specified consent, and
 - (b) that if those circumstances obtain or that consent is given at the time a company is registered by a name, a subsequent change of circumstances or withdrawal of consent does not affect the registration.
- (5) Regulations under this section are subject to negative resolution procedure.
- (6) In this section “specified” means specified in the regulations.

67 Power to direct change of name in case of similarity to existing name

- (1) The Secretary of State may direct a company to change its name if it has been registered in a name that is the same as or, in the opinion of the Secretary of State, too like –
 - (a) a name appearing at the time of the registration in the registrar’s index of company names, or
 - (b) a name that should have appeared in that index at that time.

- (2) The Secretary of State may make provision by regulations supplementing this section.
- (3) The regulations may make provision –
 - (a) as to matters that are to be disregarded, and
 - (b) as to words, expressions, signs or symbols that are, or are not, to be regarded as the same,for the purposes of this section.
- (4) The regulations may provide –
 - (a) that no direction is to be given under this section in respect of a name –
 - (i) in specified circumstances, or
 - (ii) if specified consent is given, and
 - (b) that a subsequent change of circumstances or withdrawal of consent does not give rise to grounds for a direction under this section.
- (5) Regulations under this section are subject to negative resolution procedure.
- (6) In this section “specified” means specified in the regulations.

68 Direction to change name: supplementary provisions

- (1) The following provisions have effect in relation to a direction under section 67 (power to direct change of name in case of similarity to existing name).
- (2) Any such direction –
 - (a) must be given within twelve months of the company’s registration by the name in question, and
 - (b) must specify the period within which the company is to change its name.
- (3) The Secretary of State may by a further direction extend that period. Any such direction must be given before the end of the period for the time being specified.
- (4) A direction under section 67 or this section must be in writing.
- (5) If a company fails to comply with the direction, an offence is committed by –
 - (a) the company, and
 - (b) every officer of the company who is in default.For this purpose a shadow director is treated as an officer of the company.
- (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.

Similarity to other name in which person has goodwill

69 Objection to company’s registered name

- (1) A person (“the applicant”) may object to a company’s registered name on the ground –
 - (a) that it is the same as a name associated with the applicant in which he has goodwill, or

- (b) that it is sufficiently similar to such a name that its use in the United Kingdom would be likely to mislead by suggesting a connection between the company and the applicant.
- (2) The objection must be made by application to a company names adjudicator (see section 70).
- (3) The company concerned shall be the primary respondent to the application. Any of its members or directors may be joined as respondents.
- (4) If the ground specified in subsection (1)(a) or (b) is established, it is for the respondents to show –
- (a) that the name was registered before the commencement of the activities on which the applicant relies to show goodwill; or
 - (b) that the company –
 - (i) is operating under the name, or
 - (ii) is proposing to do so and has incurred substantial start-up costs in preparation, or
 - (iii) was formerly operating under the name and is now dormant;
 or
 - (c) that the name was registered in the ordinary course of a company formation business and the company is available for sale to the applicant on the standard terms of that business; or
 - (d) that the name was adopted in good faith; or
 - (e) that the interests of the applicant are not adversely affected to any significant extent.
- If none of those is shown, the objection shall be upheld.
- (5) If the facts mentioned in subsection (4)(a), (b) or (c) are established, the objection shall nevertheless be upheld if the applicant shows that the main purpose of the respondents (or any of them) in registering the name was to obtain money (or other consideration) from the applicant or prevent him from registering the name.
- (6) If the objection is not upheld under subsection (4) or (5), it shall be dismissed.
- (7) In this section “goodwill” includes reputation of any description.

70 Company names adjudicators

- (1) The Secretary of State shall appoint persons to be company names adjudicators.
- (2) The persons appointed must have such legal or other experience as, in the Secretary of State’s opinion, makes them suitable for appointment.
- (3) An adjudicator –
- (a) holds office in accordance with the terms of his appointment,
 - (b) is eligible for re-appointment when his term of office ends,
 - (c) may resign at any time by notice in writing given to the Secretary of State, and
 - (d) may be dismissed by the Secretary of State on the ground of incapacity or misconduct.
- (4) One of the adjudicators shall be appointed Chief Adjudicator.

He shall perform such functions as the Secretary of State may assign to him.

- (5) The other adjudicators shall undertake such duties as the Chief Adjudicator may determine.
- (6) The Secretary of State may –
 - (a) appoint staff for the adjudicators;
 - (b) pay remuneration and expenses to the adjudicators and their staff;
 - (c) defray other costs arising in relation to the performance by the adjudicators of their functions;
 - (d) compensate persons for ceasing to be adjudicators.

71 Procedural rules

- (1) The Secretary of State may make rules about proceedings before a company names adjudicator.
- (2) The rules may, in particular, make provision –
 - (a) as to how an application is to be made and the form and content of an application or other documents;
 - (b) for fees to be charged;
 - (c) about the service of documents and the consequences of failure to serve them;
 - (d) as to the form and manner in which evidence is to be given;
 - (e) for circumstances in which hearings are required and those in which they are not;
 - (f) for cases to be heard by more than one adjudicator;
 - (g) setting time limits for anything required to be done in connection with the proceedings (and allowing for such limits to be extended, even if they have expired);
 - (h) enabling the adjudicator to strike out an application, or any defence, in whole or in part –
 - (i) on the ground that it is vexatious, has no reasonable prospect of success or is otherwise misconceived, or
 - (ii) for failure to comply with the requirements of the rules;
 - (i) conferring power to order security for costs (in Scotland, caution for expenses);
 - (j) as to how far proceedings are to be held in public;
 - (k) requiring one party to bear the costs (in Scotland, expenses) of another and as to the taxing (or settling) the amount of such costs (or expenses).
- (3) The rules may confer on the Chief Adjudicator power to determine any matter that could be the subject of provision in the rules.
- (4) Rules under this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

72 Decision of adjudicator to be made available to public

- (1) A company names adjudicator must, within 90 days of determining an application under section 69, make his decision and his reasons for it available to the public.

- (2) He may do so by means of a website or by such other means as appear to him to be appropriate.

73 Order requiring name to be changed

- (1) If an application under section 69 is upheld, the adjudicator shall make an order –
- (a) requiring the respondent company to change its name to one that is not an offending name, and
 - (b) requiring all the respondents –
 - (i) to take all such steps as are within their power to make, or facilitate the making, of that change, and
 - (ii) not to cause or permit any steps to be taken calculated to result in another company being registered with a name that is an offending name.
- (2) An “offending name” means a name that, by reason of its similarity to the name associated with the applicant in which he claims goodwill, would be likely –
- (a) to be the subject of a direction under section 67 (power of Secretary of State to direct change of name), or
 - (b) to give rise to a further application under section 69.
- (3) The order must specify a date by which the respondent company’s name is to be changed and may be enforced –
- (a) in England and Wales or Northern Ireland, in the same way as an order of the High Court;
 - (b) in Scotland, in the same way as a decree of the Court of Session.
- (4) If the respondent company’s name is not changed in accordance with the order by the specified date, the adjudicator may determine a new name for the company.
- (5) If the adjudicator determines a new name for the respondent company he must give notice of his determination –
- (a) to the applicant,
 - (b) to the respondents, and
 - (c) to the registrar.
- (6) For the purposes of this section a company’s name is changed when the change takes effect in accordance with section 81(1) (on the issue of the new certification of incorporation).

74 Appeal from adjudicator’s decision

- (1) An appeal lies to the court from any decision of a company names adjudicator to uphold or dismiss an application under section 69.
- (2) Notice of appeal against a decision upholding an application must be given before the date specified in the adjudicator’s order by which the respondent company’s name is to be changed.
- (3) If notice of appeal is given against a decision upholding an application, the effect of the adjudicator’s order is suspended.
- (4) If on appeal the court –

- (a) affirms the decision of the adjudicator to uphold the application, or
 - (b) reverses the decision of the adjudicator to dismiss the application,
- the court may (as the case may require) specify the date by which the adjudicator’s order is to be complied with, remit the matter to the adjudicator or make any order or determination that the adjudicator might have made.
- (5) If the court determines a new name for the company it must give notice of the determination –
 - (a) to the parties to the appeal, and
 - (b) to the registrar.

CHAPTER 4

OTHER POWERS OF THE SECRETARY OF STATE

75 Provision of misleading information etc

- (1) If it appears to the Secretary of State –
 - (a) that misleading information has been given for the purposes of a company’s registration by a particular name, or
 - (b) that an undertaking or assurance has been given for that purpose and has not been fulfilled,the Secretary of State may direct the company to change its name.
- (2) Any such direction –
 - (a) must be given within five years of the company’s registration by that name, and
 - (b) must specify the period within which the company is to change its name.
- (3) The Secretary of State may by a further direction extend the period within which the company is to change its name.
Any such direction must be given before the end of the period for the time being specified.
- (4) A direction under this section must be in writing.
- (5) If a company fails to comply with a direction under this section, an offence is committed by –
 - (a) the company, and
 - (b) every officer of the company who is in default.For this purpose a shadow director is treated as an officer of the company.
- (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.

76 Misleading indication of activities

- (1) If in the opinion of the Secretary of State the name by which a company is registered gives so misleading an indication of the nature of its activities as to be likely to cause harm to the public, the Secretary of State may direct the company to change its name.

- (2) The direction must be in writing.
- (3) The direction must be complied with within a period of six weeks from the date of the direction or such longer period as the Secretary of State may think fit to allow.
 This does not apply if an application is duly made to the court under the following provisions.
- (4) The company may apply to the court to set the direction aside.
 The application must be made within the period of three weeks from the date of the direction.
- (5) The court may set the direction aside or confirm it.
 If the direction is confirmed, the court shall specify the period within which the direction is to be complied with.
- (6) If a company fails to comply with a direction under this section, an offence is committed by –
 - (a) the company, and
 - (b) every officer of the company who is in default.
 For this purpose a shadow director is treated as an officer of the company.
- (7) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.

CHAPTER 5

CHANGE OF NAME

77 Change of name

- (1) A company may change its name –
 - (a) by special resolution (see section 78), or
 - (b) by other means provided for by the company’s articles (see section 79).
- (2) The name of a company may also be changed –
 - (a) by resolution of the directors acting under section 64 (change of name to comply with direction of Secretary of State under that section);
 - (b) on the determination of a new name by a company names adjudicator under section 73 (powers of adjudicator on upholding objection to company name);
 - (c) on the determination of a new name by the court under section 74 (appeal against decision of company names adjudicator);
 - (d) under section 1033 (company’s name on restoration to the register).

78 Change of name by special resolution

- (1) Where a change of name has been agreed to by a company by special resolution, the company must give notice to the registrar.
 This is in addition to the obligation to forward a copy of the resolution to the registrar.

- (2) Where a change of name by special resolution is conditional on the occurrence of an event, the notice given to the registrar of the change must –
 - (a) specify that the change is conditional, and
 - (b) state whether the event has occurred.
- (3) If the notice states that the event has not occurred –
 - (a) the registrar is not required to act under section 80 (registration and issue of new certificate of incorporation) until further notice,
 - (b) when the event occurs, the company must give notice to the registrar stating that it has occurred, and
 - (c) the registrar may rely on the statement as sufficient evidence of the matters stated in it.

79 Change of name by means provided for in company's articles

- (1) Where a change of a company's name has been made by other means provided for by its articles –
 - (a) the company must give notice to the registrar, and
 - (b) the notice must be accompanied by a statement that the change of name has been made by means provided for by the company's articles.
- (2) The registrar may rely on the statement as sufficient evidence of the matters stated in it.

80 Change of name: registration and issue of new certificate of incorporation

- (1) This section applies where the registrar receives notice of a change of a company's name.
- (2) If the registrar is satisfied –
 - (a) that the new name complies with the requirements of this Part, and
 - (b) that the requirements of the Companies Acts, and any relevant requirements of the company's articles, with respect to a change of name are complied with,the registrar must enter the new name on the register in place of the former name.
- (3) On the registration of the new name, the registrar must issue a certificate of incorporation altered to meet the circumstances of the case.

81 Change of name: effect

- (1) A change of a company's name has effect from the date on which the new certificate of incorporation is issued.
- (2) The change does not affect any rights or obligations of the company or render defective any legal proceedings by or against it.
- (3) Any legal proceedings that might have been continued or commenced against it by its former name may be continued or commenced against it by its new name.

CHAPTER 6

TRADING DISCLOSURES

82 Requirement to disclose company name etc

- (1) The Secretary of State may by regulations make provision requiring companies—
 - (a) to display specified information in specified locations,
 - (b) to state specified information in specified descriptions of document or communication, and
 - (c) to provide specified information on request to those they deal with in the course of their business.
- (2) The regulations—
 - (a) must in every case require disclosure of the name of the company, and
 - (b) may make provision as to the manner in which any specified information is to be displayed, stated or provided.
- (3) The regulations may provide that, for the purposes of any requirement to disclose a company's name, any variation between a word or words required to be part of the name and a permitted abbreviation of that word or those words (or vice versa) shall be disregarded.
- (4) In this section “specified” means specified in the regulations.
- (5) Regulations under this section are subject to affirmative resolution procedure.

83 Civil consequences of failure to make required disclosure

- (1) This section applies to any legal proceedings brought by a company to which section 82 applies (requirement to disclose company name etc) to enforce a right arising out of a contract made in the course of a business in respect of which the company was, at the time the contract was made, in breach of regulations under that section.
- (2) The proceedings shall be dismissed if the defendant (in Scotland, the defender) to the proceedings shows—
 - (a) that he has a claim against the claimant (pursuer) arising out of the contract that he has been unable to pursue by reason of the latter's breach of the regulations, or
 - (b) that he has suffered some financial loss in connection with the contract by reason of the claimant's (pursuer's) breach of the regulations,unless the court before which the proceedings are brought is satisfied that it is just and equitable to permit the proceedings to continue.
- (3) This section does not affect the right of any person to enforce such rights as he may have against another person in any proceedings brought by that person.

84 Criminal consequences of failure to make required disclosures

- (1) Regulations under section 82 may provide—
 - (a) that where a company fails, without reasonable excuse, to comply with any specified requirement of regulations under that section an offence is committed by—

- (i) the company, and
 - (ii) every officer of the company who is in default;
 - (b) that a person guilty of such an offence 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.
- (2) The regulations may provide that, for the purposes of any provision made under subsection (1), a shadow director of the company is to be treated as an officer of the company.
- (3) In subsection (1)(a) “specified” means specified in the regulations.

85 Minor variations in form of name to be left out of account

- (1) For the purposes of this Chapter, in considering a company’s name no account is to be taken of –
- (a) whether upper or lower case characters (or a combination of the two) are used,
 - (b) whether diacritical marks or punctuation are present or absent,
 - (c) whether the name is in the same format or style as is specified under section 57(1)(b) for the purposes of registration,
- provided there is no real likelihood of names differing only in those respects being taken to be different names.
- (2) This does not affect the operation of regulations under section 57(1)(a) permitting only specified characters, diacritical marks or punctuation.

PART 6

A COMPANY’S REGISTERED OFFICE

General

86 A company’s registered office

A company must at all times have a registered office to which all communications and notices may be addressed.

87 Change of address of registered office

- (1) A company may change the address of its registered office by giving notice to the registrar.
- (2) The change takes effect upon the notice being registered by the registrar, but until the end of the period of 14 days beginning with the date on which it is registered a person may validly serve any document on the company at the address previously registered.
- (3) For the purposes of any duty of a company –
- (a) to keep available for inspection at its registered office any register, index or other document, or
 - (b) to mention the address of its registered office in any document,

a company that has given notice to the registrar of a change in the address of its registered office may act on the change as from such date, not more than 14 days after the notice is given, as it may determine.

- (4) Where a company unavoidably ceases to perform at its registered office any such duty as is mentioned in subsection (3)(a) in circumstances in which it was not practicable to give prior notice to the registrar of a change in the address of its registered office, but—
- (a) resumes performance of that duty at other premises as soon as practicable, and
 - (b) gives notice accordingly to the registrar of a change in the situation of its registered office within 14 days of doing so,
- it is not to be treated as having failed to comply with that duty.

Welsh companies

88 Welsh companies

- (1) In the Companies Acts a “Welsh company” means a company as to which it is stated in the register that its registered office is to be situated in Wales.
- (2) A company—
- (a) whose registered office is in Wales, and
 - (b) as to which it is stated in the register that its registered office is to be situated in England and Wales,
- may by special resolution require the register to be amended so that it states that the company's registered office is to be situated in Wales.
- (3) A company—
- (a) whose registered office is in Wales, and
 - (b) as to which it is stated in the register that its registered office is to be situated in Wales,
- may by special resolution require the register to be amended so that it states that the company's registered office is to be situated in England and Wales.
- (4) Where a company passes a resolution under this section it must give notice to the registrar, who shall—
- (a) amend the register accordingly, and
 - (b) issue a new certificate of incorporation altered to meet the circumstances of the case.

PART 7

RE-REGISTRATION AS A MEANS OF ALTERING A COMPANY'S STATUS

Introductory

89 Alteration of status by re-registration

A company may by re-registration under this Part alter its status—

- (a) from a private company to a public company (see sections 90 to 96);
- (b) from a public company to a private company (see sections 97 to 101);

- (c) from a private limited company to an unlimited company (see sections 102 to 104);
- (d) from an unlimited private company to a limited company (see sections 105 to 108);
- (e) from a public company to an unlimited private company (see sections 109 to 111).

Private company becoming public

90 Re-registration of private company as public

- (1) A private company (whether limited or unlimited) may be re-registered as a public company limited by shares if—
 - (a) a special resolution that it should be so re-registered is passed,
 - (b) the conditions specified below are met, and
 - (c) an application for re-registration is delivered to the registrar in accordance with section 94, together with—
 - (i) the other documents required by that section, and
 - (ii) a statement of compliance.
- (2) The conditions are—
 - (a) that the company has a share capital;
 - (b) that the requirements of section 91 are met as regards its share capital;
 - (c) that the requirements of section 92 are met as regards its net assets;
 - (d) if section 93 applies (recent allotment of shares for non-cash consideration), that the requirements of that section are met; and
 - (e) that the company has not previously been re-registered as unlimited.
- (3) The company must make such changes—
 - (a) in its name, and
 - (b) in its articles,as are necessary in connection with its becoming a public company.
- (4) If the company is unlimited it must also make such changes in its articles as are necessary in connection with its becoming a company limited by shares.

91 Requirements as to share capital

- (1) The following requirements must be met at the time the special resolution is passed that the company should be re-registered as a public company—
 - (a) the nominal value of the company's allotted share capital must be not less than the authorised minimum;
 - (b) each of the company's allotted shares must be paid up at least as to one-quarter of the nominal value of that share and the whole of any premium on it;
 - (c) if any shares in the company or any premium on them have been fully or partly paid up by an undertaking given by any person that he or another should do work or perform services (whether for the company or any other person), the undertaking must have been performed or otherwise discharged;
 - (d) if shares have been allotted as fully or partly paid up as to their nominal value or any premium on them otherwise than in cash, and the

- consideration for the allotment consists of or includes an undertaking to the company (other than one to which paragraph (c) applies), then either –
- (i) the undertaking must have been performed or otherwise discharged, or
 - (ii) there must be a contract between the company and some person pursuant to which the undertaking is to be performed within five years from the time the special resolution is passed.
- (2) For the purpose of determining whether the requirements in subsection (1)(b), (c) and (d) are met, the following may be disregarded –
 - (a) shares allotted –
 - (i) before 22nd June 1982 in the case of a company then registered in Great Britain, or
 - (ii) before 31st December 1984 in the case of a company then registered in Northern Ireland;
 - (b) shares allotted in pursuance of an employees' share scheme by reason of which the company would, but for this subsection, be precluded under subsection (1)(b) (but not otherwise) from being re-registered as a public company.
 - (3) No more than one-tenth of the nominal value of the company's allotted share capital is to be disregarded under subsection (2)(a).
For this purpose the allotted share capital is treated as not including shares disregarded under subsection (2)(b).
 - (4) Shares disregarded under subsection (2) are treated as not forming part of the allotted share capital for the purposes of subsection (1)(a).
 - (5) A company must not be re-registered as a public company if it appears to the registrar that –
 - (a) the company has resolved to reduce its share capital,
 - (b) the reduction –
 - (i) is made under section 626 (reduction in connection with redenomination of share capital),
 - (ii) is supported by a solvency statement in accordance with section 643, or
 - (iii) has been confirmed by an order of the court under section 648, and
 - (c) the effect of the reduction is, or will be, that the nominal value of the company's allotted share capital is below the authorised minimum.

92 Requirements as to net assets

- (1) A company applying to re-register as a public company must obtain –
 - (a) a balance sheet prepared as at a date not more than seven months before the date on which the application is delivered to the registrar,
 - (b) an unqualified report by the company's auditor on that balance sheet, and
 - (c) a written statement by the company's auditor that in his opinion at the balance sheet date the amount of the company's net assets was not less than the aggregate of its called-up share capital and undistributable reserves.

- (2) Between the balance sheet date and the date on which the application for re-registration is delivered to the registrar, there must be no change in the company's financial position that results in the amount of its net assets becoming less than the aggregate of its called-up share capital and undistributable reserves.
- (3) In subsection (1)(b) an "unqualified report" means –
 - (a) if the balance sheet was prepared for a financial year of the company, a report stating without material qualification the auditor's opinion that the balance sheet has been properly prepared in accordance with the requirements of this Act;
 - (b) if the balance sheet was not prepared for a financial year of the company, a report stating without material qualification the auditor's opinion that the balance sheet has been properly prepared in accordance with the provisions of this Act which would have applied if it had been prepared for a financial year of the company.
- (4) For the purposes of an auditor's report on a balance sheet that was not prepared for a financial year of the company, the provisions of this Act apply with such modifications as are necessary by reason of that fact.
- (5) For the purposes of subsection (3) a qualification is material unless the auditor states in his report that the matter giving rise to the qualification is not material for the purpose of determining (by reference to the company's balance sheet) whether at the balance sheet date the amount of the company's net assets was not less than the aggregate of its called-up share capital and undistributable reserves.
- (6) In this Part "net assets" and "undistributable reserves" have the same meaning as in section 831 (net asset restriction on distributions by public companies).

93 Recent allotment of shares for non-cash consideration

- (1) This section applies where –
 - (a) shares are allotted by the company in the period between the date as at which the balance sheet required by section 92 is prepared and the passing of the resolution that the company should re-register as a public company, and
 - (b) the shares are allotted as fully or partly paid up as to their nominal value or any premium on them otherwise than in cash.
- (2) The registrar shall not entertain an application by the company for re-registration as a public company unless –
 - (a) the requirements of section 593(1)(a) and (b) have been complied with (independent valuation of non-cash consideration; valuer's report to company not more than six months before allotment), or
 - (b) the allotment is in connection with –
 - (i) a share exchange (see subsections (3) to (5) below), or
 - (ii) a proposed merger with another company (see subsection (6) below).
- (3) An allotment is in connection with a share exchange if –
 - (a) the shares are allotted in connection with an arrangement under which the whole or part of the consideration for the shares allotted is provided by –

- (i) the transfer to the company allotting the shares of shares (or shares of a particular class) in another company, or
 - (ii) the cancellation of shares (or shares of a particular class) in another company; and
 - (b) the allotment is open to all the holders of the shares of the other company in question (or, where the arrangement applies only to shares of a particular class, to all the holders of the company's shares of that class) to take part in the arrangement in connection with which the shares are allotted.
- (4) In determining whether a person is a holder of shares for the purposes of subsection (3), there shall be disregarded –
- (a) shares held by, or by a nominee of, the company allotting the shares;
 - (b) shares held by, or by a nominee of –
 - (i) the holding company of the company allotting the shares,
 - (ii) a subsidiary of the company allotting the shares, or
 - (iii) a subsidiary of the holding company of the company allotting the shares.
- (5) It is immaterial, for the purposes of deciding whether an allotment is in connection with a share exchange, whether or not the arrangement in connection with which the shares are allotted involves the issue to the company allotting the shares of shares (or shares of a particular class) in the other company.
- (6) There is a proposed merger with another company if one of the companies concerned proposes to acquire all the assets and liabilities of the other in exchange for the issue of its shares or other securities to shareholders of the other (whether or not accompanied by a cash payment).
“Another company” includes any body corporate.
- (7) For the purposes of this section –
- (a) the consideration for an allotment does not include any amount standing to the credit of any of the company's reserve accounts, or of its profit and loss account, that has been applied in paying up (to any extent) any of the shares allotted or any premium on those shares; and
 - (b) “arrangement” means any agreement, scheme or arrangement, (including an arrangement sanctioned in accordance with –
 - (i) Part 26 of this Act (arrangements and reconstructions), or
 - (ii) section 110 of the Insolvency Act 1986 (c. 45) or Article 96 of the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)) (liquidator in winding up accepting shares as consideration for sale of company's property)).

94 Application and accompanying documents

- (1) An application for re-registration as a public company must contain –
- (a) a statement of the company's proposed name on re-registration; and
 - (b) in the case of a company without a secretary, a statement of the company's proposed secretary (see section 95).
- (2) The application must be accompanied by –

- (a) a copy of the special resolution that the company should re-register as a public company (unless a copy has already been forwarded to the registrar under Chapter 3 of Part 3);
 - (b) a copy of the company's articles as proposed to be amended;
 - (c) a copy of the balance sheet and other documents referred to in section 92(1); and
 - (d) if section 93 applies (recent allotment of shares for non-cash consideration), a copy of the valuation report (if any) under subsection (2)(a) of that section.
- (3) The statement of compliance required to be delivered together with the application is a statement that the requirements of this Part as to re-registration as a public company have been complied with.
 - (4) The registrar may accept the statement of compliance as sufficient evidence that the company is entitled to be re-registered as a public company.

95 Statement of proposed secretary

- (1) The statement of the company's proposed secretary must contain the required particulars of the person who is or the persons who are to be the secretary or joint secretaries of the company.
- (2) The required particulars are the particulars that will be required to be stated in the company's register of secretaries (see sections 277 to 279).
- (3) The statement must also contain a consent by the person named as secretary, or each of the persons named as joint secretaries, to act in the relevant capacity. If all the partners in a firm are to be joint secretaries, consent may be given by one partner on behalf of all of them.

96 Issue of certificate of incorporation on re-registration

- (1) If on an application for re-registration as a public company the registrar is satisfied that the company is entitled to be so re-registered, the company shall be re-registered accordingly.
- (2) The registrar must issue a certificate of incorporation altered to meet the circumstances of the case.
- (3) The certificate must state that it is issued on re-registration and the date on which it is issued.
- (4) On the issue of the certificate—
 - (a) the company by virtue of the issue of the certificate becomes a public company,
 - (b) the changes in the company's name and articles take effect, and
 - (c) where the application contained a statement under section 95 (statement of proposed secretary), the person or persons named in the statement as secretary or joint secretary of the company are deemed to have been appointed to that office.
- (5) The certificate is conclusive evidence that the requirements of this Act as to re-registration have been complied with.

*Public company becoming private***97 Re-registration of public company as private limited company**

- (1) A public company may be re-registered as a private limited company if—
 - (a) a special resolution that it should be so re-registered is passed,
 - (b) the conditions specified below are met, and
 - (c) an application for re-registration is delivered to the registrar in accordance with section 100, together with—
 - (i) the other documents required by that section, and
 - (ii) a statement of compliance.
- (2) The conditions are that—
 - (a) where no application under section 98 for cancellation of the resolution has been made—
 - (i) having regard to the number of members who consented to or voted in favour of the resolution, no such application may be made, or
 - (ii) the period within which such an application could be made has expired, or
 - (b) where such an application has been made—
 - (i) the application has been withdrawn, or
 - (ii) an order has been made confirming the resolution and a copy of that order has been delivered to the registrar.
- (3) The company must make such changes—
 - (a) in its name, and
 - (b) in its articles,as are necessary in connection with its becoming a private company limited by shares or, as the case may be, by guarantee.

98 Application to court to cancel resolution

- (1) Where a special resolution by a public company to be re-registered as a private limited company has been passed, an application to the court for the cancellation of the resolution may be made—
 - (a) by the holders of not less in the aggregate than 5% in nominal value of the company's issued share capital or any class of the company's issued share capital (disregarding any shares held by the company as treasury shares);
 - (b) if the company is not limited by shares, by not less than 5% of its members; or
 - (c) by not less than 50 of the company's members;but not by a person who has consented to or voted in favour of the resolution.
- (2) The application must be made within 28 days after the passing of the resolution and may be made on behalf of the persons entitled to make it by such one or more of their number as they may appoint for the purpose.
- (3) On the hearing of the application the court shall make an order either cancelling or confirming the resolution.
- (4) The court may —

- (a) make that order on such terms and conditions as it thinks fit,
 - (b) if it thinks fit adjourn the proceedings in order that an arrangement may be made to the satisfaction of the court for the purchase of the interests of dissentient members, and
 - (c) give such directions, and make such orders, as it thinks expedient for facilitating or carrying into effect any such arrangement.
- (5) The court's order may, if the court thinks fit –
- (a) provide for the purchase by the company of the shares of any of its members and for the reduction accordingly of the company's capital; and
 - (b) make such alteration in the company's articles as may be required in consequence of that provision.
- (6) The court's order may, if the court thinks fit, require the company not to make any, or any specified, amendments to its articles without the leave of the court.

99 Notice to registrar of court application or order

- (1) On making an application under section 98 (application to court to cancel resolution) the applicants, or the person making the application on their behalf, must immediately give notice to the registrar.
This is without prejudice to any provision of rules of court as to service of notice of the application.
- (2) On being served with notice of any such application, the company must immediately give notice to the registrar.
- (3) Within 15 days of the making of the court's order on the application, or such longer period as the court may at any time direct, the company must deliver to the registrar a copy of the order.
- (4) If a company fails to comply with subsection (2) or (3) an offence is committed by –
- (a) the company, and
 - (b) every officer of the company who is in default.
- (5) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.

100 Application and accompanying documents

- (1) An application for re-registration as a private limited company must contain a statement of the company's proposed name on re-registration.
- (2) The application must be accompanied by –
- (a) a copy of the resolution that the company should re-register as a private limited company (unless a copy has already been forwarded to the registrar under Chapter 3 of Part 3); and
 - (b) a copy of the company's articles as proposed to be amended.
- (3) The statement of compliance required to be delivered together with the application is a statement that the requirements of this Part as to re-registration as a private limited company have been complied with.

- (4) The registrar may accept the statement of compliance as sufficient evidence that the company is entitled to be re-registered as a private limited company.

101 Issue of certificate of incorporation on re-registration

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

Private limited company becoming unlimited

102 Re-registration of private limited company as unlimited

- (1) A private limited company may be re-registered as an unlimited company if –
 - (a) all the members of the company have assented to its being so re-registered,
 - (b) the condition specified below is met, and
 - (c) an application for re-registration is delivered to the registrar in accordance with section 103, together with –
 - (i) the other documents required by that section, and
 - (ii) a statement of compliance.
- (2) The condition is that the company has not previously been re-registered as limited.
- (3) The company must make such changes in its name and its articles –
 - (a) as are necessary in connection with its becoming an unlimited company; and
 - (b) if it is to have a share capital, as are necessary in connection with its becoming an unlimited company having a share capital.
- (4) For the purposes of this section –
 - (a) a trustee in bankruptcy of a member of the company is entitled, to the exclusion of the member, to assent to the company's becoming unlimited; and
 - (b) the personal representative of a deceased member of the company may assent on behalf of the deceased.
- (5) In subsection (4)(a), "a trustee in bankruptcy of a member of the company" includes –

- (a) a permanent trustee or an interim trustee (within the meaning of the Bankruptcy (Scotland) Act 1985 (c. 66)) on the sequestrated estate of a member of the company;
- (b) a trustee under a protected trustee deed (within the meaning of the Bankruptcy (Scotland) Act 1985) granted by a member of the company.

103 Application and accompanying documents

- (1) An application for re-registration as an unlimited company must contain a statement of the company’s proposed name on re-registration.
- (2) The application must be accompanied by –
 - (a) the prescribed form of assent to the company’s being registered as an unlimited company, authenticated by or on behalf of all the members of the company;
 - (b) a copy of the company’s articles as proposed to be amended.
- (3) The statement of compliance required to be delivered together with the application is a statement that the requirements of this Part as to re-registration as an unlimited company have been complied with.
- (4) The statement must contain a statement by the directors of the company –
 - (a) that the persons by whom or on whose behalf the form of assent is authenticated constitute the whole membership of the company, and
 - (b) if any of the members have not authenticated that form themselves, that the directors have taken all reasonable steps to satisfy themselves that each person who authenticated it on behalf of a member was lawfully empowered to do so.
- (5) The registrar may accept the statement of compliance as sufficient evidence that the company is entitled to be re-registered as an unlimited company.

104 Issue of certificate of incorporation on re-registration

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

*Unlimited private company becoming limited***105 Re-registration of unlimited company as limited**

- (1) An unlimited company may be re-registered as a private limited company if—
 - (a) a special resolution that it should be so re-registered is passed,
 - (b) the condition specified below is met, and
 - (c) an application for re-registration is delivered to the registrar in accordance with section 106, together with—
 - (i) the other documents required by that section, and
 - (ii) a statement of compliance.
- (2) The condition is that the company has not previously been re-registered as unlimited.
- (3) The special resolution must state whether the company is to be limited by shares or by guarantee.
- (4) The company must make such changes—
 - (a) in its name, and
 - (b) in its articles,as are necessary in connection with its becoming a company limited by shares or, as the case may be, by guarantee.

106 Application and accompanying documents

- (1) An application for re-registration as a limited company must contain a statement of the company's proposed name on re-registration.
- (2) The application must be accompanied by—
 - (a) a copy of the resolution that the company should re-register as a private limited company (unless a copy has already been forwarded to the registrar under Chapter 3 of Part 3);
 - (b) if the company is to be limited by guarantee, a statement of guarantee;
 - (c) a copy of the company's articles as proposed to be amended.
- (3) The statement of guarantee required to be delivered in the case of a company that is to be limited by guarantee must state that each member undertakes that, if the company is wound up while he is a member, or within one year after he ceases to be a member, he will contribute to the assets of the company such amount as may be required for—
 - (a) payment of the debts and liabilities of the company contracted before he ceases to be a member,
 - (b) payment of the costs, charges and expenses of winding up, and
 - (c) adjustment of the rights of the contributories among themselves,not exceeding a specified amount.
- (4) The statement of compliance required to be delivered together with the application is a statement that the requirements of this Part as to re-registration as a limited company have been complied with.
- (5) The registrar may accept the statement of compliance as sufficient evidence that the company is entitled to be re-registered as a limited company.

107 Issue of certificate of incorporation on re-registration

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

108 Statement of capital required where company already has share capital

- (1) A company which on re-registration under section 107 already has allotted share capital must within 15 days after the re-registration deliver a statement of capital to the registrar.
- (2) This does not apply if the information which would be included in the statement has already been sent to the registrar in—
 - (a) a statement of capital and initial shareholdings (see section 10), or
 - (b) a statement of capital contained in an annual return (see section 856(2)).
- (3) The statement of capital must state with respect to the company's share capital on re-registration—
 - (a) the total number of shares of the company,
 - (b) the aggregate nominal value of those shares,
 - (c) for each class of shares—
 - (i) prescribed particulars of the rights attached to the shares,
 - (ii) the total number of shares of that class, and
 - (iii) the aggregate nominal value of shares of that class, and
 - (d) the amount paid up and the amount (if any) unpaid on each share (whether on account of the nominal value of the share or by way of premium).
- (4) If default is made in complying with this section, an offence is committed by—
 - (a) the company, and
 - (b) every officer of the company who is in default.
- (5) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.

*Public company becoming private and unlimited***109 Re-registration of public company as private and unlimited**

- (1) A public company limited by shares may be re-registered as an unlimited private company with a share capital if—
 - (a) all the members of the company have assented to its being so re-registered,
 - (b) the condition specified below is met, and
 - (c) an application for re-registration is delivered to the registrar in accordance with section 110, together with—
 - (i) the other documents required by that section, and
 - (ii) a statement of compliance.
- (2) The condition is that the company has not previously been re-registered—
 - (a) as limited, or
 - (b) as unlimited.
- (3) The company must make such changes—
 - (a) in its name, and
 - (b) in its articles,as are necessary in connection with its becoming an unlimited private company.
- (4) For the purposes of this section—
 - (a) a trustee in bankruptcy of a member of the company is entitled, to the exclusion of the member, to assent to the company's re-registration; and
 - (b) the personal representative of a deceased member of the company may assent on behalf of the deceased.
- (5) In subsection (4)(a), "a trustee in bankruptcy of a member of the company" includes—
 - (a) a permanent trustee or an interim trustee (within the meaning of the Bankruptcy (Scotland) Act 1985 (c. 66)) on the sequestrated estate of a member of the company;
 - (b) a trustee under a protected trustee deed (within the meaning of the Bankruptcy (Scotland) Act 1985) granted by a member of the company.

110 Application and accompanying documents

- (1) An application for re-registration of a public company as an unlimited private company must contain a statement of the company's proposed name on re-registration.
- (2) The application must be accompanied by—
 - (a) the prescribed form of assent to the company's being registered as an unlimited company, authenticated by or on behalf of all the members of the company, and
 - (b) a copy of the company's articles as proposed to be amended.
- (3) The statement of compliance required to be delivered together with the application is a statement that the requirements of this Part as to re-registration as an unlimited private company have been complied with.

- (4) The statement must contain a statement by the directors of the company –
 - (a) that the persons by whom or on whose behalf the form of assent is authenticated constitute the whole membership of the company, and
 - (b) if any of the members have not authenticated that form themselves, that the directors have taken all reasonable steps to satisfy themselves that each person who authenticated it on behalf of a member was lawfully empowered to do so.
- (5) The registrar may accept the statement of compliance as sufficient evidence that the company is entitled to be re-registered as an unlimited private company.

111 Issue of certificate of incorporation on re-registration

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

PART 8

A COMPANY'S MEMBERS

CHAPTER 1

THE MEMBERS OF A COMPANY

112 The members of a company

- (1) The subscribers of a company's memorandum are deemed to have agreed to become members of the company, and on its registration become members and must be entered as such in its register of members.
- (2) Every other person who agrees to become a member of a company, and whose name is entered in its register of members, is a member of the company.

CHAPTER 2

REGISTER OF MEMBERS

General

113 Register of members

- (1) Every company must keep a register of its members.
- (2) There must be entered in the register –
 - (a) the names and addresses of the members,
 - (b) the date on which each person was registered as a member, and
 - (c) the date at which any person ceased to be a member.
- (3) In the case of a company having a share capital, there must be entered in the register, with the names and addresses of the members, a statement of –
 - (a) the shares held by each member, distinguishing each share –
 - (i) by its number (so long as the share has a number), and
 - (ii) where the company has more than one class of issued shares, by its class, and
 - (b) the amount paid or agreed to be considered as paid on the shares of each member.
- (4) If the company has converted any of its shares into stock, and given notice of the conversion to the registrar, the register of members must show the amount and class of stock held by each member instead of the amount of shares and the particulars relating to shares specified above.
- (5) In the case of joint holders of shares or stock in a company, the company's register of members must state the names of each joint holder.
In other respects joint holders are regarded for the purposes of this Chapter as a single member (so that the register must show a single address).
- (6) In the case of a company that does not have a share capital but has more than one class of members, there must be entered in the register, with the names and addresses of the members, a statement of the class to which each member belongs.
- (7) 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.
- (8) 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.

114 Register to be kept available for inspection

- (1) A company's register of members must be kept available for inspection –
 - (a) at its registered office, or
 - (b) at a place specified in regulations under section 1136.

- (2) A company must give notice to the registrar of the place where its register of members is kept available for inspection and of any change in that place.
- (3) No such notice is required if the register has, at all times since it came into existence (or, in the case of a register in existence on the relevant date, at all times since then) been kept available for inspection at the company’s registered office.
- (4) The relevant date for the purposes of subsection (3) is—
 - (a) 1st July 1948 in the case of a company registered in Great Britain, and
 - (b) 1st April 1961 in the case of a company registered in Northern Ireland.
- (5) If a company makes default for 14 days in complying with subsection (2), an offence is committed by—
 - (a) the company, and
 - (b) every officer of the company who is in default.
- (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.

115 Index of members

- (1) Every company having more than 50 members must keep an index of the names of the members of the company, unless the register of members is in such a form as to constitute in itself an index.
- (2) The company must make any necessary alteration in the index within 14 days after the date on which any alteration is made in the register of members.
- (3) The index must contain, in respect of each member, a sufficient indication to enable the account of that member in the register to be readily found.
- (4) The index must be at all times kept available for inspection at the same place as the register of members.
- (5) If default is made in complying with this section, an offence is committed by—
 - (a) the company, and
 - (b) every officer of the company who is in default.
- (6) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.

116 Rights to inspect and require copies

- (1) The register and the index of members’ names must be open to the inspection—
 - (a) of any member of the company without charge, and
 - (b) of any other person on payment of such fee as may be prescribed.
- (2) Any person may require a copy of a company’s register of members, or of any part of it, on payment of such fee as may be prescribed.

- (3) A person seeking to exercise either of the rights conferred by this section must make a request to the company to that effect.
- (4) The request must contain the following information –
 - (a) in the case of an individual, his name and address;
 - (b) in the case of an organisation, the name and address of an individual responsible for making the request on behalf of the organisation;
 - (c) the purpose for which the information is to be used; and
 - (d) whether the information will be disclosed to any other person, and if so –
 - (i) where that person is an individual, his name and address,
 - (ii) where that person is an organisation, the name and address of an individual responsible for receiving the information on its behalf, and
 - (iii) the purpose for which the information is to be used by that person.

117 Register of members: response to request for inspection or copy

- (1) Where a company receives a request under section 116 (register of members: right to inspect and require copy), it must within five working days either –
 - (a) comply with the request, or
 - (b) apply to the court.
- (2) If it applies to the court it must notify the person making the request.
- (3) If on an application under this section the court is satisfied that the inspection or copy is not sought for a proper purpose –
 - (a) it shall direct the company not to comply with the request, and
 - (b) it may further order that the company's costs (in Scotland, expenses) on the application be paid in whole or in part by the person who made the request, even if he is not a party to the application.
- (4) If the court makes such a direction and it appears to the court that the company is or may be subject to other requests made for a similar purpose (whether made by the same person or different persons), it may direct that the company is not to comply with any such request.

The order must contain such provision as appears to the court appropriate to identify the requests to which it applies.
- (5) If on an application under this section the court does not direct the company not to comply with the request, the company must comply with the request immediately upon the court giving its decision or, as the case may be, the proceedings being discontinued.

118 Register of members: refusal of inspection or default in providing copy

- (1) If an inspection required under section 116 (register of members: right to inspect and require copy) is refused or default is made in providing a copy required under that section, otherwise than in accordance with an order of the court, an offence is committed by –
 - (a) the company, and
 - (b) every officer of the company who is in default.

- (2) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.
- (3) In the case of any such refusal or default the court may by order compel an immediate inspection or, as the case may be, direct that the copy required be sent to the person requesting it.

119 Register of members: offences in connection with request for or disclosure of information

- (1) It is an offence for a person knowingly or recklessly to make in a request under section 116 (register of members: right to inspect or require copy) a statement that is misleading, false or deceptive in a material particular.
- (2) It is an offence for a person in possession of information obtained by exercise of either of the rights conferred by that section –
 - (a) to do anything that results in the information being disclosed to another person, or
 - (b) to fail to do anything with the result that the information is disclosed to another person,knowing, or having reason to suspect, that person may use the information for a purpose that is not a proper purpose.
- (3) A person guilty of an offence under this section is liable –
 - (a) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine (or both);
 - (b) on summary conviction –
 - (i) in England and Wales, to imprisonment for a term not exceeding twelve months or to a fine not exceeding the statutory maximum (or both);
 - (ii) in Scotland or Northern Ireland, to imprisonment for a term not exceeding six months, or to a fine not exceeding the statutory maximum (or both).

120 Information as to state of register and index

- (1) When a person inspects the register, or the company provides him with a copy of the register or any part of it, the company must inform him of the most recent date (if any) on which alterations were made to the register and there were no further alterations to be made.
- (2) When a person inspects the index of members’ names, the company must inform him whether there is any alteration to the register that is not reflected in the index.
- (3) If a company fails to provide the information required under subsection (1) or (2), an offence is committed by –
 - (a) the company, and
 - (b) every officer of the company who is in default.
- (4) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

121 Removal of entries relating to former members

An entry relating to a former member of the company may be removed from the register after the expiration of ten years from the date on which he ceased to be a member.

Special cases

122 Share warrants

- (1) On the issue of a share warrant the company must –
 - (a) enter in the register of members –
 - (i) the fact of the issue of the warrant,
 - (ii) a statement of the shares included in the warrant, distinguishing each share by its number so long as the share has a number, and
 - (iii) the date of the issue of the warrant,and
 - (b) amend the register, if necessary, so that no person is named on the register as the holder of the shares specified in the warrant.
- (2) Until the warrant is surrendered, the particulars specified in subsection (1)(a) are deemed to be those required by this Act to be entered in the register of members.
- (3) The bearer of a share warrant may, if the articles of the company so provide, be deemed a member of the company within the meaning of this Act, either to the full extent or for any purposes defined in the articles.
- (4) Subject to the company's articles, the bearer of a share warrant is entitled, on surrendering it for cancellation, to have his name entered as a member in the register of members.
- (5) The company is responsible for any loss incurred by any person by reason of the company entering in the register the name of a bearer of a share warrant in respect of the shares specified in it without the warrant being surrendered and cancelled.
- (6) On the surrender of a share warrant, the date of the surrender must be entered in the register.

123 Single member companies

- (1) If a limited company is formed under this Act with only one member there shall be entered in the company's register of members, with the name and address of the sole member, a statement that the company has only one member.
- (2) If the number of members of a limited company falls to one, or if an unlimited company with only one member becomes a limited company on re-registration, there shall upon the occurrence of that event be entered in the company's register of members, with the name and address of the sole member –
 - (a) a statement that the company has only one member, and

- (b) the date on which the company became a company having only one member.
- (3) If the membership of a limited company increases from one to two or more members, there shall upon the occurrence of that event be entered in the company's register of members, with the name and address of the person who was formerly the sole member –
 - (a) a statement that the company has ceased to have only one member, and
 - (b) the date on which that event occurred.
- (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 and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.

124 Company holding its own shares as treasury shares

- (1) Where a company purchases its own shares in circumstances in which section 724 (treasury shares) applies –
 - (a) the requirements of section 113 (register of members) need not be complied with if the company cancels all of the shares forthwith after the purchase, and
 - (b) if the company does not cancel all of the shares forthwith after the purchase, any share that is so cancelled shall be disregarded for the purposes of that section.
- (2) Subject to subsection (1), where a company holds shares as treasury shares the company must be entered in the register as the member holding those shares.

Supplementary

125 Power of court to rectify register

- (1) If –
 - (a) the name of any person is, without sufficient cause, entered in or omitted from a company's register of members, or
 - (b) default is made or unnecessary delay takes place in entering on the register the fact of any person having ceased to be a member,the person aggrieved, or any member of the company, or the company, may apply to the court for rectification of the register.
- (2) The court may either refuse the application or may order rectification of the register and payment by the company of any damages sustained by any party aggrieved.
- (3) On such an application the court may decide any question relating to the title of a person who is a party to the application to have his name entered in or omitted from the register, whether the question arises between members or alleged members, or between members or alleged members on the one hand

and the company on the other hand, and generally may decide any question necessary or expedient to be decided for rectification of the register.

- (4) In the case of a company required by this Act to send a list of its members to the registrar of companies, the court, when making an order for rectification of the register, shall by its order direct notice of the rectification to be given to the registrar.

126 Trusts not to be entered on register

No notice of any trust, expressed, implied or constructive, shall be entered on the register of members of a company registered in England and Wales or Northern Ireland, or be receivable by the registrar.

127 Register to be evidence

The register of members is prima facie evidence of any matters which are by this Act directed or authorised to be inserted in it.

128 Time limit for claims arising from entry in register

- (1) Liability incurred by a company –
- (a) from the making or deletion of an entry in the register of members, or
 - (b) from a failure to make or delete any such entry,
- is not enforceable more than ten years after the date on which the entry was made or deleted or, as the case may be, the failure first occurred.
- (2) This is without prejudice to any lesser period of limitation (and, in Scotland, to any rule that the obligation giving rise to the liability prescribes before the expiry of that period).

CHAPTER 3

OVERSEAS BRANCH REGISTERS

129 Overseas branch registers

- (1) A company having a share capital may, if it transacts business in a country or territory to which this Chapter applies, cause to be kept there a branch register of members resident there (an “overseas branch register”).
- (2) This Chapter applies to –
- (a) any part of Her Majesty’s dominions outside the United Kingdom, the Channel Islands and the Isle of Man, and
 - (b) the countries or territories listed below.

Bangladesh	Malaysia
Cyprus	Malta
Dominica	Nigeria
The Gambia	Pakistan

Ghana	Seychelles
Guyana	Sierra Leone
The Hong Kong Special Administrative Region of the People’s Republic of China	Singapore
India	South Africa
Ireland	Sri Lanka
Kenya	Swaziland
Kiribati	Trinidad and Tobago
Lesotho	Uganda
Malawi	Zimbabwe

- (3) The Secretary of State may make provision by regulations as to the circumstances in which a company is to be regarded as keeping a register in a particular country or territory.
- (4) Regulations under this section are subject to negative resolution procedure.
- (5) References –
 - (a) in any Act or instrument (including, in particular, a company’s articles) to a dominion register, or
 - (b) in articles registered before 1st November 1929 to a colonial register, are to be read (unless the context otherwise requires) as a reference to an overseas branch register kept under this section.

130 Notice of opening of overseas branch register

- (1) A company that begins to keep an overseas branch register must give notice to the registrar within 14 days of doing so, stating the country or territory in which the register is kept.
- (2) If default is made in complying with subsection (1), an offence is committed by –
 - (a) the company, and
 - (b) every officer of the company who is in default.
- (3) A person guilty of an offence under subsection (2) 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.

131 Keeping of overseas branch register

- (1) An overseas branch register is regarded as part of the company’s register of members (“the main register”).
- (2) The Secretary of State may make provision by regulations modifying any provision of Chapter 2 (register of members) as it applies in relation to an overseas branch register.

- (3) Regulations under this section are subject to negative resolution procedure.
- (4) Subject to the provisions of this Act, a company may by its articles make such provision as it thinks fit as to the keeping of overseas branch registers.

132 Register or duplicate to be kept available for inspection in UK

- (1) A company that keeps an overseas branch register must keep available for inspection –
 - (a) the register, or
 - (b) a duplicate of the register duly entered up from time to time,at the place in the United Kingdom where the company's main register is kept available for inspection.
- (2) Any such duplicate is treated for all purposes of this Act as part of the main register.
- (3) If default is made in complying with subsection (1), 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 subsection (3) is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.

133 Transactions in shares registered in overseas branch register

- (1) Shares registered in an overseas branch register must be distinguished from those registered in the main register.
- (2) No transaction with respect to shares registered in an overseas branch register may be registered in any other register.
- (3) An instrument of transfer of a share registered in an overseas branch register –
 - (a) is regarded as a transfer of property situated outside the United Kingdom, and
 - (b) unless executed in a part of the United Kingdom, is exempt from stamp duty.

134 Jurisdiction of local courts

- (1) A competent court in a country or territory where an overseas branch register is kept may exercise the same jurisdiction as is exercisable by a court in the United Kingdom –
 - (a) to rectify the register (see section 125), or
 - (b) in relation to a request for inspection or a copy of the register (see section 117).
- (2) The offences –
 - (a) of refusing inspection or failing to provide a copy of the register (see section 118), and
 - (b) of making a false, misleading or deceptive statement in a request for inspection or a copy (see section 119),

may be prosecuted summarily before any tribunal having summary criminal jurisdiction in the country or territory where the register is kept.

- (3) This section extends only to those countries and territories to which paragraph 3 of Schedule 14 to the Companies Act 1985 (c. 6) (which made similar provision) extended immediately before the coming into force of this Chapter.

135 Discontinuance of overseas branch register

- (1) A company may discontinue an overseas branch register.
- (2) If it does so all the entries in that register must be transferred –
 - (a) to some other overseas branch register kept in the same country or territory, or
 - (b) to the main register.
- (3) The company must give notice to the registrar within 14 days of the discontinuance.
- (4) If default is made in complying with subsection (3), an offence is committed by –
 - (a) the company, and
 - (b) every officer of the company who is in default.
- (5) A person guilty of an offence under subsection (4) is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.

CHAPTER 4

PROHIBITION ON SUBSIDIARY BEING MEMBER OF ITS HOLDING COMPANY

General prohibition

136 Prohibition on subsidiary being a member of its holding company

- (1) Except as provided by this Chapter –
 - (a) a body corporate cannot be a member of a company that is its holding company, and
 - (b) any allotment or transfer of shares in a company to its subsidiary is void.
- (2) The exceptions are provided for in –
 - section 138 (subsidiary acting as personal representative or trustee), and
 - section 141 (subsidiary acting as authorised dealer in securities).

137 Shares acquired before prohibition became applicable

- (1) Where a body corporate became a holder of shares in a company –
 - (a) before the relevant date, or
 - (b) on or after that date and before the commencement of this Chapter in circumstances in which the prohibition in section 23(1) of the Companies Act 1985 or Article 33(1) of the Companies (Northern

Ireland) Order 1986 (S.I. 1986/1032 (N.I. 6)) (or any corresponding earlier enactment), as it then had effect, did not apply, or

- (c) on or after the commencement of this Chapter in circumstances in which the prohibition in section 136 did not apply, it may continue to be a member of the company.
- (2) The relevant date for the purposes of subsection (1)(a) is—
- (a) 1st July 1948 in the case of a company registered in Great Britain, and
 - (b) 1st April 1961 in the case of a company registered in Northern Ireland.
- (3) So long as it is permitted to continue as a member of a company by virtue of this section, an allotment to it of fully paid shares in the company may be validly made by way of capitalisation of reserves of the company.
- (4) But, so long as the prohibition in section 136 would (apart from this section) apply, it has no right to vote in respect of the shares mentioned in subsection (1) above, or any shares allotted as mentioned in subsection (3) above, on a written resolution or at meetings of the company or of any class of its members.

Subsidiary acting as personal representative or trustee

138 Subsidiary acting as personal representative or trustee

- (1) The prohibition in section 136 (prohibition on subsidiary being a member of its holding company) does not apply where the subsidiary is concerned only—
- (a) as personal representative, or
 - (b) as trustee,
- unless, in the latter case, the holding company or a subsidiary of it is beneficially interested under the trust.
- (2) For the purpose of ascertaining whether the holding company or a subsidiary is so interested, there shall be disregarded—
- (a) any interest held only by way of security for the purposes of a transaction entered into by the holding company or subsidiary in the ordinary course of a business that includes the lending of money;
 - (b) any interest within—
 - section 139 (interests to be disregarded: residual interest under pension scheme or employees' share scheme), or
 - section 140 (interests to be disregarded: employer's rights of recovery under pension scheme or employees' share scheme);
 - (c) any rights that the company or subsidiary has in its capacity as trustee, including in particular—
 - (i) any right to recover its expenses or be remunerated out of the trust property, and
 - (ii) any right to be indemnified out of the trust property for any liability incurred by reason of any act or omission in the performance of its duties as trustee.

139 Interests to be disregarded: residual interest under pension scheme or employees' share scheme

- (1) Where shares in a company are held on trust for the purposes of a pension scheme or employees' share scheme, there shall be disregarded for the purposes of section 138 any residual interest that has not vested in possession.
- (2) A "residual interest" means a right of the company or subsidiary ("the residual beneficiary") to receive any of the trust property in the event of—
 - (a) all the liabilities arising under the scheme having been satisfied or provided for, or
 - (b) the residual beneficiary ceasing to participate in the scheme, or
 - (c) the trust property at any time exceeding what is necessary for satisfying the liabilities arising or expected to arise under the scheme.
- (3) In subsection (2)—
 - (a) the reference to a right includes a right dependent on the exercise of a discretion vested by the scheme in the trustee or another person, and
 - (b) the reference to liabilities arising under a scheme includes liabilities that have resulted, or may result, from the exercise of any such discretion.
- (4) For the purposes of this section a residual interest vests in possession—
 - (a) in a case within subsection (2)(a), on the occurrence of the event mentioned there (whether or not the amount of the property receivable pursuant to the right is ascertained);
 - (b) in a case within subsection (2)(b) or (c), when the residual beneficiary becomes entitled to require the trustee to transfer to him any of the property receivable pursuant to the right.
- (5) In this section "pension scheme" means a scheme for the provision of benefits consisting of or including relevant benefits for or in respect of employees or former employees.
- (6) In subsection (5)—
 - (a) "relevant benefits" means any pension, lump sum, gratuity or other like benefit given or to be given on retirement or on death or in anticipation of retirement or, in connection with past service, after retirement or death; and
 - (b) "employee" shall be read as if a director of a company were employed by it.

140 Interests to be disregarded: employer's rights of recovery under pension scheme or employees' share scheme

- (1) Where shares in a company are held on trust for the purposes of a pension scheme or employees' share scheme, there shall be disregarded for the purposes of section 138 any charge or lien on, or set-off against, any benefit or other right or interest under the scheme for the purpose of enabling the employer or former employer of a member of the scheme to obtain the discharge of a monetary obligation due to him from the member.
- (2) In the case of a trust for the purposes of a pension scheme there shall also be disregarded any right to receive from the trustee of the scheme, or as trustee of the scheme to retain, an amount that can be recovered or retained, under section 61 of the Pension Schemes Act 1993 (c. 48) or section 57 of the Pension

Schemes (Northern Ireland) Act 1993 (c. 49) (deduction of contributions equivalent premium from refund of scheme contributions) or otherwise, as reimbursement or partial reimbursement for any contributions equivalent premium paid in connection with the scheme under Part 3 of that Act.

- (3) In this section “pension scheme” means a scheme for the provision of benefits consisting of or including relevant benefits for or in respect of employees or former employees.
 “Relevant benefits” here means any pension, lump sum, gratuity or other like benefit given or to be given on retirement or on death or in anticipation of retirement or, in connection with past service, after retirement or death.
- (4) In this section “employer” and “employee” shall be read as if a director of a company were employed by it.

Subsidiary acting as dealer in securities

141 Subsidiary acting as authorised dealer in securities

- (1) The prohibition in section 136 (prohibition on subsidiary being a member of its holding company) does not apply where the shares are held by the subsidiary in the ordinary course of its business as an intermediary.
- (2) For this purpose a person is an intermediary if he –
- (a) carries on a bona fide business of dealing in securities,
 - (b) is a member of or has access to a regulated market, and
 - (c) does not carry on an excluded business.
- (3) The following are excluded businesses –
- (a) a business that consists wholly or mainly in the making or managing of investments;
 - (b) a business that consists wholly or mainly in, or is carried on wholly or mainly for the purposes of, providing services to persons who are connected with the person carrying on the business;
 - (c) a business that consists in insurance business;
 - (d) a business that consists in managing or acting as trustee in relation to a pension scheme, or that is carried on by the manager or trustee of such a scheme in connection with or for the purposes of the scheme;
 - (e) a business that consists in operating or acting as trustee in relation to a collective investment scheme, or that is carried on by the operator or trustee of such a scheme in connection with and for the purposes of the scheme.
- (4) For the purposes of this section –
- (a) the question whether a person is connected with another shall be determined in accordance with section 839 of the Income and Corporation Taxes Act 1988 (c. 1);
 - (b) “collective investment scheme” has the meaning given in section 235 of the Financial Services and Markets Act 2000 (c. 8);
 - (c) “insurance business” means business that consists in the effecting or carrying out of contracts of insurance;
 - (d) “securities” includes –
 - (i) options,
 - (ii) futures, and

- (iii) contracts for differences, and rights or interests in those investments;
 - (e) “trustee” and “the operator” in relation to a collective investment scheme shall be construed in accordance with section 237(2) of the Financial Services and Markets Act 2000 (c. 8).
- (5) Expressions used in this section that are also used in the provisions regulating activities under the Financial Services and Markets Act 2000 have the same meaning here as they do in those provisions.
See section 22 of that Act, orders made under that section and Schedule 2 to that Act.

142 Protection of third parties in other cases where subsidiary acting as dealer in securities

- (1) This section applies where—
- (a) a subsidiary that is a dealer in securities has purportedly acquired shares in its holding company in contravention of the prohibition in section 136, and
 - (b) a person acting in good faith has agreed, for value and without notice of the contravention, to acquire shares in the holding company—
 - (i) from the subsidiary, or
 - (ii) from someone who has purportedly acquired the shares after their disposal by the subsidiary.
- (2) A transfer to that person of the shares mentioned in subsection (1)(a) has the same effect as it would have had if their original acquisition by the subsidiary had not been in contravention of the prohibition.

Supplementary

143 Application of provisions to companies not limited by shares

In relation to a company other than a company limited by shares, the references in this Chapter to shares shall be read as references to the interest of its members as such, whatever the form of that interest.

144 Application of provisions to nominees

The provisions of this Chapter apply to a nominee acting on behalf of a subsidiary as to the subsidiary itself.

PART 9

EXERCISE OF MEMBERS' RIGHTS

Effect of provisions in company's articles

145 Effect of provisions of articles as to enjoyment or exercise of members' rights

- (1) This section applies where provision is made by a company's articles enabling a member to nominate another person or persons as entitled to enjoy or exercise all or any specified rights of the member in relation to the company.

- (2) So far as is necessary to give effect to that provision, anything required or authorised by any provision of the Companies Acts to be done by or in relation to the member shall instead be done, or (as the case may be) may instead be done, by or in relation to the nominated person (or each of them) as if he were a member of the company.
- (3) This applies, in particular, to the rights conferred by –
 - (a) sections 291 and 293 (right to be sent proposed written resolution);
 - (b) section 292 (right to require circulation of written resolution);
 - (c) section 303 (right to require directors to call general meeting);
 - (d) section 310 (right to notice of general meetings);
 - (e) section 314 (right to require circulation of a statement);
 - (f) section 324 (right to appoint proxy to act at meeting);
 - (g) section 338 (right to require circulation of resolution for AGM of public company); and
 - (h) section 423 (right to be sent a copy of annual accounts and reports).
- (4) This section and any such provision as is mentioned in subsection (1) –
 - (a) do not confer rights enforceable against the company by anyone other than the member, and
 - (b) do not affect the requirements for an effective transfer or other disposition of the whole or part of a member's interest in the company.

Information rights

146 Traded companies: nomination of persons to enjoy information rights

- (1) This section applies to a company whose shares are admitted to trading on a regulated market.
- (2) A member of such a company who holds shares on behalf of another person may nominate that person to enjoy information rights.
- (3) "Information rights" means –
 - (a) the right to receive a copy of all communications that the company sends to its members generally or to any class of its members that includes the person making the nomination, and
 - (b) the rights conferred by –
 - (i) section 431 or 432 (right to require copies of accounts and reports), and
 - (ii) section 1145 (right to require hard copy version of document or information provided in another form).
- (4) The reference in subsection (3)(a) to communications that a company sends to its members generally includes the company's annual accounts and reports. For the application of section 426 (option to provide summary financial statement) in relation to a person nominated to enjoy information rights, see subsection (5) of that section.
- (5) A company need not act on a nomination purporting to relate to certain information rights only.

147 Information rights: form in which copies to be provided

- (1) This section applies as regards the form in which copies are to be provided to a person nominated under section 146 (nomination of person to enjoy information rights).
- (2) If the person to be nominated wishes to receive hard copy communications, he must—
 - (a) request the person making the nomination to notify the company of that fact, and
 - (b) provide an address to which such copies may be sent.This must be done before the nomination is made.
- (3) If having received such a request the person making the nomination—
 - (a) notifies the company that the nominated person wishes to receive hard copy communications, and
 - (b) provides the company with that address,the right of the nominated person is to receive hard copy communications accordingly.
- (4) This is subject to the provisions of Parts 3 and 4 of Schedule 5 (communications by company) under which the company may take steps to enable it to communicate in electronic form or by means of a website.
- (5) If no such notification is given (or no address is provided), the nominated person is taken to have agreed that documents or information may be sent or supplied to him by the company by means of a website.
- (6) That agreement—
 - (a) may be revoked by the nominated person, and
 - (b) does not affect his right under section 1145 to require a hard copy version of a document or information provided in any other form.

148 Termination or suspension of nomination

- (1) The following provisions have effect in relation to a nomination under section 146 (nomination of person to enjoy information rights).
- (2) The nomination may be terminated at the request of the member or of the nominated person.
- (3) The nomination ceases to have effect on the occurrence in relation to the member or the nominated person of any of the following—
 - (a) in the case of an individual, death or bankruptcy;
 - (b) in the case of a body corporate, dissolution or the making of an order for the winding up of the body otherwise than for the purposes of reconstruction.
- (4) In subsection (3)—
 - (a) the reference to bankruptcy includes—
 - (i) the sequestration of a person's estate, and
 - (ii) a person's estate being the subject of a protected trust deed (within the meaning of the Bankruptcy (Scotland) Act 1985 (c. 66)); and
 - (b) the reference to the making of an order for winding up is to—

- (i) the making of such an order under the Insolvency Act 1986 (c. 45) or the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)), or
 - (ii) any corresponding proceeding under the law of a country or territory outside the United Kingdom.
- (5) The effect of any nominations made by a member is suspended at any time when there are more nominated persons than the member has shares in the company.
- (6) Where –
 - (a) the member holds different classes of shares with different information rights, and
 - (b) there are more nominated persons than he has shares conferring a particular right,
 the effect of any nominations made by him is suspended to the extent that they confer that right.
- (7) Where the company –
 - (a) enquires of a nominated person whether he wishes to retain information rights, and
 - (b) does not receive a response within the period of 28 days beginning with the date on which the company's enquiry was sent,
 the nomination ceases to have effect at the end of that period.
 Such an enquiry is not to be made of a person more than once in any twelve-month period.
- (8) The termination or suspension of a nomination means that the company is not required to act on it.
 It does not prevent the company from continuing to do so, to such extent or for such period as it thinks fit.

149 Information as to possible rights in relation to voting

- (1) This section applies where a company sends a copy of a notice of a meeting to a person nominated under section 146 (nomination of person to enjoy information rights)
- (2) The copy of the notice must be accompanied by a statement that –
 - (a) he may have a right under an agreement between him and the member by whom he was nominated to be appointed, or to have someone else appointed, as a proxy for the meeting, and
 - (b) if he has no such right or does not wish to exercise it, he may have a right under such an agreement to give instructions to the member as to the exercise of voting rights.
- (3) Section 325 (notice of meeting to contain statement of member's rights in relation to appointment of proxy) does not apply to the copy, and the company must either –
 - (a) omit the notice required by that section, or
 - (b) include it but state that it does not apply to the nominated person.

150 Information rights: status of rights

- (1) This section has effect as regards the rights conferred by a nomination under section 146 (nomination of person to enjoy information rights).
- (2) Enjoyment by the nominated person of the rights conferred by the nomination is enforceable against the company by the member as if they were rights conferred by the company's articles.
- (3) Any enactment, and any provision of the company's articles, having effect in relation to communications with members has a corresponding effect (subject to any necessary adaptations) in relation to communications with the nominated person.
- (4) In particular –
 - (a) where under any enactment, or any provision of the company's articles, the members of a company entitled to receive a document or information are determined as at a date or time before it is sent or supplied, the company need not send or supply it to a nominated person –
 - (i) whose nomination was received by the company after that date or time, or
 - (ii) if that date or time falls in a period of suspension of his nomination; and
 - (b) where under any enactment, or any provision of the company's articles, the right of a member to receive a document or information depends on the company having a current address for him, the same applies to any person nominated by him.
- (5) The rights conferred by the nomination –
 - (a) are in addition to the rights of the member himself, and
 - (b) do not affect any rights exercisable by virtue of any such provision as is mentioned in section 145 (provisions of company's articles as to enjoyment or exercise of members' rights).
- (6) A failure to give effect to the rights conferred by the nomination does not affect the validity of anything done by or on behalf of the company.
- (7) References in this section to the rights conferred by the nomination are to –
 - (a) the rights referred to in section 146(3) (information rights), and
 - (b) where applicable, the rights conferred by section 147(3) (right to hard copy communications) and section 149 (information as to possible voting rights).

151 Information rights: power to amend

- (1) The Secretary of State may by regulations amend the provisions of sections 146 to 150 (information rights) so as to –
 - (a) extend or restrict the classes of companies to which section 146 applies,
 - (b) make other provision as to the circumstances in which a nomination may be made under that section, or
 - (c) extend or restrict the rights conferred by such a nomination.
- (2) The regulations may make such consequential modifications of any other provisions of this Part, or of any other enactment, as appear to the Secretary of State to be necessary.

- (3) Regulations under this section are subject to affirmative resolution procedure.

Exercise of rights where shares held on behalf of others

152 Exercise of rights where shares held on behalf of others: exercise in different ways

- (1) Where a member holds shares in a company on behalf of more than one person –
- (a) rights attached to the shares, and
 - (b) rights under any enactment exercisable by virtue of holding the shares, need not all be exercised, and if exercised, need not all be exercised in the same way.
- (2) A member who exercises such rights but does not exercise all his rights, must inform the company to what extent he is exercising the rights.
- (3) A member who exercises such rights in different ways must inform the company of the ways in which he is exercising them and to what extent they are exercised in each way.
- (4) If a member exercises such rights without informing the company –
- (a) that he is not exercising all his rights, or
 - (b) that he is exercising his rights in different ways,
- the company is entitled to assume that he is exercising all his rights and is exercising them in the same way.

153 Exercise of rights where shares held on behalf of others: members' requests

- (1) This section applies for the purposes of –
- (a) section 314 (power to require circulation of statement),
 - (b) section 338 (public companies: power to require circulation of resolution for AGM),
 - (c) section 342 (power to require independent report on poll), and
 - (d) section 527 (power to require website publication of audit concerns).
- (2) A company is required to act under any of those sections if it receives a request in relation to which the following conditions are met –
- (a) it is made by at least 100 persons;
 - (b) it is authenticated by all the persons making it;
 - (c) in the case of any of those persons who is not a member of the company, it is accompanied by a statement –
 - (i) of the full name and address of a person (“the member”) who is a member of the company and holds shares on behalf of that person,
 - (ii) that the member is holding those shares on behalf of that person in the course of a business,
 - (iii) of the number of shares in the company that the member holds on behalf of that person,
 - (iv) of the total amount paid up on those shares,
 - (v) that those shares are not held on behalf of anyone else or, if they are, that the other person or persons are not among the other persons making the request,

- (vi) that some or all of those shares confer voting rights that are relevant for the purposes of making a request under the section in question, and
- (vii) that the person has the right to instruct the member how to exercise those rights;
- (d) in the case of any of those persons who is a member of the company, it is accompanied by a statement –
 - (i) that he holds shares otherwise than on behalf of another person, or
 - (ii) that he holds shares on behalf of one or more other persons but those persons are not among the other persons making the request;
- (e) it is accompanied by such evidence as the company may reasonably require of the matters mentioned in paragraph (c) and (d);
- (f) the total amount of the sums paid up on –
 - (i) shares held as mentioned in paragraph (c), and
 - (ii) shares held as mentioned in paragraph (d),divided by the number of persons making the request, is not less than £100;
- (g) the request complies with any other requirements of the section in question as to contents, timing and otherwise.

PART 10

A COMPANY'S DIRECTORS

CHAPTER 1

APPOINTMENT AND REMOVAL OF DIRECTORS

Requirement to have directors

154 Companies required to have directors

- (1) A private company must have at least one director.
- (2) A public company must have at least two directors.

155 Companies required to have at least one director who is a natural person

- (1) A company must have at least one director who is a natural person.
- (2) This requirement is met if the office of director is held by a natural person as a corporation sole or otherwise by virtue of an office.

156 Direction requiring company to make appointment

- (1) If it appears to the Secretary of State that a company is in breach of –
 - section 154 (requirements as to number of directors), or
 - section 155 (requirement to have at least one director who is a natural person),the Secretary of State may give the company a direction under this section.

- (2) The direction must specify –
- (a) the statutory requirement the company appears to be in breach of,
 - (b) what the company must do in order to comply with the direction, and
 - (c) the period within which it must do so.
- That period must be not less than one month or more than three months after the date on which the direction is given.
- (3) The direction must also inform the company of the consequences of failing to comply.
- (4) Where the company is in breach of section 154 or 155 it must comply with the direction by –
- (a) making the necessary appointment or appointments, and
 - (b) giving notice of them under section 167,
- before the end of the period specified in the direction.
- (5) If the company has already made the necessary appointment or appointments (or so far as it has done so), it must comply with the direction by giving notice of them under section 167 before the end of the period specified in the direction.
- (6) If a company fails to comply with a direction under this section, an offence is committed by –
- (a) the company, and
 - (b) every officer of the company who is in default.
- For this purpose a shadow director is treated as an officer of the company.
- (7) A person guilty of an offence under this section 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.

Appointment

157 Minimum age for appointment as director

- (1) A person may not be appointed a director of a company unless he has attained the age of 16 years.
- (2) This does not affect the validity of an appointment that is not to take effect until the person appointed attains that age.
- (3) Where the office of director of a company is held by a corporation sole, or otherwise by virtue of another office, the appointment to that other office of a person who has not attained the age of 16 years is not effective also to make him a director of the company until he attains the age of 16 years.
- (4) An appointment made in contravention of this section is void.
- (5) Nothing in this section affects any liability of a person under any provision of the Companies Acts if he –
 - (a) purports to act as director, or
 - (b) acts as a shadow director,
 although he could not, by virtue of this section, be validly appointed as a director.

- (6) This section has effect subject to section 158 (power to provide for exceptions from minimum age requirement).

158 Power to provide for exceptions from minimum age requirement

- (1) The Secretary of State may make provision by regulations for cases in which a person who has not attained the age of 16 years may be appointed a director of a company.
- (2) The regulations must specify the circumstances in which, and any conditions subject to which, the appointment may be made.
- (3) If the specified circumstances cease to obtain, or any specified conditions cease to be met, a person who was appointed by virtue of the regulations and who has not since attained the age of 16 years ceases to hold office.
- (4) The regulations may make different provision for different parts of the United Kingdom.
This is without prejudice to the general power to make different provision for different cases.
- (5) Regulations under this section are subject to negative resolution procedure.

159 Existing under-age directors

- (1) This section applies where –
 - (a) a person appointed a director of a company before section 157 (minimum age for appointment as director) comes into force has not attained the age of 16 when that section comes into force, or
 - (b) the office of director of a company is held by a corporation sole, or otherwise by virtue of another office, and the person appointed to that other office has not attained the age of 16 years when that section comes into force,and the case is not one excepted from that section by regulations under section 158.
- (2) That person ceases to be a director on section 157 coming into force.
- (3) The company must make the necessary consequential alteration in its register of directors but need not give notice to the registrar of the change.
- (4) If it appears to the registrar (from other information) that a person has ceased by virtue of this section to be a director of a company, the registrar shall note that fact on the register.

160 Appointment of directors of public company to be voted on individually

- (1) At a general meeting of a public company a motion for the appointment of two or more persons as directors of the company by a single resolution must not be made unless a resolution that it should be so made has first been agreed to by the meeting without any vote being given against it.
- (2) A resolution moved in contravention of this section is void, whether or not its being so moved was objected to at the time.
But where a resolution so moved is passed, no provision for the automatic reappointment of retiring directors in default of another appointment applies.

- (3) For the purposes of this section a motion for approving a person’s appointment, or for nominating a person for appointment, is treated as a motion for his appointment.
- (4) Nothing in this section applies to a resolution amending the company’s articles.

161 Validity of acts of directors

- (1) The acts of a person acting as a director are valid notwithstanding that it is afterwards discovered –
 - (a) that there was a defect in his appointment;
 - (b) that he was disqualified from holding office;
 - (c) that he had ceased to hold office;
 - (d) that he was not entitled to vote on the matter in question.
- (2) This applies even if the resolution for his appointment is void under section 160 (appointment of directors of public company to be voted on individually).

Register of directors, etc

162 Register of directors

- (1) Every company must keep a register of its directors.
- (2) The register must contain the required particulars (see sections 163, 164 and 166) of each person who is a director of the company.
- (3) The 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.
- (4) The company must give notice to the registrar –
 - (a) of the place at which the register is kept available for inspection, and
 - (b) of any change in that place,unless it has at all times been kept at the company’s registered office.
- (5) The register must be open to the inspection –
 - (a) of any member of the company without charge, and
 - (b) of any other person on payment of such fee as may be prescribed.
- (6) If default is made in complying with subsection (1), (2) or (3) or if default is made for 14 days in complying with subsection (4), or if an inspection required under subsection (5) is refused, an offence is committed by –
 - (a) the company, and
 - (b) every officer of the company who is in default.For this purpose a shadow director is treated as an officer of the company.
- (7) A person guilty of an offence under this section 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.
- (8) In the case of a refusal of inspection of the register, the court may by order compel an immediate inspection of it.

163 Particulars of directors to be registered: individuals

- (1) A company’s register of directors must contain the following particulars in the case of an individual –
 - (a) name and any former name;
 - (b) a service address;
 - (c) the country or state (or part of the United Kingdom) in which he is usually resident;
 - (d) nationality;
 - (e) business occupation (if any);
 - (f) date of birth.
- (2) For the purposes of this section “name” means a person’s Christian name (or other forename) and surname, except that in the case of –
 - (a) a peer, or
 - (b) an individual usually known by a title,the title may be stated instead of his Christian name (or other forename) and surname or in addition to either or both of them.
- (3) For the purposes of this section a “former name” means a name by which the individual was formerly known for business purposes.
Where a person is or was formerly known by more than one such name, each of them must be stated.
- (4) It is not necessary for the register to contain particulars of a former name in the following cases –
 - (a) in the case of a peer or an individual normally known by a British title, where the name is one by which the person was known previous to the adoption of or succession to the title;
 - (b) in the case of any person, where the former name –
 - (i) was changed or disused before the person attained the age of 16 years, or
 - (ii) has been changed or disused for 20 years or more.
- (5) A person’s service address may be stated to be “The company’s registered office”.

164 Particulars of directors to be registered: corporate directors and firms

A company’s register of directors must contain the following particulars in the case of a body corporate, or a firm that is a legal person under the law by which it is governed –

- (a) corporate or firm name;
- (b) registered or principal office;
- (c) in the case of an EEA company to which the First Company Law Directive (68/151/EEC) applies, particulars of –
 - (i) the register in which the company file mentioned in Article 3 of that Directive is kept (including details of the relevant state), and
 - (ii) the registration number in that register;
- (d) in any other case, particulars of –
 - (i) the legal form of the company or firm and the law by which it is governed, and

- (ii) if applicable, the register in which it is entered (including details of the state) and its registration number in that register.

165 Register of directors’ residential addresses

- (1) Every company must keep a register of directors’ residential addresses.
- (2) The register must state the usual residential address of each of the company’s directors.
- (3) If a director’s usual residential address is the same as his service address (as stated in the company’s register of directors), the register of directors’ residential addresses need only contain an entry to that effect.
This does not apply if his service address is stated to be “The company’s registered office”.
- (4) If default is made in complying with this section, an offence is committed by –
 - (a) the company, and
 - (b) every officer of the company who is in default.For this purpose a shadow director is treated as an officer of the company.
- (5) A person guilty of an offence under this section 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.
- (6) This section applies only to directors who are individuals, not where the director is a body corporate or a firm that is a legal person under the law by which it is governed.

166 Particulars of directors to be registered: power to make regulations

- (1) The Secretary of State may make provision by regulations amending –
 - section 163 (particulars of directors to be registered: individuals),
 - section 164 (particulars of directors to be registered: corporate directors and firms), or
 - section 165 (register of directors’ residential addresses),so as to add to or remove items from the particulars required to be contained in a company’s register of directors or register of directors’ residential addresses.
- (2) Regulations under this section are subject to affirmative resolution procedure.

167 Duty to notify registrar of changes

- (1) A company must, within the period of 14 days from –
 - (a) a person becoming or ceasing to be a director, or
 - (b) the occurrence of any change in the particulars contained in its register of directors or its register of directors’ residential addresses,give notice to the registrar of the change and of the date on which it occurred.
- (2) Notice of a person having become a director of the company must –
 - (a) contain a statement of the particulars of the new director that are required to be included in the company’s register of directors and its register of directors’ residential addresses, and

- (b) be accompanied by a consent, by that person, to act in that capacity.
- (3) Where –
 - (a) a company gives notice of a change of a director's service address as stated in the company's register of directors, and
 - (b) the notice is not accompanied by notice of any resulting change in the particulars contained in the company's register of directors' residential addresses,the notice must be accompanied by a statement that no such change is required.
- (4) If default is made in complying with this section, an offence is committed by –
 - (a) the company, and
 - (b) every officer of the company who is in default.For this purpose a shadow director is treated as an officer of the company.
- (5) A person guilty of an offence under this section 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.

Removal

168 Resolution to remove director

- (1) A company may by ordinary resolution at a meeting remove a director before the expiration of his period of office, notwithstanding anything in any agreement between it and him.
- (2) Special notice is required of a resolution to remove a director under this section or to appoint somebody instead of a director so removed at the meeting at which he is removed.
- (3) A vacancy created by the removal of a director under this section, if not filled at the meeting at which he is removed, may be filled as a casual vacancy.
- (4) A person appointed director in place of a person removed under this section is treated, for the purpose of determining the time at which he or any other director is to retire, as if he had become director on the day on which the person in whose place he is appointed was last appointed a director.
- (5) This section is not to be taken –
 - (a) as depriving a person removed under it of compensation or damages payable to him in respect of the termination of his appointment as director or of any appointment terminating with that as director, or
 - (b) as derogating from any power to remove a director that may exist apart from this section.

169 Director's right to protest against removal

- (1) On receipt of notice of an intended resolution to remove a director under section 168, the company must forthwith send a copy of the notice to the director concerned.
- (2) The director (whether or not a member of the company) is entitled to be heard on the resolution at the meeting.

- (3) Where notice is given of an intended resolution to remove a director under that section, and the director concerned makes with respect to it representations in writing to the company (not exceeding a reasonable length) and requests their notification to members of the company, the company shall, unless the representations are received by it too late for it to do so –
 - (a) in any notice of the resolution given to members of the company state the fact of the representations having been made; and
 - (b) send a copy of the representations to every member of the company to whom notice of the meeting is sent (whether before or after receipt of the representations by the company).
- (4) If a copy of the representations is not sent as required by subsection (3) because received too late or because of the company's default, the director may (without prejudice to his right to be heard orally) require that the representations shall be read out at the meeting.
- (5) Copies of the representations need not be sent out and the representations need not be read out at the meeting if, on the application either of the company or of any other person who claims to be aggrieved, the court is satisfied that the rights conferred by this section are being abused.
- (6) The court may order the company's costs (in Scotland, expenses) on an application under subsection (5) to be paid in whole or in part by the director, notwithstanding that he is not a party to the application.

CHAPTER 2

GENERAL DUTIES OF DIRECTORS

Introductory

170 Scope and nature of general duties

- (1) The general duties specified in sections 171 to 177 are owed by a director of a company to the company.
- (2) A person who ceases to be a director continues to be subject –
 - (a) to the duty in section 175 (duty to avoid conflicts of interest) as regards the exploitation of any property, information or opportunity of which he became aware at a time when he was a director, and
 - (b) to the duty in section 176 (duty not to accept benefits from third parties) as regards things done or omitted by him before he ceased to be a director.

To that extent those duties apply to a former director as to a director, subject to any necessary adaptations.

- (3) The general duties are based on certain common law rules and equitable principles as they apply in relation to directors and have effect in place of those rules and principles as regards the duties owed to a company by a director.
- (4) The general duties shall be interpreted and applied in the same way as common law rules or equitable principles, and regard shall be had to the corresponding common law rules and equitable principles in interpreting and applying the general duties.

- (5) The general duties apply to shadow directors where, and to the extent that, the corresponding common law rules or equitable principles so apply.

The general duties

171 Duty to act within powers

A director of a company must –

- (a) act in accordance with the company’s constitution, and
- (b) only exercise powers for the purposes for which they are conferred.

172 Duty to promote the success of the company

- (1) A director of a company must act in the way he considers, in good faith, would be most likely to promote the success of the company for the benefit of its members as a whole, and in doing so have regard (amongst other matters) to –
- (a) the likely consequences of any decision in the long term,
 - (b) the interests of the company’s employees,
 - (c) the need to foster the company’s business relationships with suppliers, customers and others,
 - (d) the impact of the company’s operations on the community and the environment,
 - (e) the desirability of the company maintaining a reputation for high standards of business conduct, and
 - (f) the need to act fairly as between members of the company.
- (2) Where or to the extent that the purposes of the company consist of or include purposes other than the benefit of its members, subsection (1) has effect as if the reference to promoting the success of the company for the benefit of its members were to achieving those purposes.
- (3) The duty imposed by this section has effect subject to any enactment or rule of law requiring directors, in certain circumstances, to consider or act in the interests of creditors of the company.

173 Duty to exercise independent judgment

- (1) A director of a company must exercise independent judgment.
- (2) This duty is not infringed by his acting –
- (a) in accordance with an agreement duly entered into by the company that restricts the future exercise of discretion by its directors, or
 - (b) in a way authorised by the company’s constitution.

174 Duty to exercise reasonable care, skill and diligence

- (1) A director of a company must exercise reasonable care, skill and diligence.
- (2) This means the care, skill and diligence that would be exercised by a reasonably diligent person with –
- (a) the general knowledge, skill and experience that may reasonably be expected of a person carrying out the functions carried out by the director in relation to the company, and

- (b) the general knowledge, skill and experience that the director has.

175 Duty to avoid conflicts of interest

- (1) A director of a company must avoid a situation in which he has, or can have, a direct or indirect interest that conflicts, or possibly may conflict, with the interests of the company.
- (2) This applies in particular to the exploitation of any property, information or opportunity (and it is immaterial whether the company could take advantage of the property, information or opportunity).
- (3) This duty does not apply to a conflict of interest arising in relation to a transaction or arrangement with the company.
- (4) This duty is not infringed –
 - (a) if the situation cannot reasonably be regarded as likely to give rise to a conflict of interest; or
 - (b) if the matter has been authorised by the directors.
- (5) Authorisation may be given by the directors –
 - (a) where the company is a private company and nothing in the company’s constitution invalidates such authorisation, by the matter being proposed to and authorised by the directors; or
 - (b) where the company is a public company and its constitution includes provision enabling the directors to authorise the matter, by the matter being proposed to and authorised by them in accordance with the constitution.
- (6) The authorisation is effective only if –
 - (a) any requirement as to the quorum at the meeting at which the matter is considered is met without counting the director in question or any other interested director, and
 - (b) the matter was agreed to without their voting or would have been agreed to if their votes had not been counted.
- (7) Any reference in this section to a conflict of interest includes a conflict of interest and duty and a conflict of duties.

176 Duty not to accept benefits from third parties

- (1) A director of a company must not accept a benefit from a third party conferred by reason of –
 - (a) his being a director, or
 - (b) his doing (or not doing) anything as director.
- (2) A “third party” means a person other than the company, an associated body corporate or a person acting on behalf of the company or an associated body corporate.
- (3) Benefits received by a director from a person by whom his services (as a director or otherwise) are provided to the company are not regarded as conferred by a third party.
- (4) This duty is not infringed if the acceptance of the benefit cannot reasonably be regarded as likely to give rise to a conflict of interest.

- (5) Any reference in this section to a conflict of interest includes a conflict of interest and duty and a conflict of duties.

177 Duty to declare interest in proposed transaction or arrangement

- (1) If a director of a company is in any way, directly or indirectly, interested in a proposed transaction or arrangement with the company, he must declare the nature and extent of that interest to the other directors.
- (2) The declaration may (but need not) be made –
- (a) at a meeting of the directors, or
 - (b) by notice to the directors in accordance with –
 - (i) section 184 (notice in writing), or
 - (ii) section 185 (general notice).
- (3) If a declaration of interest under this section proves to be, or becomes, inaccurate or incomplete, a further declaration must be made.
- (4) Any declaration required by this section must be made before the company enters into the transaction or arrangement.
- (5) This section does not require a declaration of an interest of which the director is not aware or where the director is not aware of the transaction or arrangement in question.
For this purpose a director is treated as being aware of matters of which he ought reasonably to be aware.
- (6) A director need not declare an interest –
- (a) if it cannot reasonably be regarded as likely to give rise to a conflict of interest;
 - (b) if, or to the extent that, the other directors are already aware of it (and for this purpose the other directors are treated as aware of anything of which they ought reasonably to be aware); or
 - (c) if, or to the extent that, it concerns terms of his service contract that have been or are to be considered –
 - (i) by a meeting of the directors, or
 - (ii) by a committee of the directors appointed for the purpose under the company’s constitution.

Supplementary provisions

178 Civil consequences of breach of general duties

- (1) The consequences of breach (or threatened breach) of sections 171 to 177 are the same as would apply if the corresponding common law rule or equitable principle applied.
- (2) The duties in those sections (with the exception of section 174 (duty to exercise reasonable care, skill and diligence)) are, accordingly, enforceable in the same way as any other fiduciary duty owed to a company by its directors.

179 Cases within more than one of the general duties

Except as otherwise provided, more than one of the general duties may apply in any given case.

180 Consent, approval or authorisation by members

- (1) In a case where –
 - (a) section 175 (duty to avoid conflicts of interest) is complied with by authorisation by the directors, or
 - (b) section 177 (duty to declare interest in proposed transaction or arrangement) is complied with,
 the transaction or arrangement is not liable to be set aside by virtue of any common law rule or equitable principle requiring the consent or approval of the members of the company.
 This is without prejudice to any enactment, or provision of the company’s constitution, requiring such consent or approval.
- (2) The application of the general duties is not affected by the fact that the case also falls within Chapter 4 (transactions requiring approval of members), except that where that Chapter applies and –
 - (a) approval is given under that Chapter, or
 - (b) the matter is one as to which it is provided that approval is not needed,
 it is not necessary also to comply with section 175 (duty to avoid conflicts of interest) or section 176 (duty not to accept benefits from third parties).
- (3) Compliance with the general duties does not remove the need for approval under any applicable provision of Chapter 4 (transactions requiring approval of members).
- (4) The general duties –
 - (a) have effect subject to any rule of law enabling the company to give authority, specifically or generally, for anything to be done (or omitted) by the directors, or any of them, that would otherwise be a breach of duty, and
 - (b) where the company’s articles contain provisions for dealing with conflicts of interest, are not infringed by anything done (or omitted) by the directors, or any of them, in accordance with those provisions.
- (5) Otherwise, the general duties have effect (except as otherwise provided or the context otherwise requires) notwithstanding any enactment or rule of law.

181 Modification of provisions in relation to charitable companies

- (1) In their application to a company that is a charity, the provisions of this Chapter have effect subject to this section.
- (2) Section 175 (duty to avoid conflicts of interest) has effect as if –
 - (a) for subsection (3) (which disapplies the duty to avoid conflicts of interest in the case of a transaction or arrangement with the company) there were substituted –
 - “(3) This duty does not apply to a conflict of interest arising in relation to a transaction or arrangement with the company if or to the extent that the company’s articles allow that duty to be so

disapplied, which they may do only in relation to descriptions of transaction or arrangement specified in the company’s articles.”;

- (b) for subsection (5) (which specifies how directors of a company may give authority under that section for a transaction or arrangement) there were substituted –

“(5) Authorisation may be given by the directors where the company’s constitution includes provision enabling them to authorise the matter, by the matter being proposed to and authorised by them in accordance with the constitution.”.

- (3) Section 180(2)(b) (which disapplies certain duties under this Chapter in relation to cases excepted from requirement to obtain approval by members under Chapter 4) applies only if or to the extent that the company’s articles allow those duties to be so disapplied, which they may do only in relation to descriptions of transaction or arrangement specified in the company’s articles.

- (4) After section 26(5) of the Charities Act 1993 (c. 10) (power of Charity Commission to authorise dealings with charity property etc) insert –

“(5A) In the case of a charity that is a company, an order under this section may authorise an act notwithstanding that it involves the breach of a duty imposed on a director of the company under Chapter 2 of Part 10 of the Companies Act 2006 (general duties of directors).”.

- (5) This section does not extend to Scotland.

CHAPTER 3

DECLARATION OF INTEREST IN EXISTING TRANSACTION OR ARRANGEMENT

182 Declaration of interest in existing transaction or arrangement

- (1) Where a director of a company is in any way, directly or indirectly, interested in a transaction or arrangement that has been entered into by the company, he must declare the nature and extent of the interest to the other directors in accordance with this section.

This section does not apply if or to the extent that the interest has been declared under section 177 (duty to declare interest in proposed transaction or arrangement).

- (2) The declaration must be made –
(a) at a meeting of the directors, or
(b) by notice in writing (see section 184), or
(c) by general notice (see section 185).
- (3) If a declaration of interest under this section proves to be, or becomes, inaccurate or incomplete, a further declaration must be made.
- (4) Any declaration required by this section must be made as soon as is reasonably practicable.

Failure to comply with this requirement does not affect the underlying duty to make the declaration.

- (5) This section does not require a declaration of an interest of which the director is not aware or where the director is not aware of the transaction or arrangement in question.
For this purpose a director is treated as being aware of matters of which he ought reasonably to be aware.
- (6) A director need not declare an interest under this section –
- (a) if it cannot reasonably be regarded as likely to give rise to a conflict of interest;
 - (b) if, or to the extent that, the other directors are already aware of it (and for this purpose the other directors are treated as aware of anything of which they ought reasonably to be aware); or
 - (c) if, or to the extent that, it concerns terms of his service contract that have been or are to be considered –
 - (i) by a meeting of the directors, or
 - (ii) by a committee of the directors appointed for the purpose under the company's constitution.

183 Offence of failure to declare interest

- (1) A director who fails to comply with the requirements of section 182 (declaration of interest in existing transaction or arrangement) commits an offence.
- (2) A person guilty of an offence under this section is liable –
- (a) on conviction on indictment, to a fine;
 - (b) on summary conviction, to a fine not exceeding the statutory maximum.

184 Declaration made by notice in writing

- (1) This section applies to a declaration of interest made by notice in writing.
- (2) The director must send the notice to the other directors.
- (3) The notice may be sent in hard copy form or, if the recipient has agreed to receive it in electronic form, in an agreed electronic form.
- (4) The notice may be sent –
- (a) by hand or by post, or
 - (b) if the recipient has agreed to receive it by electronic means, by agreed electronic means.
- (5) Where a director declares an interest by notice in writing in accordance with this section –
- (a) the making of the declaration is deemed to form part of the proceedings at the next meeting of the directors after the notice is given, and
 - (b) the provisions of section 248 (minutes of meetings of directors) apply as if the declaration had been made at that meeting.

185 General notice treated as sufficient declaration

- (1) General notice in accordance with this section is a sufficient declaration of interest in relation to the matters to which it relates.

- (2) General notice is notice given to the directors of a company to the effect that the director –
 - (a) has an interest (as member, officer, employee or otherwise) in a specified body corporate or firm and is to be regarded as interested in any transaction or arrangement that may, after the date of the notice, be made with that body corporate or firm, or
 - (b) is connected with a specified person (other than a body corporate or firm) and is to be regarded as interested in any transaction or arrangement that may, after the date of the notice, be made with that person.
- (3) The notice must state the nature and extent of the director's interest in the body corporate or firm or, as the case may be, the nature of his connection with the person.
- (4) General notice is not effective unless –
 - (a) it is given at a meeting of the directors, or
 - (b) the director takes reasonable steps to secure that it is brought up and read at the next meeting of the directors after it is given.

186 Declaration of interest in case of company with sole director

- (1) Where a declaration of interest under section 182 (duty to declare interest in existing transaction or arrangement) is required of a sole director of a company that is required to have more than one director –
 - (a) the declaration must be recorded in writing,
 - (b) the making of the declaration is deemed to form part of the proceedings at the next meeting of the directors after the notice is given, and
 - (c) the provisions of section 248 (minutes of meetings of directors) apply as if the declaration had been made at that meeting.
- (2) Nothing in this section affects the operation of section 231 (contract with sole member who is also a director: terms to be set out in writing or recorded in minutes).

187 Declaration of interest in existing transaction by shadow director

- (1) The provisions of this Chapter relating to the duty under section 182 (duty to declare interest in existing transaction or arrangement) apply to a shadow director as to a director, but with the following adaptations.
- (2) Subsection (2)(a) of that section (declaration at meeting of directors) does not apply.
- (3) In section 185 (general notice treated as sufficient declaration), subsection (4) (notice to be given at or brought up and read at meeting of directors) does not apply.
- (4) General notice by a shadow director is not effective unless given by notice in writing in accordance with section 184.

CHAPTER 4

TRANSACTIONS WITH DIRECTORS REQUIRING APPROVAL OF MEMBERS

Service contracts

188 Directors' long-term service contracts: requirement of members' approval

- (1) This section applies to provision under which the guaranteed term of a director's employment—
 - (a) with the company of which he is a director, or
 - (b) where he is the director of a holding company, within the group consisting of that company and its subsidiaries,is, or may be, longer than two years.
- (2) A company may not agree to such provision unless it has been approved—
 - (a) by resolution of the members of the company, and
 - (b) in the case of a director of a holding company, by resolution of the members of that company.
- (3) The guaranteed term of a director's employment is—
 - (a) the period (if any) during which the director's employment—
 - (i) is to continue, or may be continued otherwise than at the instance of the company (whether under the original agreement or under a new agreement entered into in pursuance of it), and
 - (ii) cannot be terminated by the company by notice, or can be so terminated only in specified circumstances, or
 - (b) in the case of employment terminable by the company by notice, the period of notice required to be given,or, in the case of employment having a period within paragraph (a) and a period within paragraph (b), the aggregate of those periods.
- (4) If more than six months before the end of the guaranteed term of a director's employment the company enters into a further service contract (otherwise than in pursuance of a right conferred, by or under the original contract, on the other party to it), this section applies as if there were added to the guaranteed term of the new contract the unexpired period of the guaranteed term of the original contract.
- (5) A resolution approving provision to which this section applies must not be passed unless a memorandum setting out the proposed contract incorporating the provision is made available to members—
 - (a) in the case of a written resolution, by being sent or submitted to every eligible member at or before the time at which the proposed resolution is sent or submitted to him;
 - (b) in the case of a resolution at a meeting, by being made available for inspection by members of the company both—
 - (i) at the company's registered office for not less than 15 days ending with the date of the meeting, and
 - (ii) at the meeting itself.
- (6) No approval is required under this section on the part of the members of a body corporate that—
 - (a) is not a UK-registered company, or

- (b) is a wholly-owned subsidiary of another body corporate.
- (7) In this section “employment” means any employment under a director’s service contract.

189 Directors’ long-term service contracts: civil consequences of contravention

If a company agrees to provision in contravention of section 188 (directors’ long-term service contracts: requirement of members’ approval) –

- (a) the provision is void, to the extent of the contravention, and
- (b) the contract is deemed to contain a term entitling the company to terminate it at any time by the giving of reasonable notice.

Substantial property transactions

190 Substantial property transactions: requirement of members’ approval

- (1) A company may not enter into an arrangement under which –
 - (a) a director of the company or of its holding company, or a person connected with such a director, acquires or is to acquire from the company (directly or indirectly) a substantial non-cash asset, or
 - (b) the company acquires or is to acquire a substantial non-cash asset (directly or indirectly) from such a director or a person so connected,unless the arrangement has been approved by a resolution of the members of the company or is conditional on such approval being obtained.
For the meaning of “substantial non-cash asset” see section 191.
- (2) If the director or connected person is a director of the company’s holding company or a person connected with such a director, the arrangement must also have been approved by a resolution of the members of the holding company or be conditional on such approval being obtained.
- (3) A company shall not be subject to any liability by reason of a failure to obtain approval required by this section.
- (4) No approval is required under this section on the part of the members of a body corporate that –
 - (a) is not a UK-registered company, or
 - (b) is a wholly-owned subsidiary of another body corporate.
- (5) For the purposes of this section –
 - (a) an arrangement involving more than one non-cash asset, or
 - (b) an arrangement that is one of a series involving non-cash assets,shall be treated as if they involved a non-cash asset of a value equal to the aggregate value of all the non-cash assets involved in the arrangement or, as the case may be, the series.
- (6) This section does not apply to a transaction so far as it relates –
 - (a) to anything to which a director of a company is entitled under his service contract, or
 - (b) to payment for loss of office as defined in section 215 (payments requiring members’ approval).

191 Meaning of “substantial”

- (1) This section explains what is meant in section 190 (requirement of approval for substantial property transactions) by a “substantial” non-cash asset.
- (2) An asset is a substantial asset in relation to a company if its value –
 - (a) exceeds 10% of the company’s asset value and is more than £5,000, or
 - (b) exceeds £100,000.
- (3) For this purpose a company’s “asset value” at any time is –
 - (a) the value of the company’s net assets determined by reference to its most recent statutory accounts, or
 - (b) if no statutory accounts have been prepared, the amount of the company’s called-up share capital.
- (4) A company’s “statutory accounts” means its annual accounts prepared in accordance with Part 15, and its “most recent” statutory accounts means those in relation to which the time for sending them out to members (see section 424) is most recent.
- (5) Whether an asset is a substantial asset shall be determined as at the time the arrangement is entered into.

192 Exception for transactions with members or other group companies

Approval is not required under section 190 (requirement of members’ approval for substantial property transactions) –

- (a) for a transaction between a company and a person in his character as a member of that company, or
- (b) for a transaction between –
 - (i) a holding company and its wholly-owned subsidiary, or
 - (ii) two wholly-owned subsidiaries of the same holding company.

193 Exception in case of company in winding up or administration

- (1) This section applies to a company –
 - (a) that is being wound up (unless the winding up is a members’ voluntary winding up), or
 - (b) that is in administration within the meaning of Schedule B1 to the Insolvency Act 1986 (c. 45) or the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)).
- (2) Approval is not required under section 190 (requirement of members’ approval for substantial property transactions) –
 - (a) on the part of the members of a company to which this section applies, or
 - (b) for an arrangement entered into by a company to which this section applies.

194 Exception for transactions on recognised investment exchange

- (1) Approval is not required under section 190 (requirement of members’ approval for substantial property transactions) for a transaction on a recognised investment exchange effected by a director, or a person connected

with him, through the agency of a person who in relation to the transaction acts as an independent broker.

- (2) For this purpose –
- (a) “independent broker” means a person who, independently of the director or any person connected with him, selects the person with whom the transaction is to be effected; and
 - (b) “recognised investment exchange” has the same meaning as in Part 18 of the Financial Services and Markets Act 2000 (c. 8).

195 Property transactions: civil consequences of contravention

- (1) This section applies where a company enters into an arrangement in contravention of section 190 (requirement of members’ approval for substantial property transactions).
- (2) The arrangement, and any transaction entered into in pursuance of the arrangement (whether by the company or any other person), is voidable at the instance of the company, unless –
- (a) restitution of any money or other asset that was the subject matter of the arrangement or transaction is no longer possible,
 - (b) the company has been indemnified in pursuance of this section by any other persons for the loss or damage suffered by it, or
 - (c) rights acquired in good faith, for value and without actual notice of the contravention by a person who is not a party to the arrangement or transaction would be affected by the avoidance.
- (3) Whether or not the arrangement or any such transaction has been avoided, each of the persons specified in subsection (4) is liable –
- (a) to account to the company for any gain that he has made directly or indirectly by the arrangement or transaction, and
 - (b) (jointly and severally with any other person so liable under this section) to indemnify the company for any loss or damage resulting from the arrangement or transaction.
- (4) The persons so liable are –
- (a) any director of the company or of its holding company with whom the company entered into the arrangement in contravention of section 190,
 - (b) any person with whom the company entered into the arrangement in contravention of that section who is connected with a director of the company or of its holding company,
 - (c) the director of the company or of its holding company with whom any such person is connected, and
 - (d) any other director of the company who authorised the arrangement or any transaction entered into in pursuance of such an arrangement.
- (5) Subsections (3) and (4) are subject to the following two subsections.
- (6) In the case of an arrangement entered into by a company in contravention of section 190 with a person connected with a director of the company or of its holding company, that director is not liable by virtue of subsection (4)(c) if he shows that he took all reasonable steps to secure the company’s compliance with that section.
- (7) In any case –

(a) a person so connected is not liable by virtue of subsection (4)(b), and
 (b) a director is not liable by virtue of subsection (4)(d),
 if he shows that, at the time the arrangement was entered into, he did not know the relevant circumstances constituting the contravention.

- (8) Nothing in this section shall be read as excluding the operation of any other enactment or rule of law by virtue of which the arrangement or transaction may be called in question or any liability to the company may arise.

196 Property transactions: effect of subsequent affirmation

Where a transaction or arrangement is entered into by a company in contravention of section 190 (requirement of members’ approval) but, within a reasonable period, it is affirmed—

- (a) in the case of a contravention of subsection (1) of that section, by resolution of the members of the company, and
 (b) in the case of a contravention of subsection (2) of that section, by resolution of the members of the holding company,
 the transaction or arrangement may no longer be avoided under section 195.

Loans, quasi-loans and credit transactions

197 Loans to directors: requirement of members’ approval

- (1) A company may not—
 (a) make a loan to a director of the company or of its holding company, or
 (b) give a guarantee or provide security in connection with a loan made by any person to such a director,
 unless the transaction has been approved by a resolution of the members of the company.
- (2) If the director is a director of the company’s holding company, the transaction must also have been approved by a resolution of the members of the holding company.
- (3) A resolution approving a transaction to which this section applies must not be passed unless a memorandum setting out the matters mentioned in subsection (4) is made available to members—
 (a) in the case of a written resolution, by being sent or submitted to every eligible member at or before the time at which the proposed resolution is sent or submitted to him;
 (b) in the case of a resolution at a meeting, by being made available for inspection by members of the company both—
 (i) at the company’s registered office for not less than 15 days ending with the date of the meeting, and
 (ii) at the meeting itself.
- (4) The matters to be disclosed are—
 (a) the nature of the transaction,
 (b) the amount of the loan and the purpose for which it is required, and
 (c) the extent of the company’s liability under any transaction connected with the loan.

- (5) No approval is required under this section on the part of the members of a body corporate that—
- (a) is not a UK-registered company, or
 - (b) is a wholly-owned subsidiary of another body corporate.

198 Quasi-loans to directors: requirement of members’ approval

- (1) This section applies to a company if it is—
 - (a) a public company, or
 - (b) a company associated with a public company.
- (2) A company to which this section applies may not—
 - (a) make a quasi-loan to a director of the company or of its holding company, or
 - (b) give a guarantee or provide security in connection with a quasi-loan made by any person to such a director,
 unless the transaction has been approved by a resolution of the members of the company.
- (3) If the director is a director of the company’s holding company, the transaction must also have been approved by a resolution of the members of the holding company.
- (4) A resolution approving a transaction to which this section applies must not be passed unless a memorandum setting out the matters mentioned in subsection (5) is made available to members—
 - (a) in the case of a written resolution, by being sent or submitted to every eligible member at or before the time at which the proposed resolution is sent or submitted to him;
 - (b) in the case of a resolution at a meeting, by being made available for inspection by members of the company both—
 - (i) at the company’s registered office for not less than 15 days ending with the date of the meeting, and
 - (ii) at the meeting itself.
- (5) The matters to be disclosed are—
 - (a) the nature of the transaction,
 - (b) the amount of the quasi-loan and the purpose for which it is required, and
 - (c) the extent of the company’s liability under any transaction connected with the quasi-loan.
- (6) No approval is required under this section on the part of the members of a body corporate that—
 - (a) is not a UK-registered company, or
 - (b) is a wholly-owned subsidiary of another body corporate.

199 Meaning of “quasi-loan” and related expressions

- (1) A “quasi-loan” is a transaction under which one party (“the creditor”) agrees to pay, or pays otherwise than in pursuance of an agreement, a sum for another (“the borrower”) or agrees to reimburse, or reimburses otherwise than in pursuance of an agreement, expenditure incurred by another party for another (“the borrower”)—

- (a) on terms that the borrower (or a person on his behalf) will reimburse the creditor; or
 - (b) in circumstances giving rise to a liability on the borrower to reimburse the creditor.
- (2) Any reference to the person to whom a quasi-loan is made is a reference to the borrower.
- (3) The liabilities of the borrower under a quasi-loan include the liabilities of any person who has agreed to reimburse the creditor on behalf of the borrower.

200 Loans or quasi-loans to persons connected with directors: requirement of members' approval

- (1) This section applies to a company if it is –
- (a) a public company, or
 - (b) a company associated with a public company.
- (2) A company to which this section applies may not –
- (a) make a loan or quasi-loan to a person connected with a director of the company or of its holding company, or
 - (b) give a guarantee or provide security in connection with a loan or quasi-loan made by any person to a person connected with such a director,
- unless the transaction has been approved by a resolution of the members of the company.
- (3) If the connected person is a person connected with a director of the company's holding company, the transaction must also have been approved by a resolution of the members of the holding company.
- (4) A resolution approving a transaction to which this section applies must not be passed unless a memorandum setting out the matters mentioned in subsection (5) is made available to members –
- (a) in the case of a written resolution, by being sent or submitted to every eligible member at or before the time at which the proposed resolution is sent or submitted to him;
 - (b) in the case of a resolution at a meeting, by being made available for inspection by members of the company both –
 - (i) at the company's registered office for not less than 15 days ending with the date of the meeting, and
 - (ii) at the meeting itself.
- (5) The matters to be disclosed are –
- (a) the nature of the transaction,
 - (b) the amount of the loan or quasi-loan and the purpose for which it is required, and
 - (c) the extent of the company's liability under any transaction connected with the loan or quasi-loan.
- (6) No approval is required under this section on the part of the members of a body corporate that –
- (a) is not a UK-registered company, or
 - (b) is a wholly-owned subsidiary of another body corporate.

201 Credit transactions: requirement of members’ approval

- (1) This section applies to a company if it is—
 - (a) a public company, or
 - (b) a company associated with a public company.
- (2) A company to which this section applies may not—
 - (a) enter into a credit transaction as creditor for the benefit of a director of the company or of its holding company, or a person connected with such a director, or
 - (b) give a guarantee or provide security in connection with a credit transaction entered into by any person for the benefit of such a director, or a person connected with such a director,unless the transaction (that is, the credit transaction, the giving of the guarantee or the provision of security, as the case may be) has been approved by a resolution of the members of the company.
- (3) If the director or connected person is a director of its holding company or a person connected with such a director, the transaction must also have been approved by a resolution of the members of the holding company.
- (4) A resolution approving a transaction to which this section applies must not be passed unless a memorandum setting out the matters mentioned in subsection (5) is made available to members—
 - (a) in the case of a written resolution, by being sent or submitted to every eligible member at or before the time at which the proposed resolution is sent or submitted to him;
 - (b) in the case of a resolution at a meeting, by being made available for inspection by members of the company both—
 - (i) at the company’s registered office for not less than 15 days ending with the date of the meeting, and
 - (ii) at the meeting itself.
- (5) The matters to be disclosed are—
 - (a) the nature of the transaction,
 - (b) the value of the credit transaction and the purpose for which the land, goods or services sold or otherwise disposed of, leased, hired or supplied under the credit transaction are required, and
 - (c) the extent of the company’s liability under any transaction connected with the credit transaction.
- (6) No approval is required under this section on the part of the members of a body corporate that—
 - (a) is not a UK-registered company, or
 - (b) is a wholly-owned subsidiary of another body corporate.

202 Meaning of “credit transaction”

- (1) A “credit transaction” is a transaction under which one party (“the creditor”)—
 - (a) supplies any goods or sells any land under a hire-purchase agreement or a conditional sale agreement,
 - (b) leases or hires any land or goods in return for periodical payments, or

- (c) otherwise disposes of land or supplies goods or services on the understanding that payment (whether in a lump sum or instalments or by way of periodical payments or otherwise) is to be deferred.
- (2) Any reference to the person for whose benefit a credit transaction is entered into is to the person to whom goods, land or services are supplied, sold, leased, hired or otherwise disposed of under the transaction.
- (3) In this section –
 - “conditional sale agreement” has the same meaning as in the Consumer Credit Act 1974 (c. 39); and
 - “services” means anything other than goods or land.

203 Related arrangements: requirement of members’ approval

- (1) A company may not –
 - (a) take part in an arrangement under which –
 - (i) another person enters into a transaction that, if it had been entered into by the company, would have required approval under section 197, 198, 200 or 201, and
 - (ii) that person, in pursuance of the arrangement, obtains a benefit from the company or a body corporate associated with it, or
 - (b) arrange for the assignment to it, or assumption by it, of any rights, obligations or liabilities under a transaction that, if it had been entered into by the company, would have required such approval,
 unless the arrangement in question has been approved by a resolution of the members of the company.
- (2) If the director or connected person for whom the transaction is entered into is a director of its holding company or a person connected with such a director, the arrangement must also have been approved by a resolution of the members of the holding company.
- (3) A resolution approving an arrangement to which this section applies must not be passed unless a memorandum setting out the matters mentioned in subsection (4) is made available to members –
 - (a) in the case of a written resolution, by being sent or submitted to every eligible member at or before the time at which the proposed resolution is sent or submitted to him;
 - (b) in the case of a resolution at a meeting, by being made available for inspection by members of the company both –
 - (i) at the company’s registered office for not less than 15 days ending with the date of the meeting, and
 - (ii) at the meeting itself.
- (4) The matters to be disclosed are –
 - (a) the matters that would have to be disclosed if the company were seeking approval of the transaction to which the arrangement relates,
 - (b) the nature of the arrangement, and
 - (c) the extent of the company’s liability under the arrangement or any transaction connected with it.
- (5) No approval is required under this section on the part of the members of a body corporate that –

- (a) is not a UK-registered company, or
 - (b) is a wholly-owned subsidiary of another body corporate.
- (6) In determining for the purposes of this section whether a transaction is one that would have required approval under section 197, 198, 200 or 201 if it had been entered into by the company, the transaction shall be treated as having been entered into on the date of the arrangement.

204 Exception for expenditure on company business

- (1) Approval is not required under section 197, 198, 200 or 201 (requirement of members' approval for loans etc) for anything done by a company –
- (a) to provide a director of the company or of its holding company, or a person connected with any such director, with funds to meet expenditure incurred or to be incurred by him –
 - (i) for the purposes of the company, or
 - (ii) for the purpose of enabling him properly to perform his duties as an officer of the company, or
 - (b) to enable any such person to avoid incurring such expenditure.
- (2) This section does not authorise a company to enter into a transaction if the aggregate of –
- (a) the value of the transaction in question, and
 - (b) the value of any other relevant transactions or arrangements, exceeds £50,000.

205 Exception for expenditure on defending proceedings etc

- (1) Approval is not required under section 197, 198, 200 or 201 (requirement of members' approval for loans etc) for anything done by a company –
- (a) to provide a director of the company or of its holding company with funds to meet expenditure incurred or to be incurred by him –
 - (i) in defending any criminal or civil proceedings in connection with any alleged negligence, default, breach of duty or breach of trust by him in relation to the company or an associated company, or
 - (ii) in connection with an application for relief (see subsection (5)), or
 - (b) to enable any such director to avoid incurring such expenditure, if it is done on the following terms.
- (2) The terms are –
- (a) that the loan is to be repaid, or (as the case may be) any liability of the company incurred under any transaction connected with the thing done is to be discharged, in the event of –
 - (i) the director being convicted in the proceedings,
 - (ii) judgment being given against him in the proceedings, or
 - (iii) the court refusing to grant him relief on the application; and
 - (b) that it is to be so repaid or discharged not later than –
 - (i) the date when the conviction becomes final,
 - (ii) the date when the judgment becomes final, or
 - (iii) the date when the refusal of relief becomes final.

- (3) For this purpose a conviction, judgment or refusal of relief becomes final –
 - (a) if not appealed against, at the end of the period for bringing an appeal;
 - (b) if appealed against, when the appeal (or any further appeal) is disposed of.
- (4) An appeal is disposed of –
 - (a) if it is determined and the period for bringing any further appeal has ended, or
 - (b) if it is abandoned or otherwise ceases to have effect.
- (5) The reference in subsection (1)(a)(ii) to an application for relief is to an application for relief under –
 - section 661(3) or (4) (power of court to grant relief in case of acquisition of shares by innocent nominee), or
 - section 1157 (general power of court to grant relief in case of honest and reasonable conduct).

206 Exception for expenditure in connection with regulatory action or investigation

Approval is not required under section 197, 198, 200 or 201 (requirement of members' approval for loans etc) for anything done by a company –

- (a) to provide a director of the company or of its holding company with funds to meet expenditure incurred or to be incurred by him in defending himself –
 - (i) in an investigation by a regulatory authority, or
 - (ii) against action proposed to be taken by a regulatory authority, in connection with any alleged negligence, default, breach of duty or breach of trust by him in relation to the company or an associated company, or
- (b) to enable any such director to avoid incurring such expenditure.

207 Exceptions for minor and business transactions

- (1) Approval is not required under section 197, 198 or 200 for a company to make a loan or quasi-loan, or to give a guarantee or provide security in connection with a loan or quasi-loan, if the aggregate of –
 - (a) the value of the transaction, and
 - (b) the value of any other relevant transactions or arrangements,
 does not exceed £10,000.
- (2) Approval is not required under section 201 for a company to enter into a credit transaction, or to give a guarantee or provide security in connection with a credit transaction, if the aggregate of –
 - (a) the value of the transaction (that is, of the credit transaction, guarantee or security), and
 - (b) the value of any other relevant transactions or arrangements,
 does not exceed £15,000.
- (3) Approval is not required under section 201 for a company to enter into a credit transaction, or to give a guarantee or provide security in connection with a credit transaction, if –

- (a) the transaction is entered into by the company in the ordinary course of the company’s business, and
- (b) the value of the transaction is not greater, and the terms on which it is entered into are not more favourable, than it is reasonable to expect the company would have offered to, or in respect of, a person of the same financial standing but unconnected with the company.

208 Exceptions for intra-group transactions

- (1) Approval is not required under section 197, 198 or 200 for –
 - (a) the making of a loan or quasi-loan to an associated body corporate, or
 - (b) the giving of a guarantee or provision of security in connection with a loan or quasi-loan made to an associated body corporate.
- (2) Approval is not required under section 201 –
 - (a) to enter into a credit transaction as creditor for the benefit of an associated body corporate, or
 - (b) to give a guarantee or provide security in connection with a credit transaction entered into by any person for the benefit of an associated body corporate.

209 Exceptions for money-lending companies

- (1) Approval is not required under section 197, 198 or 200 for the making of a loan or quasi-loan, or the giving of a guarantee or provision of security in connection with a loan or quasi-loan, by a money-lending company if –
 - (a) the transaction (that is, the loan, quasi-loan, guarantee or security) is entered into by the company in the ordinary course of the company’s business, and
 - (b) the value of the transaction is not greater, and its terms are not more favourable, than it is reasonable to expect the company would have offered to a person of the same financial standing but unconnected with the company.
- (2) A “money-lending company” means a company whose ordinary business includes the making of loans or quasi-loans, or the giving of guarantees or provision of security in connection with loans or quasi-loans.
- (3) The condition specified in subsection (1)(b) does not of itself prevent a company from making a home loan –
 - (a) to a director of the company or of its holding company, or
 - (b) to an employee of the company,if loans of that description are ordinarily made by the company to its employees and the terms of the loan in question are no more favourable than those on which such loans are ordinarily made.
- (4) For the purposes of subsection (3) a “home loan” means a loan –
 - (a) for the purpose of facilitating the purchase, for use as the only or main residence of the person to whom the loan is made, of the whole or part of any dwelling-house together with any land to be occupied and enjoyed with it,
 - (b) for the purpose of improving a dwelling-house or part of a dwelling-house so used or any land occupied and enjoyed with it, or

- (c) in substitution for any loan made by any person and falling within paragraph (a) or (b).

210 Other relevant transactions or arrangements

- (1) This section has effect for determining what are “other relevant transactions or arrangements” for the purposes of any exception to section 197, 198, 200 or 201. In the following provisions “the relevant exception” means the exception for the purposes of which that falls to be determined.
- (2) Other relevant transactions or arrangements are those previously entered into, or entered into at the same time as the transaction or arrangement in question in relation to which the following conditions are met.
- (3) Where the transaction or arrangement in question is entered into –
 - (a) for a director of the company entering into it, or
 - (b) for a person connected with such a director,the conditions are that the transaction or arrangement was (or is) entered into for that director, or a person connected with him, by virtue of the relevant exception by that company or by any of its subsidiaries.
- (4) Where the transaction or arrangement in question is entered into –
 - (a) for a director of the holding company of the company entering into it, or
 - (b) for a person connected with such a director,the conditions are that the transaction or arrangement was (or is) entered into for that director, or a person connected with him, by virtue of the relevant exception by the holding company or by any of its subsidiaries.
- (5) A transaction or arrangement entered into by a company that at the time it was entered into –
 - (a) was a subsidiary of the company entering into the transaction or arrangement in question, or
 - (b) was a subsidiary of that company’s holding company,is not a relevant transaction or arrangement if, at the time the question arises whether the transaction or arrangement in question falls within a relevant exception, it is no longer such a subsidiary.

211 The value of transactions and arrangements

- (1) For the purposes of sections 197 to 214 (loans etc) –
 - (a) the value of a transaction or arrangement is determined as follows, and
 - (b) the value of any other relevant transaction or arrangement is taken to be the value so determined reduced by any amount by which the liabilities of the person for whom the transaction or arrangement was made have been reduced.
- (2) The value of a loan is the amount of its principal.
- (3) The value of a quasi-loan is the amount, or maximum amount, that the person to whom the quasi-loan is made is liable to reimburse the creditor.
- (4) The value of a credit transaction is the price that it is reasonable to expect could be obtained for the goods, services or land to which the transaction relates if they had been supplied (at the time the transaction is entered into) in the