

## COMPANIES ACT 2014

## Principal Act

## Act. No. 2014-19

*Commencement (LN. 2014/187)**except ss.189(3)(a) and 189(3)(b) of  
the Act shall not come into force.*

1.11.2014

*Assent*

11.6.2014

Amending enactments	Relevant current provisions	Commencement date
Act. 2014-34	ss. 12, 24(1)(a), 65(1), 70(4), 102(5)(b), 126(3), 137(2)(c), 154(1), 163(2)(c)(iii), 168(5), 189(1), (2), (3), 192(2), , 208, 237(1), (2), (7), 247(6), 252(4), 260, 263(2), 352(A), 359(1), 398(1)(n), 426(5), 430(1), 441, 465(6)(a), 467(6)(a), Schs. 2, 5, 8, 9, 13, 15, 21, 23, 24, 26, 27	22.12.2014
LN. 2015/113 <sup>1</sup> <i>Amended by LN. 2015/231</i>	ss. 180(1)(e), (4), 237(1), 237A, 240(1A), (3), 244(2)(b), (c), (d), (da), (g), (j), 245(2), (2A) - (2C), (7A), (7B), 246(2), (3), 247(2), (4), 248, 250(3), (4), (6), 251(1), (2), (6A), (7), (8), 252(7), 253(1), (1A), 254(2), (5)(b), 258(1), (1A), (2), (2A), (3), (4), (5), 259(3), 270(a), (e), 271, 272(1)(a), (2), 273(2), 276(7), 279(1), 281(2), 282(A1), (5), (7), 283, 285(1), (aa), (b), (2), (3), (5), 286(1), (aa), (b), (2), (3), (5), 287(3), (4), (6), 288(3), 289(2), (6),	

<sup>1</sup> *These Regulations have effect in relation to financial years beginning on or after 1 January 2016, and a financial year of a company beginning on or after 1 January 2015, but before 1 January 2016, if the directors of the company so decide.*

*In determining whether a company or group qualifies as small or medium-sized under section 293 and Schedule 9 of the Companies Act 2014 in relation to a financial year in relation to which the amendments made by these Regulations have effect, the company or group is to be treated as having qualified as small or medium-sized (as the case may be) in any previous year in which it would have so qualified if amendments to the same effect as the amendments made by these Regulations had had effect in relation to that previous year.*

	(7), (8), 291, 292(2), (3), 293, 294A, Sch. 9, 11, 12, 13, 14, 15, 16, 17, 18, 19, 21, 22	20.7.2015
Act. 2015-21	ss. 360(2), (3), 366(1), 369(1A), 414(1), Sch. 5	6.7.2015
LN. 2015/165	s. 168A	1.11.2015

**Transposing:**

Directive 78/660/EEC

Directive 83/349/EEC

Directive 2006/43/EC

Directive 2013/34/EU

**EU Legislation/International Agreements involved:**

**ARRANGEMENT OF SECTIONS****PART I****PRELIMINARY***Introductory*

## Section

1. Short title and Commencement.
2. Interpretation.

*Types of company*

3. Limited and unlimited companies.
4. Public and private companies.

**PART II****FORMATION OF COMPANIES***Memorandum of association*

5. Mode of forming incorporated company.
6. Memorandum of association.
7. Requirements with respect to the memorandum.
8. Existing companies: provisions of memorandum treated as provisions of articles.

*Requirements as to registration*

9. Registration documents.
10. Statement of capital and initial shareholdings.
11. Statement of guarantee.
12. *Repealed*
13. Statement of compliance.

*Registration and its effect*

14. Registration.
15. Issue of certificate of incorporation.
16. Effect of registration.

*Membership of a company*

17. Definition of member.

*Companies that are Collective investment schemes*

18. Notification that company is a Collective Investment Scheme.

*Private companies*

19. Meaning of “private company”.  
20. Circumstances in which company ceases to be, or to enjoy privileges of a private company.

**PART III**

**A COMPANY’S CONSTITUTION AND RELATED MATTERS**

**CHAPTER 1  
INTRODUCTORY**

21. A company’s constitution.

**CHAPTER 2  
ARTICLES OF ASSOCIATION**

*General*

22. Articles of association.  
23. Power of Minister to prescribe model articles.  
24. Default application of model articles.

*Alteration of articles*

25. Amendment of articles.  
26. Registrar to be sent copy of amended articles.

*Provisions with respect to names of companies*

27. Restriction on registration of companies by certain names.  
28. Power to dispense with “Limited” in name of charitable and other companies.  
29. Change of name.  
30. Power to require company to change name – general.  
31. Power to require company to change misleading name.  
32. Penalty for misuse of “Limited”.

*General provisions with respect to company’s constitution*

33. Effect of company’s constitution  
34. Provision as to memorandum and articles of companies limited by guarantee.  
35. Constitutional documents to be provided to members.

36. Statutory alterations.

## CHAPTER 3

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

#### *Introductory*

37. Alteration of status by re-registration.  
*Private company becoming public*

38. Re-registration of private company as public.  
39. Requirements as to share capital.  
40. Requirements as to net assets.  
41. Recent allotment of shares for non-cash consideration.  
42. Application and accompanying documents.  
43. Statement of proposed secretary.  
44. Issue of certificate of incorporation on re-registration.

#### *Public company becoming private*

45. Re-registration of public company as private limited company.  
46. Application to court to cancel resolution.  
47. Notice to Registrar of court application or order.  
48. Application and accompanying documents.  
49. Issue of certificate of incorporation on re-registration.

#### *Private limited company becoming unlimited*

50. Re-registration of private limited company as unlimited.  
51. Application and accompanying documents.  
52. Issue of certificate of incorporation on re-registration.

#### *Unlimited private company becoming limited*

53. Re-registration of unlimited company as limited.  
54. Application and accompanying documents.  
55. Issue of certificate of incorporation on re-registration.  
56. Statement of capital required where company already has share capital.

#### *Public company becoming private and unlimited*

57. Re-registration of public company as private and unlimited.  
58. Issue of certificate of incorporation on re-registration.

*Company limited by shares becoming a company limited by guarantee and not having a share capital*

- 59. Re-registration of company limited by shares as company limited by guarantee and not having a share capital.
- 60. Certificate of re-registration under section 59.

*Company limited by shares becoming a company limited by guarantee and having a share capital*

- 61. Re-registration of company limited by shares as company limited by guarantee and not having a share capital.
- 62. Certificate of re-registration under section 61.

*Company limited by guarantee and not having a share capital becoming a company limited by shares*

- 63. Re-registration of company limited by guarantee and not having share capital as company limited by shares.
- 64. Certificate of re-registration under section 63.

*Company limited by guarantee and having a share capital becoming a company limited by shares*

- 65. Re-registration of company limited by guarantee and having share capital as a company limited by shares.
- 66. Certificate of re-registration under section 65.

*De-registration and registration as limited partnership*

- 67. De-registration of company limited by shares or guarantee on registration as a limited partnership.
- 68. De-registration of limited partnership on registration as a company limited by shares or guarantee.

## **CHAPTER 4**

### **CONTRACTS ETC.**

*Contracts*

- 69. Pre-incorporation actions.
- 70. Power of directors to bind the company.
- 71. No duty to enquire as to capacity of company or authority of directors.

*Execution of documents by companies*

- 72. Company contracts.
- 73. Execution of documents.
- 74. Common seal.

- 75. Execution of deeds.
- 76. Execution of deeds or other documents by attorney.

#### **PART IV**

### **PROSPECTUSES, SHARE CAPITAL AND DEBENTURES**

#### *Prospectus*

- 77. Dating and registration of prospectus.
- 78. Exemption for collective investment schemes.
- 79. Specific requirements as to particulars in prospectus.
- 80. Restriction on alteration of terms mentioned in prospectus or statement.
- 81. Liability for statements in prospectus.
- 82. Document containing offer of shares or debentures for sale to be deemed prospectus.

#### *Allotment*

- 83. Prohibition of allotment unless minimum subscription received.
- 84. Prohibition of allotment in certain cases unless statement in lieu of prospectus delivered to Registrar.
- 85. Effect of irregular allotment.
- 86. Return as to allotments.
- 87. Provisions supplementary to section 86.
- 88. Payment for allotted shares.
- 89. Shares to be allotted as at least one quarter paid up.
- 90. Restrictions on payment by long-term undertaking.
- 91. Non-cash consideration to be valued before allotment.
- 92. Exception to valuation requirement: Merger and Division.
- 93. Transfer to public company of non-cash asset in initial period.
- 94. Authority of company required for certain allotments.
- 95. Allotment where issue not fully subscribed.
- 96. Application to certain private companies of conditions as to share capital.

#### *Commissions and discounts*

- 97. Power to pay certain commissions and prohibition of payment of all other commissions and discounts.
- 98. Statement in balance sheet as to commissions and discounts.
- 99. Holding of shares in public company by another company.
- 100. Prohibition of provision of financial assistance by company for purchase of its own shares.
- 101. Relaxations of section 100 in the case of private companies.
- 102. Statutory declaration under section 101.
- 103. Special resolution under section 101.
- 104. Time for giving financial assistance under section 101.

- 105. Power of company to purchase own shares and interpretation of sections 101 to 115.
- 106. Acquisition other than for value, in reduction of capital, alteration of objects and on forfeiture.
- 107. Restrictions on power of company to purchase own shares.
- 108. Definitions of “off-market” and “market” purchase.
- 109. Authority for off-market purchase.
- 110. Authority for contingent purchase contract.
- 111. Authority for market purchase.
- 112. Assignment or release of company’s right to purchase own shares.
- 113. Payments apart from purchase price to be made out of distributable profits.
- 114. Disclosure by company of purchase of own shares.
- 115. The capital redemption reserve.

*Redemption or purchase of own shares out of capital (private companies only)*

- 116. Power of private companies to redeem or purchase own shares out of capital.
- 117. Availability of profits for purposes of section 116.
- 118. Conditions for payment out of capital.
- 119. Procedure for special resolution under section 118.
- 120. Publicity for proposed payment out of capital.
- 121. Objections by company’s members or creditors.
- 122. Powers of court on application under section 121.
- 123. Effect of company’s failure to redeem or purchase.

*Issue of redeemable preference shares and shares at discount.*

- 124. Power to issue redeemable shares.
- 125. Application of premiums received on issue of shares.
- 126. Power to issue shares at a discount.

*Miscellaneous provisions as to share capital.*

- 127. Power of company to arrange for different amounts being paid on shares.
- 128. Fractional shares.
- 129. Reserve liability of limited company.
- 130. Power of company limited by shares to alter its share capital.
- 131. Notice to Registrar of consolidation of share capital and conversion of shares into stock.
- 132. Notice of increase of share capital.
- 133. Power of unlimited company to provide for reserve share capital on re-registration.
- 134. Power of company to pay interest out of capital in certain cases.
- 135. Authorised minimum.



*Reduction of share capital*

- 136. Special resolution for reduction of share capital.
- 137. Application to court for confirming order, objections by creditors, and settlement of list of objecting creditors.
- 138. Order confirming reduction and powers of court on making such order.
- 139. Registration of order and minute of reduction.
- 140. Liability of members in respect of reduced shares.
- 141. Penalty on concealment of name of creditor.
- 142. Public companies reducing capital below authorised minimum.

*Variation of shareholders' rights*

- 143. Rights of holders of special classes of shares.
- 144. Variation of rights attached to any class of shares.

*Protection of members against unfair prejudice*

- 145. Petition by a company member.
- 146. Petition by the minister.
- 147. Powers of the Court under this part.
- 148. Application of general rule-making powers.
- 149. Copy of order affecting company's constitution to be delivered to Registrar.
- 150. Supplementary provisions where company's constitution altered.

*Transfer of shares and debentures and evidence of title*

- 151. Nature of shares.
- 152. Miscellaneous provisions as to transfers of shares.
- 153. Duties of company with respect to issue of certificates.
- 154. Transfer of Shares.
- 155. Certificate to be evidence of title.
- 156. Evidence of grant of probate.
- 157. Issue and effect of share warrants to bearer.
- 158. Penalty for personation of shareholder.

*Redenomination of share capital*

- 159. Redenomination of share capital.
- 160. Effect of redenomination.
- 161. Notice to Registrar of redenomination.
- 162. Reduction of capital in connection with redenomination.
- 163. Notice to Registrar of reduction of capital in connection with redenomination.

*Special provisions as to debentures*

- 164. Right of debenture holders and shareholders to inspect register of debenture holders and to have copies of trust deeds.
- 165. Perpetual debentures.
- 166. Power to re-issue redeemed debentures in certain cases.
- 167. Specific performance of contracts to subscribe for debentures.

## **PART V**

### **REGISTRATION OF CHARGES**

#### *Registration of charges with Registrar of companies*

- 168. Registration of charges created by companies registered in Gibraltar.
- 168A.
- 169. Special rules relating to debentures.
- 170. Duty of company to register charges created by company.
- 171. Duty of company to register charges existing on property acquired.
- 172. Register of charges to be kept by Registrar.
- 173. Endorsement of certificate of registration on debentures.
- 174. Entry of satisfaction.
- 175. Rectification of register of charges.

#### *Provisions as to company's register of charges and as to copies of instruments creating charges*

- 176. Copies of instruments creating charges to be kept by company and available for inspection.
- 177. Company's register of charges.

## **PART VI**

### **CHAPTER 1**

### **MANAGEMENT AND ADMINISTRATION**

#### *Registered office and name*

- 178. Registered office of company.
- 179. Publication of name by company.
- 180. Particulars to be shown on letterheads, etc.

#### *Restrictions on commencement of business*

- 181. Restrictions on commencement of business.

#### *Register of members*

- 182. Register of members.
- 183. Inspection of register of members.

- 184. Power to close register.
- 185. Power of court to rectify register.
- 186. Trusts not to be entered on register.
- 187. Register to be evidence.

*Annual return*

- 188. Annual return to be made company having a share capital.
- 189. Statement of allotment, redemption and purchase of own shares to be made by a collective investment scheme which is a private scheme.
- 190. Annual return to be made by company not having share capital.
- 191. General provisions as to annual returns.
- 192. Certificates to be sent by private company with annual return.

*Meetings and proceedings*

- 193. Annual general meetings.
- 194. Statutory meeting and statutory report.
- 195. Convening of extraordinary general meeting on requisition.
- 196. Provisions as to meetings and votes.
- 197. Publication of notice of meetings on a website.
- 198. Quorum at meetings of sole member.
- 199. Representation of companies at meetings of other companies and of creditors.
- 200. Provisions as to ordinary resolutions.
- 201. Provisions as to extraordinary and special resolutions.
- 202. Written approval.
- 203. Sending documents relating to written resolutions by electronic means.
- 204. Publication of written resolutions on website.
- 205. Relationship between this Part and provisions of the company's articles.
- 206. Registration and copies of certain resolutions and agreements.
- 207. Resolutions passed at adjourned meetings.
- 208. Minutes of proceedings of meetings and directors.
- 209. Recording of decisions by the sole member.
- 210. Inspection of minute books.

*Inspection*

- 211. Investigation of companies and their affairs, etc.
- 212. Proceedings on report by inspectors.
- 213. Power of company to appoint inspectors.
- 214. Report of inspectors to be evidence.

*Directors and managers*

- 215. Number of directors.

- 216. Secretaries.
- 217. Qualifications of company secretaries.
- 218. Restrictions on appointment or advertisement of director.
- 219. Qualification of director or manager.
- 220. Provisions as to undischarged bankrupts acting as directors or secretary.
- 221. Validity of acts of directors.
- 222. Register of directors.
- 223. Register of secretaries.
- 224. Limited company may have directors with unlimited liability.
- 225. Special resolution of limited company making liability of directors unlimited.
- 226. Statement as to remuneration of directors to be furnished to shareholders.
- 227. Disclosure by directors of interest in contracts.
- 228. Contracts with sole members who are directors.
- 229. Provisions as to payments received by directors for loss of office or on retirement.
- 230. Provisions as to assignment of office by directors.

*Avoidance of provisions in articles or contracts relieving officers from liability*

- 231. Provisions as to liability of officers and auditors.

**CHAPTER 2**  
**DERIVATIVE ACTIONS**

- 232. Commencing Derivative Claims.
- 233. Application for permission to continue derivative claim.
- 234. Application for permission to continue claim as a derivative claim.
- 235. Whether permission to be given.
- 236. Application for permission to continue derivative claim brought by another member.

**PART VII**  
**ACCOUNTS AND AUDIT**

**CHAPTER 1**  
**PRELIMINARY**

- 237. Interpretation of Part VII.
- 237A. Public-interest entity excluded from exemptions.
- 238. Preparation of annual accounts: mainstream companies.

**CHAPTER 2**  
**ACCOUNTS OTHER THAN CONSOLIDATED ACCOUNTS**

- 239. Keeping of accounts.
- 240. Profit and loss account and balance sheet.
- 241. Signing of annual accounts.
- 242. Right to receive copies of balance sheets and auditors' report.
- 243. Non-IAS accounts; mainstream companies.
- 244. Principles to determine items shown in a company's accounts: mainstream companies: Non-IAS accounts.
- 245. Mainstream Companies: Non-IAS accounts; layout of balance sheet and profit and loss accounts.
- 246. Content of the notes on the accounts: mainstream companies: Non-IAS accounts.

*Notes on account: mainstream companies*

- 247. Disclosure required in notes to annual accounts: particulars of staff.

*IAS Accounts*

- 248. IAS annual accounts.

*Directors reports: mainstream companies*

- 249. Duty to prepare directors' reports.
- 250. Directors' report: general requirements.
- 251. Directors' reports; corporate governance.
- 252. Directors' report: business reviews.
- 253. Financial instruments.
- 254. Director's duties as to preparation and filing of documents.

*Auditors and auditor' reports*

- 255. Appointment auditors.
- 256. Supplementary provisions as to auditors and their remuneration.
- 257. Auditors' report and right of access to books and right to attend general meetings.
- 258. Auditors' reports.
- 259. Exemption for small companies.
- 260. Voidness of provisions protecting auditors from liability.
- 261. Indemnity for costs of successfully defending proceedings.
- 262. Liability limitation agreements.
- 263. Terms of liability limitation agreement.
- 264. Authorisation of agreement by members of the company.
- 265. Effect of liability limitation agreement.
- 266. Disclosure of agreement by company.
- 267. Voluntary revision of defective accounts and reports.
- 268. Change of accounting reference period.

*Supplementary*

- 269. Offences.
- 270. Exemptions from preparation, audit and publication of individual accounts.
- 271. *Deleted*
- 272. Period allowed for delivering accounts and reports.
- 273. Delivery and publication of accounts in euros.
- 274. Requirements where a company wishes to circulate its accounts to the public.
- 275. Regulations.

### **CHAPTER 3**

#### **CONSOLIDATED ACCOUNTS**

##### *Interpretation and general*

- 276. Parent and subsidiary undertaking.
- 277. Meaning of “undertaking” and related expressions.
- 278. Participating interests.
- 279. Notes to the accounts.
- 280. Other definitions.

##### *Preparation of group accounts*

- 281. Preparation of group accounts.
- 282. Chapter 3 Accounts.
- 283. IAS group accounts.
- 284. Consistency of accounts.
- 285. Exemption for parent companies included in accounts of larger group.
- 286. Exemption for parent companies included in non-EEA group accounts.
- 287. Subsidiary undertakings included in the consolidation.
- 288. Treatment of individual profit and loss account where group accounts prepared.
- 289. Disclosure required in notes to accounts: related undertakings.
- 290. Disclosure required in notes to annual accounts: particulars of staff.
- 291. *Deleted*
- 292. Exemption for small and medium-sized groups.
- 293. Qualification of group as small or medium-sized or large.
- 294. Offences.
- 294A. Transmission of Information.

### **PART VIII**

#### **ARRANGEMENTS AND RECONSTRUCTIONS**

295. Application of sections 296 to 301.

*Meeting of creditors or members*

296. Court order for holding of meeting.  
297. Statement to be circulated or made available.  
298. Duty of directors and trustees to provide information.

*Court sanction for compromise or arrangement*

299. Court sanction for compromise or arrangement.

*Reconstructions and amalgamations*

300. Powers of court to facilitate reconstruction or amalgamation.  
301. Obligations of company with respect to articles etc.

*Merger and divisions of public companies*

302. Application of sections 303 to 351.  
303. Relationship of sections 303 to 351 to sections 296 to 301.

*Merger*

304. Mergers and merging companies.

*Requirements applicable to merger*

305. Draft terms of scheme (merger).  
306. Publication of draft terms (merger) by Registrar.  
307. Publication of draft terms on company website (merger).  
308. Approval of members of merging companies.  
309. Directors' explanatory report (merger).  
310. Expert's report (merger).  
311. Supplementary accounting statement (merger).  
312. Inspection of documents (merger).  
313. Publication of documents on company website (merger).  
314. Report on material changes of assets of merging companies.  
315. Approval of articles of new transferee company (merger).  
316. Protection of holders of securities to which special rights attached (merger).  
317. No allotment of shares to transferor company or its nominee (merger).

*Exceptions where shares of transferor company held by transferee company.*

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

- 319. Other circumstances in which reports and inspection not required (merger).
- 320. Circumstances in which meeting of members of transferee company not required (merger).
- 321. Conditions relevant to section 320.
- 322. Circumstances in which no meetings required (merger).

*Other exceptions*

- 323. Other circumstances in which meeting of members of transferee company not required (merger).
- 324. Agreement to dispense with report, etc (merger).

*Division*

- 325. Divisions and companies involved in a division.

*Requirements to be complied with in case of division.*

- 326. Draft terms of scheme (division).
- 327. Publication of draft terms by Registrar (division).
- 328. Publication of draft terms on company website (division).
- 329. Approval of members of companies involved in the division
- 330. Directors' explanatory report (division).
- 331. Expert's report (division).
- 332. Supplementary accounting statement (division).
- 333. Inspection of documents (division).
- 334. Publication of documents on company website (division).
- 335. Report on material changes of assets of transferor company (division).
- 336. Approval of articles of new transferee company (division).
- 337. Protection of holders of securities to which special rights attached (division).
- 338. No allotment of shares to transferor company or its nominee (division) .

*Exceptions where shares of transferor company held by transferee company*

- 339. Circumstances in which meeting of members of transferor company not required (division).
- 340. Conditions relevant to section 339.

*Other exceptions*

- 341. Circumstances in which meeting of members of transferee company not required (division).
- 342. Agreement to dispense with reports etc (division).
- 343. Certain requirements excluded where shareholders given proportional rights (division).



344. Power of court to exclude certain requirements (division).

*Expert's report and related matter*

345. Expert's report: valuation by another person.

*Resolutions for, and commencement of voluntary liquidation*

346. Experts and valuers : independence requirement.

347. Experts and valuers: meaning of "associate".

*Powers of the court*

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

349. Court to fix date for transfer of undertaking etc of transferor company.

*Liability of transferee companies*

350. Liability of transferee companies for each other's defaults.

*Disruption of websites*

351. Disregard of website failures beyond control of company.

*Interpretation*

352. Meaning of "liabilities" and "property".

- 352(A). Power to acquire shares of shareholders dissenting from scheme or contract approved by majority.

## **PART IX**

### **DISTRIBUTION OF PROFITS AND ASSETS**

353. Certain distributions prohibited.
354. Further provisions as to distributions.
355. Investment companies.
356. Insurance companies.
357. Consequences of unlawful distribution.
358. Amount of distribution which may be made.

## **PART X LIQUIDATION**

### **CHAPTER 1 VOLUNTARY LIQUIDATION**

*Preliminary*

- 359. Interpretation.
- 360. Eligibility to act as a voluntary liquidator.

*Liability of members, former members and directors with unlimited liability*

- 361. Liability of members and former members.

*Declaration of solvency*

- 362. Statutory declaration of solvency.

*Resolutions for, and commencement of voluntary liquidation*

- 363. Commencement and duration of voluntary liquidation.
- 364. Resolution to appoint voluntary liquidator.
- 365. Restrictions on appointment of voluntary liquidator.
- 366. Notice of resolution to appoint a voluntary liquidator.

*Effect of company's insolvency*

- 367. Company in voluntary liquidation insolvent.
- 368. Voluntary liquidator to call meeting of creditors.
- 369. Insolvency Act to apply.

*Consequences of voluntary liquidation*

- 370. Effects of Voluntary Liquidation.
- 371. Transfer after commencement of voluntary liquidation.
- 372. Saving for certain rights.
- 373. Restrictions on enforcement process already commenced.
- 374. Duties of officer in execution process.

*Voluntary liquidators and their powers and duties*

- 375. Status of voluntary liquidator.
- 376. Notice of appointment.
- 377. General Powers of voluntary liquidator.
- 378. Power to apply to Court.
- 379. General duties of voluntary liquidator.
- 380. Power to fill vacancy in office of voluntary liquidator.
- 381. Removal of liquidator.
- 382. Resignation of voluntary liquidator.
- 383. Directors' powers where no voluntary liquidator in office.
- 384. Power of voluntary liquidator to accept shares as consideration for sale of property of company.
- 385. Progress report to company at year's end.

## *Distribution of company's assets*

- 386. Priority of debts and liabilities.
- 387. Sums due to members.
- 388. Preferential debts.
- 389. Costs, expenses and debts having priority over floating charges.
- 390. Interest after commencement of voluntary liquidation.

## *Application of certain provisions of Insolvency Act*

- 391. Application of certain provisions in Part 5 of Insolvency Act.
- 392. Disclaimer.
- 393. Application of certain provisions in Part 8 of Insolvency Act.

## *Miscellaneous provisions*

- 394. Notification of voluntary liquidation on public documents.

## *Termination of voluntary liquidation*

- 395. Termination of voluntary liquidation.
- 396. Order terminating liquidation.
- 397. Final meeting prior to dissolution.

## **CHAPTER 2** **OTHER LIQUIDATION PROVISIONS**

### *Offences antecedent to or in course of winding up*

- 398. Offences by officers of companies in liquidation.
- 399. Penalty for falsification of books.
- 400. Frauds by officers of companies which have gone into liquidation.
- 401. Liability where proper accounts not kept.
- 402. Power of court to assess damages against delinquent directors.
- 403. Prosecution of delinquent officers and members of company.

### *Supplementary provisions as to winding up*

- 404. Exemption of certain documents from stamp duty on winding up of companies.
- 405. Disposal of books and papers of company.
- 406. Information as to pending liquidations.
- 407. Resolutions passed at adjourned meetings of creditors and members.
- 408. Judicial notice of signature of officers.
- 409. Affidavits in Gibraltar, United Kingdom or elsewhere within the Commonwealth, etc.
- 410. Power of court to declare dissolution of company void.
- 411. Companies in default in respect of annual returns.

- 412. Registrar may strike defunct company off register.
- 413. Voluntary request to strike company off Register.
- 414. Restoration of dissolved companies to the register; the Registrar's functions.
- 415. Restoration of dissolved companies to the register; the Court's functions.
- 416. Property of dissolved company to be bona vacantia.

*Rules, fees and remuneration of officers*

- 417. Rules of court.
- 418. Remuneration of officers.

**PART XI**

**GENERAL PROVISIONS AS TO REGISTRATION**

- 419. Registration Office.
- 420. Appointment of Registrar.
- 421. Documents to be submitted to the Registrar.
- 422. Registrar's requirements as to form, authentication and manner of delivery.
- 423. Delivery to the Registrar of documents.
- 424. Delivery of documents in different languages.
- 425. Keeping of company records by the Registrar.
- 426. Fees.
- 427. Inspection, production and evidence of documents kept by Registrar.
- 428. Certification of electronic copies by Registrar.
- 429. Enforcement of duty of company to make returns to Registrar.
- 430. Official notification.

**PART XII**

**COMPANIES INCORPORATED OUTSIDE GIBRALTAR  
CARRYING ON BUSINESS WITHIN GIBRALTAR**

- 431. Companies to which Part XII applies.
- 432. Documents to be delivered to Registrar by companies carrying on business in Gibraltar.
- 433. Return to be delivered to Registrar where documents altered.
- 434. Application of sections 432 and 433.
- 435. Obligation to state name of company, whether limited, and country where incorporated.
- 436. Company contracts.
- 437. Execution of documents.
- 438. Execution of deeds.
- 439. Service on overseas company.
- 440. Penalties.

441. Interpretation of Part XII.

## **PART XIII**

### **RE-DOMICILIATION**

442. Companies to which Part XIII applies.

## **PART XIV**

### **BRANCH DISCLOSURE**

443. Application of Part XIV.  
444. Registration of branches of companies.  
445. Duty to register.  
446. Particulars required about the company.  
447. Further particulars about the branch.  
448. Further particulars about registration of documents.  
449. Documents required.  
450. Further documents required in certain cases  
451. Alterations.  
452. Time periods.

## **PART XV**

### **CHANGE IN REGISTRATION REGIME**

453. Change in registration regime.  
454. Change in registration regime: transitional provisions.  
455. Change in registration regime: further transitional provisions  
456. Duty to state name, etc.  
457. Service of documents: companies to which Part XIV applies.  
458. Documents to be filed on cessation of business: companies to which Part XIV applies.  
459. Penalties for non-compliance.  
460. Delivery of accounts and reports: companies to which the Eleventh Company Law Directive applies.

## **PART XVI**

### **PARTICULARS TO BE DELIVERED TO REGISTRAR: WINDING UP, ETC.**

461. Particulars to be delivered to the Registrar: winding up.  
462. Particulars to be delivered to the Registrar: insolvency proceedings, etc.  
463. Penalty for non-compliance.

464. Disclosure of branches.

## **PART XVII**

### **RESTRICTIONS ON SALE OF SHARES AND OFFERS OF SHARES FOR SALE**

465. Prospectuses of foreign companies inviting subscriptions for shares or offering shares for sale.  
466. Penalties relevant to section 465.  
467. Requirements as to prospectus.  
468. Restrictions on offering of shares for subscription or sale.  
469. Offences relating to section 468.

## **PART XVIII**

### **MISCELLANEOUS**

#### *Miscellaneous offences*

470. Penalty for false statement.  
471. Penalty for improper use of “limited”.

#### *General provisions as to offences*

472. Provision with respect to default fines and meaning of “officer in default”.  
473. Application of fines.  
474. Savings relating to proceedings instituted by the Attorney General.

#### *Service of documents and legal proceedings*

475. Service of documents on company.  
476. Costs in actions by certain limited companies.  
477. Power of court to grant relief in certain cases.  
478. Power to enforce orders.

#### *General provisions*

479. Financial Secretary.  
480. Orders and certificates of the Minister or the Financial Secretary to be evidence.  
481. Documents and production of documents.  
482. Sending or supplying documents or information.  
483. Right to hard copy version.  
484. Requirement of authentication.  
485. Hard copy form electronic copy form and related expressions.  
486. Designation of capital.

- 487. European Economic Community Law.
- 488. Transitional provisions.
- 489. Consequential amendments.
- 490. Repeals.

**SCHEDULES**

**SCHEDULE 1**

DE-REGISTRATION OF CERTAIN COMPANIES ON BECOMING  
LIMITED PARTNERSHIPS CONSEQUENTIAL AMENDMENTS TO  
LIMITED PARTNERS ACT

**SCHEDULE 2**

PROSPECTUSES

**SCHEDULE 3**

FORM OF STATEMENT IN LIEU OF PROSPECTUS TO BE  
DELIVERED TO REGISTRAR BY A COMPANY WHICH DOES NOT  
ISSUE A PROSPECTUS OR WHICH DOES NOT GO TO ALLOTMENT  
ON A PROSPECTUS ISSUED

**SCHEDULE 4**

VALUATION PROVISIONS  
ENTITLEMENT TO FULL DISCLOSURE

**SCHEDULE 5**

FORM OF ANNUAL RETURN OF A COMPANY HAVING A SHARE  
CAPITAL

**SCHEDULE 6**

DOCUMENTS AND INFORMATION SENT OR SUPPLIED TO A  
COMPANY

**SCHEDULE 7**

COMMUNICATIONS BY A COMPANY

**SCHEDULE 8**

INVESTIGATION OF COMPANIES AND THEIR AFFAIRS:  
REQUISITION OF DOCUMENTS

**SCHEDULE 9**

DEFINITION OF MICRO-ENTITY, SMALL, MEDIUM-SIZED AND  
LARGE COMPANIES

**SCHEDULE 10**

FORM OF STATEMENT TO BE PUBLISHED BY INSURANCE  
COMPANIES AND DEPOSIT, PROVIDENT, OR BENEFIT SOCIETIES

**SCHEDULE 11**

BALANCE SHEET FORMATS 1 AND 2

**SCHEDULE 12**

PROFIT AND LOSS ACCOUNT FORMATS 1-4

**SCHEDULE 13**

EXEMPTIONS WITH RESPECT TO PREPARATION OF BALANCE  
SHEET OF SMALL COMPANIES

**SCHEDULE 14**

MEDIUM SIZED COMPANIES PROFIT AND LOSS ACCOUNT

**SCHEDULE 15**

AMOUNTS TO BE INCLUDED IN RESPECT OF ITEMS SHOWN IN  
COMPANY ACCOUNTS

**SCHEDULE 16**

NOTES ON ACCOUNTS - MINIMUM REQUIREMENTS

**SCHEDULE 17**

DEFINITION OF INVESTMENT COMPANIES AND FINANCIAL  
HOLDING COMPANIES

**SCHEDULE 18**

FINANCIAL HOLDING COMPANIES – PROFIT AND LOSS  
ACCOUNT FORMAT

**SCHEDULE 19**

ANNUAL AND SEMI-ANNUAL REPORTS OF INVESTMENT  
COMPANIES



**SCHEDULE 20**

PARENT AND SUBSIDIARY UNDERTAKINGS: SUPPLEMENTARY  
PROVISIONS

**SCHEDULE 21**

FORM AND CONTENT OF GROUP ACCOUNTS

**SCHEDULE 22**

DISCLOSURE OF INFORMATION: RELATED UNDERTAKINGS

**SCHEDULE 23**

POWERS OF VOLUNTARY LIQUIDATOR

**SCHEDULE 24**

TABLE OF FEES TO BE PAID TO THE REGISTRAR OF COMPANIES  
BY OR IN RESPECT OF CERTAIN COMPANIES

**SCHEDULE 25**

CREDIT AND FINANCIAL INSTITUTIONS TO WHICH THE BANK  
BRANCHES DIRECTIVE (89/117/EEC) APPLIES

**SCHEDULE 26**

DELIVERY OF REPORTS AND ACCOUNTS: COMPANIES TO  
WHICH THE ELEVENTH COMPANY LAW DIRECTIVE APPLIES  
COMPANIES REQUIRED TO MAKE DISCLOSURE UNDER PARENT  
LAW

**SCHEDULE 27**

PROVISIONS REFERRED TO IN SECTION 470

**SCHEDULE 28**

INDEX OF DEFINED EXPRESSIONS

**SCHEDULE 29**

ENACTMENTS REPEALED

AN ACT TO RE-ENACT, WITH AMENDMENTS, THE PROVISIONS OF THE COMPANIES ACT (1930-07) AS AMENDED; TO INCORPORATE THE COMPANIES (ACCOUNTS) ACT 1999 AND THE COMPANIES (CONSOLIDATED ACCOUNTS) ACT 1999; TO TAKE ACCOUNT OF THE EFFECT OF THE INSOLVENCY ACT; TO INCORPORATE AMENDMENTS PROPOSED BY A LAW REFORM COMMITTEE OF THE GIBRALTAR FINANCE CENTRE COUNCIL; AND FOR CONNECTED PURPOSES.

## **PART I**

### **PRELIMINARY**

#### *Introductory*

#### **Short title and Commencement.**

1.(1) This Act may be cited as the Companies Act 2014.

(2) This Act shall come into force on a day to be appointed by the Minister by notice in the Gazette and different days may be so appointed for different provisions of this Act.

#### **Interpretation.**

2.(1) In this Part, unless the context otherwise requires,—

- (a) in the case of a public company, the name of the company must end with the words “Public Limited Company” or the abbreviation “plc”; and
- (b) in the case of a private limited company, the name of the company must end with the word “Limited” or the abbreviation “Ltd”;
- (c) “articles” means the articles of association of a company, as originally framed or as altered by special resolution, including, so far as they apply to the company, the regulations derived from the model Articles prescribed by the Minister or, from the Tables in the former Companies Act;

“annual return” means the return required to be made, in the case of a company having a share capital, under section 188, and, in the case of a company not having a share capital, under section 190;

“the Commission” means the Financial Services Commission established under the Financial Services Commission Act;

“Companies Rules” means the Companies Rules 1980 made under section 334 of the former Companies Act and rules, described as Companies Rules, made under section 417 of this Act;

“company” means a company formed and registered under this Act or the former Companies Act, or, in the case of a company formed outside Gibraltar, registered under this Act or the former Companies Act;

“the Court”, used in relation to a company, means the Supreme Court;

“debenture” includes debenture stock, bonds and any other securities of a company whether constituting a charge on the assets of the company or not;

“director” includes any person occupying the position of director by whatever name called;

“document” includes summons, notice, order and other legal process and registers;

“the former Companies Act” means the Companies Act, 1930-07, as amended;

“Insolvency Act” means the Insolvency Act 2011;

“liquidator” includes a liquidator appointed under the Insolvency Act and a voluntary liquidator;

“memorandum” means the memorandum of association of a company, as originally framed or as altered in pursuance of any enactment;

“the Minister” means the Minister responsible for finance;

“proper books of account” means such books or accounts as are necessary to exhibit and explain the transactions and financial position of the trade or business of the company and includes books containing entries from day to day of all cash received and cash paid and any contracts, invoices or other underlying documentation significant to the trade or business of the company. If the company’s business involves dealing in goods, this also includes

statements of annual stocktaking and, except in the case of goods sold by way of ordinary retail trade, statements of all goods sold and purchased showing sufficient detail to enable those goods, buyers and sellers to be identified;

“prescribed” means prescribed by regulations made by the Minister;

“prospectus” means any prospectus, notice, circular, advertisement or other invitation, offering to the public for subscription or purchase any shares or debentures of a company;

“Registrar” means the Registrar of Companies;

“share” means share in the share capital of a company, and includes stock except where a distinction between stock and shares is expressed or implied;

“subsidiary”, except in the expression “subsidiary undertaking”, shall be construed in accordance with subsections (4) and (5);

“voluntary liquidation” means the liquidation of a company under Part X;

“voluntary liquidator” means a liquidator appointed under Part X.

(2) Any reference in this Act to a numbered section or Schedule or other provision of the former Companies Act is a reference to the section, Schedule or other provision which bears that number in the text of the former Companies Act in force immediately prior to the date appointed by the Minister for this Act to come into force.

(3) Any reference in this Act—

- (a) to the winding up of a company is a reference to the liquidation of the company under the Insolvency Act or the voluntary liquidation of a company under this Act; and
- (b) to a company being wound up, is a reference to the company being liquidated under the Insolvency Act or liquidated voluntarily under this Act.

(4) Where the assets of a company consist in whole or in part of shares in another company, whether held directly or through a nominee and whether that other company is a company within the meaning of this Act or not, and—

- (a) the amount of the shares so held is at the time when the accounts of the holding company are made up more than 50 per cent of the issued share capital of that other company or such

as to entitle the company to more than 50 per cent of the voting power in that other company; or

- (b) the company has power (not being power vested in it by virtue only of the provisions of a debenture, trust deed or by virtue of shares issued to it for the purpose in pursuance of those provisions) directly or indirectly to appoint the majority of the directors of that other company,

that other company shall be deemed to be a subsidiary for the purposes of this Act.

(5) Where a company, the ordinary business of which includes the lending of money holds shares in another company as security only, no account shall be taken of the shares so held in determining under subsection (4) whether that other company is its subsidiary.

## *Types of company*

### **Limited and unlimited companies.**

3.(1) A company is a limited company if the liability of its members is limited by its constitution and that limitation may be by shares or by guarantee.

(2) If the liability of a company's members is limited to the amount, if any, unpaid on the shares respectively held by them, the company is "limited by shares".

(3) If the liability of a company's members is limited to such amount as the members may respectively thereby 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".

(5) A company limited by guarantee may have a share capital.

(6) An unlimited company may have a share capital.

### **Public and private companies.**

4.(1) For the purposes of this Act, a "public company" is a company limited by shares or limited by guarantee and having a share capital, being a company—

- (a) whose certificate of incorporation states that it is a public company; and
- (b) in relation to which the provisions of this Act or the former Companies Act as to the registration or re-registration of a company as a public company have been complied with;

(2) A “private company” is any company that is not a public company and complies with the requirements of this Act as to private companies.

## **PART II**

### **FORMATION OF COMPANIES**

#### *Memorandum of Association*

#### **Mode of forming incorporated company.**

5.(1) Any one or more persons associated for a lawful purpose may, by subscribing their names to a memorandum of association and otherwise complying with the requirements of this Act in respect of registration, form an incorporated company with or without limited liability.

#### **Memorandum of association.**

6.(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 a form prescribed by the Minister.

#### **Requirements with respect to the memorandum.**

7.(1) The memorandum of every company must state—

- (a) the name of the company (complying with the following provisions of this Act); and
- (b) that the registered office of the company is to be situated in Gibraltar.

(2) The memorandum of a public company must also state the fact that it is a public company.

(3) The memorandum of a company limited by shares or by guarantee must also state that the liability of its members is limited.

(4) The memorandum of a company limited by guarantee must also state that each member undertakes to contribute to the assets of the company if it should be wound up while he is a member, or within 1 year after he ceases to be a member, for payment of the debts and liabilities of the company contracted before he ceases to be a member, and of the costs, charges and expenses of winding up, and for adjustment of the rights of the contributories among themselves, such amount as may be required, not exceeding a specified amount.

(5) In the case of a company having a share capital—

- (a) the memorandum must also (unless it is an unlimited company) state the amount of the share capital with which the company proposes to be registered and the division of the share capital into shares of a fixed amount;
- (b) subject to section 128, no member of the company may take less than one share; and
- (c) there must be shown in the memorandum against the name of each subscriber the number of shares he takes.

(6) The memorandum must be signed by each subscriber in the presence of at least one witness, who must attest the signature.

(7) A company may not alter the conditions contained in its memorandum except in the cases, in the mode and to the extent for which express provision is made by this Act.

**Existing companies: provisions of memorandum treated as provisions of articles.**

8. Provisions that, immediately before the commencement of this Part, were contained in a company's memorandum but are not provisions of a kind mentioned in section 7 are to be treated after the commencement of this Part as provisions of the company's articles.

#### *Requirements as to registration*

#### **Registration documents.**

9.(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 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
- (c) 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, in accordance with section 10;
- (b) in the case of a company that is to be limited by guarantee, a statement of guarantee, in accordance with section 11;
- (c) a statement of the company's proposed officers in accordance with 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 as mentioned in section 22).

**Statement of capital and initial shareholdings.**

10.(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.

#### **Statement of guarantee.**

11.(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 1 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. *Repealed.*

**Statement of compliance.**

13.(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 statement of compliance must be made by—

- (a) a solicitor of the Supreme Court; or
- (b) a barrister lawfully acting as a solicitor of the Supreme Court engaged in the formation of the company; or
- (c) a person named in the articles as a director or secretary of the company.

(3) The statement of compliance shall be produced to the Registrar, and the Registrar shall be entitled to rely on the statement as sufficient evidence of compliance.

*Registration and its effect*

**Registration.**

14. 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.

**Issue of certificate of incorporation.**

15.(1) On the registration of a company, the Registrar 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) when it is a company limited by guarantee, whether it has a share capital or not; and
- (e) whether it is a private or a public company.

(3) The certificate must be signed by the Registrar or authenticated by his 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.

## **Effect of registration.**

16.(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 corporate body by the name stated in the certificate of incorporation, but with such liability on the part of the members to contribute to the assets of the company in the event of its being wound up as is mentioned in this Act or, as the case may be, the Insolvency Act 2011.

(3) That corporate body is capable of exercising all the functions of an incorporated company.

(4) Unless a company's articles specifically restrict the objects of the company, its objects are unrestricted.

(5) The status and registered office of the company are as stated in, or in connection with, the application for registration.

(6) 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.

- (7) 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.

- (8) A company may, but need not, have a seal for use in Gibraltar.

## *Membership of a company*

**Definition of member.**

17.(1) The subscribers of the memorandum of a company shall be deemed to have agreed to become members of the company, and on its registration shall be entered as members 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, shall be a member of the company.

*Companies that are collective investment schemes***Notification that company is a Collective Investment Scheme.**

18.(1) Subject to subsection (3), a company that is a collective investment scheme licensed, authorised or otherwise regulated under the Financial Services (Collective Investment Schemes) Act 2011 may notify the Registrar in writing within 30 days of the establishment of the scheme that it is a collective investment scheme.

(2) Any notification so given shall confirm whether the company is—

- (i) a “private scheme” (as defined in section 2(1) of the Financial Services (Collective Investment Schemes) Act 2011); or
- (ii) any other type of collective investment scheme licensed, authorised or otherwise regulated under the Financial Services (Collective Investment Schemes) Act 2011.

(3) Where a company which is registered as a collective investment scheme licensed, authorised or otherwise regulated under the Financial Services (Collective Investment Schemes) Act 2011, ceases to be such a scheme, the company shall apply in writing to the Registrar within 30 days requesting that it no longer be treated as such a scheme.

(4) If a company fails to comply with subsection (4), the company and every officer who is in default shall be guilty of an offence and liable on summary conviction to a fine at level 2 on the standard scale.

*Private companies***Meaning of “private company”.**

19.(1) For the purposes of this Act a “private company” means a company limited by shares or limited by guarantee (whether or not having a share capital), being a company which by its articles—

- (a) restricts the right to transfer its shares; and

- (b) prohibits any invitation to the public to subscribe for any shares or debentures of the company.

(2) Where two or more persons hold one or more shares in a company jointly, they shall, for the purposes of this section, be treated as a single member.

(3) Subject to subsection (4), a company that is or will be a collective investment scheme licensed, authorised or otherwise regulated under the Financial Services Act 1989 or the Financial Services (Collective Investment Schemes) Act 2011 is entitled to be a private company where its articles of association so provide, notwithstanding that it does not comply with subsection (1).

(4) A company that is a private company by virtue of subsection (3) shall comply with subsection (1) until it is licensed, authorised or otherwise regulated as the case may be.

**Circumstances in which company ceases to be, or to enjoy privileges of a private company.**

20.(1) If a company, being a private company, alters its articles in such manner that they no longer include the provisions which, under section 19, are required to be included in the articles of a company in order to constitute it a private company (“the private company provisions”), the company shall, as on the date of the alteration, cease to be a private company and shall, within a period of 14 days after that date, deliver to the Registrar for registration a prospectus or a statement in lieu of prospectus in the form and containing the prescribed particulars.

(2) Where the articles of a company include the private company provisions but default is made in complying with any of those provisions, then, subject to subsection (4), the company shall cease to be entitled to the privileges and exemptions conferred on private companies under section 242(1), and the company shall, as on the date of the alteration, cease to be a private company and shall, within a period of 14 days after that date, deliver to the Registrar for registration a prospectus or a statement in lieu of prospectus in the form and containing the prescribed particulars.

(3) If default is made in complying with subsection (1) or (2), the company and every officer of the company who is in default shall be guilty of an offence and liable on summary conviction to a default fine at level 2 on the standard scale.

(4) On being satisfied that the failure to comply with the private company provisions was accidental or due to inadvertence or to some other sufficient cause, or that on other grounds it is just and equitable to grant relief, the

Court may, on the application of the company or any other person interested and on such terms and conditions as seem to the court just and expedient, order that the company be relieved from those consequences.

(5) Nothing in this section shall prejudice the application of section 19(3) and (4).

### **PART III**

#### **A COMPANY'S CONSTITUTION AND POWERS**

#### **CHAPTER 1**

##### *Introductory*

##### **A company's constitution.**

21.(1) Unless the context otherwise requires, references in this Act to a company's constitution include—

- (a) the company's articles; and
- (b) any relevant resolutions and agreements.

(2) In this section "relevant resolutions and agreements" means—

- (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 prescribed for the purposes of this section.

(3) 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.

**CHAPTER 2**

**ARTICLES OF ASSOCIATION**

*General*

**Articles of association.**

22.(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 24, it must register articles of association.

(3) Articles of association registered by a company must—

- (a) be printed;
- (b) be divided into paragraphs numbered consecutively; and
- (c) be signed by each subscriber to the memorandum of association in the presence of at least one witness who must attest his signature.

(4) References in this Act to a company's "articles" are to its articles of association.

**Power of Minister to prescribe model articles.**

23.(1) The Minister 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; and for this purpose "amendment" includes addition, alteration or repeal.

**Default application of model articles.**

24.(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*

#### **Amendment of articles.**

25.(1) Subject to the provisions of this Act and any conditions contained in its constitution, a company may amend its articles by special resolution.

(2) Any amendment so made in a company's articles shall, subject to the provisions of this Act, be as valid as if originally contained in the articles, and, subject to the provisions of this Act and the company's constitution, be subject to amendment by special resolution.

(3) A member of a company is not bound by any amendment to its articles after the date on which he became a member, if and so far as the amendment—

- (a) would require him to take or subscribe for more shares than the number held by him at the date on which the amendment is made; or
- (b) would in any way increase his liability as at that date to contribute to the company's share capital or otherwise to pay money to the company.

(4) Subsection (3) does not apply in a case where the member agrees in writing, either before or after the amendment is made, to be bound by the amendment.

(5) In this section "amend" includes alteration, addition and repeal and "amendment" shall be construed accordingly.

#### **Registrar to be sent copy of amended articles.**

26.(1) Where a company amends its articles it must send to the Registrar a copy of the articles as amended not later than 30 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 24.

(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.

*Provisions with respect to names of companies*

**Restriction on registration of companies by certain names.**

27.(1) No company shall be registered by a name—

- (a) which includes, otherwise than at the end of the name, the word “limited”; or
- (b) which includes, otherwise than at the end of the name, an abbreviation of the word “limited”; or
- (c) which is the same as the name appearing in the Registrar’s index of company names, except where the company in existence is in the course of being dissolved and signifies its consent in such manner as the Registrar requires; or
- (d) the use of which by the company would in the opinion of the Registrar constitute a criminal offence; or
- (e) which in the opinion of the Registrar is offensive; or
- (f) which contains the words “Chamber of Commerce”, unless the company is a company which is to be registered under a licence granted in pursuance of section 28 without the addition of the word “Limited” to its name.

(2) In determining for the purposes of subsection (1)(c) whether one name is the same as another, there shall be disregarded—

- (a) the definite article, where it is the first word of the name;
- (b) the following words and expressions where they appear at the end of a name, that is to say—

“company” or “and company”

“company limited” or “and company limited”

“limited”;

- (c) abbreviations of any of those words or expressions where they appear at the end of the name; and
- (d) type and case of letters, accents, spaces between letters and punctuation marks,

and “and” and “&” are to be taken as the same.

(3) Except with the consent of the Minister no company shall be registered by a name which—

- (a) contains the words “Royal” or “Imperial” or “Empire” or “Windsor” or “Crown” or in the opinion of the Registrar suggests, or is calculated to suggest, the patronage of Her Majesty or of any member of the Royal Family or connection with Her Majesty’s Government or the Government of Gibraltar or any department of either of those Governments; or
- (b) contains the words “Municipal” or “Chartered” or in the opinion of the Registrar suggests, or is calculated to suggest, connection with any municipality or other local authority or with any society or body incorporated by Royal Charter; or
- (c) in the opinion of the Registrar is undesirable; or
- (d) contains the word “co-operative”; or
- (e) includes any word or expression for the time being specified in regulations made under subsection (4) of this section.

(4) The Minister shall not consent under subsection (3)(a) to the use of the words “Royal” or “Windsor” or “Crown” or to any name which suggests or is calculated to suggest the patronage of Her Majesty or of any member of the Royal Family or connection with Her Majesty’s Government in the United Kingdom without the prior written consent of the Governor.

(5) The Minister may by regulations specify words or expressions for the registration of which as or as part of a company's corporate name his approval is required under subsection (3) of this section.

(6) Regulations made under subsection (5) may contain such transitional provisions and savings as the Minister thinks appropriate and may make different provisions for different cases or classes of case.

(7) Nothing in this section affects the continuing operation of section 264 of the Insolvency Act 2011 (restriction on re-use of company names).

(8) The Registrar shall keep an index of the names of the following bodies—

- (a) companies as defined by this Act;
- (b) companies incorporated outside Gibraltar which have complied with Part XII of this Act, and which do not appear to the Registrar to have a place of business in Gibraltar;
- (c) incorporated and unincorporated bodies to which any provision of this Act applies;
- (d) limited partnerships registered under the Limited Partnerships Act;
- (e) societies registered under the Co-operative Societies Act and the Friendly Societies Act.

(9) Nothing in this section affects a restriction contained in any other enactment (whether passed before or after this Act) which limits the names which companies may use.

**Power to dispense with “Limited” in name of charitable and other companies.**

28.(1) Where it is proved to the satisfaction of the Minister that an association about to be formed as a limited company is to be formed for promoting commerce, art, science, religion, charity or any other useful object, and intends to apply its profits (if any) or other income in promoting its objects, and to prohibit the payment of any dividend to its members, the Minister may by licence direct that the association may be registered as a company with limited liability, without the addition of the word “Limited” to its name, and the association may be registered accordingly.

(2) A licence by the Minister under this section may be granted on such conditions and subject to such regulations as the Minister thinks fit, and those conditions and regulations shall be binding on the association, and

shall, if the Minister so directs, be inserted in the memorandum and articles, or in one of those documents.

(3) The association shall on registration enjoy all the privileges of limited companies, and be subject to all their obligations, except those of using the word “Limited” as any part of its name, and of publishing its name, and of sending lists of members to the Registrar.

(4) A licence under this section may at any time be revoked by the Minister, and upon revocation the Registrar shall enter the word “Limited” at the end of the name of the association upon the register, and the association shall cease to enjoy the exemptions and privileges granted by this section: but, before a licence is so revoked, the Minister shall give to the association notice in writing of his intention, and shall afford the association an opportunity of being heard in opposition to the revocation.

(5) Where the name of the association contains the words “Chamber of Commerce”, the notice to be given shall include a statement of the effect of the provisions of section 29(5).

**Change of name.**

29.(1) A company may change its name—

- (a) by special resolution; or
- (b) by other means provided by the company’s articles.

(2) Where a change of name has been agreed to by a company by special resolution, then, without prejudice to the obligation to forward a copy of the special resolution to the Registrar, the company must give notice of the change to the Registrar within 7 days of the passing of the special resolution.

(3) Where a change of name by special resolution is conditional on the occurrence of an event, the notice given to the Registrar must specify that the change is conditional and state whether the event has occurred; and if the notice states that the event has not occurred—

- (a) the Registrar is not required to register the change of name and issue a new certificate of incorporation until further notice;
- (b) when the event occurs, the company must give notice of that to the Registrar; and
- (c) the Registrar may rely on the company’s statement that the event has occurred and proceed with the registration.

(4) Where a company's change of name has been made by other means provided for by its articles–

- (a) the company must give notice to the Registrar;
- (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; and
- (c) the Registrar may rely on the company's statement and proceed with the registration.

(5) Where a licence granted in pursuance of section 28 to a company the name of which contains the words "Chamber of Commerce" is revoked, the company shall, within a period of 6 weeks from the date of the revocation or such longer period as the Minister may think fit to allow, change its name to a name which does not contain those words; and a company which makes default in complying with the requirements of this subsection shall be guilty of an offence and liable on summary conviction to a fine at level 2 on the standard scale for every day during which the default continues.

(6) Where a company changes its name, the Registrar shall enter the new name on the register in place of the former name, and shall issue a certificate of incorporation altered to meet the circumstances of the case.

(7) A change of a company's name has effect from the date on which the new certificate of incorporation with the new name is issued; but the change of name shall not affect any rights or obligations of the company, or render defective any legal proceedings by or against the company, and any legal proceedings that might have been continued or commenced against it by its former name may be continued or commenced against it by its new name.

**Power to require company to change name – general.**

30.(1) Where a company has been registered by a name which–

- (a) is the same as or, in the opinion of the Registrar, too like a name appearing at the time of registration in the Registrar's index of companies names; or
- (b) is the same as or, in the opinion of the Registrar, too like a name which should have appeared in that index at that time; or
- (c) is in the opinion of the Registrar undesirable,

the Registrar may within 12 months of the time of registration, in writing, direct the company to change its name within such period as he may specify.

(2) Section 27(2) applies in determining under subsection (1) whether the name is the same as or too like another.

(3) If it appears to the Registrar that—

- (a) misleading information has been given for the purpose of a company's registration with a particular name; or
- (b) that undertakings or assurances have been given for that purpose and have not been fulfilled,

he may within 5 years of the date of its registration with that name in writing direct the company to change its name within such period as he may specify.

(4) Where a direction has been given under subsections (1) or (3) the Registrar may by a further direction in writing extend the period within which the company has to change its name at any time before the end of that period.

(5) A company which fails to comply with a direction under this section, and any officer of it who is in default shall be liable on summary conviction to a fine at level 4 on the standard scale and, for continued contravention, to a daily penalty of one twentieth of the amount of level 4 on the standard scale.

(6) Subsections (2), (4), (6) and (7) of section 29 shall apply to any change of name under this section.

**Power to require company to change misleading name.**

31.(1) If in the Registrar's opinion 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 he may direct it to change its name.

(2) The direction must, if not duly made the subject of an application to the court under the following subsection, be complied with within a period of 6 weeks from the date of the direction or such longer period as the Registrar may see fit to allow.

(3) The company may within a period of 3 weeks from the date of the direction, apply to the court to set it aside; and the court may set the direction aside or confirm it and, if it confirms the direction, shall specify the period within which it must be complied with.

(4) If a company defaults in complying with the direction under this section, it shall be liable on summary conviction to a fine at level 4 on the

standard scale, and for continued contravention, to a daily penalty of one twentieth of the amount of level 4 on the standard scale.

(5) Subsections (2), (4), (6) and (7) of section 29 shall apply to any change of name under this section.

**Penalty for misuse of “Limited”.**

32. If any person trades or carries on business under a name or title of which “Limited” or any contraction or imitation of that word, is the last word, that person unless duly incorporated with limited liability, shall be liable on summary conviction to a fine at level 4 on the standard scale, and for continued default to a daily penalty of one twentieth of the amount of level 4 on the standard scale.

*General provisions with respect to company’s constitution*

**Effect of company’s constitution.**

33.(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.

(3) Such a debt is of the nature of a specialty debt.

**Provision as to memorandum and articles of companies limited by guarantee.**

34. For the purpose of the provisions of this Act relating to the memorandum of a company limited by guarantee and of this section, every provision in the memorandum or articles, or in any resolution, of a company limited by guarantee, purporting to divide the undertaking of the company into shares or interests shall be treated as a provision for a share capital, notwithstanding that the nominal amount or number of the shares or interests is not specified by that provision.

**Constitutional documents to be provided to members.**

35.(1) A company must, on request by any member, and subject to payment of the prescribed sum, send to him the following documents—

- (a) an up-to-date copy of the company’s memorandum and articles;

- (b) a copy of any resolution or agreement relating to the company to which Chapter 1 of Part III 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 section 36;
- (d) a copy of any court order under either or both of sections 299 and 300 (order sanctioning compromise or arrangement, reconstruction or amalgamation);
- (e) a copy of the company's current certificate of incorporation, and of any past certificates of incorporation;
- (f) in the case of a company with a share capital, a current statement of capital; or
- (g) 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)(f) is a statement containing the information set out in section 10(2).

(3) If a company makes default in complying with this section, the company and every officer of the company who is in default shall be guilty of offences and each liable on summary conviction for each offence to a fine of one tenth of the amount at level 1 on the standard scale.

#### **Statutory alterations.**

36.(1) Where any alteration is made in a company's memorandum or articles of association by any statutory provision, whether contained in an Act or in an instrument made under an Act, a printed copy of the Act or instrument shall not later than 30 days after that provision comes into force be forwarded to the Registrar and recorded by him.

(2) Where a company is required by this section or otherwise to send to the Registrar any document making or evidencing an alteration in the company's memorandum or articles of association the company shall send with it a printed copy of the memorandum or articles as altered.

(3) If a company fails to comply with this subsection, the company and any officer of the company who is in default shall be liable to a default fine.

### **CHAPTER 3**



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

### *Introductory*

#### **Alteration of status by re-registration.**

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

- (a) from a private company to a public company;
- (b) from a public company to a private company;
- (c) from a private limited company to an unlimited company;
- (d) from an unlimited private company to a limited company;
- (e) from a public company to an unlimited private company;
- (f) from a company limited by shares to a company limited by guarantee not having a share capital;
- (g) from a company limited by shares to a company limited by guarantee having a share capital;
- (h) from a company limited by guarantee not having a share capital to a company limited by shares; and
- (i) from a company limited by guarantee having a share capital to a company limited by shares.

### *Private company becoming public*

#### **Re-registration of private company as public.**

38.(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 42, 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 39 are met as regards its share capital;
- (c) that the requirements of section 40 are met as regards its net assets;
- (d) if section 41 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.

**Requirements as to share capital.**

39.(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, 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 5 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, shares may be disregarded if they were 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; and shares disregarded under this subsection shall be treated as not forming part of the allotted share capital for the purposes of subsection (1)(a).

(3) 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 in connection with a redenomination of share capital,
  - (ii) is supported by a solvency statement, as defined in subsection (4), or
  - (iii) has been confirmed by an order of the court; 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.

(4) A solvency statement is a statement that each of the directors—

- (a) has formed the opinion, as regards the company's situation at the date of the statement, that there is no ground on which the company could be found to be unable to pay (or otherwise discharge) its debts; and
- (b) has also formed the opinion—
  - (i) if it is intended to commence the winding up of the company within twelve months of that date, that the company will be able to pay (or otherwise discharge) its debts in full within twelve months of the commencement of the winding up, or
  - (ii) in any other case, that the company will be able to pay (or otherwise discharge) its debts as they fall due during the year immediately following that date,

and, in forming those opinions, the directors must take into account all of the company's liabilities (including any contingent or prospective liabilities).

(5) The solvency statement must be in the prescribed form and must state—

- (a) the date on which it is made; and
- (b) the name of each director of the company,

and if the directors make a solvency statement without having reasonable grounds for the opinions expressed in it, and the statement is delivered to the Registrar, every director who is in default commits an offence.

(6) A person guilty of an offence under subsection (5) is liable—

- (a) on conviction on indictment, to imprisonment for a term not exceeding 2 years or a fine (or both);
- (b) on summary conviction to imprisonment for a term not exceeding 12 months or to a fine at level 5 on the standard scale (or both).

**Requirements as to net assets.**

40.(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 7 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 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 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 Chapter—

"net assets" means the aggregate of the company's assets less the aggregate of its liabilities;

"undistributable reserves" of a company means—

- (a) its share premium account;
- (b) its capital redemption reserve;

- (c) the amount by which its accumulated, unrealised profits (so far as not previously utilised by capitalisation) exceed its accumulated, unrealised losses (so far as not previously written off in a reduction or reorganisation of capital); and
- (d) any other reserve that the company is prohibited from distributing by any enactment (other than contained in this Part) or by its articles.

**Recent allotment of shares for non-cash consideration.**

41.(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 40 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 91 (valuation of non-cash consideration) have been complied with; or
- (b) the allotment is in connection with—
  - (i) a share exchange, or
  - (ii) a proposed merger with another company.

(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); and for this purpose “another company” includes any corporate body.

(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 VIII (arrangements and reconstructions), or
  - (ii) section 384.

#### **Application and accompanying documents.**

42.(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) a statement of the company's proposed secretary.

(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 section 206);

(b) a copy of the company's articles as proposed to be amended;

(c) a copy of the company's prospectus or the statement in lieu of prospectus;

(d) a copy of the balance sheet and other documents referred to in section 40(1);

(e) if section 41 applies, a copy of the valuation report (if any) under subsection (2)(a) of that section; and

(f) where the company carries on in or from Gibraltar a business which is licensed or authorised under the Financial Services (Investment and Fiduciary Services) Act 1991, the Financial Services (Banking) Act 1992 or the Financial Services (Markets in Financial Instruments) Act 2006,

evidence of the consent of the competent authority under the relevant legislation or requirement to the company re-registering as a public company.

(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.

**Statement of proposed secretary.**

43.(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 (as described in section 223).

(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.

(4) 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.

### **Issue of certificate of incorporation on re-registration.**

44.(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 43, 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*

### **Re-registration of public company as private limited company.**

45.(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 48, 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 46 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 in its name and 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.

**Application to court to cancel resolution.**

46.(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;
- (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.

#### **Notice to Registrar of court application or order.**

47.(1) On making an application under section 46 the applicants, or the person making the application on their behalf, must immediately give notice to the Registrar; but 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.

**Application and accompanying documents.**

48.(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 section 206);
- (b) a copy of the company's articles as proposed to be amended; and
- (c) where the company carries on in or from Gibraltar a business which is licensed or authorised under the Financial Services (Investment and Fiduciary Services) Act 1991, the Financial Services (Banking) Act 1992 or the Financial Services (Markets in Financial Instruments) Act 2006, evidence of the consent of the competent authority under the relevant legislation or requirement to the company re-registering as a public company.

(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.

**Issue of certificate of incorporation on re-registration.**

49.(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*

**Re-registration of private limited company as unlimited.**

50.(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 51, 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.

**Application and accompanying documents.**

51.(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; and
- (c) where the company carries on in or from Gibraltar a business which is licensed or authorised under the Financial Services (Investment and Fiduciary Services) Act 1991, the Financial Services (Banking) Act 1992 or the Financial Services (Markets in Financial Instruments) Act 2006, evidence of the consent of the competent authority under the relevant legislation or requirement to the company re-registering as a public company.

(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.

**Issue of certificate of incorporation on re-registration.**

52.(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*

**Re-registration of unlimited company as limited.**

53.(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 54, 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 (whether or not having a share capital).

(4) The company must make such changes in its name and in its articles as are necessary in connection with its becoming a company limited by shares or, as the case may be, by guarantee.

**Application and accompanying documents.**

54.(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 of the company confirming that the company should re-register as a private limited company (unless a copy has already been forwarded to the Registrar under section 206);
- (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;
- (d) where the company carries on in or from Gibraltar a business which is licensed or authorised under the Financial Services (Investment and Fiduciary Services) Act 1991, the Financial Services (Banking) Act 1992 or the Financial Services (Markets in Financial Instruments) Act 2006, evidence of the consent of the competent authority under the relevant legislation or requirement to the company re-registering as a public company.

(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 1 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.

**Issue of certificate of incorporation on re-registration.**

55.(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.

**Statement of capital required where company already has share capital.**

56.(1) A company which on re-registration under section 55 already has allotted share capital must within 30 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 (as described in section 10); or
- (b) a statement of capital contained in an annual return.

(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 the company, and 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*

**Re-registration of public company as private and unlimited.**

57.(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 in subsection (2) is met; and
- (c) an application for re-registration is delivered to the Registrar in accordance with subsection (5); together with–
  - (i) the other documents required by that subsection, and
  - (ii) a statement of compliance.

(2) The condition referred to in subsection (1)(b) is that the company has not previously been re-registered as limited or as unlimited.

(3) The company must make such changes in its name and 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) 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 and 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; and
- (c) where the company carries on in or from Gibraltar a business which is licensed or authorised under the Financial Services (Investment and Fiduciary Services) Act 1991, the Financial Services (Banking) Act 1992 or the Financial Services (Markets in Financial Instruments) Act 2006, evidence of the consent of the competent authority under the relevant legislation or requirement to the company re-registering as a public company.

(6) 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 and must include 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.

(7) 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.

**Issue of certificate of incorporation on re-registration.**

58.(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 shall become an unlimited private company; and
- (b) the changes in the company's name and articles shall take effect.

(5) The certificate is conclusive evidence that the requirements of this Act as to re-registration have been complied with.

*Company limited by shares becoming a company limited by guarantee and not having a share capital*

**Re-registration of company limited by shares as company limited by guarantee and not having a share capital.**

59.(1) Subject to the provisions of this section and section 60, a company which is registered as a company limited by shares or as limited by shares and by guarantee may be re-registered as limited by guarantee and not having a share capital if—

- (a) a special resolution that it should be so re-registered is passed by the vote of each member entitled to receive notice of an extraordinary meeting of the company; and
- (b) the requirements of this section are complied with in respect of the resolution and otherwise.

- 
- (2) A public company shall not be re-registered under this section.
- (3) A company is precluded from re-registering under this section if it is limited by shares by virtue of re-registration under section 63.
- (4) The special resolution referred to in subsection (1)(a) shall provide—
- (a) that the total amount of the guarantee of the members from time to time shall not fall below the amount of the share capital of the company at the date of the resolution; and
  - (b) for the making of such alterations—
    - (i) in the memorandum as are necessary to bring it (in substance and in form) into conformity with the requirements of this Act with respect to the memorandum of a company limited by guarantee and not having a share capital, and
    - (ii) in the articles as are requisite in the circumstances.
- (5) The special resolution referred to in subsection (1)(a) is subject to section 206.
- (6) An application for the company to be re-registered as limited by guarantee and having no share capital, framed in the prescribed form and signed by a director or by the secretary of the company, shall be lodged with the Registrar, together with—
- (a) the necessary documents; and
  - (b) the prescribed fee,
- not earlier than the day on which the copy of the special resolution forwarded under section 206 is received by him.
- (7) The documents required to be lodged with the Registrar for the purposes of subsection (6)(a) are—
- (a) a printed copy of the memorandum as altered in pursuance of the special resolution;
  - (b) a printed copy of the articles so altered;
  - (c) where the company carries on in or from within Gibraltar a business which is licensed or authorised under the Financial Services (Investment and Fiduciary Services) Act 1991, the

Financial Services (Banking) Act 1992 or the Financial Services (Markets in Financial Instruments) Act 2006, evidence of the consent of the competent authority under the relevant legislation or requirement to the company re-registering as a public company; and

- (d) evidence to the satisfaction of the Registrar that any mortgage or other charge recorded in respect of that company has been discharged in accordance with the Act.

(8) A cancellation of shares in pursuance of this section shall not be deemed to be a reduction of share capital within the meaning of this Act.

(9) For the purposes of this section “share capital” shall include—

- (a) the nominal value of the allotted shares of every class in the company, whether or not paid up and whether or not paid up in cash or otherwise; and
- (b) any amount in the share premium account (as defined by section 125(1)) of the company.

**Certificate of re-registration under section 59.**

60.(1) The Registrar shall retain the application and other documents lodged with him under section 59 and shall issue to the company a certificate of incorporation appropriate to the status to be assumed by it by virtue of that section.

(2) On the issue of the certificate under subsection (1)—

- (a) the status of the company, by virtue of the issue, is changed from limited by shares or limited by shares and by guarantee, as the case may be, to limited by guarantee with no share capital; and
- (b) the alterations in the memorandum of the company specified in the special resolution and the alterations in, and additions to, the articles of the company so specified take effect.

(3) The certificate issued under subsection (1) is conclusive evidence that the requirements of section 59 in respect of re-registration and of matters precedent and incidental to it have been complied with, and that the company was authorised to be registered in pursuance of that section and was duly so registered.

(4) For the avoidance of doubt it is hereby declared that a company re-registered by virtue of section 59 and in respect of which a certificate has

been issued under subsection (1) is a continuation of that company prior to that re-registration.

*Company limited by shares becoming a company limited by guarantee and having a share capital*

**Re-registration of company limited by shares as company limited by guarantee and having a share capital.**

61.(1) Subject to the provisions of this section and section 62, a company which is registered as a company limited by shares or as limited by shares and by guarantee may be re-registered as limited by guarantee and having a share capital if—

- (a) a special resolution that it should be so re-registered is passed by the vote of each member entitled to receive notice of an extraordinary meeting of the company; and
- (b) the requirements of this section are complied with in respect of the resolution and otherwise.

(2) A public company shall not be re-registered under this section.

(3) A company is precluded from re-registering under this section if it is limited by shares by virtue of re-registration under section 65.

(4) The special resolution referred to in subsection (1)(a) shall provide—

- (a) that the total amount of the guarantee of the members from time to time shall not fall below the amount of the share capital of the company at the date of the resolution; and
- (b) for the making of such alterations—
  - (i) in the memorandum as are necessary to bring it (in substance and in form) into conformity with the requirements of this Act with respect to the memorandum of a company limited by guarantee and having a share capital, and
  - (ii) in the articles as are requisite in the circumstances.

(5) The special resolution referred to in subsection (1)(a) is subject to section 206.

(6) An application for the company to be re-registered as limited by guarantee and having a share capital, framed in the prescribed form and signed by a director or by the secretary of the company, shall be lodged with the Registrar, together with—

- (a) the necessary documents; and
- (b) the prescribed fee,

not earlier than the day on which the copy of the special resolution forwarded under section 206 is received by him.

(7) The documents required to be lodged with the Registrar for the purposes of subsection (6)(a) are—

- (a) a printed copy of the memorandum as altered in pursuance of the special resolution;
- (b) a printed copy of the articles so altered;
- (c) a statement of capital;
- (d) where the company carries on in or from within Gibraltar a business which is licensed or authorised under the Financial Services (Investment and Fiduciary Services) Act 1991, the Financial Services (Banking) Act 1992 or the Financial Services (Markets in Financial Instruments) Act 2006, evidence of the consent of the competent authority under the relevant legislation or requirement to the company re-registering as a public company; and
- (e) evidence to the satisfaction of the Registrar that any mortgage or other charge recorded in respect of that company has been discharged in accordance with the Act.

(8) A cancellation of shares in pursuance of this section shall not be deemed to be a reduction of share capital within the meaning of this Act.

(9) For the purposes of this section “share capital” shall include—

- (a) the nominal value of the allotted shares of every class in the company, whether or not paid up and whether or not paid up in cash or otherwise; and
- (b) any amount in the share premium account (as defined by section 125(1)) of the company.

#### **Certificate of re-registration under section 61.**

62.(1) The Registrar shall retain the application and other documents lodged with him under section 61 and shall issue to the company a



certificate of incorporation appropriate to the status to be assumed by it by virtue of that section.

(2) On the issue of the certificate under subsection (1)–

- (a) the status of the company, by virtue of the issue, is changed from limited by shares or limited by shares and by guarantee, as the case may be, to limited by guarantee with a share capital; and
- (b) the alterations in the memorandum of the company specified in the special resolution and the alterations in, and additions to, the articles of the company so specified take effect.

(3) The certificate issued under subsection (1) is conclusive evidence that the requirements of section 61 in respect of re-registration and of matters precedent and incidental to it have been complied with, and that the company was authorised to be registered in pursuance of that section and was duly so registered.

(4) For the avoidance of doubt it is hereby declared that a company re-registered by virtue of section 61 and in respect of which a certificate has been issued under subsection (1) is a continuation of that company prior to that re-registration.

*Company limited by guarantee and not having a share capital becoming a company limited by shares*

**Re-registration of company limited by guarantee and not having share capital as company limited by shares.**

63.(1) Subject to the provisions of this section and section 64, a company which is registered as limited by guarantee and not having share capital may be re-registered as a company limited by shares if–

- (a) a special resolution that it should be so re-registered is passed; and
- (b) the requirements of this section are complied with in respect of the resolution and otherwise.

(2) A company shall not be re-registered under this section as a public company.

(3) A company is precluded from re-registering under this section if it is limited by guarantee by virtue of re-registration under section 59.

(4) The special resolution referred to in subsection (1)(a) shall state the total amount of the guarantee of the members at the date of the resolution and shall provide—

- (a) that the amount of the share capital of the company from time to time shall not fall below the total amount of the guarantee of the members at the date of the resolution; and
- (b) for the making of such alterations—
  - (i) in the memorandum as are necessary to bring it (in substance and in form) into conformity with the requirements of this Act with respect to the memorandum of a company limited by shares, and
  - (ii) are requisite to bring the articles (in substance and in form) into conformity with the requirements of this Act with respect to the articles of a company to be formed as an unlimited company having a share capital.

(5) The special resolution referred to in subsection (1)(a) is subject to section 206.

(6) An application for the company to be re-registered as limited by shares, framed in the prescribed form and signed by a director or by the secretary of the company, shall be lodged with the Registrar, together with—

- (a) the necessary documents; and
- (b) the prescribed fee,

not earlier than the day on which the copy of the special resolution forwarded under section 206 is received by him.

(7) The documents required to be lodged with the Registrar for the purposes of subsection (6) are—

- (a) a printed copy of the memorandum as altered in pursuance of the special resolution;
- (b) a printed copy of the articles so altered;
- (c) a printed copy of the company's certificate of incorporation as a company limited by guarantee; and
- (d) where the company carries on in or from within Gibraltar a business which is licensed or authorised under the Financial Services (Investment and Fiduciary Services) Act 1991, the

Financial Services (Banking) Act 1992 or the Financial Services (Markets in Financial Instruments) Act 2006, evidence of the consent of the competent authority under the relevant legislation or requirement to the company re-registering as a public company.

**Certificate of re-registration under section 63.**

64.(1) The Registrar shall retain the application and other documents lodged with him under section 63 and shall issue to the company a certificate of incorporation appropriate to the status to be assumed by it by virtue of that section.

(2) On the issue of the certificate under subsection (1)–

- (a) the status of the company, by virtue of the issue, is changed from limited by guarantee to limited by shares; and
- (b) the alterations in the memorandum of the company specified in the special resolution and the alterations in, and additions to, the articles of the company so specified take effect.

(3) The certificate issued under subsection (1) is conclusive evidence that the requirements of section 63 in respect of re-registration and of matters precedent and incidental to it have been complied with, and that the company was authorised to be registered in pursuance of that section and was duly so registered.

(4) For the avoidance of doubt it is hereby declared that a company re-registered by virtue of section 63, and in respect of which a certificate has been issued under subsection (1), is a continuation of that company prior to that re-registration.

*Company limited by guarantee and having a share capital becoming a company limited by shares*

**Re-registration of company limited by guarantee and having share capital as company limited by shares.**

65.(1) Subject to the provisions of this section and section 66, a company which is registered as limited by guarantee and has a share capital may be re-registered as a company limited by shares if–

- (a) a special resolution that it should be so re-registered is passed; and
- (b) the requirements of this section are complied with in respect of the resolution and otherwise.

(2) A company shall not be re-registered under this section as a public company.

(3) A company is precluded from re-registering under this section if it is limited by guarantee by virtue of re-registration under section 61.

(4) The special resolution referred to in subsection (1)(a) shall state the total amount of the guarantee of the members at the date of the resolution and shall provide—

- (a) that the amount of the share capital of the company from time to time shall not fall below the total amount of the guarantee of the members at the date of the resolution; and
- (b) for the making of such alterations—
  - (i) in the memorandum as are necessary to bring it (in substance and in form) into conformity with the requirements of this Act with respect to the memorandum of a company limited by shares, and
  - (ii) are requisite to bring the articles (in substance and in form) into conformity with the requirements of this Act with respect to the articles of a company to be formed as an unlimited company having a share capital.

(5) The special resolution referred to in subsection (1)(a) is subject to section 206.

(6) An application for the company to be re-registered as limited by shares, framed in the prescribed form and signed by a director or by the secretary of the company, shall be lodged with the Registrar, together with—

- (a) the necessary documents; and
- (b) the prescribed fee,

not earlier than the day on which the copy of the special resolution forwarded under section 206 is received by him.

(7) The documents required to be lodged with the Registrar for the purposes of subsection (6) are—

- (a) a printed copy of the memorandum as altered in pursuance of the special resolution;
- (b) a printed copy of the articles so altered;

- (c) a printed copy of the company's certificate of incorporation as a company limited by guarantee; and
- (d) where the company carries on in or from within Gibraltar a business which is licensed or authorised under the Financial Services (Investment and Fiduciary Services) Act 1991, the Financial Services (Banking) Act 1992 or the Financial Services (Markets in Financial Instruments) Act 2006, evidence of the consent of the competent authority under the relevant legislation or requirement to the company re-registering as a public company.

**Certificate of re-registration under section 65.**

66.(1) The Registrar shall retain the application and other documents lodged with him under section 65 and shall issue to the company a certificate of incorporation appropriate to the status to be assumed by it by virtue of that section.

(2) On the issue of the certificate under subsection (1)–

- (a) the status of the company, by virtue of the issue, is changed from limited by guarantee to limited by shares; and
- (b) the alterations in the memorandum of the company specified in the special resolution and the alterations in, and additions to, the articles of the company so specified take effect.

(3) The certificate issued under subsection (1) is conclusive evidence that the requirements of section 65 in respect of re-registration and of matters precedent and incidental to it have been complied with, and that the company was authorised to be registered in pursuance of that section and was duly so registered.

(4) For the avoidance of doubt it is hereby declared that a company re-registered by virtue of section 65, and in respect of which a certificate has been issued under subsection (1), is a continuation of that company prior to that re-registration.

*De-registration and registration as limited partnership*

**De-registration of company limited by shares or guarantee on registration as a limited partnership.**

67. The provisions of Schedule 1 shall have effect for the purpose of enabling a company limited by shares or by guarantee to be de-registered on being registered as a limited partnership under the Limited Partnerships Act.

**De-registration of limited partnership on registration as a company limited by shares or guarantee.**

68. The provisions of Schedule 1 shall have effect for the purpose of enabling a limited partnership which is registered as a limited partnership under the Limited Partnership Act to be de-registered on being registered as a company limited by shares or by guarantee.

**CHAPTER 4****CONTRACTS ETC.***Contracts***Pre-incorporation actions.**

69.(1) Where—

- (a) prior to the date of incorporation mentioned in the certificate of incorporation of a company, any action has been carried out in the name of that company and purportedly by or on behalf of that company; and
- (b) that company is not precluded from doing so by its memorandum or articles,

the company may after that date by resolution ratify that action, and that action shall then be deemed to be the action of the company; and—

- (c) the company shall be entitled to the benefit of that action; and
- (d) the company shall be liable in respect of that action; and
- (e) any failure to take any steps necessary to give effect to that action shall be a failure by the company.

(2) Except—

- (a) where a company has ratified that action, as provided for in subsection (1); or
- (b) there is an agreement to the contrary,

an action carried out in the name of a company and purportedly by or on behalf of that company prior to the date of incorporation mentioned in the certificate of incorporation of that company shall be the action of the person or persons by whom it was carried out and that person or those persons shall

be jointly and severally liable in respect of that action and shall be entitled to the benefit of that action.

**Power of directors to bind the company.**

70.(1) In favour of a person dealing with a company in good faith, the power of the board of directors to bind the company, or authorise others to do so, shall be deemed to be free of any limitations 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 shall not 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; and
- (c) a person shall be presumed to have acted in good faith unless the contrary is proved.

(3) The reference above to limitations on the directors' powers under the company's constitution includes limitations deriving—

- (a) from the resolution of the company in general meeting or a meeting of any class of shareholders; or
- (b) from any agreement between the members of the company or any class of shareholders.

(4) Subsection (1) does not affect any right of a member of the company to bring proceedings to restrain the doing of an act which is beyond the powers of the directors: except that no such proceedings shall lie in respect of any act to be done in fulfilment of a legal obligation arising from a previous act of the company.

(5) Subsection (1) does not affect any liability incurred by the directors, or any other person, by reason of the directors' exceeding of their powers.

**No duty to enquire as to capacity of company or authority of directors.**

71. A party to a transaction with a company is not bound to enquire as to whether the transaction is permitted by the company's constitution or as to any limitation on the powers of the board of directors to bind the company or to authorise others to do so.

*Execution of documents by companies*

**Company contracts.**

72.(1) 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.

**Execution of documents.**

73.(1) A document may be 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;
- (b) the persons authorised by the company to sign as resolved by the company from time to time, on behalf of, and to the extent so resolved; and
- (c) 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); and for this purpose, 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.

## **Common seal.**

74.(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 shall be 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 shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

## **Execution of deeds.**

75.(1) A document is validly executed by a company as a deed 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.

**Execution of deeds or other documents by attorney.**

76.(1) 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 Gibraltar or elsewhere, has effect as if executed by the company.

**PART IV**

**PROSPECTUSES, SHARE CAPITAL AND DEBENTURES**

*Prospectus*

**Dating and registration of prospectus.**

77.(1) A prospectus issued by or on behalf of a company or in relation to an intended company shall be dated, and that date shall, unless the contrary is proved, be taken as the date of publication of the prospectus.

(2) A copy of every such prospectus, signed by every person who is named therein as a director or proposed director of the company, or by his agent authorised in writing, shall be delivered to the Registrar for registration on or before the date of its publication, and no such prospectus shall be issued until a copy thereof has been so delivered for registration.

(3) The Registrar shall not register any prospectus unless it is dated, and the copy thereof signed, in manner required by this section.

(4) Every prospectus shall state on the face of it that a copy has been delivered for registration as required by this section.

(5) If a prospectus is issued without a copy thereof being so delivered, the company and every person who is knowingly a party to the issue of the prospectus, are guilty of offences and are each liable on summary conviction to a fine of £5 for every day from the date of the issue of the prospectus until a copy thereof is so delivered.

(6) The provisions of this section and sections 78 to 82 are in addition to any requirements arising under the Prospectus Act 2005 and in this section and sections 78 to 82, “prospectus” has the same meaning as in that Act.

**Exemptions for collective investment schemes.**

78. Sections 77 and 79 to 85 do not apply to a company that is licensed, authorised or otherwise regulated under the Financial Services (Collective Investment Schemes) Act 2011.

**Specific requirements as to particulars in prospectus.**

79.(1) Every prospectus issued by or on behalf of a company, or by or on behalf of any person who is or has been engaged or interested in the formation of the company, must state the matters specified in Part I of Schedule 2 and set out the reports specified in Part II of that Schedule, and Parts I and II shall have effect subject to the provisions contained in Part III of that Schedule.

(2) A condition requiring or binding an applicant for shares in or debentures of a company to waive compliance with any requirement of this section, or purporting to affect him with notice of any contract, or matter not specifically referred to in the prospectus, shall be void.

(3) It shall not be lawful to issue any form of application for shares in or debentures of a company unless the form is issued with a prospectus which complies with the requirements of this section; except that this subsection shall not apply if it is shown that the form of application was issued either—

- (a) in connection with a bona fide invitation to a person to enter into an underwriting agreement with respect to the shares or debentures; or
- (b) in relation to shares or debentures which were not offered to the public.

(4) A person who acts in contravention of the provisions of subsection (3), shall be guilty of an offence and liable on summary conviction to a fine at level 5 on the standard scale.

(5) In the event of non-compliance with or contravention of any of the requirements of this section, a director or other person responsible for the prospectus shall not incur any liability by reason of the non-compliance or contravention, if—

- (a) as regards any matter not disclosed, he proves that he was not aware of it; or
- (b) he proves that the non-compliance or contravention arose from an honest mistake of fact on his part; or
- (c) the non-compliance or contravention was in respect of matters which in the opinion of the court dealing with the case were immaterial or was otherwise such as ought, in the opinion of

that court, having regard to all the circumstances of the case, reasonably to be excused:

except that, in the event of failure to include in a prospectus a statement with respect to the matters specified in paragraph 15 of Part I of Schedule 2, no director or other person shall incur any liability in respect of the failure unless it be proved that he had knowledge of the matters not disclosed.

(6) This section shall not apply to the issue to existing members or debenture holders of a company of a prospectus or form of application relating to shares in or debentures of the company, whether an applicant for shares or debentures will or will not have the right to renounce in favour of other persons, but subject to that, this section shall apply to a prospectus or a form of application whether issued on or with reference to the formation of a company or subsequently.

(7) Nothing in this section shall limit or diminish any liability which any person may incur under the general law or this Act apart from this section.

**Restriction on alteration of terms mentioned in prospectus or statement.**

80.(1) A company limited by shares or a company limited by guarantee and having a share capital shall not prior to the statutory meeting vary the terms of a contract referred to in the prospectus or statement in lieu of prospectus, except subject to the approval of the statutory meeting.

(2) This section shall not apply to a private company.

**Liability for statements in prospectus.**

81.(1) Where a prospectus invites persons to subscribe for shares in or debentures of a company—

- (a) every person who is a director of the company at the time of the issue of the prospectus; and
- (b) every person who has authorised himself to be named and is named in the prospectus as a director or as having agreed to become a director either immediately or after an interval of time; and
- (c) every person being a promoter of the company; and
- (d) every person who has authorised the issue of the prospectus,

shall be liable to pay compensation to all persons who subscribe for any shares or debentures on the faith of the prospectus for the loss or damage

they may have sustained by reason of any untrue statement therein, or in any report or memorandum appearing on the face thereof, or by reference incorporated therein or issued therewith, unless it is proved—

- (i) that having consented to become a director of the company he withdrew his consent before the issue of the prospectus, and that it was issued without his authority or consent, or
- (ii) that the prospectus was issued without his knowledge or consent, and that on becoming aware of its issue he forthwith gave reasonable public notice that it was issued without his knowledge or consent, or
- (iii) that after the issue of the prospectus and before allotment thereunder, he, on becoming aware of any untrue statement therein, withdrew his consent thereto, and gave reasonable public notice of the withdrawal, and of the reason therefor, or
- (iv) that one of the propositions in subsection (2) applies.

(2) The propositions referred to in subsection (1)(iv) are that it is proved either—

- (a) as regards every untrue statement not purporting to be made on the authority of an expert or of a public official document or statement, the person concerned had reasonable grounds to believe, and did up to the time of the allotment of the shares or debentures, as the case may be, believe, that the statement was true; or
- (b) as regards every untrue statement purporting to be a statement by an expert or contained in what purports to be a copy of or extract from a report or valuation of an expert, it fairly represented the statement, or was a correct and fair copy of or extract from the report or valuation; or
- (c) as regards every untrue statement purporting to be a statement made by an official person or contained in what purports to be a copy of or extract from a public official document, it was a correct and fair representation of the statement or copy of or extract from the document—

but, nevertheless, a person shall be liable to pay compensation as mentioned in subsection (1) if it is proved that he had no reasonable ground to believe that the person making any such statement, report or valuation as is mentioned in this subsection was competent to make it.

(3) Where the prospectus contains the name of a person as a director of the company, or as having agreed to become a director thereof, and he has not consented to become a director, or has withdrawn his consent before the issue of the prospectus, and has not authorised or consented to its issue, the directors of the company, except any without whose knowledge or consent the prospectus was issued, and any other person who authorised the issue thereof, shall be liable to indemnify the person named against all damages, costs and expenses to which he may be made liable by reason of his name having been inserted in the prospectus, or in defending himself against any action or legal proceedings brought against him in respect thereof.

(4) Every person who, by reason of his being a director or named as a director or as having agreed to become a director, or of his having authorised the issue of the prospectus, becomes liable to make any payment under this section may recover contribution, as in cases of contract, from any other person who, if sued separately, would have been liable to make the same payment, unless the person who has become so liable was, and that other person was not, guilty of fraudulent misrepresentation.

(5) For the purposes of this section,—

“promoter” means a promoter who was a party to the preparation of the prospectus, or of the portion thereof containing the untrue statement, but does not include any person by reason of his acting in a professional capacity for persons engaged in procuring the formation of the company; and

“expert” includes engineer, valuer, accountant and any other person whose profession gives authority to a statement made by him.

**Document containing offer of shares or debentures for sale to be deemed prospectus.**

82.(1) Where a company allots or agrees to allot any shares in or debentures of the company with a view to all or any of those shares or debentures being offered for sale to the public, any document by which the offer for sale to the public is made shall for all purposes be deemed to be a prospectus issued by the company, and all enactments and rules of law as to the contents of prospectuses and to liability in respect of statements in and omissions from prospectuses, or otherwise relating to prospectuses, shall apply and have effect accordingly, as if—

- (a) the shares or debentures had been offered to the public for subscription; and
- (b) persons accepting the offer in respect of any shares or debentures were subscribers for those shares or debentures,

but without prejudice to the liability (if any) of the persons by whom the offer is made, in respect of misstatements contained in the document or otherwise in respect thereof.

(2) For the purposes of this Act, it shall, unless the contrary is proved, be evidence that an allotment of, or an agreement to allot, shares or debentures was made with a view to the shares or debentures being offered for sale to the public if it is shown—

- (a) that an offer of the shares or debentures or of any of them for sale to the public was made within 6 months after the allotment or agreement to allot; or
- (b) that at the date when the offer was made the whole consideration to be received by the company in respect of the shares or debentures had not been so received.

(3) Section 77 as applied by this section shall have effect as though the persons making the offer were persons named in a prospectus as directors of a company, and section 79 as applied by this section shall have effect as if it required a prospectus to state in addition to the matters required by that section to be stated in a prospectus—

- (a) the net amount of the consideration received or to be received by the company in respect of the shares or debentures to which the offer relates; and
- (b) the place and time at which the contract under which the shares or debentures have been or are to be allotted may be inspected.

(4) Where a person making an offer to which this section relates is a company or a firm, it shall be sufficient if the document referred to above is signed on behalf of the company or firm by two directors of the company or not less than half of the partners, as the case may be, and any such director or partner may sign by his agent authorised in writing.

#### *Allotment*

#### **Prohibition of allotment unless minimum subscription received.**

83.(1) No allotment shall be made of any share capital of a company offered to the public for subscription unless the amount stated in the prospectus as the minimum amount which, in the opinion of the directors, must be raised by the issue of share capital in order to provide for the matters specified in paragraph 5 of Part I of Schedule 2 has been subscribed, and the sum payable on application for the amount so stated has been paid to and received by the company.

(2) For the purposes of subsection (1), a sum shall be deemed to have been paid to and received by the company if a cheque for that sum has been received in good faith by the company and the directors of the company have no reason for suspecting that the cheque will not be paid.

(3) The amount so stated in the prospectus shall be reckoned exclusively of any amount payable otherwise than in cash and is in this Act referred to as “the minimum subscription.”

(4) The amount payable on application on each share shall not be less than 5 per cent of the nominal amount of the share.

(5) If the above conditions have not been complied with at the expiry of 40 days after the first issue of the prospectus, all money received from applicants for shares shall be forthwith repaid to them without interest, and, if any such money is not so repaid within 48 days after the issue of the prospectus, the directors of the company shall be jointly and severally liable to repay that money with interest at the rate of 5 per cent per annum from the expiration of the 48<sup>th</sup> day: except that a director shall not be liable if he proves that the default in the repayment of the money was not due to any misconduct or negligence on his part.

(6) Any condition requiring or binding any applicant for shares to waive compliance with any requirement of this section shall be void.

(7) This section, except subsection (4), shall not apply to any allotment of shares subsequent to the first allotment of shares offered to the public for subscription.

**Prohibition of allotment in certain cases unless statement in lieu of prospectus delivered to Registrar.**

84.(1) A company having a share capital which does not issue a prospectus on or with reference to its formation, or which has issued such a prospectus but has not proceeded to allot any of the shares offered to the public for subscription, shall not allot any of its shares or debentures unless at least 3 days before the first allotment of either shares or debentures there has been delivered to the Registrar for registration a statement in lieu of prospectus, signed by every person who is named therein as a director or a proposed director of the company or by his agent authorised in writing, in the form and containing the particulars set out in Schedule 3.

(2) This section shall not apply to a private company.

(3) If a company acts in contravention of this section, the company and every director of the company who knowingly authorises or permits the



contravention shall be guilty of offences and are each liable on summary conviction to a fine at level 3 on the standard scale.

**Effect of irregular allotment.**

85.(1) An allotment made by a company to an applicant in contravention of the provisions of sections 83 and 84, shall be voidable at the instance of the applicant within 1 month after the holding of the statutory meeting of the company and not later, or, in any case where the company is not required to hold a statutory meeting, or where the allotment is made after the holding of the statutory meeting, within 1 month after the date of the allotment, and not later, and shall be so voidable notwithstanding that the company is in course of being wound up.

(2) A director of a company who knowingly contravenes, or permits or authorises the contravention of, any of the provisions of those sections with respect to allotment, is liable to compensate the company and the allottee respectively for any loss, damages or costs which the company or the allottee may have sustained or incurred thereby: but no proceedings to recover any such loss, damages or costs shall be commenced after the expiration of 2 years from the date of the allotment.

**Return as to allotments.**

86.(1) Except where the company has given a notification to the Registrar pursuant to section 18 that it is a Collective Investment Scheme, whenever a company limited by shares or a company limited by guarantee and having a share capital makes any allotment of its shares, the company shall within 30 days thereafter deliver to the Registrar for registration—

- (a) a return of the allotments, stating the number and nominal amount of the shares comprised in the allotment, the names, addresses and descriptions of the allottees, and the amount (if any) paid or due and payable on each share; and
- (b) in the case of shares allotted as fully or partly paid up otherwise than in cash, a contract in writing constituting the title of the allottee to the allotment together with any contract of sale, or for services or other consideration in respect of which that allotment was made, such contracts being duly stamped, and a return stating the number and nominal amount of shares so allotted, the extent to which they are to be treated as paid up, and the consideration for which they have been allotted.

(2) Where such a contract as above mentioned is not reduced to writing, the company shall within 30 days after the allotment deliver to the Registrar for registration the prescribed particulars of the contract.

(3) Subject to subsection (4), if default is made in complying with this section, every director, manager or other officer of the company, who is knowingly a party to the default, shall be guilty of an offence and liable on summary conviction to a fine at level 2 on the standard scale for every day during which the default continues

(4) In case of default in delivering to the Registrar within 1 month after the allotment any document required to be delivered by this section, the company, or any person liable for the default, may apply to the Registrar for leave to file the return of allotment out of time, and the Registrar, if satisfied that the omission to deliver the document was accidental or due to inadvertence or that it is just and equitable to grant relief, may make an order extending the time for the delivery of the document for such period as the court may think proper.

(5) An application made under subsection (4) shall be accompanied by—

- (a) an affidavit of—
  - (i) the applicant's interest in the matter,
  - (ii) a statement of the facts on which the application is based, and
  - (iii) the relief sought; and
- (b) the fee prescribed in Schedule 24.

(6) The Registrar may, in his discretion, require that a person making an application under subsection (4) give notice of that application (including the facts on which the application is based and the relief sought) to such other person as the Registrar may specify, being a person who appears to the Registrar to be concerned or to have an interest and may specify the time for receipt by him of any written objection from that other person.

(7) On receipt within the time specified by virtue of subsection (6) of any written objection to the granting by the Registrar of an extension of time within which the return of allotment may be filed, the Registrar shall forthwith notify the applicant of the receipt of the objection, the terms of the objection and of the identity of the objector.

#### **Provisions supplementary to section 86.**

87.(1) Where an application for an extension of time for the filing of a return of allotment has been made under section 86 (4), the Registrar may, in his discretion, refuse to consider the application and require that the

person by whom the application was made apply to the Supreme Court for an order for such an extension of time.

(2) On receipt of an application under section 86, the Registrar, if satisfied that there are good grounds for extending the time within which the return of allotment may be made, may direct that the time be extended to the extent specified in his direction.

(3) A direction given under section 86 or this section may be made subject to conditions and the Registrar may include such further directions and such provisions as seem just and equitable in the circumstances.

(4) The court may, on application under subsection (1), refuse the application or order the period of time for the filing of the return of allotment be extended by the period specified by the court.

(5) In any proceedings under this section, the court may determine any question which may be necessary or expedient to decide in connection with the extension of the time within which the return of allotment may be filed.

(6) The Registrar shall be entitled to appear and be heard on any application to the court under this section and shall appear if so directed by the court.

(7) Any order made by the court under this section shall direct that notice of the order shall be served on the Registrar in the prescribed manner and the Registrar shall, on receipt of the notice, act accordingly.

#### **Payment for allotted shares.**

88.(1) Subject to the following provisions, shares allotted by any company and any premium payable on them may be paid up in money or money's worth (including goodwill and know-how).

(2) A public company may not at any time accept, in payment up of its shares or any premium on them, an undertaking given by any person that he or another should do work or perform services for the company or any other person.

(3) Where a public company accepts such an undertaking in payment up of its shares or any premium payable on them, the holder of the shares when they or the premium are treated as paid up, in whole or in part, by the undertaking is liable to pay the company in respect of those shares an amount equal to their nominal value, together with the whole of any premium or, if the case so requires, such proportion of that amount as is treated as paid up by the undertaking, with interest at the appropriate rate.

(4) This section does not prevent a company from allotting bonus shares to its members or from paying up, with sums available for the purpose, any amount for the time being unpaid on any of its shares (whether on their nominal value or any premium).

(5) The reference in subsection (3) to the holder of shares includes any person who has an unconditional right to be included in the company's register of members in respect of those shares or to have an instrument of transfer of them executed in his favour.

**Shares to be allotted as at least one quarter paid up.**

89.(1) A public company may not allot a share except as paid up at least as to one-quarter of its nominal value and the whole of any premium on it.

(2) If a company allots a share in contravention of subsection (1), the share shall be treated as if one-quarter of its nominal value, together with the whole of any premium on it, had been received.

(3) In the circumstances of subsection (2), the allottee is liable to pay the company the minimum amount which should have been received in respect of the share under subsection (1) (less the value of any consideration actually applied in payment up, to any extent, of the share and any premium on it) with interest at the appropriate rate.

(4) Subsections (2) and (3) do not apply to the allotment of bonus shares, unless the allottee knew or ought to have known that the shares were allotted in contravention of subsection (1).

**Restrictions on payment by long-term undertaking.**

90.(1) A public company may not allot shares as fully or partly paid up (as to their nominal value or any premium on them) except in cash if the consideration for the allotment is or includes an undertaking which is to be, or may be, performed more than 5 years after the date of allotment.

(2) If a company allots shares in contravention of subsection (1), the allottee is liable to pay the company an amount equal to the total of their nominal value and the whole of any premium (or, if the case so requires, so much of that total as is treated as paid up by the undertaking), with interest at the appropriate rate.

(3) Where a contract for the allotment of shares does not contravene subsection (1), any variation of the contract which has that effect is void.

(4) Subsection (3) applies also to the variation by a public company of the terms of a contract entered into before the company was re-registered as a public company.

(5) Where a public company allots shares for a consideration which consists of or includes (in accordance with subsection (1)) an undertaking which is to be performed within 5 years of the allotment, but the undertaking is not performed within the period allowed by the contract for the allotment of the shares, the allottee is then liable to pay the company, at the end of the period so allowed, an amount equal to the total of the nominal value of the shares and the whole of any premium (or, if the case so requires, so much of that total as is treated as paid up by the undertaking), with interest at the appropriate rate.

(6) A reference in this section to a contract for the allotment of shares includes an ancillary contract relating to payment in respect of them.

**Non-cash consideration to be valued before allotment.**

91.(1) Subject to section 92 and the following provisions of this section, a public company shall not allot shares as fully or partly paid up (as to their nominal value or any premium on them) except in cash unless—

- (a) the consideration for the allotment has been independently valued under Part I of Schedule 4;
- (b) a report with respect to its value has been made to the company by a person appointed by the company during the 6 months immediately preceding the allotment of the shares; and
- (c) a copy of the report has been sent to the proposed allottee.

(2) Subsection (1) does not apply where an amount standing to the credit of any of the company's reserve accounts, or of its profit and loss account, is applied in paying up (to any extent) any shares allotted to members of the company or any premiums on shares so allotted.

(3) Subsection (1) does not apply to the allotment of shares by a company in connection with an arrangement providing for the allotment of shares in that company on terms that—

- (a) the whole or part of the consideration for the shares allotted is to be provided by the transfer to that company (or cancellation) of all or some of the shares, or all or some of the shares of a particular class, in another company (with or without the issue to that company of shares, or of shares of any particular class, in that other company); and
- (b) the arrangement is open to all shareholders in the other company (or all shareholders of the particular class, if the arrangement is limited to a particular class of shares),

and in determining whether that is the case, shares held by or by a nominee of the company proposing to allot the shares in connection with the arrangement, or held by or by a nominee of a company which is that company's holding company or subsidiary or a company which is a subsidiary of its holding company, shall be disregarded.

(4) Subsection (1) does not apply to the allotment of shares by a company in connection with its proposed merger with another company; that is, where one of the companies proposes to acquire all the assets and liabilities of the other in exchange for the issue of shares or other securities in the first company to shareholders of the other, with or without any cash payment to those shareholders.

(5) If a company allots shares in contravention of subsection (1) and either—

- (a) the allottee has not received the valuer's report required by that subsection to be sent to him; or
- (b) there has been some other contravention of this section or Part I of Schedule 4 which the allottee knew or ought to have known amounted to a contravention,

the allottee shall be liable to pay the company an amount equal to the total of the nominal value of the shares and the whole of any premium (or, if the case so requires, so much of that total as is treated as paid up by the consideration), with interest at the appropriate rate.

(6) A public company shall deliver to the Registrar for registration a copy of the report mentioned in subsection (1) at the same time as a return of the documents is filed under section 86.

(7) If subsection (6) is not complied with, every officer of the company who is in default shall be guilty of an offence and liable on summary conviction to a fine at level 5 on the standard scale, and for continued contravention to a daily default fine of £500.

**Exception to valuation requirement: Merger and Division.**

92. The requirement for valuation of non-cash consideration does not apply to the allotment of shares by a company as part of a scheme to which sections 303 to 351 apply if—

- (a) in the case of a scheme involving a merger, an expert's report is drawn up as required by section 310; or
- (b) in the case of a scheme involving a division, an expert's report is drawn up as required by section 331.

**Transfer to public company of non-cash asset in initial period.**

93.(1) Subject to subsection (7), a public company shall not, unless the conditions of this section have been complied with, enter into an agreement with a person for the transfer by him during the initial period of one or more non-cash assets to the company or another if—

- (a) that person is a subscriber to the company's memorandum; and
- (b) the consideration for the transfer to be given by the company is equal in value at the time of the agreement to one-tenth or more of the nominal value of the company's share capital issued at the time.

(2) In subsection (1) the "initial period" is the period of 2 years beginning with the date on which the company was issued with a certificate by the Registrar under section 181(4) that it was entitled to commence business.

(3) This section applies to a company re-registered as a public company, but in that case—

- (a) subsection (1)(a) shall be read as if it referred to a person who is a member of the company on the date of re-registration; and
- (b) the initial period is 2 years beginning with the date of re-registration.

(4) The conditions referred to in subsection (1) are that—

- (a) the consideration to be received by the company (that is to say, the asset to be transferred to the company or the advantage to the company of its transfer to another person) and any consideration other than cash to be given by the company have been independently valued under Part II of Schedule 4;
- (b) a report with respect to the consideration to be so received and given has been made to the company during the 6 months immediately preceding the date of the agreement;
- (c) the terms of the agreement have been approved by an ordinary resolution of the company; and
- (d) not later than the giving of the notice of the meeting at which the resolution is proposed, copies of the resolution and report have been circulated to the members of the company entitled to receive that notice and, if the person with whom the agreement

in question is proposed to be made is not then a member of the company so entitled, to that person.

(5) A company which has passed a resolution under this section with respect to the transfer of an asset shall, within 30 days of so doing, deliver to the Registrar a copy of that resolution together with the report required by this section.

(6) If subsection (5) is not complied with, the company and every officer of it who is in default is guilty of an offence and liable on summary conviction to a fine at level 3 on the standard scale and for continued contravention to a daily default fine of £100.

(7) Subsection (1) does not apply in the event of an increase in subscribed capital made in order to give effect to a merger, a division or a public offer for the purchase or exchange of shares and to pay the shareholders of the company which is being absorbed or divided or which is the object of the public offer for the purchase or exchange of shares.

(8) In the case of a merger or a division, subsection (7) shall be applied where an independent expert's report on the draft terms of merger or division is drawn up.

**Authority of company required for certain allotments.**

94.(1) The directors of a public company may not use any power of the company to allot relevant securities, unless they are, in accordance with this section, authorised to do so by—

- (a) the company in general meeting; or
- (b) the company's articles.

(2) In this section “relevant securities” means—

- (a) shares in the company other than shares shown in the memorandum or articles to have been taken by the subscribers to it; and
- (b) any right to subscribe for, or to convert any security into, shares in the company (other than shares so allotted),

and a reference to the allotment of relevant securities includes the grant of such a right but (subject to subsection (6) below) not the allotment of shares under such a right.

(3) Authority under this section may be given for a general or particular exercise of the power and may be subject to conditions.



(4) The authority shall state the maximum amount of relevant securities that may be allotted under it and the date on which it will expire, which shall be not more than 5 years from whichever is relevant of the following dates—

- (a) in the case of an authority contained in the company's articles at the time of its original incorporation, the date of that incorporation; and
- (b) in any other case, the date on which the resolution is passed by virtue of which the authority is given,

but such an authority (including an authority contained in the articles) may be previously revoked or varied by the company in general meeting.

(5) The authority may be renewed or further renewed by the company in general meeting for a period not exceeding 5 years, but the resolution shall state (or restate) the amount of relevant securities which may be allotted under the authority or, as the case may be, the amount remaining to be allotted under it, and shall specify the date on which the renewed authority will expire.

(6) In relation to authority under this section for the grant of such rights as are mentioned in subsection (2)(b), the reference in subsection (4) (and the corresponding reference in subsection (5)), to the maximum amount of relevant securities that may be allotted under the authority is to the maximum amount of shares which may be allotted under the rights.

(7) The directors may allot relevant securities, even if authority under this section has expired, if they are allotted under an offer or agreement made by the company before the authority expired and the authority allowed it to make an offer or agreement which would or might require relevant securities to be allotted after the authority expired.

(8) A resolution of a company to give, vary, revoke or renew an authority shall be forwarded to the Registrar within 30 days of the passing of that resolution.

(9) A director who knowingly contravenes, or permits or authorises a contravention of this section is guilty of an offence and liable on summary conviction to a fine at level 5 on the standard scale.

(10) Nothing in this section affects the validity of any allotment.

**Allotment where issue not fully subscribed.**

95.(1) No allotment may be made of any share capital of a public company

offered for subscription unless—

- (a) that capital is subscribed for in full; or
- (b) the offer states that, even if the capital is not subscribed for in full, the amount of that capital subscribed for may be allotted in any event or in the event of the conditions specified in the offer being satisfied,

and, where conditions are so specified, no allotment of the capital may be made by virtue of paragraph (b) unless those conditions are satisfied.

(2) If shares may not be allotted under subsection (1) and 40 days have passed after the first issue of the prospectus, all money received from applicants for shares shall be immediately repaid to them without interest.

(3) If any of the money is not repaid within 48 days after the issue of the prospectus, the directors of the company are jointly and severally liable to repay it with interest at the rate of 5 per cent per annum from the expiration of the 48th day, except that a director is not so liable if he proves that the default in repayment was not due to any misconduct or negligence on his part.

(4) This section applies in the case of shares offered as wholly or partly payable otherwise than in cash as it applies in the case of shares offered for subscription (the word “subscribed” in subsection (1) being construed accordingly).

(5) In subsections (2) and (3), as they apply to the case of shares offered as wholly or partly payable otherwise than in cash, references to the repayment of money received from applicants for shares include—

- (a) the return of any other consideration so received (including, if the case so requires, the release of the applicant from any undertaking); or
- (b) if it is not reasonably practicable to return the consideration, the payment of money equal to its value at the time it was so received.

(6) Any condition requiring or binding an applicant for shares to waive compliance with any requirement of this section is void.

**Application to certain private companies of conditions as to share capital.**

96. The provisions of sections 88 to 93, 181 and Schedule 4 apply where a private company ceases to be a private company in accordance with section 20 in the same way as those provisions apply to a public company.

*Commissions and Discounts*

**Power to pay certain commissions and prohibition of payment of all other commissions and discounts.**

97.(1) It shall be lawful for a company to pay a commission to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any shares in the company, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any shares in the company if—

- (a) the payment of the commission is authorised by the articles;
- (b) the commission paid or agreed to be paid does not exceed 10 per cent of the price at which the shares are issued or the amount or rate authorised by the articles, whichever is the less;
- (c) the amount or rate per cent of the commission paid or agreed to be paid is—
  - (i) in the case of shares offered to the public for subscription, disclosed in the prospectus, or
  - (ii) in the case of shares not offered to the public for subscription, disclosed in the statement in lieu of prospectus, or in a statement in the prescribed form signed in like manner as a statement in lieu of prospectus and delivered before the payment of the commission to the Registrar for registration, and, where a circular or notice, not being a prospectus, inviting subscription for the shares is issued, also disclosed in that circular or notice; and
- (d) the number of shares which persons have agreed for a commission to subscribe absolutely is disclosed in the manner referred to above.

(2) Except as provided in subsection (1), no company shall apply any of its shares or capital money either directly or indirectly in payment of any commission, discount or allowance, to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any shares of the company, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any shares in the company, whether the shares or money be so applied by being added to the

purchase money of any property acquired by the company or to the contract price of any work to be executed for the company, or the money be paid out of the nominal purchase money or contract price, or otherwise.

(3) A vendor to, promoter of, or other person who receives payment in money or shares from, a company shall have and shall be deemed always to have had power to apply any part of the money or shares so received in payment of any commission, the payment of which, if made directly by the company, would have been legal under this section.

(4) If default is made in complying with the provisions of this section relating to the delivery to the Registrar of the statement in the prescribed form, the company and every officer of the company who is in default are guilty of offences and are each liable on summary conviction to a fine at level 1 on the standard scale.

#### **Statement in balance sheet as to commissions and discounts.**

98.(1) Where a company has paid any sums by way of commission in respect of any shares or debentures, or allowed any sums by way of discount in respect of any debentures, the total amount so paid or allowed, or so much thereof as has not been written off, shall be stated in every balance sheet of the company until the whole amount thereof has been written off.

(2) If default is made in complying with this section, the company and every officer of the company who is in default is guilty of an offence and shall be liable on summary conviction to a default fine.

#### **Holding of shares in public company by another company.**

99.(1) The subscription, acquisition or holding of shares in a public company by another company within the meaning of Article 1 of Council Directive 68/151/EEC of 9 March 1968 on the co-ordination of safeguards for the protection of the interests of members of companies in which that public company directly or indirectly holds a majority of the voting rights or on which it can directly or indirectly exercise a dominant influence will be regarded as having been effected by that public company itself.

(2) Subsection (1) applies where the other company is governed by the law of a country outside the European Union and has a legal form comparable to those listed in Article 1 of Directive 68/151/EEC.

(3) Subsections (1) and (2) do not apply where the subscription, acquisition or holding is effected by the other company in its capacity or in the context of its activities as a professional dealer in securities, provided that it is a member of a stock exchange situated or operating within the European Economic Area or is approved or supervised by an authority of a member State competent to supervise professional dealers in securities.

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**Prohibition of provision of financial assistance by company for purchase of its own shares.**

100.(1) Subject as provided in this section, it shall not be lawful for a company or any of its subsidiaries to give, whether directly or indirectly, and whether by means of a loan, guarantee, the provision of security or otherwise, any financial assistance for the purpose of or in connection with a purchase made or to be made by any person of any shares in the company.

(2) Nothing in this section shall be taken to prohibit—

- (a) where the lending of money is part of the ordinary business of a company, the lending of money by the company in the ordinary course of its business;
- (b) the provision by a company, in accordance with any scheme for the time being in force, of money for the purchase by trustees of fully-paid shares in the company to be held by or for the benefit of employees of the company, including any director holding a salaried employment or office in the company;
- (c) the making by a company of loans to persons, other than directors, bona fide in the employment of the company with a view to enabling those persons to purchase fully-paid shares in the company to be held by themselves by way of beneficial ownership.

(3) The aggregate amount of any outstanding loans made under the authority of paragraphs (b) and (c) of subsection (2) shall be shown as a separate item in every balance sheet of the company.

(4) The acceptance of the company's own shares as security, either by the company itself or through a person acting in his own name but on the company's behalf, shall be treated as falling within the scope of the prohibition set out in subsection (1).

(5) Subsection (4) does not apply to transactions concluded by banks and other financial institutions in the normal course of business.

(6) If a company acts in contravention of this section, the company and every officer of the company who is in default shall be guilty of an offence and liable on summary conviction to a fine at level 3 on the standard scale.

**Relaxations of section 100 in the case of private companies.**

101.(1) Section 100 does not prohibit a private company from giving financial assistance in a case where the acquisition of the shares in question was an acquisition of shares in the company or, if it is a subsidiary of another private company, in that other company, if the following provisions of this section and sections 102 to 104 are complied with as respects the giving of that assistance.

(2) The financial assistance may only be given if the company has net assets which are not thereby reduced or to the extent that they are reduced, if the assistance is provided out of distributable profits.

(3) This section does not permit financial assistance to be given by a subsidiary in a case where the acquisition of shares in question is or was an acquisition of shares in its holding company, if it is also a subsidiary of a public company which is itself a subsidiary of that holding company.

(4) Unless the company proposing to give the financial assistance is a wholly-owned subsidiary, the giving of assistance under this section must be approved by special resolution of the company in general meeting.

(5) Where the financial assistance is to be given by the company in a case where the acquisition of shares in question is or was an acquisition of shares in its holding company, that holding company and another company which is both the company's holding company and a subsidiary of that other holding company (except, in any case, a company which is a wholly owned subsidiary) shall also approve by special resolution in general meeting the giving of the financial assistance.

(6) The directors of the company proposing to give the financial assistance and, where the shares acquired or to be acquired are shares in its holding company, the directors of that company and of any other company which is both the company's holding company and a subsidiary of that other holding company shall, before the assistance is given, make a statutory declaration in the prescribed form complying with section 102.

(7) In this section, in relation to a company,—

“net assets” means the amount by which the aggregate of the company's assets exceeds the aggregate of its liabilities (taking the amount of both assets and liabilities to be as stated in the company's accounting records immediately before the financial assistance is given);

“liabilities” includes any amount retained as reasonably necessary for the purpose of providing for any liability or loss which is either likely to be incurred, or certain to be incurred but uncertain as to amount or as to the date on which it will arise.

**Statutory declaration under section 101.**

102.(1) A statutory declaration made by a company's directors under section 101(6) shall contain such particulars of the financial assistance to be given, and of the business of the company of which they are directors, as may be prescribed, and shall identify the person to whom the assistance is to be given.

(2) The declaration shall state that the directors have formed the opinion, as regards the company's initial situation immediately following the date on which the assistance is proposed to be given, that there will be no ground on which it could then be found to be unable to pay its debts; and either—

- (a) it is intended to commence the winding up of the company within 12 months of that date, that the company will be able to pay its debts in full within 12 months of the commencement of the winding up; or
- (b) in any other case, that the company will be able to pay its debts as they fall due during the year immediately following that date.

(3) In forming their opinion for the purposes of subsection (2), the directors shall take into account the same liabilities (including contingent and prospective liabilities) as would be relevant in relation to a winding up by the court under section 10(1) of the Insolvency Act to the question whether the company is unable to pay its debts.

(4) The directors' statutory declaration shall have annexed to it a report addressed to them by the company's auditors stating that—

- (a) they have enquired into the state of affairs of the company; and
- (b) they are not aware of anything to indicate that the opinion expressed by the directors in the declaration as to any of the matters mentioned in subsection (2) is unreasonable in all the circumstances.

(5) The statutory declaration and auditors' report shall be delivered to the Registrar—

- (a) together with any special resolution passed by the company under section 101 delivered to the Registrar in compliance with any provision of this Act; or
- (b) where no declaration is required to be passed, within 30 days after the making of the declaration.

(6) If a company fails to comply with subsection (5), the company and every officer of it who is in default shall be liable to a fine and, for continued contravention, to a daily default fine.

(7) A director of a company who makes a statutory declaration under section 101 without having reasonable grounds for the opinion expressed in it shall be liable to imprisonment or to a fine or both.

**Special resolution under section 101.**

103.(1) A special resolution required by section 101 to be passed by a company approving the giving of financial assistance must be passed on the date on which the directors of that company make the statutory declaration required by that section in connection with the giving of assistance or within the week immediately following that date.

(2) Where such a resolution has been passed, an application may be made to the court for the cancellation of the resolution—

- (a) by the holders of not less in the aggregate than 10 per cent in nominal value of the company's issued share capital or any class of it; or
- (b) if the company is not limited by shares, by not less than 10 per cent of the company's members,

but the application shall not be made by a person who has consented to or voted in favour of the resolution.

(3) On the hearing of the application the court shall make an order either cancelling or confirming the resolution and the court may—

- (a) make that order on such terms and conditions as it thinks fit;
- (b) if it thinks fit adjourn the proceedings for such purpose as it thinks fit;
- (c) give such directions, and make such orders, as it thinks expedient.

(4) A special resolution passed by a company is not effective for the purposes of section 101—

- (a) unless the declaration made in compliance with subsection (6) of that section by the directors of the company, together with the auditors' report annexed to it, is available for inspection by



members of the company at the meeting at which the resolution is passed;

- (b) if it is cancelled by the court on an application under this section.

**Time for giving financial assistance under section 101.**

104.(1) This section has effect with respect to the time before and after which financial assistance may not be given by a company in pursuance of section 101.

(2) Where a special resolution is required by section 101 to be passed approving the giving of assistance, the assistance shall not be given before the expiry of the period of 4 weeks beginning with—

- (a) the date on which the special resolution is passed; or
- (b) where more than one such resolution is passed, the date on which the last of them is passed,

unless, as respects that resolution (or, if more than one, each of them) every member of the company which passed the resolution who is entitled to vote at general meetings of the company voted in favour of the resolution.

(3) If an application for the cancellation of any such resolution is made under section 103, the financial assistance may not be given before the final determination of the application, unless the court otherwise orders.

(4) The assistance shall not be given after the expiry of 8 weeks beginning with—

- (a) the date on which the directors of the company proposing to give the assistance made their declaration under section 101; or
- (b) where that company is a subsidiary and both its directors and the directors of any of its holding companies made such a declaration, the date on which the earliest of the declarations is made,

unless the court, on an application under section 103, otherwise orders.

**Power of company to purchase own shares and interpretation of sections 106 to 115.**

105.(1) Subject to the provisions of this section, and to any requirements imposed on that company by virtue of any licence or authorisation to which it is subject under any other Act, a company limited by shares or limited by

guarantee and having a share capital may, if authorised to do so by its articles, purchase its own shares (including any redeemable shares).

(2) A company may exercise the power contained in subsection (1) only if it does so in accordance with the provisions of sections 106 to 123 as to—

- (a) the conditions to be met by the company and its directors in respect of any such purchase of its own shares; and
- (b) the application to any such purchase of the provisions of this Act.

(3) A failure to comply with the requirements of sections 106 to 123 shall have the effect specified in that respect by those sections including, where so specified, the liability on summary conviction to a fine at level 3 on the standard scale.

(4) In this section and sections 106 to 123—

“distributable profits”, in relation to the making of any payment by a company, means those profits out of which it could lawfully make a distribution equal in value to the payment;

“permissible capital payment” means the payment permitted by section 116;

“prescribed form” means the form prescribed by the Registrar from time to time,

and references to payment out of capital are to be construed in accordance with section 116.

**Acquisition other than for value, in reduction of capital, alteration of objects and on forfeiture.**

106. The restrictions of section 105 shall not apply to a company limited by shares or limited by guarantee and by shares which—

- (a) acquires any of its own fully paid shares other than for valuable consideration;
- (b) acquires its own shares in a reduction of capital duly made;
- (c) purchases its own shares in pursuance of an order made under Part X;

- (d) accepts its own shares in forfeiture of them, or shares surrendered in lieu, in pursuance of the articles, for failure to pay any sum payable in respect of the shares.

**Restrictions on power of company to purchase own shares .**

107.(1) Section 124 applies to the purchase by a company under section 105 of its own shares as it applies to the redemption of redeemable shares, save that the terms and manner of purchase need not be determined by the articles as required by section 123(5).

(2) A company may not under section 105 purchase its shares if as a result of the purchase there would no longer be any member of the company holding shares other than redeemable shares.

**Definitions of “off-market” and “market” purchase.**

108.(1) A purchase by a company of its own shares is “off-market” if the shares either—

- (a) are purchased otherwise than on a recognised investment exchange; or
- (b) are purchased on a recognised investment exchange but are not subject to a marketing arrangement on that investment exchange.

(2) For this purpose, a company’s shares are subject to a marketing arrangement on a recognised investment exchange if the company has been afforded facilities for dealings in those shares to take place on that investment exchange without prior permission for individual transactions from the authority governing that investment exchange and without limit as to the time during which those facilities are to be available.

(3) A purchase by a company of its own shares is a “market purchase” if it is a purchase made on a recognised investment exchange other than a purchase which is an off-market purchase by virtue of subsection (1)(b).

(4) In this section “recognised investment exchange,” means a recognised investment exchange as so listed from time to time in Chapter 11 of Administrative Notice No. 7 issued by the Banking Commissioner under the provisions of the Banking Act, 1992.

**Authority for off-market purchase.**

109.(1) A company may only make an off-market purchase of its own shares in pursuance of a contract approved in advance in accordance with this section or under section 110.

(2) The terms of the proposed contract shall have been authorised by a special resolution of the company before the contract is entered into and subsections (3) to (7) apply with respect to that authority and to resolutions conferring it.

(3) Subject to subsection (4), the authority may be varied, revoked or from time to time renewed by special resolution of the company.

(4) In the case of a public company, the authority conferred by the resolution shall specify a date on which the authority is to expire, and in a resolution conferring or renewing authority the date shall not be later than 18 months after that on which the resolution is passed.

(5) A special resolution to confer, vary, revoke or renew authority is not effective if any member of the company holding shares to which the resolution relates exercised the voting rights carried by any of those shares in voting on the resolution and the resolution would not have been passed if he had not done so, and for this purpose—

- (a) a member who holds shares to which the resolution relates is regarded as exercising the voting rights carried by those shares not only if he votes in respect of them on a poll on the question whether the resolution shall be passed, but also if he votes on the resolution otherwise than on a poll;
- (b) notwithstanding anything in the company's articles, any member of the company may demand a poll on that question; and
- (c) a vote and a demand for a poll by a person as proxy for a member are the same respectively as a vote and a demand by the member.

(6) Such a resolution is not effective for the purposes of this section unless (if the proposed contract is in writing) a copy of the contract or (if not) a written memorandum of its terms is available for inspection by members of the company both—

- (a) at the company's registered office for not less than 15 days ending with the date of the meeting at which the resolution is passed; and
- (b) at the meeting itself,

and a memorandum of contract terms so made available shall include the names of any members holding shares to which the contract relates, and a copy of the contract so made available shall have annexed to it a written memorandum specifying any such names which do not appear in the contract itself.

(7) A company may agree to a variation of an existing contract so approved, but only if the variation is authorised by a special resolution of the company before it is agreed to, and subsections (3) to (6) apply to the authority for a proposed variation as they apply to the authority for a proposed contract, save that a copy of the original contract or (as the case may require) a memorandum of its terms, together with any variations previously made, shall also be available for inspection in accordance with subsection (6).

**Authority for contingent purchase contract.**

110.(1) A contingent purchase contract is a contract entered into by a company and relating to any of its shares—

- (a) which does not amount to a contract to purchase those shares; but
- (b) under which the company may (subject to any conditions) become entitled or obliged to purchase those shares.

(2) A company may only make a purchase of its own shares in pursuance of a contingent purchase contract if the contract is approved in advance by a special resolution of the company before the contract is entered into, and subsections (3) to (7) of section 109 apply to the contract and its terms.

**Authority for market purchase.**

111.(1) A company shall not make a market purchase of its own shares unless the purchase has first been authorised by the company in a general meeting.

(2) That authority—

- (a) may be general for that purpose, or limited to the purchase of shares of any particular class or description; and
- (b) may be unconditional or subject to conditions.

(3) The authority shall—

- (a) specify the maximum number of shares authorised to be acquired;

(b) determine both the maximum and the minimum prices which may be paid for the shares; and

(c) specify a date on which it is to expire.

(4) The authority may be varied, revoked or from time to time renewed by the company in general meeting, but this is subject to subsection (3), and in a resolution to confer or renew authority the date on which the authority is to expire shall not be later than 18 months after that on which the resolution is passed.

(5) A company may under this section make a purchase of its own shares after the expiry of the time limit imposed to comply with subsection (3)(c) if the contract of purchase was concluded before the authority expired and the terms of the authority permitted the company to make a contract of purchase which would or might be executed wholly or partly after its expiry.

(6) A resolution to confer or vary authority under this section may determine either or both the maximum and minimum prices for purchase by—

(a) specifying a particular sum; or

(b) providing a basis or formula for calculating the amount of the price in question without reference to any person's discretion or opinion.

(7) A resolution of a company conferring, varying, revoking or renewing authority under this section is subject to section 206 (resolution to be sent to Registrar within 30 days).

**Assignment or release of company's right to purchase own shares.**

112.(1) The rights of a company under a contract approved under section 109 or 110, or under a contract for a purchase authorised under section 111, are not capable of being assigned.

(2) An agreement by a company to release its rights under a contract approved under section 109 or 110 is void unless the terms of the release agreement are approved in advance by a special resolution of the company before the agreement is entered into, and subsections (3) to (7) of section 109 apply to approval for a proposed release agreement as to authority for a proposed variation of an existing contract.

**Payments apart from purchase price to be made out of distributable profits.**

113.(1) A payment made by a company in consideration of—

- (a) acquiring any right with respect to the purchase of its own shares in pursuance of a contract approved under section 110; or
- (b) the variation of a contract approved under section 109 or 110; or
- (c) the release of any of the company's obligations with respect to the purchase of any of its own shares under a contract approved under section 109 or 110 or under a contract for a purchase authorised under section 111,

shall be made out of the company's distributable profits.

(2) If the requirements of subsection (1) are not satisfied in relation to a contract—

- (a) in a case within paragraph (a) of the subsection, no purchase by the company of its own shares in pursuance of that contract is lawful under section 105;
- (b) in a case within paragraph (b) of the subsection, no such purchase following the variation is lawful under section 105; and
- (c) in a case within paragraph (c) of the subsection, the purported release is void.

**Disclosure by company of purchase of own shares.**

114.(1) Within the period of 30 days beginning with the date on which any shares purchased by a company under section 105 are delivered to it, the company shall deliver to the Registrar for registration a return in the prescribed form stating with respect to shares of each class purchased the number and nominal value of those shares and the date on which they were delivered to the company.

(2) In the case of a public company, the return shall also state—

- (a) the aggregate amount paid by the company for the shares; and
- (b) the maximum and minimum prices paid in respect of shares of each class purchased.

(3) Subsections (1) and (2) do not apply to a company which has given a notification to the Registrar pursuant to section 18 that it is a Collective Investment Scheme.

(4) Particulars of shares delivered to the company on different dates and under different contracts may be included in a single return to the Registrar, and in such a case the amount required to be stated under subsection (2)(a) is the aggregate amount paid by the company for all the shares to which the return relates.

(5) Where a company enters into a contract approved under section 109 or 110, or a contract for a purchase authorised under section 111, the company shall keep at its registered office—

- (a) if the contract is in writing, a copy of it; and
- (b) if the contract is not in writing, a memorandum of its terms,

from the conclusion of the contract until the end of the period of 10 years beginning with the date on which the purchase of all the shares in pursuance of the contract is completed or (as the case may be) the date on which the contract otherwise determines.

(6) Every copy and memorandum so required to be kept shall, during business hours (subject to such reasonable restrictions as the company may in general meeting impose, provided that not less than 2 hours in each day are allowed for inspection) be open to inspection without charge—

- (a) by any member of the company; and
- (b) if it is a public company, by any other person.

(7) If default is made in delivering to the Registrar any return required by this section, every officer of the company who is in default is liable to a fine and, for continued contravention, to a daily default fine.

(8) If default is made in complying with subsection (5), or an inspection required under subsection (6) is refused, the company and every officer of it who is in default shall be liable to a fine and, for continued contravention, to a daily default fine.

(9) In the case of a refusal of an inspection required under subsection (6) of a copy or memorandum, the court may by order compel an immediate inspection of it.

(10) The obligation of a company under subsection (5) to keep a copy of any contract or (as the case may be) a memorandum of its terms applies to any variation of the contract so long as it applies to the contract.



**The capital redemption reserve.**

115.(1) Where under section 105 shares of a company are redeemed or purchased wholly out of the company's profits, the amount by which the company's issued share capital is diminished in accordance with section 124(6) on cancellation of the shares redeemed or purchased shall be transferred to a reserve, called "the capital redemption reserve".

(2) If the shares are redeemed or purchased wholly or partly out of the proceeds of a fresh issue and the aggregate amount of those proceeds is less than the aggregate nominal value of the shares redeemed or purchased, the amount of the difference shall be transferred to the capital redemption reserve.

(3) Subsection (2) shall not apply if the proceeds of the fresh issue are applied by the company in making a redemption or purchase of its own shares in addition to a payment out of capital under section 116.

*Redemption or purchase of own shares out of capital (private companies only)*

**Power of private companies to redeem or purchase own shares out of capital.**

116.(1) Subject to—

- (a) the following provisions of this section;
- (b) sections 117 to 123; and
- (c) any requirements imposed on a company by virtue of any licence or authorisation to which it is subject under any other Act,

a private company limited by shares or limited by guarantee and having a share capital may, if so authorised by its articles, make a payment in respect of the redemption or purchase under section 105 or (as the case may be) section 124, of its own shares otherwise than out of its distributable profits or the proceeds of a fresh issue of shares.

(2) References in this section and sections 117 to 123 to payment out of capital are (subject to subsection (6)) to any payment so made, whether or not it would be regarded apart from this section as a payment out of capital.

(3) The payment which may (if authorised in accordance with the provisions of subsections (4) to (6) and sections 117 to 123) be made by a

company out of capital in respect of the redemption or purchase of its own shares is such an amount, as taken together with—

- (a) any available profits of the company; and
- (b) the proceeds of any fresh issue of shares made for the purposes of the redemption or purchase,

is equal to the price of redemption or purchase, and the payment permissible under this subsection is referred to in subsections (4) to (6) and sections 117 to 123 as the permissible capital payment for the shares.

(4) Subject to subsection (6), if the permissible capital payment for shares redeemed or purchased is less than their nominal amount, the amount of the difference shall be transferred to the company's capital redemption reserve.

(5) Subject to subsection (6), if the permissible capital payment is greater than the nominal amount of the shares redeemed or purchased, the amount of any capital redemption reserve, share premium account or fully paid share capital of the company may be reduced by a sum not exceeding (or by sums not in the aggregate exceeding) the amount by which the permissible capital payment exceeds the nominal amount of shares.

(6) Where the proceeds of a fresh issue are applied by a company in making any redemption or purchase of its own shares in addition to a payment out of capital under this section, the references in subsections (4) and (5) to the permissible capital payment are to be read as referring to the aggregate of that payment and those proceeds.

#### **Availability of profits for purposes of section 116.**

117.(1) The reference in section 116(3)(a) to available profits of the company is to the company's profits which are available for distribution, as determined as to availability and amount in accordance with subsections (2) to (6).

(2) Subject to subsection (3), the availability of profits for distribution and the amount thereof is to be determined by reference to—

- (a) profits, losses, assets and liabilities;
- (b) provisions as to depreciation, diminution in value of assets, retentions to meet liabilities, etc.; and
- (c) share capital and reserves (including undistributable reserves),

as stated in the relevant accounts for determining the permissible capital payment for shares.

(3) The relevant accounts for this purpose are such accounts, prepared as at any date within the period for determining the amount of the permissible capital payment, as are necessary to enable a reasonable judgement to be made as to the amounts of any of the items mentioned in paragraphs (a) to (c) of subsection (2).

(4) For the purposes of determining the amount of the permissible capital payment for shares, the amount of the company's available profits (if any) determined in accordance with subsections (2) and (3) is treated as reduced by the amount of any distributions lawfully made by the company after the date of the relevant accounts and before the end of the period for determining the amount of that payment.

(5) The reference in subsection (4) to distributions lawfully made by the company includes—

- (a) financial assistance lawfully given out of distributable profits as assistance to a person to acquire the shares of the company;
- (b) any payment lawfully made by the company in respect of the purchase of any shares in the company (except a payment lawfully made otherwise than out of distributable profits); and
- (c) a payment of any description specified in section 113(1) lawfully made by the company.

(6) References in this section to the period for determining the amount of the permissible capital payment for shares are to the period of 3 months ending with the date on which the statutory declaration of the directors purporting to specify the amount of that payment is made in accordance with section 118(3).

### **Conditions for payment out of capital.**

118.(1) Subject to any order of the court under section 122, a payment out of capital by a private company for the redemption or purchase of its own shares is not lawful unless the requirements of this section and sections 119 and 120 are satisfied.

(2) The payment out of capital shall have been approved by a special resolution of the company.

(3) The company's directors shall have made a statutory declaration specifying the amount of the permissible capital payment for the shares in question and stating that, having made full inquiry into the affairs and prospects of the company, they have formed the opinion—

- (a) as regards its initial situation immediately following the date on which the payment out of capital is proposed to be made, that there will be no grounds on which the company could then be found unable to pay its debts; and
- (b) as regards its prospects for the year immediately following that date, that, having regard to their intentions with respect to the management of the company's business during that year and to the amount and character of the financial resources which will in their view be available to the company during that year, the company will be able to continue to carry on business as a going concern (and will accordingly be able to pay its debts as they fall due) throughout that year.

(4) In forming their opinion for purposes of subsection (3)(a), the directors shall take into account the same liabilities (including prospective and contingent liabilities) as would be relevant on any application to the court for the appointment of a liquidator under the Insolvency Act to the question whether a company is unable to pay its debts.

(5) The directors' statutory declaration shall be in the prescribed form and contain such information with respect to the nature of the company's business as may be so prescribed, and shall in addition have annexed to it a report addressed to the directors by the company's auditors stating that—

- (a) they have inquired into the company's state of affairs;
- (b) the amount specified in the declaration as the permissible capital payment for the shares in question is in their view properly determined in accordance with sections 116 and 117; and
- (c) they are not aware of anything to indicate that the opinion expressed by the directors in the declaration as to any of the matters mentioned in subsection (3) is unreasonable in all the circumstances.

(6) A director who makes a declaration under this section without having reasonable grounds for the opinion expressed in the declaration is liable on conviction on indictment to imprisonment or a fine, or both.

**Procedure for special resolution under section 118.**

119.(1) The resolution required by section 118 must be passed on, or within the week immediately following, the date on which the directors make the statutory declaration required by that section; and the payment out of capital must be made no earlier than 5 nor more than 7 weeks after the date of the resolution.

(2) The resolution shall be ineffective if any member of the company holding shares to which the resolution relates exercises the voting rights carried by any of those shares in voting on the resolution and the resolution would not have been passed if he had not done so.

(3) For purposes of subsection (2), a member who holds such shares is to be regarded as exercising the voting rights carried by them in voting on the resolution not only if he votes in respect of them on a poll on the question whether the resolution shall be passed, but also if he votes on the resolution otherwise than on a poll, and, notwithstanding anything in a company's articles, any member of the company may demand a poll on that question.

(4) The resolution shall be ineffective unless the statutory declaration and auditors' report required by section 118 are available for inspection by members of the company at the meeting at which the resolution is passed.

(5) For purposes of this section a vote and a demand for a poll by a person as proxy for a member are the same (respectively) as a vote and demand by the member.

**Publicity for proposed payment out of capital.**

120.(1) Within the week immediately following the date of the resolution for payment out of capital the company shall cause to be published in the Gazette a notice—

- (a) stating that the company has approved a payment out of capital for the purpose of acquiring its own shares by redemption or purchase or both (as the case may be);
- (b) specifying the amount of the permissible capital payment for the shares in question and the date of the resolution under section 118;
- (c) stating that the statutory declaration of the directors and the auditors' report required by that section are available for inspection at the company's registered office; and
- (d) stating that any creditor of the company may at any time within the 5 weeks immediately following the date of the resolution for payment out of capital apply to the court under section 121 for an order prohibiting the payment.

(2) Within the week immediately following the date of the resolution the company shall also either cause a notice to the same effect as that required by subsection (1) to be published in a newspaper circulating in Gibraltar or give notice in writing to that effect to each of its creditors.

(3) References in subsections (4) and (5) to the first notice date are to the day on which the company first publishes the notice required by subsection (1) or first publishes or gives the notice required by subsection (2) (whichever is the earlier).

(4) Not later than the first notice date the company shall deliver to the Registrar a copy of the statutory declaration of the directors and of the auditors' report required by section 118.

(5) The statutory declaration and auditors' report—

- (a) shall be kept at the company's registered office throughout the period beginning with the first notice date and ending 5 weeks after the date of the resolution for payment out of capital; and
- (b) shall during business hours on any day during that period be open to the inspection of any member or creditor of the company without charge.

(6) If an inspection required under subsection (5) is refused the company and every officer of it who is in default shall be liable to a fine and, for continued contravention, to a daily default fine.

(7) In the case of refusal of an inspection required under subsection (5) of a declaration or report, the court may by order compel an immediate inspection of that declaration or report.

#### **Objections by company's members or creditors.**

121.(1) Where a private company passes a special resolution under section 118 approving any payment out of capital for the redemption or purchase of any of its shares—

- (a) any member of the company other than one who consented to or voted in favour of the resolution; and
- (b) any creditor of the company, may within 5 weeks of the date on which the resolution was passed apply to the court for cancellation of the resolution.

(2) The application may be made on behalf of the persons entitled to make it by such one or more of their number as they may appoint in writing for the purpose.

(3) If an application is made, the company shall—

- (a) forthwith give notice in the prescribed form of that fact to the Registrar; and
- (b) within 15 days from the making of any order of the court on the hearing of the application, or such longer period as the court may by order direct, deliver an office copy of the order to the Registrar.

(4) A company which fails to comply with subsection (3), and any officer of it who is in default, shall be liable to a fine and for continued contravention, to a daily default fine.

**Powers of court on application under section 121.**

122.(1) On the hearing of an application under section 121 the court may, if it thinks fit, adjourn the proceedings in order that an arrangement may be made to the court's satisfaction for the purchase of the interests of dissentient members or for the protection of dissentient creditors (as the case may be), and the court may give such directions and make such orders as it thinks expedient for facilitating or carrying into effect any such arrangement.

(2) Without prejudice to its powers under subsection (1), the court shall make an order on such terms and conditions as it thinks fit either confirming or cancelling the resolution, and, if the court confirms the resolution, it may in particular by order alter or extend any date or period of time specified in the resolution or in any provision in sections 105 to 123 which applies to the redemption or purchase of shares to which the resolution refers.

(3) The court's order may, if the court thinks fit, 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 may make such alterations in the company's memorandum and articles as may be required in consequence of that provision.

(4) If the court's order requires the company not to make any, or any specified alteration in its memorandum or articles, the company has not then power without leave of the court to make any such alteration in breach of the requirement.

(5) An alteration in the memorandum or articles made by virtue of an order under this section, if not made by resolution of the company, is of the same effect as if duly made by resolution, and this Act applies accordingly to the memorandum or articles as so altered.

**Effect of company's failure to redeem or purchase.**

123.(1) This section has effect where a company has—

(a) issued shares on terms that they are or are liable to be redeemed; or

(b) agreed to purchase any of its own shares.

(2) The company is not liable in damages in respect of any failure on its part to redeem or purchase any of the shares.

(3) Subsection (2) is without prejudice to any right of the holder of the shares other than his right to sue the company for damages in respect of its failure, but the court shall not grant an order for specific performance of the terms of redemption or purchase if the company shows that it is unable to meet the costs of redeeming or purchasing the shares in question out of distributable profits.

(4) If the company is wound up and at the commencement of the winding up any of the shares have not been redeemed or purchased, the terms of redemption or purchase may be enforced against the company, and when shares are redeemed or purchased under this subsection they are treated as cancelled.

(5) Subsection (4) does not apply if–

(a) the terms provided for the redemption or purchase to take place at a date later than that of the commencement of the winding up; or

(b) during the period beginning with the date on which the redemption or purchase was to have taken place and ending with the commencement of the winding up, the company could not at any time have lawfully made a distribution equal in value to the price at which the shares were to have been redeemed or purchased.

(6) There shall be paid in priority to any amount which the company is liable under subsection (4) to pay in respect of any shares–

(a) all other debts and liabilities of the company (other than any due to members in their character as such); and

(b) if other shares carry rights (whether as to capital or as to income) which are preferred to the rights as to capital attaching to the first mentioned shares, any amount due in satisfaction of those preferred rights,



but, subject to that, any such amount shall be paid in priority to any amounts due to members in satisfaction of their rights (whether as to capital or income) as members.

*Issue of redeemable preference shares and shares at discount*

**Power to issue redeemable shares.**

124.(1) Subject to the restrictions and conditions set out in subsection (2) and to the following provisions of this section, a company limited by shares or limited by guarantee and having a share capital, may, if so authorised by its articles, issue redeemable shares which are, or are liable, to be redeemed at the option of the company or the shareholder.

(2) The restrictions and conditions referred to above are—

- (a) no such shares shall be redeemed except out of profits of the company which would otherwise be available for dividend or out of the proceeds of a fresh issue of shares made for the purposes of the redemption;
- (b) no such shares shall be redeemed unless they are fully paid, and the terms of redemption must provide for payment on redemption;
- (c) where any such shares are redeemed otherwise than out of the proceeds of a fresh issue, there shall out of profits which would otherwise have been available for dividend be transferred to a reserve fund, to be called “the capital redemption reserve fund”, a sum equal to the nominal amount of the shares redeemed, and the provisions of this Act relating to the reduction of the share capital of a company, shall, except as provided in this section, apply as if the capital redemption reserve fund were paid-up share capital of the company; and
- (d) the premium, if any, payable on redemption, shall have been provided for out of the profits of the company which would otherwise have been available for dividend, or out of the company’s share premium account before the shares are redeemed.

(3) There shall be included in the annual accounts of a company which has issued redeemable shares a statement specifying what part of the issued capital of the company consists of those shares and the date on or before which those shares are, or are to be liable, to be redeemed.

(4) If a company fails to comply with the provisions of subsection (3), the company and every officer of the company who is in default shall be guilty

of an offence and liable on summary conviction to a fine at level 3 on the standard scale.

(5) Subject to the provisions of this section, the redemption of redeemable shares may be effected on such terms and in such manner as may be provided by the company's articles.

(6) Shares redeemed under this section shall be treated as cancelled on redemption, and the amount of the company's issued share capital shall be diminished by the nominal value of those shares accordingly; but the redemption of shares by a company shall not be taken as reducing the amount of the company's authorised share capital.

(7) Where in pursuance of this section a company has redeemed or is about to redeem any redeemable shares, it shall have power to issue shares up to the nominal amount of the shares redeemed or to be redeemed as if those shares had never been issued.

(8) Where new shares have been issued in pursuance of subsection (7), the capital redemption reserve fund may be applied by the company in paying up unissued shares of the company to be allotted to members of the company as fully paid bonus shares.

**Application of premiums received on issue of shares.**

125.(1) Where a company issues shares at a premium, whether for cash or otherwise, a sum equal to the aggregate amount or value of the premiums on those shares shall be transferred to an account to be called "the share premium account"; and the provisions of this Act relating to the reduction of the share capital of a company shall, except as provided in this section, apply as if the share premium account were paid up share capital of the company.

(2) The share premium account may, notwithstanding anything in subsection (1), be applied by the company in paying up unissued shares of the company to be allotted to members of the company as fully paid bonus shares, in writing off—

- (a) the preliminary expenses of the company; or
- (b) the expenses of, or the commission paid or discount allowed on, any issue of shares or debentures of the company; or
- (c) in providing for the premium payable on redemption of any redeemable shares or of any debentures of the company.

**Power to issue shares at a discount.**

126.(1) Subject to the conditions set out in subsection (2) and to the following provisions of this section, it shall be lawful for a private company to issue at a discount shares in the company of a class already issued.

(2) The conditions referred to above are—

- (a) that the issue of the shares at a discount must be authorised by resolution passed in general meeting of the company, and must be sanctioned by the Registrar of the Court;
- (b) that the resolution must specify the maximum rate of discount at which the shares are to be issued;
- (c) that, at the date of the issue, not less than 1 year must have elapsed since the date on which the company was entitled to commence business; and
- (d) that the shares to be issued at a discount must be issued within 1 month after the date on which the issue is sanctioned by the Registrar of the Court or within such extended time as the Registrar of the Court may allow.

(3) Where a company has passed a resolution authorising the issue of shares at a discount, it may apply to the Registrar of the Court for an order sanctioning the issue and, on any such application the Registrar of the Court, if, having regard to all the circumstances of the case, thinks proper so to do, may make an order sanctioning the issue on such terms and conditions as he thinks fit.

(4) Every prospectus relating to the issue of the shares and every balance sheet issued by the company subsequently to the issue of the shares must contain particulars of the discount allowed on the issue of the shares or of so much of that discount as has not been written off at the date of the issue of the document in question.

(5) If default is made in complying with subsection (4), the company and every officer of the company who is in default shall be guilty of offences and liable on summary conviction to default fines.

*Miscellaneous provisions as to share capital*

**Power of company to arrange for different amounts being paid on shares.**

127. A company, if so authorised by its articles, may do any one or more of the following things—

- (a) make arrangements on the issue of shares for a difference between the shareholders in the amounts and times of payment of calls on their shares;
- (b) accept from any member the whole or a part of the amount remaining unpaid on any shares held by him, although no part of that amount has been called up;
- (c) pay dividend in proportion to the amount paid up on each share where a larger amount is paid up on some shares than on others.

**Fractional shares.**

128.(1) Except in so far as any provision of a company's constitution otherwise provides, a company having a share capital may issue fractional shares.

(2) A fractional share issued in accordance with subsection (1)–

- (a) has the corresponding fractional rights, obligations and liabilities of a whole share of the same class; and
- (b) for the purposes only of section 7(5)(b) shall be treated as a whole share.

**Reserve liability of limited company.**

129. A limited company may by special resolution determine that any portion of its share capital which has not been already called up shall not be capable of being called up, except in the event and for the purposes of the company being wound up, and thereupon that portion of its share capital shall not be capable of being called up except in that event and for those purposes.

**Power of company limited by shares to alter its share capital.**

130.(1) A company limited by shares or a company limited by guarantee and having a share capital, if so authorised by its articles, may alter the conditions of its constitution as follows, that is to say, it may–

- (a) increase its share capital by new shares of such amount as it thinks expedient;
- (b) consolidate and divide all or any of its share capital into shares of larger amount than its existing shares;
- (c) re-classify all or any of its share capital as it thinks expedient;

- (d) convert all or any of its paid-up shares into stock, and reconvert that stock into paid-up shares of any denomination;
- (e) subdivide its shares, or any of them, into shares of smaller amount than is fixed by its constitution, so, however, that in the sub-division the proportion between the amount paid and the amount (if any) unpaid on each reduced share shall be the same as it was in the case of the share from which the reduced share is derived;
- (f) cancel shares which, at the date of the passing of the resolution in that behalf, have not been taken or agreed to be taken by any person, and diminish the amount of its share capital by the amount of the shares so cancelled.

(2) The powers conferred by this section must be exercised by the company in general meeting.

(3) A cancellation of shares in pursuance of this section shall not be deemed to be a reduction of share capital within the meaning of this Act.

**Notice to Registrar of consolidation of share capital and conversion of shares into stock.**

131.(1) If a company having a share capital has—

- (a) consolidated and divided its share capital into shares of larger amount than its existing shares; or
- (b) converted any shares into stock; or
- (c) re-classified all or any of its share capital; or
- (d) re-converted stock into shares; or
- (e) subdivided its shares or any of them; or
- (f) redeemed any redeemable preference shares; or
- (g) cancelled any shares, otherwise than in connection with a reduction of share capital under section 136,

it shall within 30 days after so doing give notice thereof to the Registrar specifying, as the case may be, the shares consolidated, divided, converted, re-classified, subdivided, redeemed or cancelled, or the stock re-converted.

(2) Subsection (1)(f) shall not apply to a company which has given a notice to the Registrar pursuant to section 18 that the company is a Collective Investment Scheme.

(3) If default is made in complying with this section, the company and every officer of the company who is in default are guilty of offences and are liable on summary conviction to default fines.

**Notice of increase of share capital.**

132.(1) Where a company having a share capital, whether its shares have or have not been converted into stock, has increased its share capital beyond the registered capital, it shall within 15 days after the passing of the resolution authorising the increase, give to the Registrar notice of the increase, and the Registrar shall record the increase.

(2) The notice to be given shall include such particulars as may be prescribed with respect to the classes of shares affected and the conditions subject to which the new shares have been or are to be issued, and there shall be forwarded to the Registrar together with the notice a printed copy of the resolution authorising the increase.

(3) If default is made in complying with this section, the company and every officer of the company who is in default shall be guilty of an offence and liable on summary conviction to a default fine.

**Power of unlimited company to provide for reserve share capital on re-registration.**

133. An unlimited company having a share capital may, by its resolution for registration as a limited company in pursuance of this Act, do either or both of the following things, namely–

- (a) increase the nominal amount of its share capital by increasing the nominal amount of each of its shares, but subject to the condition that no part of the increased capital shall be capable of being called up except in the event and for the purposes of the company being wound up;
- (b) provide that a specified portion of its uncalled share capital shall not be capable of being called up except in the event and for the purposes of the company being wound up.

**Power of company to pay interest out of capital in certain cases.**

134.(1) Where any shares of a company are issued for the purpose of raising money to defray the expenses of the construction of any works or buildings or the provision of any plant which cannot be made profitable for

a lengthened period, the company may pay interest on so much of that share capital as is for the time being paid up for the period and subject to the conditions and restrictions mentioned below, and may charge the sum so paid by way of interest to capital as part of the cost of construction of the work or building, or the provision of plant.

(2) Subsection (1) is subject to the following conditions and restrictions, namely, that—

- (a) no such payment as is referred to in that subsection shall be made unless it is authorised by the articles or by special resolution;
- (b) no such payment, whether authorised by the articles or by special resolution, shall be made without the previous consent of the Registrar of the Court;
- (c) before sanctioning any such payment the Registrar of the Court may, at the expense of the company, appoint a person to inquire and report to him as to the circumstances of the case, and may, before making the appointment, require the company to give security for the payment of the costs of the inquiry;
- (d) the payment shall be made only for such period as may be determined by the Registrar of the Court, and that period shall in no case extend beyond the close of the half year next after the half year during which the works or buildings have been actually completed or the plant provided;
- (e) the rate of interest shall in no case exceed 5 per cent per annum or such other rate as may for the time being be prescribed by order made by the Minister and published in the Gazette;
- (f) the payment of the interest shall not operate as a reduction of the amount paid up on the shares in respect of which it is paid;
- (g) the accounts of the company shall show the share capital on which, and the rate at which, interest has been paid out of capital during the period to which the accounts relate.

(3) If default is made in complying with paragraph (g) of subsection (2), the company and every officer of the company who is in default shall be guilty of an offence and liable on summary conviction to a fine at level 2 on the standard scale.

**Authorised minimum.**

135.(1) A public limited company may not commence business unless the nominal value of the company's allotted share capital is not less than the authorised minimum.

(2) In this Act "the authorised minimum" in relation to the paid up share capital of a public company means £20,500 or such other sum as the Minister may specify by order published in the Gazette.

(3) An order under this section which increases the authorised minimum may—

- (a) require any public company having an allotted share capital of which the nominal value is less than the amount specified in the order as the authorised minimum to increase that value to not less than that amount or to apply to be re-registered as a private company;
- (b) make, in connection with any such requirement, provision for—
  - (i) any matters relating to the company's registration, re-registration or change of name, to payment for any share comprised in a company's capital and to offers of shares in or debentures of a company to the public, and
  - (ii) the consequences (whether in criminal law or otherwise) of a failure to comply; and
- (c) contain such additional provisions as are appropriate, make different provisions for different cases and provide for any provision of the order to come into force on different days for different purposes.

(4) Where the court makes an order confirming a reduction of a public company's capital which has the effect of bringing the nominal value of the company's allotted share capital below the authorised minimum, the Registrar shall not register the order under section 139 unless the court otherwise directs or the company is first re-registered as a private company.

(5) The court making any such order in respect of a company may authorise the company to be re-registered as a private company without its having passed a special resolution and, where the court so authorises a company, the court shall specify in the order the alterations in the company's memorandum and articles to be made in connection with that re-registration.

*Reduction of share capital*

**Special resolution for reduction of share capital.**



136.(1) Subject to confirmation by the Registrar of the Court, a company limited by shares or a company limited by guarantee and having a share capital may, if so authorised by its articles, by special resolution reduce its share capital in any way, and in particular, without prejudice to the generality of the foregoing power, may—

- (a) extinguish or reduce the liability on any of its shares in respect of share capital not paid up; or
- (b) either with or without extinguishing or reducing liability on any of its shares, cancel any paid-up share capital which is lost or unrepresented by available assets; or
- (c) either with or without extinguishing or reducing liability on any of its shares, pay off any paid-up share capital which is in excess of the wants of the company,

and may, if and so far as is necessary, alter its memorandum by reducing the amount of its share capital and of its shares accordingly.

(2) A special resolution under this section is in this Act referred to as “a resolution for reducing share capital”.

**Application to court for confirming order, objections by creditors, and settlement of list of objecting creditors.**

137.(1) Where a company has passed a resolution for reducing share capital, it may apply by petition to the Registrar of the Court for an order confirming the reduction.

(2) Where the proposed reduction of share capital involves either diminution of liability in respect of unpaid share capital or the payment to any shareholder of any paid-up share capital, and in any other case if the Registrar of the Court so directs, the following provisions shall have effect, subject nevertheless to subsection (3)—

- (a) every creditor of the company who—
  - (i) at the date fixed by the Registrar of the Court is entitled to any debt or claim which, if that date were the commencement of the winding up of the company, would be admissible in proof against the company, and
  - (ii) can show that there is a real likelihood that the reduction would result in the company being unable to discharge his debt or claim when it fell due,

is entitled to object to the reduction of capital;

- (b) the Registrar of the Court shall settle a list of creditors so entitled to object, and for that purpose shall ascertain, as far as possible without requiring an application from any creditor, the names of those creditors and the nature and amount of their debts or claims, and may publish notices fixing a day or days within which creditors not entered on the list are to claim to be so entered or are to be excluded from the right of objecting to the reduction;
- (c) where a creditor entered on the list whose debt or claim is not discharged or has not been determined does not consent to the reduction, the Registrar of the Court may, if he thinks fit, dispense with the consent of that creditor, on the company securing payment of his debt or claim by appropriating, as the Registrar of the Court may direct, the following amount—
  - (i) if the company admits the full amount of the debt or claim, or, though not admitting it, is willing to provide for it, then the full amount of the debt or claim, and
  - (ii) if the company does not admit and is not willing to provide for the full amount of the debt or claim, or if the amount is contingent or not ascertained, then an amount fixed by the Registrar of the Court after the same inquiry as if the company were being wound up by the Registrar of the Court.

(3) Where a proposed reduction of share capital involves either the diminution of any liability in respect of unpaid share capital or the payment to any shareholder of any paid up share capital, the Registrar of the Court may, if having regard to any special circumstances of the case he thinks proper so to do, direct that subsection (2) shall not apply as regards any class or any classes of creditors.

(4) Where an application for an order under this section is made prior to 17 March 2011, that application shall be considered as though regulation 3(a) of the Companies Act (Amendment) Regulations 2011 had not come into operation.

**Order confirming reduction and powers of court on making such order.**

138.(1) The Registrar of the Court, if satisfied, with respect to every creditor of the company who under section 137 is entitled to object to the reduction, that either his consent to the reduction has been obtained or his debt or claim has been discharged or has determined, or has been secured,

may make an order confirming the reduction on such terms and conditions as he thinks fit.

(2) Where the Registrar of the Court makes any such order, then—

- (a) if for any special reason he thinks proper so to do, the Registrar may make an order directing that the company shall, during such period, commencing on or at any time after the date of the order, as is specified in the order, add to its name as the last words thereof, the words “and reduced”; and
- (b) The Registrar may make an order requiring the company to publish as he directs the reasons for reduction or such other information in regard thereto as he may think expedient with a view to giving proper information to the public, and, if he thinks fit, the causes which led to the reduction.

(3) Where a company is ordered to add to its name the words “and reduced” those words shall, until the expiration of the period specified in the order, be deemed to be part of the name of the company.

**Registration of order and minute of reduction.**

139.(1) The Registrar—

- (a) on production to him of an order of the Registrar of the Court confirming the reduction of the share capital of a company; and
- (b) on the delivery to him of a copy of the order and of a minute approved by the Registrar of the Court showing with respect to the share capital of the company, as altered by the order,—
  - (i) the amount of the share capital,
  - (ii) the number of shares into which it is to be divided,
  - (iii) the amount of each share, and
  - (iv) the amount (if any) at the date of the registration deemed to be paid up on each share,

shall register the order and minute.

(2) On the registration of the order and minute, and not before, the resolution for reducing share capital as confirmed by the order so registered shall take effect.

(3) Notice of the registration shall be published in such manner as the Registrar of the Court may direct.

(4) The Registrar shall certify under his hand the registration of the order and minute, and his certificate shall be conclusive evidence that all the requirements of this Act with respect to reduction of share capital have been complied with, and that the share capital of the company is such as is stated in the minute.

(5) The minute when registered shall be deemed to be substituted for the corresponding part of the memorandum, and shall be valid and alterable as if it had been originally contained therein.

(6) The substitution of any such minute for part of the memorandum of the company shall be deemed to be an alteration of the memorandum and, accordingly, relevant to determining what is an up-to date copy of the memorandum for the purposes of section 35(1)(a).

**Liability of members in respect of reduced shares.**

140.(1) Subject to subsection (2), in the case of a reduction of share capital, a member of the company, past or present, shall not be liable in respect of any share to any call or contribution exceeding in amount the difference (if any) between the amount of the share as fixed by the minute and the amount paid, or the reduced amount (if any) which is to be deemed to have been paid, on the share, as the case may be.

(2) If any creditor, entitled in respect of any debt or claim to object to the reduction of share capital, is, by reason of his ignorance of the proceedings for reduction, or of their nature and effect with respect to his claim, not entered on the list of creditors, and, after the reduction, the company is unable, within the meaning of the provisions of this Act with respect to winding up by the court, to pay the amount of his debt or claim, then, notwithstanding subsection (1),—

- (a) every person who was a member of the company at the date of the registration of the order for reduction and minute, shall be liable to contribute for the payment of that debt or claim an amount not exceeding the amount which he would have been liable to contribute if the company had commenced to be wound up on the day before the said date; and
- (b) if the company is wound up, the court, on the application of any such creditor and proof of his ignorance as mentioned above, may, if it thinks fit, settle accordingly a list of persons so liable to contribute, and make and enforce calls and orders on the contributories settled on the list, as if they were ordinary contributories in a winding up.

(3) Nothing in this section shall affect the rights of the contributories among themselves.

**Penalty on concealment of name of creditor.**

141. A director, manager or other officer of the company who—

- (a) wilfully conceals the name of any creditor entitled to object to the reduction; or
- (b) wilfully misrepresents the nature or amount of the debt or claim of any creditor; or
- (c) aids, abets or is privy to any such concealment or misrepresentation,

shall be guilty of an offence.

**Public companies reducing capital below authorised minimum.**

142.(1) This section applies where the court makes an order confirming a reduction of a public company's capital which has the effect of bringing the nominal value of its allotted share capital below the authorised minimum.

(2) The Registrar shall not register the order under section 139 unless the court otherwise directs, or the company is first re-registered as a private company.

(3) The court may authorise the company to be so re-registered without its having passed a special resolution to this effect, and where that authority is given, the court shall specify in the order the alterations in the company's memorandum and articles to be made in connection with that re-registration.

(4) The company may then be re-registered as a private company, if an application in the prescribed form and signed by a director or secretary of the company is delivered to the Registrar in accordance with sections 45 to 49, together with a printed copy of the memorandum and articles as altered by the court's order and the prescribed fee.

(5) On receipt of such an application, the Registrar shall retain it and the other documents delivered with it and issue the company with a certificate of incorporation appropriate to a company which is not a public company, and—

- (a) the company by virtue of the issue of the certificate shall become a private company, and the alterations set out in the court's order take effect; and

- (b) the certificate is conclusive evidence that the requirements of this section in respect of re-registration and of the matters precedent and incidental thereto have been complied with and that the company is a private company.

*Variation of shareholders' rights*

**Rights of holders of special classes of shares.**

143.(1) If in the case of a company the share capital of which is divided into different classes of shares, provision is made by the articles for authorising the variation of the rights attached to any class of shares in the company subject to—

- (a) the consent of any specified proportion of the holders of the issued shares of that class; or
- (b) the sanction of a resolution passed at a separate meeting of the holders of those shares,

and in pursuance of those provisions the rights attached to any such class of shares are at any time varied, the holders of not less in the aggregate than 15 per cent of the issued shares of that class, being persons who did not consent to or vote in favour of the resolution for the variation, may apply to the court to have the variation cancelled, and, where any such application is made, the variation shall not have effect unless and until it is confirmed by the court.

(2) An application under this section must be made within 7 days after the date on which the consent was given or the resolution was passed, as the case may be, and may be made on behalf of the shareholders entitled to make the application by such one or more of their number as they may appoint in writing for the purpose.

(3) On any such application the court, after hearing the applicant and any other persons who apply to the court to be heard and appear to the court to be interested in the application, may, if it is satisfied, having regard to all the circumstances of the case, that the variation would unfairly prejudice the shareholders of the class represented by the applicant, disallow the variation and shall, if not so satisfied, confirm the variation.

(4) The decision of the court on any such application shall be final.

(5) The company shall within 15 days after the making of an order by the court on any such application forward a copy of the order to the Registrar and, if default is made in complying with this provision, the company and

every officer of the company who is in default shall be guilty of offences and liable on summary conviction to default fines.

(6) In this section, the expression “variation” includes abrogation and the expression “varied” shall be construed accordingly.

**Variation of rights attached to any class of shares.**

144.(1) This section applies in relation to the variation of the rights attached to any class of shares in a company whose share capital is divided into shares of different classes.

(2) Where the rights are attached to a class of shares otherwise than by the company’s memorandum, and the company’s articles do not contain provisions with respect to the variation of the rights, those rights may be varied only if–

- (a) the holders of three-quarters in nominal value of the issued shares of that class agree in writing to the variation; or
- (b) an extraordinary resolution passed at a separate general meeting of the holders of that class approves the variation,

and any requirement (however imposed) in relation to the variation of those rights shall be regarded as complied with to the extent that it is not comprised in subsection (2)(a) or (b).

(3) Where the variation of those rights is connected with the giving, variation, revocation, or renewal of an authority for allotment or with a reduction of capital those rights shall not be valid unless–

- (a) the condition mentioned in subsection (2)(a) or (b) is satisfied; and
- (b) any requirement of the memorandum or articles in relation to the variation of rights of that class shall be regarded as complied with to the extent that it is not comprised in that condition.

*Protection of members against unfair prejudice*

**Petition by company member.**

145.(1) A member of a company may apply to the court by petition for an order under this Part on the ground–

- (a) that the company’s affairs are being or have been conducted in a manner that is unfairly prejudicial to the interests of members

generally or of some part of its members (including at least himself); or

- (b) that an actual or proposed act or omission of the company (including an act or omission on its behalf) is or would be so prejudicial.

(2) The provisions of this Part apply to a person who is not a member of a company but to whom shares in the company have been transferred or transmitted by operation of law as they apply to a member of a company.

**Petition by the Minister.**

146.(1) This section applies to a company in respect of which the Minister has exercised his powers under section 211.

(2) If it appears to the Minister that in the case of such a company—

- (a) the company's affairs are being or have been conducted in a manner that is unfairly prejudicial to the interests of members generally or of some part of its members; or
- (b) an actual or proposed act or omission of the company (including an act or omission on its behalf) is or would be so prejudicial,

he may apply to the court by petition for an order under this Part.

(3) The Minister may do this in addition to, or instead of, presenting a petition for the winding up of the company.

(4) In this section, and so far as applicable for the purposes of this section in the other provisions of this Part, “company” means any body corporate that is liable to be wound up under the Insolvency Act.

**Powers of the court under this Part.**

147.(1) If the court is satisfied that a petition under this Part is well founded, it may make such order as it thinks fit for giving relief in respect of the matters complained of.

(2) Without prejudice to the generality of subsection (1), the court's order may—

- (a) regulate the conduct of the company's affairs in the future;
- (b) require the company—



- (i) to refrain from doing or continuing an act complained of, or
- (ii) to do an act that the petitioner has complained it has omitted to do;
- (c) authorise civil proceedings to be brought in the name and on behalf of the company by such person or persons and on such terms as the court may direct;
- (d) require the company not to make any, or any specified, alterations in its articles without the leave of the court;
- (e) provide for the purchase of the shares of any members of the company by other members or by the company itself and, in the case of a purchase by the company itself, the reduction of the company's capital accordingly.

*Supplementary provisions*

**Application of general rule-making powers.**

148. The power to make rules under section 495 of the Insolvency Act so far as relating to a winding-up petition, applies for the purposes of a petition under this Part.

**Copy of order affecting company's constitution to be delivered to Registrar.**

149.(1) Where an order of the court under this Part—

- (a) alters the company's constitution; or
- (b) gives leave for the company to make any, or any specified, alterations to its constitution,

the company must deliver a copy of the order to the Registrar.

(2) It must do so within 14 days from the making of the order or such longer period as the court may allow.

(3) If a company makes default in complying with this section, an offence is committed by—

- (a) the company; and
- (b) every officer of the company who is in default.

(4) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.

**Supplementary provisions where company's constitution altered.**

150.(1) This section applies where an order under this Part alters a company's constitution.

(2) If the order amends—

- (a) a company's articles; or
- (b) any resolution or agreement to which Chapter 1 of Part III applies,

the copy of the order delivered to the Registrar by the company under section 149 must be accompanied by a copy of the company's articles, or the resolution or agreement in question, as amended.

(3) Every copy of a company's articles issued by the company after the order is made must be accompanied by a copy of the order, unless the effect of the order has been incorporated into the articles by amendment.

(4) If a company makes default in complying with this section an offence is committed by—

- (a) the company; and
- (b) every officer of the company who is in default.

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

*Transfer of shares and debentures and evidence of title*

**Nature of Shares.**

151.(1) The shares or other interest of any member in a company shall be personal estate, transferable in the manner provided by the articles of the company, and shall not be of the nature of real estate.

(2) Each share in a company having a share capital shall be distinguished by its appropriate number.

**Miscellaneous provisions as to transfer of shares.**

152.(1) Subject to subsection (2) notwithstanding anything in the articles of a company, it shall not be lawful for the company to register a transfer of shares in or debentures of the company unless a proper instrument of transfer has been delivered to the company.

(2) Nothing in subsection (1) shall prejudice any power of the company to register as shareholder or debenture holder any person to whom the right to any shares in or debentures of the company has been transmitted by operation of law.

(3) A transfer of the share or other interest of a deceased member of a company made by his personal representative shall, although the personal representative is not himself a member of the company, be as valid as if he had been such a member at the time of the execution of the instrument of transfer.

(4) Subject to subsection (5), on the application of the transferor of any share or interest in a company, the company shall enter in its register of members the name of the transferee in the same manner and subject to the same conditions as if the application for the entry were made by the transferee.

(5) If a company refuses to register a transfer of any shares or debentures, the company shall, within 2 months after the date on which the transfer was lodged with the company, send to the transferee notice of the refusal.

(6) If default is made in complying with subsection (5), the company and every director, manager or other officer of the company who is knowingly a party to the default shall be guilty of an offence and liable on summary conviction to a fine of one half of the amount at level 1 on the standard scale for every day during which the default continues.

#### **Duties of company with respect to issue of certificates.**

153.(1) Every company shall, within 2 months after the allotment of any of its shares, debentures or debenture stock, and within 2 months after the date on which a transfer of any of those shares, debentures or debenture stock is lodged with the company, complete and have ready for delivery the certificates of all shares, the debentures, and the certificates of all debenture stock allotted or transferred, unless the conditions of issue of the shares, debentures or debenture stock otherwise provide.

(2) For the purposes of this section, the expression “transfer” means a transfer duly stamped and otherwise valid, and does not include such a transfer as the company is for any reason entitled to refuse to register and does not register.

(3) If default is made in complying with this section, the company and every director, manager or other officer of the company who is knowingly a party to the default shall be guilty of an offence and liable on summary conviction to a fine of one half of the amount at level 1 on the standard scale for every day during which the default continues.

(4) If any company on which a notice has been served requiring the company to make good any default in complying with the provisions of subsection (1) fails to make good the default within 10 days after the service of the notice, the court may, on the application of the person entitled to have the certificates or the debentures delivered to him, make an order directing the company and any officer of the company to make good the default within such time as may be specified in the order, and any such order may provide that all costs of and incidental to the application shall be borne by the company or by any officer of the company responsible for the default.

#### **Transfer of Shares.**

154.(1) Save for any company which has notified the Registrar that it is a collective investment scheme pursuant to section 18, a private company shall, within a period of 30 days of any change in any member or any particular entered in respect of any member on the register of members, send to the Registrar a return in the prescribed form of any change among its members or in any of the particulars contained in the register of members.

(2) If any default is made in complying with subsection (1), the company and every officer of the company who is in default are guilty of offences and are liable on summary conviction to default fines.

#### **Certificate to be evidence of title.**

155. A certificate, sealed or signed as provided for by sections 72 to 76 specifying any shares held by any member, shall be prima facie evidence of the title of the member to the shares.

#### **Evidence of grant of probate.**

156. The production to a company of any document which is by law sufficient evidence of probate of the will or letters of administration of the estate of a deceased person having been granted to some person shall be accepted by the company, notwithstanding anything in its memorandum or articles, as sufficient evidence of the grant.

#### **Issue and effect of share warrants to bearer.**

157.(1) A company limited by shares, shall not, with respect to any shares, issue sealed or signed as provided for in sections 72 to 76 a warrant stating

that the bearer of the warrant is entitled to the shares therein specified, and shall not provide, by coupons or otherwise, for the payment of the future dividends on the shares included in the warrant.

(2) In this Act this warrant shall be referred to as a “share warrant”.

(3) No rights attached to a share warrant issued prior to 21 March 2013 shall be exercised unless the bearer has been entered in the company’s register of members.

(4) A company which fails to comply with subsection (1) shall be liable on summary conviction to a fine at level 5 on the standard scale.

**Penalty for personation of shareholder.**

158. A person who falsely and deceitfully personates any owner of any share or interest in any company, or of any share warrant or coupon, issued in pursuance of this Act, and thereby obtains or endeavours to obtain any share or interest or share warrant or coupon, or receives or endeavours to receive any money due to the owner, as if the offender were the true and lawful owner, shall be guilty of an offence and be liable to imprisonment for life or for any lesser term of not less than 3 years.

*Redenomination of share capital*

**Redenomination of share capital.**

159.(1) Subject to subsection (6), a limited company having a share capital may by special resolution redenominate its share capital or any class of its share capital; and in this section and sections 160 to 161 “redenominate” means convert shares having a nominal fixed value in one currency to shares having a nominal fixed value in another currency.

(2) The conversion must be made at an appropriate rate of exchange specified in the resolution; and that rate must be either—

- (a) a rate prevailing on a day specified in the resolution; or
- (b) a rate determined by taking the average of rates prevailing on each consecutive day of a period specified in the resolution,

and the day or period specified for the purposes of paragraph (a) or (b) must be within the period of 30 days ending on the day before the resolution is passed.

(3) A resolution under this section may specify conditions which must be met before the redenomination takes effect.

(4) Redenomination in accordance with a resolution under this section takes effect–

- (a) on the day on which the resolution is passed; or
- (b) on such later day as may be determined in accordance with the resolution.

(5) A resolution under this section lapses if the redenomination for which it provides has not taken effect at the end of the period of 30 days beginning on the date on which it is passed.

(6) A company's articles may prohibit or restrict the exercise of the power conferred by this section.

(7) For each class of share the new nominal value of each share shall be calculated as follows:

*Step One*

Take the aggregate of the old nominal values of all the shares of that class.

*Step Two*

Translate that amount into the new currency at the rate of exchange specified in the resolution.

*Step Three*

Divide that amount by the number of shares in the class.

**Effect of redenomination.**

160.(1) The redenomination of shares under section 159 does not affect any rights or obligations of members under the company's constitution, or any restrictions affecting members under the company's constitution and, in particular, it does not affect entitlement to dividends (including entitlement to dividends in a particular currency), voting rights or any liability in respect of amounts unpaid on shares.

(2) For this purpose the company's constitution includes the terms on which any shares of the company are allotted or held.

(3) Subject to subsection (1), references to the old nominal value of the shares in any agreement or statement, or in any deed, instrument or document, shall (unless the context otherwise requires) be construed after

the resolution takes effect as references to the new nominal value of the shares.

**Notice to Registrar of redenomination.**

161.(1) If a limited company having a share capital redenominates any of its share capital, it must within 1 month after doing so give notice to the Registrar, specifying the shares redenominated.

(2) The notice must—

- (a) state the date on which the resolution was passed; and
- (b) be accompanied by a statement of capital.

(3) The statement of capital must state with respect to the company's share capital as redenominated by the resolution—

- (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 shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for a continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.

**Reduction of capital in connection with redenomination.**

162.(1) A limited company that passes a resolution redenominating some or all of its shares for the purpose of adjusting the nominal values of the redenominated shares, to obtain values that in the opinion of the company are more suitable, may reduce its share capital under this section.

(2) A reduction of capital under this section requires a special resolution of the company, which must be passed within 3 months of the resolution effecting the redenomination.

(3) The amount by which a company's share capital is reduced under this section—

- (a) must not exceed 10% of the nominal value of the company's allotted share capital immediately after the reduction; and
- (b) must be transferred to a reserve, called "the redenomination reserve".

(4) A reduction of capital under this section shall not extinguish or reduce any liability in respect of share capital not paid up.

(5) The redenomination reserve may be applied by the company in paying up shares to be allotted to members as fully paid bonus shares.

(6) Nothing in sections 136 to 142 applies to a reduction of capital under this section but, subject to that and to subsection (5), the provisions of this Act relating to the reduction of a company's share capital shall apply as if the redenomination reserve were paid-up share capital of the company.

**Notice to Registrar of reduction of capital in connection with redenomination.**

163.(1) A company that passes a special resolution under section 162 must give to the Registrar, within 30 days after the resolution is passed,—

- (a) notice of the date of the resolution, and the date of the resolution under section 159 in connection with which it was passed;
- (b) a statement of capital; and
- (c) a statement by the directors confirming that the reduction in share capital is in accordance with section 161(3)(a) (reduction of capital not to exceed 10% of nominal value of allotted shares immediately after reduction).



(2) The statement of capital must state with respect to the company's share capital as reduced by the resolution—

- (a) the total number of shares of the company;
- (b) the aggregate nominal value of those shares;
- (c) for each class of shares—
  - (i) the prescribed particulars of the rights attached to the shares,
  - (ii) the total number of shares of that class, and
  - (iii) the aggregate nominal value of shares of that class; and
- (d) the amount paid up and the amount (if any) unpaid on each share (whether on account of the nominal value of the share or by way of premium).

(3) The Registrar must register the notice and the statement of capital on receipt.

(4) The reduction of capital shall not be effective until those documents are registered.

(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 shall be liable on conviction on indictment to a fine, and on summary conviction to a fine not exceeding the statutory maximum.

*Special provisions as to debentures*

**Right of debenture holders and shareholders to inspect register of debenture holders and to have copies of trust deeds.**

164.(1) Every register of holders of debentures of a company shall, except when duly closed, be open to the inspection of the registered holder of any such debentures and of any holder of shares in the company, but subject to such reasonable restrictions as the company may in general meeting impose, so that not less than 2 hours in each day shall be allowed for inspection.

(2) For the purposes of subsection (1), a register shall be deemed to be duly closed if closed in accordance with provisions contained in the memorandum or articles or in the debentures or, in the case of debenture stock, in the stock certificates or in the trust deed or other document securing the debentures or debenture stock, during the period or those periods, not exceeding in the whole 30 days in any year, as may be specified.

(3) Every registered holder of debentures and every holder of shares in a company may require a copy of the register of the holders of debentures of the company or any part thereof on payment of the prescribed sum for every hundred words required to be copied.

(4) A copy of any trust deed for securing any issue of debentures shall be forwarded to every holder of any of those debentures at his request on payment in the case of a printed trust deed of the prescribed sum, or, where the trust deed has not been printed, on payment of the prescribed sum for every hundred words required to be copied.

(5) If inspection is refused, or a copy is refused or not forwarded, the company and every officer of the company who is in default shall be guilty of an offence and liable on summary conviction to a fine of one half of the amount at level 1 on the standard scale, and be further liable to a default fine of one fifth of the amount at level 1 on the standard scale for every day on which the default continues.

(6) If a company fails to comply with subsections (1) to (3), the court may by order compel an immediate inspection of the register or direct that the copies required shall be sent to the person requiring them.

### **Perpetual debentures.**

165. Notwithstanding any enactment or rule of law relating to perpetuity, a condition contained in any debentures or in any deed for securing any debentures, whether issued or executed before or after the commencement of this Act, shall not be invalid by reason only that the debentures are made irredeemable or redeemable only on the happening of a contingency, however remote, or on the expiration of a period, however long.

### **Power to re-issue redeemed debentures in certain cases.**

166.(1) Where a company has redeemed any debentures previously issued, then—

- (a) unless any provision to the contrary, whether express or implied, is contained in the memorandum or articles or in any contract entered into by the company; or

- (b) unless the company has, by passing a resolution to that effect or by some other act, manifested its intention that the debentures shall be cancelled,

the company shall have, and shall be deemed always to have had, power to re-issue the debentures, either by re-issuing the same debentures or by issuing other debentures in their place.

(2) On a re-issue of redeemed debentures the person entitled to the debentures shall have, and shall be deemed always to have had, the same priorities as if the debentures had never been redeemed.

(3) Where a company has power to re-issue debentures which have been redeemed, particulars with respect to the debentures which can be so reissued shall be included in every balance sheet of the company.

(4) Where a company has deposited any of its debentures to secure advances from time to time on current account or otherwise, the debentures shall not be deemed to have been redeemed by reason only of the account of the company having ceased to be in debit whilst the debentures remained so deposited.

(5) Subject to subsection (6)–

- (a) the re-issue of a debenture; or
- (b) the issue of another debenture in its place under the power by this section given to, or deemed to have been possessed by, a company,

shall be treated as the issue of a new debenture for the purposes of stamp duty, but it shall not be so treated for the purposes of any provision limiting the amount or number of debentures to be issued.

(6) Any person lending money on the security of a debenture reissued under this section which appears to be duly stamped may give the debenture in evidence in any proceedings for enforcing his security without payment of the stamp duty or any penalty in respect thereof, unless he had notice or, but for his negligence, might have discovered, that the debenture was not duly stamped, but in any such case the company shall be liable to pay the proper stamp duty and penalty.

#### **Specific performance of contracts to subscribe for debentures.**

167. A contract with a company to take up and pay for any debentures may be enforced by an order for specific performance.

**PART V****REGISTRATION OF CHARGES***Registration of charges with Registrar of companies***Registration of charges created by companies registered in Gibraltar.**

168.(1) Subject to the provisions of this Part, every charge to which this section applies which is created by a company at a time when the company is registered in Gibraltar shall, so far as any security on the company's property or undertaking is concerned, be void against the liquidator and any creditor of the company, unless—

- (a) the prescribed particulars of the charge; and
- (b) the instrument (if any) by which the charge is created or evidenced,

are delivered to or received by the Registrar for registration in the manner required by this Act within the period of 30 days beginning with the date of creation of the charge; and in this Part “charge” includes a “mortgage”.

(2) If a charge becomes void under subsection (1), the money secured by it shall immediately become payable but, otherwise, that subsection shall not affect the validity of any contract or obligation for the repayment of the money secured by the charge.

(3) This section applies to the following charges, whether created inside or outside Gibraltar—

- (a) a charge for the purpose of securing any issue of debentures;
- (b) a charge on uncalled share capital of the company;
- (c) a charge created or evidenced by an instrument which, if executed by an individual, would require registration as a bill of sale;
- (d) a charge on land or any other description of property (wherever situated) or any interest therein;
- (e) a charge on book debts of the company;
- (f) a floating charge on the undertaking or property of the company;
- (g) a charge on calls made but not paid;

- (h) a charge on a ship or any share in a ship;
- (i) a charge on goodwill, on a patent or a licence under a patent, on a trademark or on a copyright or a licence under a copyright.

(4) In the case of a charge created out of Gibraltar comprising solely property situate outside Gibraltar, the delivery to and the receipt by the Registrar of a copy verified in the prescribed manner of the instrument by which the charge is created or evidenced, shall have the same effect for the purposes of this section as the delivery and receipt of the instrument itself, and 30 days after the date on which the instrument or copy could, in due course of post, and if despatched with due diligence, have been received in Gibraltar, shall be substituted for 30 days after the date of the creation of the charge, as the time within which the particulars and instrument or copy are to be delivered to the Registrar.

(5) Where a charge is created in Gibraltar at a time when the company is registered in Gibraltar but comprises property outside Gibraltar, the instrument creating or purporting to create the charge may be sent for registration under this section notwithstanding that further proceedings may be necessary to make the charge valid or effectual according to the law of the country in which the property is situated.

(6) Where a negotiable instrument has been given to secure the payment of any book debts of a company the deposit of the instrument for the purpose of securing an advance to the company shall not for the purposes of this section be treated as a charge on those book debts.

(7) The holding of debentures entitling the holder to a charge on land shall not for the purposes of this section be deemed to be an interest in land.

(8) If a company becomes registered in Gibraltar as a result of being re-domiciled in accordance with Part XIII then, as regards any charge to which this section applies which was created before the date of the company's registration,

- (a) the obligation to register the charge under this Part shall apply as if the charge were created on the day following the date of registration; but
- (b) the actual date of creation of the charge shall be included in the prescribed particulars referred to in subsection (1) (b).

(9) If, before the commencement of this Act, a company became registered in Gibraltar as a result of being re-domiciled in accordance with Part XI of the former Companies Act, and, before that commencement, the

company had created a charge to which this section applies, the company shall take such action as may be prescribed in order to ensure the registration of the charge.

(10) If a company registers in Gibraltar either–

- (a) a place of business in accordance with Part XII; or
- (b) a branch in accordance with Part XIV,

any charge created prior to the date of registration of the company shall not be void for lack of registration in accordance with the requirements of this Part, but particulars of the charge shall be submitted with the application for registration under Part XII or Part XIV, as the case may be.

(11) The requirements of this Part V shall not apply to any charge (including a charge on property situated in Gibraltar) created by a company which is not formed and registered under this Act or the former Companies Act, or, in the case of a company formed outside Gibraltar, registered under this Act or the former Companies Act.

168A. Section 168 shall not apply to a charge which is a registered international interest as defined in regulation 3 of the International Interests in Aircraft Equipment (Cape Town Convention) Regulations 2015.

**Special rules relating to debentures.**

169.(1) Subject to subsection (2), where a series of debentures containing, or giving by reference to any other instrument, any charge to the benefit of which the debenture holders of that series are entitled *pari passu* is created by a company, it shall for the purposes of this Part be sufficient if there are delivered to or received by the Registrar within 30 days after the execution of the deed containing the charge or, if there is no deed, after the execution of any debentures of the series, the following particulars–

- (a) the total amount secured by the whole series;
- (b) the dates of the resolutions authorising the issue of the series and the date of the covering deed (if any) by which the security is created or defined;
- (c) a general description of the property charged; and
- (d) the names of the trustees (if any) for the debenture holders,

together with the deed containing the charge, or, if there is no deed, one of the debentures of the series.

(2) Where more than one issue is made of debentures in the series, there shall be sent to the Registrar for entry in the register, particulars of the date and amount of each issue.

(3) Subject to subsection (4), where any commission, allowance or discount has been paid or made either directly or indirectly by a company to any person in consideration of his—

- (a) subscribing or agreeing to subscribe, whether absolutely or conditionally, for any debentures of the company; or
- (b) procuring or agreeing to procure subscriptions, whether absolute or conditional, for any of those debentures,

the particulars required to be sent for registration under this Part shall include particulars as to the amount or rate per cent of the commission, discount or allowance, so paid or made.

(4) For the purposes of subsection (3), the deposit of any debentures as security for any debt of the company shall not be treated as the issue of the debentures at a discount.

(5) A failure to comply with subsection (2) or subsection (3) shall not affect the validity of the debentures concerned.

**Duty of company to register charges created by company.**

170.(1) It shall be the duty of a company to send to the Registrar for registration the particulars of every charge created by the company and of the issues of debentures of a series, requiring registration under this Part, but registration of any such charge may be effected on the application of any person interested in the charge.

(2) Where registration is effected on the application of some person other than the company, that person shall be entitled to recover from the company the amount of any fees properly paid by him to the Registrar on the registration.

(3) If a company makes default in sending to the Registrar for registration the particulars of any charge created by the company, or of the issues of debentures of a series, requiring registration, then, unless the registration has been effected on the application of some other person, the company and every director, manager or other person, who is knowingly a party to the default shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the standard scale for every day during which the default continues.

**Duty of company to register charges existing on property acquired.**

171.(1) Where a company acquires any property which is subject to a charge of any such kind as would, if it had been created by the company after the acquisition of the property, have been required to be registered under this Part, the company shall cause the prescribed particulars of the charge, together with a copy (certified in the prescribed manner to be a correct copy) of the instrument (if any) by which the charge was created or is evidenced, to be delivered to the Registrar for registration in the manner required by this Part within 30 days after the date on which the acquisition is completed.

(2) If default is made in complying with this section, the company and every officer of the company who is in default shall be guilty of an offence and liable on summary conviction to a default fine at level 2 on the standard scale.

**Register of charges to be kept by Registrar.**

172.(1) The Registrar shall keep, with respect to each company, a register in the prescribed form of all the charges requiring registration under this Part, and on payment of the prescribed fee shall enter in the register with respect to those charges the following particulars—

- (a) in the case of a charge to the benefit of which the holders of a series of debentures are entitled, such particulars as are specified in section 168;
- (b) in the case of any other charge—
  - (i) if the charge is a charge created by the company, the date of its creation, and if the charge was a charge existing on property acquired by the company, the date of the acquisition of the property,
  - (ii) the amount secured by the charge,
  - (iii) short particulars of the property charged, and
  - (iv) the persons entitled to the charge.

(2) The Registrar shall give a certificate under his hand of the registration of any charge registered in pursuance of this Part, stating the amount secured, and the certificate shall be conclusive evidence that the requirements of this Part as to registration have been complied with.

(3) The register kept in pursuance of this section shall be open to inspection by any person on payment of the prescribed fee for each inspection.



(4) The Registrar shall keep a chronological index, in the prescribed form and with the prescribed particulars of the charges entered in the register.

**Endorsement of certificate of registration on debentures.**

173.(1) Subject to subsection (2), the company shall cause a copy of every certificate of registration given under section 172 to be endorsed on every debenture or certificate of debenture stock which is issued by the company, and the payment of which is secured by the charge so registered.

(2) Nothing in subsection (1) shall be construed as requiring a company to cause a certificate of registration of any charge so given to be endorsed on any debenture or certificate of debenture stock issued by the company before the charge was created.

(3) A person who knowingly authorises or permits the delivery of any debenture or certificate of debenture stock which under the provisions of this section is required to have endorsed on it a copy of a certificate of registration without the copy being so endorsed upon it, shall be guilty of an offence and, without prejudice to any other liability, liable on summary conviction to a fine at level 3 on the standard scale.

**Entry of satisfaction.**

174. On evidence being given to the satisfaction of the Registrar that the debt for which any registered charge was given has been paid or satisfied, the Registrar may order that a memorandum of satisfaction be entered on the register, and shall, if required, furnish the company with a copy.

**Rectification of register of charges.**

175. If the court is satisfied—

- (a) that the omission to register a charge within the time required by this Act; or
- (b) that the omission or misstatement of any particular with respect to any charge or in a memorandum of satisfaction,

was accidental, or due to inadvertence or to some other sufficient cause, or is not of a nature to prejudice the position of creditors or shareholders of the company, or that on other grounds it is just and equitable to grant relief, the court may, on the application of the company or any person interested, and on such terms and conditions as seem to the court just and expedient, order that the time for registration shall be extended, or, as the case may be, that the omission or misstatement shall be rectified.

*Provisions as to company's register of charges and as to copies of instruments creating charges*

**Copies of instruments creating charges to be kept by company and available for inspection.**

176.(1) Every company shall cause a copy of every instrument creating any charge requiring registration under this Part to be kept at the registered office of the company except that, in the case of a series of uniform debentures, a copy of one debenture of the series shall be sufficient.

(2) Subject to subsection (3), the copies of instruments creating any charge requiring registration under this Part with the Registrar, and the register of charges kept in pursuance of section 177, shall be open during business hours to the inspection of any creditor or member of the company without fee, and the register of charges shall also be open to the inspection of any other person on payment of the prescribed sum for each inspection.

(3) The requirement for documents and the register to be open to inspection during business hours shall be subject to such reasonable restrictions as the company in general meeting may impose, so that not less than 2 hours in each day shall be allowed for inspection.

(4) If inspection of those copies or register referred to in subsection (2) is refused, any officer of the company refusing inspection, and every director or manager of the company authorising or knowingly permitting the refusal, shall be guilty of an offence and liable on summary conviction to a fine of one half of the amount at level 1 on the standard scale, and a further fine of one fifth of the amount at level 1 on the standard scale for every day during which the refusal continues.

(5) If any refusal occurs, the court may by order compel an immediate inspection of the copies or register.

**Company's register of charges.**

177.(1) Every limited company shall keep at the registered office of the company a register of charges and enter in that register all charges specifically affecting property of the company and all floating charges on the undertaking or any property of the company, giving in each case a short description of the property charged, the amount of the charge, and, except in the case of securities to bearer, the names of the persons entitled.

(2) A director, manager or other officer of the company who knowingly authorises or permits the omission of any entry required to be made in pursuance of this section, shall be guilty of an offence and liable on summary conviction to a fine at level 2 on the standard scale.

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**PART VI****MANAGEMENT AND ADMINISTRATION.***Registered office and name***Registered office of company.**

178.(1) As from the day on which a company begins to carry on business or as from the date of its incorporation, whichever is the earlier, the company shall have a registered office in Gibraltar to which all communications and notices may be addressed.

(2) Notice of any change of registered office, shall be given within 30 days after the date of the change of the registered office to the Registrar who shall record the same.

(3) The inclusion in the annual return of a company of a statement as to the address of its registered office shall not be taken to satisfy the obligation imposed by subsection (2) unless that return shall have been due and made within 28 days of the change.

(4) If default is made in complying with this section, the company and every officer of the company who is in default shall be guilty of an offence and liable on summary conviction to a default fine.

(5) A company or officer of a company may send a notice in the prescribed form to the Registrar stating that the company does not have authority to use the address it has registered in accordance with the preceding provisions of this section.

(6) A company or undertaking which holds a licence under the Financial Services (Investment and Fiduciary Services) Act 1991 which enables that company or undertaking to provide company or corporate administration services by way of the provision of a registered office, may send a notice in the prescribed form to the Registrar stating that the company does not have authority to use the address it has registered in accordance with the preceding provisions of this section.

(7) Notwithstanding the filing of a notice in accordance with subsections (5) and (6) the address of the registered office shall remain as registered in accordance with this section and all communications and notices may be served on the company at that address in accordance with section 475.

**Publication of name by company.**

179.(1) Every company—

- (a) shall paint or affix or otherwise display, and keep painted or affixed or otherwise display, its name at every office or place in which its business is carried on, clearly visible, in letters easily legible; and
- (b) shall have its name mentioned in legible characters in all notices, advertisements and other official publications of the company, and in all bills of exchange, promissory notes, endorsements, cheques and orders for money or goods purporting to be signed by or on behalf of the company, and in all bills of parcels, invoices, receipts and letters of credit of the company.

(2) If a company does not paint or affix or otherwise display (and keep painted or affixed or otherwise displayed) its name in the manner directed by this Part, the company and every officer of the company who is in default shall be guilty of an offence and liable on summary conviction to a fine of one half of the amount at level 1 on the standard scale.

(3) If a company fails to comply with paragraph (b) of subsection (1), the company shall be guilty of an offence and liable on summary conviction to a fine at level 2 on the standard scale.

(4) A director, manager or officer of a company or any person on its behalf who—

- (a) issues or authorises the issue of any notice, advertisement or other official publication of the company, or signs or authorises to be signed on behalf of the company any bill of exchange, promissory note, endorsement, cheque or order for money or goods, where its name is not mentioned in the manner required by this Part; or
- (b) issues or authorises the issue of any bill of parcels, invoice, receipt or letter of credit of the company, where its name is not mentioned in the manner required by this Part,

shall be guilty of an offence and liable on summary conviction to a fine at level 2 on the standard scale, and is further personally liable to the holder of the bill of exchange, promissory note, cheque or order for money or goods, for the amount as stated, unless it is duly paid by the company.

**Particulars to be shown on letterheads, etc.**

180.(1) Every company shall have the following particulars mentioned in legible characters in all business letters, order forms and on the homepage of its website (if any), that is to say—

- (a) the place of registration of the company;
- (b) the number with which it is registered;
- (c) the address of its registered office;
- (d) in the case of a limited company exempt from the obligation to use the word “Limited” as part of its name, the fact that it is a limited company;
- (e) in the case of an investment company (as defined in Article 2(14) of Directive 2013/34/EU) the fact that it is such a company;
- (f) where appropriate, that the company is being wound up,

and, if in the case of a company having a share capital there is on the stationery used for any such letters or on the order forms a reference to the amount of the share capital, the reference shall be to paid-up share capital.

(2) Company websites shall state clearly on their homepage all the information referred to in subsection (1).

(3) If a company fails to comply with subsection (1) and (2), the company shall be guilty of an offence and liable on summary conviction to a fine at level 2 on the standard scale; and if an officer of a company or any person on its behalf issues or authorises the issue of any business letter or order form not complying with subsection (1), he shall be guilty of an offence and liable on summary conviction to a fine at level 2 on the standard scale.

(4) In this section Directive 2013/34/EU has the meaning prescribed in section 237 of this Act.

#### *Restrictions on commencement of business*

#### **Restrictions on commencement of business.**

181.(1) This section shall not apply to a private company.

(2) Where a company, having a share capital has issued a prospectus inviting the public to subscribe for its shares, the company shall not commence any business or exercise any borrowing powers unless—

- (a) shares held subject to the payment of the whole amount in cash have been allotted to an amount not less in the whole than the minimum subscription;

- (b) every director of the company has paid to the company on each of the shares taken or contracted to be taken by him and for which he is liable to pay in cash, a proportion equal to the proportion payable on application and allotment on the shares offered for public subscription; and
- (c) there has been delivered to the Registrar for registration a statutory declaration by the secretary or one of the directors, in the prescribed form, that the conditions referred to in this section have been complied with.

(3) Where a company having a share capital has not issued a prospectus inviting the public to subscribe for its shares, the company shall not commence any business or exercise any borrowing powers, unless—

- (a) there has been delivered to the Registrar for registration a statement in lieu of prospectus;
- (b) every director of the company has paid to the company, on each of the shares taken or contracted to be taken by him and for which he is liable to pay in cash, a proportion equal to the proportion payable on application and allotment on the shares payable in cash; and
- (c) there has been delivered to the Registrar for registration a statutory declaration by the secretary or one of the directors in the prescribed form that paragraph (b) of this subsection has been complied with.

(4) The Registrar, on the delivery to him of a statutory declaration, and, in the case of a company which is required by this section to deliver a statement in lieu of prospectus, of that statement, shall certify that the company is entitled to commence business, and that certificate shall be conclusive evidence that the company is so entitled.

(5) Nothing in this section affects the validity of any transaction entered into by a company; but if a company enters into a transaction in contravention of this section and fails to comply with its obligations within 21 days from being called upon to do so, the directors of the company shall be jointly and severally liable to indemnify the other party to the transaction in respect of any loss or damage suffered by him by reason of the company's failure to comply with those obligations.

(6) Nothing in this section shall prevent the simultaneous offer for subscription or allotment of any shares and debentures or the receipt of any money payable on application for debentures.

(7) If a company commences business or exercises borrowing powers in contravention of this section, every person who is responsible for the contravention shall be guilty of an offence and, without prejudice to any other liability, liable on summary conviction to a fine at level 2 on the standard scale for every day during which the contravention continues.

*Register of members*

**Register of members.**

182.(1) Subject to subsection (2) every company shall keep in one or more books a register of its members, and enter the following particulars—

- (a) the names and addresses, and the occupations (if any) of the members, and in the case of a company having a share capital a statement of the shares held by each member, distinguishing each share by its number and of the amount paid or agreed to be considered as paid on the shares of each member;
- (b) the date at which each person was entered in the register as a member; and
- (c) the date at which any person ceased to be a member.

(2) Where a company has converted any of its shares into stock and given notice of the conversion to the Registrar, the register shall show the amount of stock held by each member instead of the amount of shares and the particulars relating to shares specified in paragraph (a) of subsection (1).

(3) If default is made in complying with this section, the company and every officer of the company who is in default shall be guilty of an offence and liable on summary conviction to a default fine.

**Inspection of register of members.**

183.(1) The register of members, commencing from the date of the registration of the company shall be kept at the registered office of the company.

(2) Subject to subsection (3), except when the register is closed under the provisions of this Part, it shall during business hours be open to the inspection of any member without charge and shall also be open to the inspection of any other person on payment of the prescribed sum for each inspection.

(3) The requirement for the register to be open to inspection during business hours shall be subject to such reasonable restrictions as the company in

general meeting may impose, so that not less than 2 hours in each day shall be allowed for inspection.

(4) Any member or other person may require a copy of the register, or of any part of it, on payment of the prescribed sum for every hundred words or fractional part required to be copied; and the company shall send any copy so required by any person to that person within a period of 10 days commencing on the day next after the day on which the request is received by the company.

(5) If any inspection required under this section is refused or if any copy required under this section is not sent within the proper period, the company and every officer of the company who is in default shall be guilty of an offence and liable on summary conviction in respect of each offence to a fine of one fifth of the amount at level 1 on the standard scale, and further to a default fine of the same amount.

(6) If any refusal or default occurs, the court may by order compel an immediate inspection of the register or direct that the copies required shall be sent to the persons requiring them.

**Power to close register.**

184. On giving notice by advertisement in any newspaper circulating in Gibraltar, a company may close the register of members for any time or times not exceeding in the whole 30 days in each year.

**Power of court to rectify register.**

185.(1) If—

- (a) the name of any person, without sufficient cause, is entered in or omitted from the register of members of a company; 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) Where an application is made under this section, 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 an application under this section the court may decide any question relating to the title of any 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 Part to send a list of its members to the Registrar, 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.

**Trusts not to be entered on register.**

186. No notice of any trust, express, implied or constructive, shall be entered on the register, or be receivable by the Registrar.

**Register to be evidence.**

187. The register of members shall be prima facie evidence of any matters directed or authorised to be inserted by this Act.

*Annual return*

**Annual return to be made by company having a share capital.**

188.(1) Every company having a share capital shall deliver to the Registrar successive annual returns each of which is made up to a date not later than the date which is from time to time the company's "return date", that is—

- (a) the anniversary of the company's incorporation; or
- (b) if the company's last return delivered in accordance with this Act was made up to a different date, the anniversary of that date.

(2) Each return shall—

- (a) be in the form prescribed in Schedule 5;
- (b) contain the information required by this Act; and
- (c) be signed by a director or the secretary of the company,

and subject to subsection (3) shall be delivered to the Registrar within 30 days after the date to which it is made up.

(3) In the case of a company to which section 189 applies, the annual return shall be delivered to the Registrar within 6 months after the date to which it is made up.

(4) Subject to subsection (5) and (6), the list specified in Schedule 5–

- (a) must state the names, addresses and occupations of all the past and present members mentioned;
- (b) must state the number of shares held by each of the existing members at the date of the return, specifying shares transferred since the date of the last return, or, in the case of the first return, of the incorporation of the company by persons who are still members and have ceased to be members respectively and the dates of registration of the transfers; and
- (c) if the names are not arranged in alphabetical order, must have annexed to it an index sufficient to enable the name of any person in the list to be readily found.

(5) Where a company has converted any of its shares into stock and given notice of the conversion to the Registrar, the list must state the amount of stock held by each of the existing members instead of the amount of shares and the particulars relating to shares required.

(6) A company which is a collective investment scheme licensed, authorised or deemed authorised under the Financial Services (Collective Investment Schemes) Act 2011 (excluding, for the avoidance of doubt, private schemes as defined in section 2(1) of such Act) shall not be required to provide the information requested at subsection (4) in its return.

(7) The return must also state the address of the registered office of the company and must contain a summary distinguishing between shares issued for cash and shares issued as fully or partly paid up otherwise than in cash, and specifying the following particulars–

- (a) the amount of the share capital of the company, and the number of the shares into which it is divided;
- (b) the number of shares taken from the commencement of the company up to the date of the return;
- (c) the amount called up on each share;
- (d) the total amount of calls received;
- (e) the total amount of calls unpaid;

- (f) the total amount of the sums (if any) paid by way of commission in respect of any shares or debentures;
- (g) particulars of the discount allowed on the issue of any shares issued at a discount, or of so much of that discount as has not been written off at the date on which the return is made;
- (h) the total amount of the sums (if any) allowed by way of discount in respect of any debentures, since the date of the last return;
- (i) the total number of shares forfeited;
- (j) the total amount of shares for which share warrants are outstanding at the date of the return;
- (k) the total amount of share warrants issued and surrendered respectively since the date of the last return;
- (l) the number of shares comprised in each share warrant;
- (m) all such particulars with respect to the persons who at the date of the return are the directors and secretaries of the company as are required by this Act to be contained with respect to directors and secretaries in the registers of the directors and secretaries of a company; and
- (n) the total amount of the indebtedness of the company in respect of all mortgages and charges which are required to be registered with the Registrar under this Act.

(8) The references in this section to a return being delivered “in accordance with this Act” are to a return with respect to which all of the requirements of subsection (2) are complied with.

**Statement of allotment, redemption and purchase of own shares to be made by a collective investment scheme which is a private scheme.**

189.(1) Subject to subsection (2), this section applies to a company that is a “private scheme” as defined in Section 2(1) of the Financial Services (Collective Investment Schemes) Act 2011.

(2) This section shall not apply to a company that is a collective investment scheme (excluding private schemes) licensed, authorised or otherwise regulated under the Financial Services (Collective Investment Schemes) Act 2011.

(3) The company shall deliver to the Registrar together with every annual return a “Statement of Allotments, Redemptions and Purchase of Own Shares”, that is to say, a statement containing the information set out in subsections (3), (4) and (5) for the period to which the annual return relates.

(4) When a company has made any allotment of its shares the statement shall specify—

- (a) the number and nominal amount of the shares comprised in each allotment, the names and addresses of the allottees and the amount (if any) paid or due and payable on each allotted share; and
- (b) in the case of shares allotted as fully or partly paid up otherwise than in cash—
  - (i) a contract in writing constituting title of the allottee to the allotment together with any contract of sale, or for services or other consideration in respect of which that allotment was made,
  - (ii) the number and nominal amount of shares so allotted,
  - (iii) the extent to which they are treated as paid up, and
  - (iv) the consideration for which they have been allotted.

(5) When a company has made any redemption of its redeemable preference shares the statement shall specify—

- (a) the number and nominal amount of the shares redeemed;
- (b) the names and addresses of the persons who have redeemed the shares; and
- (c) the amount paid or due and payable on each redeemed share.

(6) When a company has purchased shares under section 105 the statement shall specify—

- (a) with respect to shares of each class purchased, the number and nominal value of those shares and the date on which they were delivered to the company; and
- (b) in the case of a public company, the aggregate amount paid by the company for the shares and the maximum and minimum prices paid in respect of shares of each class purchased.

(7) The company may, in addition to the statement delivered in accordance with this section, deliver to the Registrar at any time a statement containing the information set out in subsections (4), (5) and (6) for the period specified in that statement and, in this case, the statement is referred to as a “Voluntary Statement of Allotments, Redemptions and Purchase of Own Shares”.

**Annual return to be made by company not having share capital.**

190.(1) Every company not having a share capital shall deliver to the Registrar successive annual returns each of which is made up to a date not later than the date which is from time to time the company’s “return date”, that is, the anniversary of the company’s incorporation, and each return shall be in the prescribed form and shall state—

- (a) the address of the registered office of the company; and
- (b) such particulars with respect to the persons who at the date of the return are the directors and secretaries of the company as are required by this Act to be contained with respect to directors and secretaries in the registers of directors and secretaries of a company,

and the return shall be delivered to the Registrar within 28 days after the date to which it is made up.

(2) There shall be annexed to the return a statement containing particulars of the total amount of the indebtedness of the company in respect of all mortgages and charges which are required to be registered with the Registrar under this Act.

**General provisions as to annual returns.**

191.(1) The annual return must be contained in a separate part of the register of members and must be completed within 30 days after the first or only general meeting in the year, and the company must forward to the Registrar a copy signed by a director or by the manager or by the secretary of the company.

(2) Section 183 shall apply to the annual return as it applies to the register of members.

(3) If a company fails to comply with this section or any of sections 188, 189 and 190—

- (a) the company and every officer of the company who is in default shall be guilty of an offence and liable on summary conviction to a fine at level 3 on the standard scale and for

continued contravention, to a daily fine of an amount of one half of the amount at level 3 on the standard scale;

- (b) in the case of a failure to comply with sections 188, 189 or 190, as the case may be, the Registrar may regard that failure as reasonable cause to believe that the company is not carrying on business or is not in operation.

(4) For the purposes of subsection (3) of this section, “officer”, and for the purposes of sections 188, 189 and 190, “director” shall include any person in accordance with whose directions or instructions the directors of the company are accustomed to act.

**Certificates to be sent by private company with annual return.**

192.(1) A private company shall send with the annual return required by section 188 a certificate in the form required by Schedule 5, signed by a director or the secretary of the company that the company has not, since the date of the last return, or, in the case of a first return, since the date of the incorporation of the company, issued any invitation to the public to subscribe for any shares or debentures of the company.

(2) Subsection (1) shall not apply to a company which has given a notice to the Registrar pursuant to section 18 that it is a Collective Investment Scheme.

*Meetings and proceedings*

**Annual general meetings.**

193.(1) Subject to the provisions of subsection (5), in each year, every company shall hold a general meeting as its annual general meeting in addition to any other meetings in that year, and shall specify the meeting as that in the notices calling it.

(2) So long as a company holds its first annual general meeting within 18 months of its incorporation, it need not hold it in the year of its incorporation or in the following year.

(3) Not more than 15 months shall elapse between the date of one annual general meeting of a company and that of the next.

(4) If default is made in holding a meeting in accordance with this section, the company and every officer of it who is in default shall be liable on summary conviction to a fine, in the case of the company, at level 5 on the standard scale, and in the case of an officer of the company, at level 3 on the standard scale.

(5) A private company, by special resolution may dispense with the holding of annual general meetings and where the company has passed such a special resolution—

- (a) sections 240 and 255(1) shall be deemed to have no effect in respect of that company for such time and in respect of such years as the resolution shall have effect in accordance with this section; and
- (b) the special resolution shall be subject to section 206 (copy to be forwarded to the Registrar within 30 days).

(6) A special resolution dispensing with the holding of annual general meetings, shall have effect for the year in which it is made and subsequent years, but shall not affect any liability already incurred by reason of default in holding an annual general meeting.

(7) In any year in which an annual general meeting would be required to be held but for the special resolution and in which no meeting has been held, any member of the company may, by notice to the company not later than 3 months before the end of the year, require the holding of an annual general meeting in that year.

(8) If a notice provided for in subsection (7) is given, the provisions of subsections (1) and (4) shall apply with respect to the calling of the meeting and the consequences of default.

(9) Subject to subsection (10), if the effect of the special resolution ceases, the company shall not be obliged under the provisions of this section to hold an annual general meeting in that year if, when the special resolution ceases to have effect, less than 3 months of the year remains.

(10) The terms of subsection (9) do not affect any obligation of the company to hold an annual general meeting in that year in pursuance of a notice given under subsection (7).

#### **Statutory meeting and statutory report.**

194.(1) This section shall not apply to a private company.

(2) Every company limited by shares and every company limited by guarantee and having a share capital, shall hold a general meeting of the members of the company, which shall be called “the statutory meeting” and that statutory meeting shall be held within a period of not less than 1 month nor more than 3 months from the date at which the company is entitled to commence business.

(3) At least 7 days before the day on which the meeting is held, the directors shall forward a report (in this Act referred to as “the statutory report”) to every member of the company.

(4) The statutory report shall be certified by not less than two directors of the company or, where there are less than two directors, by the sole director and manager, and shall state—

- (a) the total number of shares allotted, distinguishing shares allotted as fully or partly paid up otherwise than in cash, and stating in the case of shares partly paid up the extent to which they are so paid up, and in either case the consideration for which they have been allotted;
- (b) the total amount of cash received by the company in respect of all the shares allotted, distinguished as referred to in paragraph (a) of this subsection;
- (c) an abstract of the receipts of the company and of the payments made, up to a date within 7 days of the date of the report, exhibiting under distinctive headings the receipts of the company from shares and debentures and other sources, the payments made, and particulars concerning the balance remaining in hand, and an account or estimate of the preliminary expenses of the company;
- (d) the names, addresses and descriptions of the directors, auditors (if any), managers (if any) and secretary of the company; and
- (e) the particulars of any contract, the modification of which is to be submitted to the meeting for its approval, together with the particulars of the modification or proposed modification.

(5) The statutory report, so far as it relates to the shares allotted by the company, and to the cash received in respect of such shares, and to the receipts and payments of the company on capital account, shall be certified as correct by the auditors (if any) of the company.

(6) The directors shall deliver a copy of the statutory report, certified as required by this section, to the Registrar for registration after sending it to the members of the company.

(7) The directors shall produce a list showing the names, descriptions and addresses of the members of the company, and the number of shares held by them respectively, at the commencement of the meeting, which shall remain open and accessible to any member of the company during the continuance of the meeting.



(8) The members of the company present at the meeting shall be at liberty to discuss any matter relating to the formation of the company, or arising out of the statutory report, whether previous notice has been given or not, but no resolution of which notice has not been given in accordance with the memorandum or articles may be passed.

(9) The meeting may adjourn from time to time, and at any adjourned meeting any resolution of which notice has been given in accordance with the memorandum or articles, either before or subsequently to the former meeting, may be passed, and the adjourned meeting shall have the same powers as an original meeting.

(10) In the event of any default in complying with the provisions of this section every director of the company who is guilty of or who knowingly authorises or permits the default shall be guilty of an offence and liable on summary conviction to a fine at level 2 on the standard scale.

**Convening of extraordinary general meeting on requisition.**

195.(1) Notwithstanding anything in the memorandum and articles of a company, the directors of the company shall, on the requisition of members of the company holding at the date of the deposit of the requisition—

- (a) not less than one-tenth of such of the paid-up capital of the company as at the date of the deposit carries the right of voting at general meetings of the company; or
- (b) in the case of a company not having a share capital, members of the company representing not less than one-tenth of the voting rights of all the members having at that date a right to vote at general meetings of the company,

proceed to convene an extraordinary general meeting of the company.

(2) The requisition must state the objects of the meeting, and must be signed by the requisitioning members and deposited at the registered office of the company, and may consist of several documents in like form, each signed by one or more of those members.

(3) The requisition may be in hard copy or in electronic form and must be authenticated by the persons making it.

(4) The directors shall convene a meeting within 21 days from the date of the deposit of the requisition and the meeting shall be held within 28 days after the date of the notice convening the meeting.

(5) If the directors do not within 21 days from the date of the deposit of the requisition proceed to convene a meeting, the requisitioning members,

or any of them representing more than one-half of the total voting rights of all of them, may themselves convene a meeting, but any meeting so convened shall not be held after the expiry of 3 months from that date.

(6) A meeting convened under this section by the requisitioning members shall be convened in the same manner, as nearly as possible, as that in which meetings are to be convened by directors.

(7) Any reasonable expenses incurred by the requisitioning members by reason of the failure of the directors to convene a meeting shall be repaid to those members by the company, and any sum so repaid shall be retained by the company out of any sums due or to become due from the company by way of fees or other remuneration in respect of their services to such of the directors as were in default.

(8) For the purposes of this section, in the case of a meeting at which a resolution is to be proposed as a special resolution, the directors shall be deemed not to have convened the meeting if they do not give notice of it as is required by section 201.

**Provisions as to meetings and votes.**

196.(1) The following provisions shall have effect in so far as the memorandum and articles of the company do not make other provision in that behalf—

- (a) a meeting of a company, other than a meeting for the passing of a special resolution, may be called by 7 days' notice in writing;
- (b) notice of the meeting of a company shall be served on every member of the company in the manner in which notices are required to be served by the articles;
- (c) two or more members holding not less than one-tenth of the issued share capital or, if the company does not have a share capital, not less than 5 per cent in number of the members of the company may call a meeting;
- (d) in the case of a private company one member, and in the case of any other company 3 members, personally present shall be a quorum;
- (e) any member elected by the members present at a meeting may be chairman;
- (f) in the case of a company originally having a share capital, every member shall have one vote in respect of each share or

each £10 of stock held by him, and in any other case every member shall have one vote.

(2) If for any reason it is impracticable to call a meeting of a company in any manner in which meetings of that company may be called, or to conduct the meeting of the company in the manner prescribed by the memorandum and articles or this Act, the Registrar of the Court may—

- (a) either of his own motion; or
- (b) on the application of any director of the company; or
- (c) on the application of any member of the company who would be entitled to vote at the meeting,

order a meeting of the company to be called, held and conducted in such manner as the Registrar of the Court thinks fit, and where any order is made the Registrar of the Court may give such ancillary or consequential directions as he thinks expedient, and any meeting called, held and conducted in accordance with that order shall for all purposes be deemed to be a meeting of the company duly called, held and conducted.

(3) Notice of a general meeting of a company must be given—

- (a) in hard form;
- (b) in electronic form;
- (c) by means of a website,

or partly by one such means and partly by another.

**Publication of notice of meetings on a website.**

197.(1) Notice of a meeting is not validly given by a company by means of a website unless it is given in accordance with this section.

(2) When the company notifies a member of the presence of the notice on the website the notification must—

- (a) state that it concerns a notice of a company meeting;
- (b) specify the place, date and time of the meeting; and
- (c) in the case of a public company, state whether the meeting will be an annual general meeting.

(3) The notice must be available on the website throughout the period beginning with the date of that notification and ending with the conclusion of the meeting.

**Quorum at meetings of sole member.**

198. Notwithstanding any provision to the contrary in the memorandum or articles of a private company limited by shares or by guarantee having only one member, one member present in person or by proxy shall be a quorum.

**Representation of companies at meetings of other companies and of creditors.**

199.(1) A corporation, whether a company within the meaning of this Act or not, may—

- (a) if it is a member of another corporation, being a company within the meaning of this Act, by resolution of its directors or other governing body authorise such person as it thinks fit to act as its representative at any meeting of the company or at any meeting of any class of members of the company;
- (b) if it is a creditor (including a holder of debentures) of another corporation, being a company within the meaning of this Act, by resolution of its directors or other governing body authorise such person as it thinks fit to act as its representative at any meeting of any creditors of the company held in pursuance of this Act or the Insolvency Act or of any rules made under the relevant Act, or in pursuance of the provisions contained in any debenture or trust deed, as the case may be.

(2) A person authorised as mentioned above shall be entitled to exercise the same powers on behalf of the corporation which he represents as that corporation could exercise if it were an individual shareholder, creditor or holder of debentures, of that other company.

**Provisions as to ordinary resolutions.**

200.(1) An ordinary resolution of the members (or of a class of members) of a company means a resolution that is passed by a simple majority.

(2) An ordinary resolution is passed by a simple majority if it is passed by members representing a simple majority of the total voting rights of the members or, as the case may be, of the class of members.

(3) A resolution passed at a meeting on a show of hands is passed by simple majority if it is passed by a simple majority of—

- (a) the members who, being entitled to do so, vote in person on the resolution; and
- (b) the persons who vote on the resolution as duly appointed proxies of members entitled to vote on it.

(4) A resolution passed on a poll taken at a meeting is passed by a simple majority if it is passed by members representing a simple majority of the total voting rights of members who, being entitled to do so, vote in person or by proxy on the resolution.

(5) Anything that may be done by ordinary resolution may also be done by special resolution.

**Provisions as to extraordinary and special resolutions.**

201.(1) A resolution shall be an extraordinary resolution when it has been passed by a majority of not less than 75% of those members who, being entitled to do so, vote in person or, where proxies are allowed, by proxy, at a general meeting of which notice specifying the terms of the resolution and the intention to propose the resolution as an extraordinary resolution has been given.

(2) Subject to subsection (3), a resolution shall be a special resolution when it has been passed by such a majority of not less than 75% and at a general meeting of which not less than 21 days' notice, specifying the intention to propose the resolution as a special resolution, has been given.

(3) If all the members entitled to attend and vote at any such meeting so agree, a resolution may be proposed and passed as a special resolution at a meeting of which less than 21 days' notice has been given.

(4) At any meeting at which an extraordinary resolution or a special resolution is submitted to be passed, a declaration of the chairman that the resolution is carried shall, unless a poll is demanded, be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.

(5) At any meeting at which an extraordinary resolution or a special resolution is submitted to be passed, a poll shall be taken to be effectively demanded, if demanded—

- (a) by the following number of members for the time being entitled under the memorandum and articles to vote at the meeting, that is to say, at least 5 or such lesser number of members as may be specified in the memorandum and articles;

- (b) if no provision is made by the memorandum and articles with respect to the right to demand the poll, by 3 members so entitled or by one member or 2 members so entitled, if that member holds or those 2 members together hold not less than 15 per cent of the paid-up share capital of the company.

(6) When a poll is demanded in accordance with this section, in computing the majority on the poll, reference shall be had to the number of votes to which each member is entitled by virtue of this Act or the memorandum and articles of the company.

(7) For the purposes of this section, notice of a meeting shall be deemed to be duly given and the meeting to be duly held when the notice is given and the meeting held in the manner provided by this Act or the memorandum and articles of the company.

**Written approval.**

202.(1) Notwithstanding anything contained in sections 200 and 201 it shall not be necessary in the case of a private company to hold a general meeting in order to pass an ordinary, an extraordinary or a special resolution, but that resolution, if it is so provided in the articles of the company, may be passed by approval of that resolution being signified in writing by all members of the company who would be entitled to vote if that resolution were submitted to a general meeting.

(2) The resolution shall be sent to all eligible members—

- (a) at the same time (so far as reasonably practicable) in hard copy form, in electronic form or by means of a website; or
- (b) if it is possible to do so without undue delay, by submitting the same copy to each eligible member in turn (or different copies to each of a number of eligible members in turn); or
- (c) by sending copies to some members in accordance with paragraph (a) and submitting a copy or copies to all other members in accordance with paragraph (b).

(3) A member signifies his agreement to a proposed written resolution when the company receives from him (or from someone acting on his behalf) an authenticated document—

- (a) identifying the resolution to which it relates; and
- (b) indicating his agreement to the resolution.

(4) The document must be sent to the company in hard form or electronic form.

(5) Where a resolution has been passed in accordance with the provisions of this section, the hard copy form or the electronic form of the resolution forwarded to the Registrar in accordance with the provisions of section 206 shall be accompanied by—

- (a) an authenticated document as required by subsection (3); and
- (b) a statement by the secretary of the company that the members whose written approval is attached are all the members who would be entitled to vote at a general meeting.

(6) No resolution forwarded in accordance with the provisions of subsection (5) shall be recorded by the Registrar unless it complies with the provisions of that subsection.

(7) For the purpose of section 206, a resolution passed by written approval shall be deemed to have been passed on the date on which the last written approval was given and shall be forwarded to the Registrar within 30 days of that date.

**Sending documents relating to written resolutions by electronic means.**

203.(1) Where a company has given an electronic address in any document containing or accompanying a proposed written resolution, it is deemed to have agreed that any document or information relating to that resolution may be sent by electronic means to that address (subject to any conditions or limitations specified in the document).

(2) In this section “electronic address” means any address or number used for the purposes of sending or receiving documents or information by electronic means.

**Publication of written resolutions on website.**

204.(1) This section applies where a company sends—

- (a) a written resolution; or
- (b) a statement relating to a written resolution,

to a person by means of a website.

(2) The resolution or statement is not validly sent for the purposes of this Chapter unless the resolution is available on the website throughout the

period beginning with the circulation date and ending on the date specified in the company's articles, or if none is specified, the period of 28 days from the circulation date.

**Relationship between this Part and provisions of company's articles.**

205. A provision of the articles of a private company is void in so far as it would have the effect that a resolution that is required by or otherwise provided for in an enactment could not be proposed and passed as a written resolution.

**Registration and copies of certain resolutions and agreements.**

206.(1) Within 30 days after the passing or making of a resolution or agreement to which this section applies, a copy of the resolution or agreement shall be forwarded to the Registrar and recorded by him.

(2) Where articles have been registered, a copy of every resolution or agreement which has been forwarded to the Registrar and which is for the time being in force shall be embodied in or annexed to every copy of the articles issued after the passing of the resolution or the making of the agreement.

(3) Where articles have not been registered, a printed copy of every such resolution or agreement shall be forwarded to any member at his request, on payment of the prescribed sum.

(4) This section applies to—

- (a) special resolutions;
- (b) extraordinary resolutions;
- (c) resolutions which have been agreed to by all the members of a company, but which, if not so agreed to, would not have been effective for their purpose unless, as the case may be, they had been passed as special resolutions, or as extraordinary resolutions;
- (d) resolutions or agreements which have been agreed to by all the members of some class of shareholders, but which, if not so agreed to, would not have been effective for their purpose unless they had been passed by some particular majority or otherwise in some particular manner;
- (e) all resolutions or agreements which effectively bind all the members of any class of shareholders though not agreed to by all those members; and



- (f) resolutions requiring a company to be wound up voluntarily, passed under Chapter 1 of Part X.

(5) If a company fails to comply with subsection (1), the company and every officer of the company who is in default shall be guilty of an offence and liable on summary conviction to a fine at level 1 on the standard scale.

(6) If a company fails to comply with subsection (2) or (3), the company and every officer of the company who is in default is guilty of an offence and shall be liable on summary conviction to a fine of one tenth of the amount at level 1 on the standard scale for each copy in respect of which default is made.

(7) For the purpose of subsections (5) and (6), a liquidator of the company shall be deemed to be an officer of the company.

#### **Resolutions passed at adjourned meetings.**

207. Where a resolution is passed at an adjourned meeting of—

- (a) a company;
- (b) the holders of any class of shares in a company; or
- (c) the directors of a company,

the resolution shall for all purposes be regarded as having been passed on the date on which it was in fact passed, and shall not be deemed to have been passed on any earlier date.

#### **Minutes of proceedings of meetings and directors.**

208.(1) Every company shall enter minutes of all proceedings of general meetings, and where there are directors or managers, of all proceedings at meetings of its directors or of its managers, in books kept for that purpose.

(2) Any minute referred to in subsection (1), if purporting to be signed by the chairman of the meeting at which the proceedings were had, or by the chairman of the next succeeding meeting, shall be evidence of the proceedings.

(3) Subject to subsection (4), where minutes have been made in accordance with the provisions of this section of the proceedings at any general meeting of the company or meeting of directors, managers or administrators, then, until the contrary is proved, the meeting shall be deemed to have been held and convened, and all proceedings had to have

taken place, and all appointments of directors, managers or administrators shall be deemed to be valid.

(4) Subsection (3) is subject to any provision of the Insolvency Act providing for appointments made by a resolution of the members of a company being invalid.

**Recording of decisions by the sole member.**

209.(1) Where a private company limited by shares or by guarantee has only one member and he takes any decision which may be taken by the company in general meeting and which has effect as if agreed by the company in general meeting, he shall (unless that decision is taken by way of a written resolution) provide the company with a written record of that decision.

(2) If the sole member fails to comply with subsection (1) he shall be liable on summary conviction to a fine not exceeding level 2 on the standard scale.

(3) Any failure by the sole member to comply with subsection (1) shall not affect the validity of any decision referred to in that subsection.

**Inspection of minute books.**

210.(1) Subject to subsection (2), the books containing the minutes of proceedings of any general meeting of a company shall be kept at the registered office of the company, and shall be open during business hours to the inspection of any member without charge.

(2) The requirement for the books containing the minutes of proceedings to be open to inspection during business hours shall be subject to such reasonable restrictions as the company may by its memorandum and articles or in general meeting impose, so that no less than 2 hours in each day be allowed for inspection.

(3) Within 7 days after he has made a request to the company for inspection under subsection (1), any member shall be entitled to be furnished with a copy of any of those minutes referred to in subsection (1) on payment of the prescribed sum for every hundred words.

(4) If any inspection required under this section is refused or if any copy required under this section is not sent within the proper time, the company and every officer of the company who is in default is guilty of an offence and shall be liable on summary conviction in respect of each offence to a fine of one fifth of the amount at level 1 on the standard scale and further to a default fine of the same amount.

(5) If refusal or default is made in complying with this section, the Court may by order compel an immediate inspection of the books in respect of all proceedings of general meetings or direct that the copies required shall be sent to the persons requiring them.

### *Inspection*

#### **Investigation of companies and their affairs, etc.**

211. Schedule 8 shall have effect with respect to the investigation of companies and their affairs, requisition of documents and other matters referred to in that Schedule.

#### **Proceedings on report by inspectors.**

212.(1) If, it appears to the Attorney-General from any report made under the provisions of Schedule 8, that any person has been guilty of any offence in relation to the company or any other corporate body whose affairs have been investigated by virtue of those provisions and—

- (a) that the case is one in which a prosecution ought to be instituted; and
- (b) that it is desirable in the public interest that the proceedings in the prosecution should be conducted by him,

he shall institute proceedings accordingly, and it shall be the duty of all the past and present officers and agents of the company or other corporate body (other than the defendant in the proceedings), to give to him all the assistance in connection with the prosecution which they are reasonably able to give.

(2) For the purposes of this section, the expression “agents” in relation to a company or other corporate body shall be taken to include its bankers and solicitors and any persons employed by it as auditors, whether those persons are or are not officers of the company or other corporate body.

#### **Power of company to appoint inspectors.**

213.(1) By special resolution a company may appoint inspectors to investigate its affairs.

(2) The inspectors appointed shall have the same powers and duties as inspectors appointed by the Minister, except that, instead of reporting to him or the Attorney-General they shall report in the manner and to such persons as the company may direct in general meeting.

(3) An officer or agent of the company who refuses to produce to the inspectors any book or document which it is his duty under this section to produce, or refuses to answer any question which is put to him by the inspectors with respect to the affairs of the company, shall be liable to be proceeded against in the same manner as if the inspectors had been inspectors appointed by the Minister.

**Report of inspectors to be evidence.**

214. A copy of the report of any inspectors appointed under this Act, authenticated in accordance with sections 72 to 76 by the company whose affairs they have investigated, shall be admissible in any legal proceeding as evidence of the opinion of the inspectors in relation to any matter contained in the report.

*Directors and managers*

**Number of directors.**

215. Every company shall have at least two directors except in the case of a private company which shall have at least one director.

**Secretaries.**

216.(1) Every company shall have a secretary and in this section and section 217, except where the context otherwise requires, any reference to a secretary includes a reference to two or more joint secretaries or, as the case may require, one of them.

(2) A sole director of a company shall not also be the secretary of that company.

(3) If there is no secretary for the time being or for any other reason there is no secretary capable of acting, anything authorised to be done by or to the secretary may be done by or to any assistant or deputy secretary or, if there is no assistant or deputy secretary capable of acting, by or to a person authorised generally or specifically in that behalf by the directors.

(4) No company shall have—

- (a) as secretary to the company a corporation, the sole director of which is a sole director of the company;
- (b) as sole director of the company a corporation, the sole director of which is secretary to the company.

(5) Subject to such consent as is referred to below, a person shall not be capable of—

- (a) being appointed secretary to a company by the articles; and
- (b) in the case of a public company, shall not be named as secretary or proposed secretary of a company in a prospectus issued by or on behalf of the company, or as proposed secretary of an intended public company in a prospectus issued in relation to that intended company, or in a statement in lieu of prospectus delivered to the Registrar by or on behalf of a company,

unless, before the registration of the articles or the publication of the prospectus, or the delivery of the statement in lieu of prospectus, as the case may be, he has consented in writing, himself or by his agent to act as such secretary and the consent has been signed and delivered to the Registrar for registration.

#### **Qualifications of company secretaries.**

217. (1) The directors of a company shall take all reasonable steps to ensure that the secretary of the company is a person that appears to them to have the knowledge and experience to discharge the functions of secretary of the company.

(2) The directors of a public company shall take all reasonable steps to ensure that the secretary of the company is a person that appears to them to have the requisite knowledge and experience to discharge the functions of secretary of the company, that is to say—

- (a) for at least 3 out of the 5 years preceding his appointment as secretary he held the appointment of secretary in a company other than a private company; or
- (b) he is a person who by reason of previous appointments held appears to the directors to be a person capable of discharging the functions of secretary; or
- (c) he is a barrister, advocate or solicitor admitted in Gibraltar or in any part of the United Kingdom; or
- (d) he is a member of a recognised accounting body or of the Institute of Chartered Secretaries and Administrators.

#### **Restrictions on appointment or advertisement of director.**

218.(1) This section does not apply to—

- (a) a company which does not have a share capital; or

- (b) a private company; or
- (c) a company which was a private company before becoming a public company; or
- (d) a prospectus issued by or on behalf of a company after the expiry of 1 year from the date on which the company was entitled to commence business.

(2) A person shall not be capable of being appointed director of a company by the articles, and shall not be named as a director or proposed director of a company in a prospectus issued by or on behalf of the company, or as proposed director of an intended company in a prospectus issued in relation to that intended company, or in a statement in lieu of prospectus delivered to the Registrar by or on behalf of a company, unless, before the registration of the articles or the publication of the prospectus, or the delivery of the statement in lieu of prospectus, as the case may be, he or his agent has authorised in writing—

- (a) his consent to act as such director, which has been signed and delivered to the Registrar for registration; and
- (b) either—
  - (i) he has signed the memorandum for a number of shares not less than his qualification (if any), or
  - (ii) he has taken from the company and paid or agreed to pay for his qualification shares (if any), or
  - (iii) he has signed and delivered to the Registrar for registration an undertaking in writing to take from the company and pay for his qualification shares (if any), or
  - (iv) he has made and delivered to the Registrar for registration a statutory declaration to the effect that a number of shares, not less than his qualification (if any) are registered in his name.

(3) Where a person has so signed and delivered an undertaking to take and pay for his qualification shares, he shall, as regards those shares, be in the same position as if he had signed the memorandum for that number of shares.

(4) On the application for registration of the memorandum and articles of a company the applicant shall deliver to the Registrar a list of the persons who have consented to be directors of the company, and, if this list contains

the name of any person who has not so consented, the applicant shall be guilty of an offence and liable on summary conviction to a fine at level 2 on the standard scale.

**Qualification of director or manager.**

219.(1) Without prejudice to the restrictions imposed by section 218, it shall be the duty of every director who is required by the articles of the company to hold a specified share qualification, and who is not already qualified, to obtain his qualification within 2 months after his appointment, or such shorter time as may be fixed by the articles.

(2) The office of director of a company shall be vacated if the director does not obtain his qualification within 2 months from the date of his appointment, or within such shorter time as may be fixed by the articles, or if after the expiry of that period or shorter time he ceases at any time to hold his qualification.

(3) A person vacating office under this section shall be incapable of being re-appointed director of the company until he has obtained his qualification.

(4) If after the expiry of 2 months or shorter time as referred to in subsection (1) any unqualified person acts as a director of the company, he shall be guilty of an offence and liable on summary conviction to a fine at level 1 on the standard scale.

**Provisions as to undischarged bankrupts acting as directors or secretary.**

220.(1) A person being an undischarged bankrupt, who acts as director or secretary or directly or indirectly takes part in or is concerned in the management of any company, except with the leave of the court which made the bankruptcy order (within the meaning of section 318 of the Insolvency Act) against him, shall be guilty of an offence and liable on conviction on indictment to imprisonment for 2 years, or on summary conviction to imprisonment for 6 months and to a fine at level 5 on the standard scale.

(2) For the purposes of this section, the leave of the court shall not be given unless notice of intention to apply for leave of the court has been served on the official receiver, and it shall be the duty of the official receiver to attend at the hearing and oppose the granting of the application, if he is of the opinion that it is contrary to the public interest that the application should be granted.

(3) In this section, “company” includes an unregistered company and a company incorporated outside Gibraltar which has an established place of

business within Gibraltar, and “official receiver” means the official receiver appointed under the Insolvency Act.

**Validity of acts of directors.**

221. The acts of a director or manager shall be valid notwithstanding any defect that may be discovered afterwards in his appointment or qualification.

**Register of directors.**

222.(1) Every company shall keep at its registered office a register of its directors or managers containing with respect to each of them the following particulars, that is to say—

- (a) in the case of an individual—
  - (i) his present forename and surname,
  - (ii) any former forename or surname,
  - (iii) his usual residential address,
  - (iv) his nationality, and, if that nationality is not the nationality of origin, his nationality of origin, and
  - (v) his business occupation (if any) or, if he has no business occupation but holds any other directorship or directorships, particulars of that directorship or at least one of those directorships; and
- (b) in the case of a corporation, its corporate name and registered or principal office.

(2) The company shall send to the Registrar a return in the prescribed form containing the particulars specified in the register of directors and a notification in the prescribed form of any change among its directors, or in any of the particulars contained in the register within the following periods of time—

- (a) the period within which the return shall be sent is 14 days from the appointment of the first directors of the company; and
- (b) the period within which the notification of a change shall be sent is 14 days from the change of directors or the change in any of the particulars contained in the register.



(3) Subject to subsection (4), the register to be kept under this section shall be open during business hours to the inspection of any member of the company without charge, and the register shall also be open to the inspection of any other person on payment of the prescribed sum for each inspection.

(4) The requirement for the register to be kept open to inspection during business hours shall be subject to such reasonable restrictions as the company by its articles or in general meeting may impose, so that not less than 2 hours in each day shall be allowed for inspection.

(5) If any inspection required under this section is refused or if default is made in complying with subsection (1) or subsection (2) the company and every officer of the company who is in default shall be guilty of an offence and liable on summary conviction to a default fine.

(6) If any refusal occurs, the court may by order compel an immediate inspection of the register.

(7) For the purposes of this section, a person in accordance with whose directions or instructions the directors of a company are accustomed to act shall be deemed to be a director and officer of the company.

#### **Register of secretaries.**

223.(1) Every company shall keep at its registered office a register of its secretary or secretaries containing with respect to each of them the following particulars, that is to say—

- (a) in the case of an individual—
  - (i) his present forename and surname,
  - (ii) any former forename or surname,
  - (iii) his usual residential address,
  - (iv) his nationality, and, if that nationality is not the nationality of origin, his nationality of origin, and
  - (v) his occupation (if any); and
- (b) in the case of a corporation, its corporate name and the address of its registered or principal office.

(2) Within the relevant period set out below, the company shall send to the Registrar a return in the form prescribed by the Registrar containing the particulars specified in the register of secretaries and a notification in the

form so prescribed of any change among its secretaries or in any of the particulars contained in the register–

- (a) the period within which the return shall be sent is 14 days from the appointment of the first secretary of the company; and
- (b) the period within which the notification of a change shall be sent is 14 days from the change of secretary or in any of the particulars contained in the register.

(3) Subject to subsection (4), the register to be kept under this section shall be open during business hours to the inspection of any member of the company without charge, and shall also be open to the inspection of any other person on payment of the prescribed sum for each inspection.

(4) The requirement for the register to be open to inspection during business hours shall be subject to such reasonable restrictions as the company by its articles or in general meeting may impose, so that not less than 2 hours in each day shall be allowed for inspection.

(5) If any inspection required under this section is refused or if default is made in complying with subsection (1) or subsection (2), the company and every officer of the company who is in default shall be guilty of an offence and liable on summary conviction to a default fine.

(6) If a refusal occurs, the court may by order compel an immediate inspection of the register.

(7) The form and notification to be prescribed by the Registrar for the purposes of subsection (2) shall be the form of return required by rules made under section 417 for the purposes of section 222(2), with the addition to that form of the requirement to provide in respect of a secretary the particulars specified in the register required to be kept by this section, and where there is a requirement under the Act that within the same period of time a return be made in respect of–

- (a) a director under section 222; and
- (b) a secretary under this section,

the particulars of both may be sent on the same form, indicating under which section such particulars are sent.

**Limited company may have directors with unlimited liability.**

224.(1) In a limited company the liability of the directors or managers, or of the managing director, if so provided by the memorandum, may be unlimited.

(2) In a limited company in which the liability of a director or manager is unlimited, the directors or managers of the company (if any) and the member who proposes a person for election or appointment to the office of director or manager, shall add to that proposal a statement that the liability of the person holding that office will be unlimited, and the promoters, directors, managers and secretary (if any) of the company, or one of them, shall, before the person accepts the office or acts as a director or manager, give him notice in writing that his liability will be unlimited.

(3) A director, manager or proposer who makes default in adding such a statement, or a promoter, director or manager who makes default in giving such a notice, shall be guilty of an offence and liable on summary conviction to a fine at level 3 on the standard scale, and shall also be liable for any damage which the person so elected or appointed may sustain from the default, but the liability of the person elected or appointed shall not be affected by the default.

**Special resolution of limited company making liability of directors unlimited.**

225.(1) A limited company, if so authorised by its articles, may, by special resolution, alter its memorandum so as to render unlimited the liability of its directors or managers, or of any managing director.

(2) Upon the passing of any such special resolution the provisions of that special resolution shall be as valid as if they had been originally contained in the memorandum.

**Statement as to remuneration of directors to be furnished to shareholders.**

226.(1) Subject to the provisions of this section, when the directors of a company receive a demand made to them in writing by members of the company entitled to not less than one quarter of the aggregate number of votes to which all the members of the company are together entitled, then, within the period of 1 month from the receipt of the demand, they shall furnish to all the members of the company a statement, certified as correct or with such qualifications as may be necessary, by the auditors of the company, showing for each of the last 3 preceding years in respect of which the accounts of the company have been made up the aggregate amount received in that year by way of remuneration or other emoluments by the directors of the company.

(2) The reference in subsection (1) to the aggregate amount received by directors of the company by way of remuneration or other emoluments includes sums received not only in their capacity as directors but also in

connection with the management of the affairs of the company; and in respect of any director of the company who is also—

- (a) a director of any other company which is in relation to the first mentioned company a subsidiary company; or
- (b) by virtue of the nomination, whether direct or indirect, of the company, a director of any other company,

there shall be included in that aggregate amount any remuneration or other emoluments received by him for his own use whether as a director of, or otherwise in connection with the management of the affairs of, that other company.

(3) For the purposes of this section—

- (a) a demand for a statement shall have no effect if the company within 1 month after the date on which the demand is made resolve that the statement shall not be furnished; and
- (b) it shall be sufficient to state the total aggregate of all sums paid to or other emoluments received by all the directors in each year without specifying the amount received by any individual.

(4) For the purpose of this section, in computing the amount of any remuneration or emoluments received by any director, the amount actually received by him, if the company has paid on his behalf any sum by way of income tax in respect of the remuneration or emoluments, shall be increased by the amount of the sum so paid.

(5) A director who fails to comply with the requirements of this section is guilty of an offence and shall be liable on summary conviction to a fine at level 2 on the standard scale.

(6) In this section, “emoluments” include fees, percentages and other payments made or consideration given, directly or indirectly, to a director as such, and the money value of any allowances or perquisites belonging to his office.

**Disclosure by directors of interest in contracts.**

227.(1) Subject to the provisions of this section, it shall be the duty of a director of a company who is in any way, whether directly or indirectly, interested in a contract or proposed contract with the company to declare the nature of his interest at a meeting of the directors of the company.

(2) In the case of a proposed contract the declaration required by this section to be made by a director shall be made at the meeting of the

directors at which the question of entering into the contract is first taken into consideration, or if the director was not at the date of that meeting interested in the proposed contract, at the next meeting of the directors held after he became so interested, and in a case where the director becomes interested in a contract after it is made, the required declaration shall be made at the first meeting of the directors held after the director becomes so interested.

(3) For the purpose of this section, a general notice given to the directors of a company by a director to the effect that he is a member of a specified company or firm and is to be regarded as interested in any contract which, after the date of the notice, may be made with that company or firm shall be deemed to be a sufficient declaration of interest in relation to any contract so made.

(4) A director who fails to comply with the provisions of this section shall be guilty of an offence and liable on summary conviction to a fine at level 3 on the standard scale.

(5) Nothing in this section shall be taken to prejudice the operation of any rule of law restricting directors of a company from having any interest in contracts with the company.

#### **Contracts with sole members who are directors.**

228.(1) Subject to the provisions of subsection (2), where a private company limited by shares or by guarantee having only one member enters into a contract with the sole member of the company and the sole member is also a director of the company, the company shall, unless the contract is in writing, ensure that the terms of the contract are either set out in a written memorandum or are recorded in the minutes of the first meeting of the directors of the company following the making of the contract.

(2) Subsection (1) shall not apply to contracts entered into in the ordinary course of the company's business.

(3) Subject to subsection (4) below, nothing in this section shall be construed as excluding the operation of any other enactment or rule of law applying to contracts between a company and a director of that company.

(4) Any failure to comply with subsection (1) with respect to a contract shall not affect the validity of that contract.

(5) If a company fails to comply with subsection (1), the company and every officer of it who is in default shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

#### **Provision as to payments received by directors for loss of office or on retirement.**

229.(1) In connection with the transfer of the whole or any part of the undertaking or property of a company it shall not be lawful for any payment to be made to any director of the company by way of compensation for loss of office, or as consideration for or in connection with his retirement from office, unless particulars with respect to the proposed payment, including the amount, have been disclosed to the members of the company and the proposal approved by the company.

(2) Where an illegal payment is made to a director of the company, the amount received shall be deemed to have been received by him in trust for the company.

(3) Where a payment is to be made to a director of a company in connection with the transfer to any persons, as a result of an offer made to the general body of shareholders, of all or any of the shares in the company, it shall be the duty of that director to take all reasonable steps to secure that particulars with respect to the proposed payment, including the amount, shall be included in or sent with any notice of the offer made for their shares which is given to any shareholders.

(4) In any case where—

- (a) a director fails to take the reasonable steps referred to in subsection (3); or
- (b) a person who has been properly required by a director to include the relevant particulars in or send them with any such notice as required by that subsection, fails so to do,

the director or person concerned is guilty of an offence and shall be liable on summary conviction to a fine at level 1 on the standard scale; and if the requirements of subsection (3) are not complied with in relation to any such payment as is mentioned in that subsection, any sum received by the director on account of the payment shall be deemed to have been received by him in trust for any persons who have sold their shares as a result of the offer made.

(5) In connection with any transfer referred to in subsection (3), if the price to be paid to a director of the company—

- (a) whose office is to be abolished; or
- (b) who is to retire from office,

for any shares in the company held by him is in excess of the price which could at the time have been obtained by other holders of the like shares or any valuable consideration is given to any such director, the excess or the

money value of the consideration, as the case may be shall be deemed for the purposes of this section to have been a payment made to him by way of compensation for loss of office or as consideration for or in connection with his retirement from office.

(6) Nothing in this section shall be taken to prejudice the operation of any rule of law requiring disclosure to be made with respect to any such payments as are mentioned in this section or with respect to any other like payments made or to be made to the directors of a company.

#### **Provisions as to assignment of office by directors.**

230. In the case of any company, if provision is made by the articles or by any agreement entered into between any person and the company for empowering a director or manager of the company to assign his office to another person, then, notwithstanding anything to the contrary contained in the provision, any assignment of office made in pursuance of the provision shall be of no effect unless and until it is approved by a special resolution of the company.

#### *Avoidance of provisions in articles or contracts relieving officers from liability*

#### **Provisions as to liability of officers and auditors.**

231.(1) Subject to the provisions of this section, any provision, whether contained in the articles of a company or in any contract with a company or otherwise, for exempting any director, manager or officer of the company from, or indemnifying him against, any liability which by virtue of any rule of law would otherwise attach to him in respect of any negligence, default, breach of duty or breach of trust of which he may be guilty in relation to the company, shall be void.

(2) Nothing in this section shall preclude—

- (a) any person, not being the company, indemnifying any director, manager or officer of the company against any such liability as referred to in subsection (1);
- (b) a company from purchasing and maintaining for any director, manager or officer of the company, or any person (whether an officer of the company or not) employed by the company as auditor, insurance against any such liability referred to in subsection (1);
- (c) a company from indemnifying any director, manager or officer of the company against any such liability incurred by him in defending any proceedings, whether civil or criminal, in which

judgment is given in his favour or in which he is acquitted or in connection with any application under section 477 in which relief is granted to him by the court.

## CHAPTER II

### DERIVATIVE CLAIMS

#### **Commencing Derivative Claims.**

232.(1) This section applies to proceedings in Gibraltar by a member of a company—

- (a) in respect of a cause of action vested in the company; and
- (b) seeking relief on behalf of the company.

This is referred to in sections 232 to 236 as a “derivative claim”.

(2) A derivative claim may only be brought—

- (a) under this Chapter; or
- (b) in pursuance of an order of the court in proceedings under section 145 (proceedings for protection of members against unfair prejudice).

(3) A derivative claim under sections 232 to 236 may be brought only in respect of a cause of action arising from an actual or proposed act or omission involving negligence, default, breach of duty or breach of trust by a director of the company.

The cause of action may be against the director or another person (or both).

(4) It is immaterial whether the cause of action arose before or after the person seeking to bring or continue the derivative claim became a member of the company.

(5) For the purposes of this Chapter—

- (a) “director” includes a former director;
- (b) “director” includes any person in accordance with whose directions or instructions the directors of a company have been accustomed to act; and



- (c) references to a member of a company include a person who is not a member but to whom shares in the company have been transferred or transmitted by operation of law.

**Application for permission to continue derivative claim.**

233.(1) A member of a company who brings a derivative claim under sections 232 to 236 must apply to the court for permission to continue it.

(2) If it appears to the court that the application and the evidence filed by the applicant in support of it do not disclose a prima facie case for giving permission (or leave), the court—

- (a) must dismiss the application; and
- (b) may make any consequential order it considers appropriate.

(3) If the application is not dismissed under subsection (2), the court—

- (a) may give directions as to the evidence to be provided by the company; and
- (b) may adjourn the proceedings to enable the evidence to be obtained.

(4) On hearing the application, the court may—

- (a) give permission to continue the claim on such terms as it thinks fit;
- (b) refuse permission and dismiss the claim; or
- (c) adjourn the proceedings on the application and give such directions as it thinks fit.

**Application for permission to continue claim as a derivative claim.**

234.(1) This section applies where—

- (a) a company has brought a claim; and
- (b) the cause of action on which the claim is based could be pursued as a derivative claim under sections 232 to 236.

(2) A member of the company may apply to the court for permission to continue the claim as a derivative claim on the ground that—

- (a) the manner in which the company commenced or continued the claim amounts to an abuse of the process of the court;

- (b) the company has failed to prosecute the claim diligently; and
- (c) it is appropriate for the member to continue the claim as a derivative claim.

(3) If it appears to the court that the application and the evidence filed by the applicant in support of it do not disclose a prima facie case for giving permission the court–

- (a) must dismiss the application; and
- (b) may make any consequential order it considers appropriate.

(4) If the application is not dismissed under subsection (3), the court–

- (a) may give directions as to the evidence to be provided by the company; and
- (b) may adjourn the proceedings to enable the evidence to be obtained.

(5) On hearing the application, the court may–

- (a) give permission (or leave) to continue the claim as a derivative claim on such terms as it thinks fit;
- (b) refuse permission (or leave) and dismiss the application; or
- (c) adjourn the proceedings on the application and give such directions as it thinks fit.

**Whether permission to be given.**

235.(1) The following provisions have effect where a member of a company applies for permission under section 233 or 234.

(2) Permission must be refused if the court is satisfied–

- (a) that a person acting in accordance with the duty to promote the success of the company would not seek to continue the claim; or
- (b) where the cause of action arises from an act or omission that is yet to occur, that the act or omission has been authorised by the company; or

- (c) where the cause of action arises from an act or omission that has already occurred, that the act or omission—
  - (i) was authorised by the company before it occurred, or
  - (ii) has been ratified by the company since it occurred.

(3) In considering whether to give permission the court must take into account, in particular—

- (a) whether the member is acting in good faith in seeking to continue the claim;
- (b) where the cause of action results from an act or omission that is yet to occur, whether the act or omission could be, and in the circumstances would be likely to be—
  - (i) authorised by the company before it occurs, or
  - (ii) ratified by the company after it occurs;
- (c) where the cause of action arises from an act or omission that has already occurred, whether the act or omission could be, and in the circumstances would be likely to be, ratified by the company;
- (d) whether the company has decided not to pursue the claim;
- (e) whether the act or omission in respect of which the claim is brought gives rise to a cause of action that the member could pursue in his own right rather than on behalf of the company.

(4) In considering whether to give permission the court shall have particular regard to any evidence before it as to the views of members of the company who have no personal interest, direct or indirect, in the matter.

(5) The Minister may by regulations—

- (a) amend subsection (2) so as to alter or add to the circumstances in which permission is to be refused;
- (b) amend subsection (3) so as to alter or add to the matters that the court is required to take into account in considering whether to give permission.

(6) Before making any such regulations the Minister shall consult such persons as he considers appropriate.

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

**Application for permission to continue derivative claim brought by another member.**

236.(1) This section applies where a member of a company (“the claimant”)–

- (a) has brought a derivative claim;
- (b) has continued as a derivative claim a claim brought by the company; or
- (c) has continued a derivative claim under this section.

(2) Another member of the company (“the applicant”) may apply to the court for permission to continue the claim on the ground that–

- (a) the manner in which the proceedings have been commenced or continued by the claimant amounts to an abuse of the process of the court;
- (b) the claimant has failed to prosecute the claim diligently; and
- (c) it is appropriate for the applicant to continue the claim as a derivative claim.

(3) If it appears to the court that the application and the evidence filed by the applicant in support of it do not disclose a prima facie case for giving permission (or leave), the court–

- (a) must dismiss the application; and
- (b) may make any consequential order it considers appropriate.

(4) If the application is not dismissed under subsection (3), the court–

- (a) may give directions as to the evidence to be provided by the company; and
- (b) may adjourn the proceedings to enable the evidence to be obtained.

(5) On hearing the application, the court may–

- (a) give permission (or leave) to continue the claim on such terms as it thinks fit;

- (b) refuse permission (or leave) and dismiss the application; or
- (c) adjourn the proceedings on the application and give such directions as it thinks fit.

## **PART VII**

### **ACCOUNTS AND AUDIT CHAPTER I**

#### *Preliminary*

#### **Interpretation of Part VII.**

237.(1) In this Part, except where the context otherwise requires—

“affiliated undertaking” means any two or more undertakings within a group;

“annual accounts” of a company are the balance sheet, the profit and loss account together with any other primary statements and the notes on the accounts, and these documents shall constitute a composite whole;

“associated undertaking” has the meaning given in paragraph 17 of Schedule 21;

“balance sheet” in relation to a company that prepares IAS accounts, includes a statement of financial position or other equivalent financial statement required to be prepared by international accounting standards;

“Directive 2013/34/EU” means Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC, as amended from time to time;

“fixed assets” has the meaning given in paragraph 15 of Schedule 15;

“group” means a parent undertaking and its subsidiary undertakings;

“group undertaking” has the meaning given by section 277 and  
“participating interest” has the meaning given by section 278;

“IAS accounts” means accounts prepared in accordance with international accounting standards;

“IAS Regulation” means Regulation (EC) No 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards;

“international accounting standards” means International Accounting Standards (IAS), International Financial Reporting Standards (IFRS) and related Interpretations (SIC-IFRIC interpretations), subsequent amendments to those standards and related interpretations, future standards and related interpretations issued or adopted by the International Accounting Standards Board (IASB) within the meaning of the IAS Regulation, adopted from time to time by the European Commission in accordance with the Regulation;

“investment property” means land and/or buildings held to earn rent or for capital appreciation;

“mainstream companies” shall be construed in accordance with subsection (2);

“material” means the status of information where its omission or misstatement could reasonably be expected to influence decisions that users make on the basis of the financial statements of the undertaking; and the materiality of individual items shall be assessed in the context of other similar items;

“medium-sized company” and “small company” have the meanings given in Schedule 9;

“net turnover” has the meaning given in Schedule 9;

“Non-IAS accounts” means accounts prepared in accordance with section 243;

“parent undertaking” has the meaning given in section 276;

“profit and loss account”, in relation to a company that prepares IAS accounts, includes an income statement or other equivalent financial statement required to be prepared by international accounting standards;

“primary currency” means any one currency out of the Gibraltar Pound, the Great British Pound, US Dollar, the Euro, the Japanese Yen, the Swiss Franc;

- “public-interest entity” has the meaning given in Schedule 9;
- “purchase price” has the meaning given in paragraph 11 of Schedule 15;
- “production cost” has the meaning given in paragraph 11 of Schedule 15;
- “regulated market” means a regulated market as defined in the Financial Services (Markets in Financial Instruments) Act 2006 where that regulated market is in Gibraltar or an EEA State;
- “related party” has the meaning given in the IAS Regulation;
- “specified company” means a company which falls within one of paragraphs (i) to (iii) of subsection (2);
- “subsidiary undertaking” has the meaning given in section 276;
- “value adjustment” has the meaning given in paragraph 14 of Schedule 15.

(2) A company is a mainstream company for the purposes of this Part if it is—

- (a) a public company limited by shares or by guarantee; or
- (b) a private company limited by shares or by guarantee,

and is neither—

- (i) a non-profit making company, nor
- (ii) a bank licensed or authorised under the Financial Services (Banking) Act, nor
- (iii) an insurance company licensed under the Financial Services (Insurance Companies) Act.

(3) Any reference in this Part to a financial year of a company shall be construed as a reference to a period in respect of which a profit and loss account of the company is made up under section 240.

(4) References in this Act to accounts giving a “true and fair view” are references—

- (a) in the case of Non-IAS accounts, to the requirement under section 243 to give a true and fair view; and

- (b) in the case of IAS accounts, to the requirement under international accounting standards that such accounts achieve fair presentation.

(5) This Part applies to the accounts of a company in respect of each financial year beginning on or after the date on which this Act comes into force.

(6) *Deleted*

(7) *Deleted*

(8) The provisions of this Part relating to IAS accounts do not apply to specified companies.

(9) This Part has effect subject to Chapter 3 (consolidated accounts).

**Public-interest entity excluded from exemptions.**

237A. Unless expressly stated, a company is not entitled to take advantage of any simplifications or exemptions as set out in this Part if it was at any time within the financial year in question a public-interest entity.

**Preparation of annual accounts: mainstream companies.**

238.(1) A mainstream company's annual accounts may be prepared—

- (a) in accordance with section 243 (“Non-IAS accounts”); or
- (b) in accordance with international accounting standards (“IAS accounts”).

(2) After the first financial year in which the directors of a company prepare IAS accounts (the “first IAS year”), all subsequent annual accounts of the company must be prepared in accordance with international accounting standards unless there is a relevant change of circumstance.

(3) There is a relevant change of circumstance if, at any time during or after the first IAS year—

- (a) the company becomes a subsidiary undertaking of another undertaking that does not prepare IAS accounts;
- (b) the company ceases to be a company with securities admitted to trading on a regulated market;



- (c) a parent undertaking of the company ceases to be an undertaking with securities admitted to trading on a regulated market.

(4) If, having changed to preparing Non-IAS accounts following a relevant change of circumstance, the directors again prepare IAS accounts for the company, subsections (2) and (3) apply again as if the first financial year for which such accounts are again prepared were the first IAS year.

## CHAPTER 2

### Accounts other than consolidated accounts

#### Keeping of accounts.

239.(1) Subject to section 243, every company shall cause to be kept for a period of 5 years proper books of account with respect to—

- (a) all sums of money received and expended by the company and the matters in respect of which the receipt and expenditure takes place;
- (b) all sales and purchases of goods and services by the company; and
- (c) the assets and liabilities of the company.

(2) The books of account shall be kept at the registered office of the company or at such other place as the directors think fit, and shall at all times be open to inspection by the directors.

(3) Subject to subsection (4), a person who, being a director of a company, fails to take all reasonable steps to secure compliance by the company with the requirements of this section, or has by his own wilful act been the cause of any default by the company thereunder, shall be liable, in respect of each offence, on summary conviction to imprisonment for 6 months or to a fine at level 4 on the standard scale.

(4) A person shall not be sentenced to imprisonment for an offence under this section unless, in the opinion of the court dealing with the case, the offence was committed knowingly.

#### *All accounts*

#### Profit and loss account and balance sheet.

240.(1) The directors of the company shall cause to be made out at some date not later than 18 months after the incorporation of the company and

subsequently once for each financial year of a company, a profit and loss account or, in the case of a company not trading for profit, an income and expenditure account for the period and the directors of the company shall lay before the company in general meeting such profit and loss account or, in the case of a company not trading for profit, such income and expenditure account made up to a date not earlier than the date of the meeting by more than 9 months, or, in the case of a company carrying on business or having interests abroad, by more than 12 months.

(2) If for any special reason the Minister thinks fit so to do, he may,—

- (a) in the case of any company, extend the period of 18 months referred to in subsection (1); and
- (b) in the case of any company and with respect to any year, extend the periods of 9 and 12 months referred to in that subsection.

(3) The directors shall cause to be made out for each financial year of a company, and to be laid before the company in general meeting, a balance sheet as at the date to which the profit and loss account, or the income and expenditure account, as the case may be, is made up, and in respect of companies other than small companies, there shall be attached to every such balance sheet a report by the directors with respect to—

- (a) the state of the company's affairs;
- (b) the amount (if any) which they recommend should be paid by way of dividend; and
- (c) the amount (if any) which they propose to carry to the reserve fund, general reserve or reserve account shown specifically on the balance sheet, or to a reserve fund, general reserve or reserve account to be shown specifically on a subsequent balance sheet.

(4) A company's financial year is determined as follows.

- (a) Its first financial year—
  - (i) begins with the first day of its first accounting reference period, and
  - (ii) ends with the last day of that period or such other date, not more than 7 days before or after the end of that period, as the directors may determine.
- (b) Subsequent financial years—

- (i) begin with the day immediately following the end of the company's previous financial year, and
- (ii) end with the last day of its next accounting reference period or such other date, not more than 7 days before or after the end of that period, as the directors may determine.

(5) Subject to subsection (6) a person who, being a director of a company to which this section applies, fails to take all reasonable steps to comply with the provisions of this section, shall be guilty of an offence and liable, in respect of each offence, on summary conviction to imprisonment for 6 months or to a fine at level 4 on the standard scale.

(6) A person shall not be sentenced to imprisonment for an offence under this section unless, in the opinion of the court dealing with the case, the offence was committed knowingly.

(7) This section has effect subject to the provisions of section 268 (change of accounting reference period).

#### **Signing of annual accounts.**

241.(1) All annual accounts of a company shall be signed on behalf of the board by two of the directors of the company, or, if there is only one director, by that director, and the auditors' report shall be attached to the annual accounts, and the report shall be read before the company in general meeting, and shall be open to inspection by any member.

(2) If any copy of the annual accounts which have not been signed as required by this section is issued, circulated or published (other than in draft form), or if any copy of the annual accounts are issued, circulated or published without having a copy of the auditors' report attached thereto (other than in draft form), the company and every director, manager or other officer of the company who is knowingly a party to the default, are guilty of offences and are each liable on summary conviction to a fine of £50.

#### **Right to receive copies of balance sheets and auditors' report.**

242.(1) In the case of a company other than a private company—

- (a) not less than 7 days before a general meeting, a copy of every balance sheet, including every document required by law to be annexed to it, which is to be laid before the company in general meeting, together with a copy of the auditors' report, shall be sent to all persons entitled to receive notices of general meetings of the company;

- (b) any member of the company, whether he is or is not entitled to have sent to him copies of the company's balance sheets, and any holder of debentures of the company shall be entitled to be furnished on demand without charge with a copy of the last balance sheet of the company, including every document required by law to be annexed to it, together with a copy of the auditors' report on the balance sheet.

(2) If default is made in complying with subsection (1)(a), the company and every officer of the company who is in default is guilty of an offence and shall be liable on summary conviction to a fine at level 1 on the standard scale.

(3) If, in a case where any person makes a demand for a document with which he is entitled to be furnished by virtue of subsection (1)(b), default is made in complying with the demand within 7 days after the making thereof, the company and every director, manager or other officer of the company who is knowingly a party to the default is guilty of an offence and shall be liable on summary conviction to a fine of one half of the amount at level 1 on the standard scale for every day during which the default continues, unless it is proved that that person has already made a demand for and been furnished with a copy of the document.

(4) In the case of a company which is a private company, any member shall be entitled to be furnished, within 7 days after he has made a request to the company under subsection (1)(b), with a copy of the balance sheet and auditors' report on payment of the prescribed sum for every hundred words.

(5) If default is made in furnishing under subsection (4) a copy to any member who demands it and tenders to the company the amount of the proper charge for such a copy, the company and every officer of the company who is in default shall be guilty of an offence and liable on summary conviction to a default fine.

#### *Non-IAS accounts*

#### **Non-IAS accounts: mainstream companies.**

243.(1) This section applies only in the case of a mainstream company which prepares Non-IAS accounts.

(1A) Non-IAS accounts must state—

- (a) that the company is registered in Gibraltar;
- (b) the company's name and registered number;

- (c) the legal form of the company including whether the company is a public or a private company and whether it is limited by shares or by guarantee;
- (d) the address of the company's registered office, and
- (e) where appropriate, the fact that the company is being wound-up.

(2) Non-IAS accounts must be drawn up clearly and comprise—

- (a) a balance sheet as at the last day of the financial year; and
- (b) a profit and loss account;

and the balance sheet must give a true and fair view of the state of affairs of the company as at the end of the financial year; and the profit and loss account must give a true and fair view of the profit or loss of the company for the financial year.

(3) Non-IAS accounts must comply with the provisions of sections 245 to 246 as to the form and content of the balance sheet and profit and loss account and additional information to be provided by way of notes to the accounts.

(4) Where compliance with subsection (3), and the other provisions of this Part as to the matters to be included in Non-IAS accounts, would not be sufficient to give a true and fair view, the necessary additional information must be given in the accounts or in a note to them.

(5) If in exceptional circumstances compliance with any of those provisions is inconsistent with the requirement to give a true and fair view, the directors must depart from that provision to the extent necessary to give a true and fair view.

(6) Particulars of any such departure, the reasons for it and its effect on the assets, liabilities, financial position and profit or loss of the company must be given in a note to the accounts.

(7) The layout of the balance sheet and of the profit and loss account, and in particular the format adopted for their presentation, must not be changed from one financial year to the next, save in exceptional cases in order to give a true and fair view of the undertaking's assets, liabilities, financial position and profit or loss unless the departure is disclosed in the notes on the accounts together with an explanation of the reasons for it.

**Principles to determine items shown in a company's accounts: mainstream companies: Non-IAS accounts.**

244.(1) This section applies only to mainstream companies which prepare Non-IAS accounts.

(2) The amounts to be included in respect of all items shown in Non-IAS accounts shall be determined in accordance with the principles set out in the following paragraphs—

- (a) the company shall be presumed to be carrying on business as a going concern;
- (b) accounting policies and measurement bases shall be applied consistently within the same accounts and from one financial year to the next;
- (c) the recognition and measurement of the amount of any item shall be determined on a prudent basis, and in particular—
  - (i) only profits realised at the balance sheet date may be included in the profit and loss account,
  - (ii) all liabilities which have arisen in respect of the financial year to which the accounts relate or a previous financial year shall be taken into account, including those which only became apparent between the balance sheet date and the date on which it is signed on behalf of the board of directors, and
  - (iii) account shall be taken of all negative value adjustments, whether the result of the financial year is a loss or a profit;
- (d) amounts recognised in the balance sheet and profit and loss account shall be computed on the accrual basis;
- (da) the opening balance sheet for each financial year must correspond to the closing balance sheet for the preceding financial year;
- (e) in determining the aggregate value of any item the value of each individual asset or liability that falls to be taken into account shall be determined separately;
- (f) if, in exceptional circumstances, it appears to the directors of a company to be necessary to depart from these principles in preparing the accounts for a financial year they may do so but particulars of the departure, the reasons for it, and its effect shall be given in a note to the accounts;

- (g) in respect of every item shown in a company's balance sheet or profit and loss account—
  - (i) for each financial year, the corresponding amount for the previous financial year shall be shown,
  - (ii) where that corresponding amount is not comparable with the value to be shown for the item in question in the financial year to which the balance sheet or profit and loss account relates, the former amount shall be adjusted and particulars of the adjustment and the reasons for it shall be disclosed in a note to the accounts;
- (h) the accounts shall not contain any set-off between asset and liability items or income and expenditure items;
- (i) the directors of a company must, in determining how amounts are presented within items in the profit and loss account and balance sheet, have regard to the substance of the reported transaction or arrangement, in accordance with generally accepted accounting principles or practice;
- (j) the requirements set out in this Part regarding recognition, measurement, presentation, disclosure and consolidation need not be complied with when the effect of complying with them is immaterial.

**Mainstream Companies: Non-IAS accounts: layout of balance sheet and profit and loss accounts.**

245.(1) This section applies where a mainstream company prepares Non-IAS accounts.

(2) Subject to the following provision of this section, the layout of the balance sheet of a company shall show separately and in the order provided, the items listed in either of the formats in Schedule 11; and the layout of the profit and loss account of a company shall show separately and in the order provided, the items listed in either of the profit and loss account formats in Schedule 12.

(2A) The balance sheet or profit and loss account of a company may show a more detailed subdivision of the items listed in the formats in Schedule 11 or 12, provided that the relevant format is adhered to.

(2B) The balance sheet or profit and loss account of a company may include the addition of new items and subtotals, provided that the contents

of such new items are not covered by any of the items listed in the formats in Schedule 11 or 12.

(2C) The layout, nomenclature and terminology of items in the balance sheet and profit and loss account that are preceded by Arabic numbers shall be adapted where the special nature of an undertaking so requires.

(3) The layout of the balance sheet of a small company may be modified to follow any of the formats in Schedule 13, but the directors may decide that it may contain some or all of the additional analysis provided for in Schedule 11.

(4) All annual accounts of a company which prepares Non-IAS accounts shall contain a summary of the authorised share capital and of the issued share capital of the company.

(5) The layout of the profit and loss account of a medium sized company and of a small company may be modified to follow any of the formats in Schedule 14.

(6) Items to which Arabic numbers are assigned in any of the formats in Schedule 11, 12, or 13 may be combined in a company's accounts for any financial year if either—

- (a) their individual amounts are not material to assessing the state of affairs or profit or loss of the company for that year; or
- (b) the combination facilitates that assessment (in which case the individual amounts of any items so combined must be disclosed in a note to the accounts).

(7) *Deleted*

(7A) The layout of the balance sheet of a company may be adapted from either of the formats in Schedule 11 so as to distinguish between current and non-current items in a different way, provided that—

- (a) the information given is at least equivalent to that which would have been required by the use of such format had it not been adapted, and
- (b) the presentation of those items is in accordance with generally accepted accounting principles or practice.

(7B) The layout of the profit and loss account of a company may be adapted from either of the formats in Schedule 12, provided that—



- (a) the information given is at least equivalent to that which would have been required by the use of such format had it not been thus adapted, and
- (b) the presentation is in accordance with generally accepted accounting principles or practice.

(8) Schedule 15 has effect in relation to the amounts to be included in respect of items shown in the company's accounts.

**Content of the notes on the accounts: mainstream companies: Non-IAS accounts.**

246.(1) This section applies to the accounts of a mainstream company which prepares Non-IAS accounts.

(2) In the case of Non-IAS accounts, in addition to the information required under other provisions of this Chapter, the notes on the accounts shall, set out the appropriate information in respect of the matters mentioned in Schedule 16.

(3) Information required by this Chapter to be given in notes on the accounts may be contained in the accounts or in a separate document annexed to the accounts and must be presented in the order in which the items to which they relate are presented in the balance sheet and in the profit and loss account.

(4) References in this Chapter to a company's annual accounts, or to a balance sheet or profit and loss account, include notes to the accounts giving information which is required by any provision of this Chapter or international accounting standards, and required or allowed by any such provision to be given in a note to company accounts.

*Notes on account: mainstream companies*

**Disclosure required in notes to annual accounts: particulars of staff.**

247.(1) Subject to subsection (2), the following information with respect to the employees of a mainstream company must be given in the notes to the company's annual accounts—

- (a) the average number of persons employed by the company in the financial year; and
- (b) the average number of persons so employed within each category of persons employed by the company.

(2) Where in respect of a financial year a company qualifies as a small company, the requirements of subsection (1)(b) and subsection (4) do not apply to that company.

(3) The average number required by subsection (1)(a) or (b) is determined by dividing the relevant annual number by the number of months in the financial year; and for this purpose, the relevant annual number is determined by ascertaining for each month in the financial year—

- (a) for the purposes of subsection (1)(a), the number of persons employed under contracts of service by the company in that month (whether throughout the month or not);
- (b) for the purposes of subsection (1)(b), the number of persons in the category in question of persons so employed,

and, in either case, adding together all the monthly numbers.

(4) In respect of all persons employed by the company during the financial year who are taken into account in determining the relevant annual number for the purposes of subsection (1)(a) there must also be stated the aggregate amounts respectively of—

- (a) wages and salaries paid or payable in respect of that year to those persons;
- (b) social security costs incurred by the company on their behalf; and
- (c) other pension costs so incurred,

but this requirement does not apply in so far as those amounts, are disclosed separately in the profit and loss account.

(5) For the purposes of subsection (1)(b), the categories of person employed by the company are such as the directors may select, having regard to the manner in which the company's activities are organised.

(6) In this section “social security costs” means any contributions by the company to any government social security or pension scheme, fund or arrangement.

(7) In this section “pension costs” includes any costs incurred by the company in respect of any pension scheme established for the purpose of providing pensions for persons currently or formerly employed by the company, any sums set aside for the future payment of pensions directly by the company to current or former employees and any pensions paid directly to such persons without having first been set aside.

*IAS Accounts***IAS annual accounts.**

248.(1) IAS accounts must state—

- (a) that the company is registered in Gibraltar;
- (b) the company's name and registered number;
- (c) the legal form of the company including whether the company is a public or a private company and whether it is limited by shares or by guarantee;
- (d) the address of the company's registered office, and
- (e) where appropriate, the fact that the company is being wound-up.

(2) The notes to the accounts must state that the accounts have been prepared in accordance with international accounting standards.

*Directors reports: mainstream companies***Duty to prepare directors' reports.**

249.(1) The directors of a mainstream company shall for each financial year prepare a report (in this Chapter referred to as a "directors' report") complying with the general requirements of section 250 containing the business review specified in section 252 and, when provided separately, the corporate governance statement specified in section 251.

(2) For a financial year in which—

- (a) the company is a parent company; and
- (b) the directors of the company prepare group accounts,

the directors' report must be a consolidated report (a "group directors report") relating, to the extent specified in the following provisions of sections 250 and 252, and, when provided separately, section 251.

(3) A group directors' report may, where appropriate, give greater emphasis to the matters that are significant to the company and its subsidiary undertakings included in the consolidation, taken as a whole.

(4) If a directors' report does not comply with the provisions of sections 250 and 252, and when provided separately, section 251 relating to the preparation and contents of the report, every director of the company who—

- (a) knew that it did not comply or was reckless as to whether it complied; and
- (b) failed to take all reasonable steps to secure compliance with the provision in question,

is guilty of an offence and shall be liable to a fine.

**Directors' report: general requirements.**

250.(1) The directors' report for a financial year of a mainstream company must state—

- (a) the names of the persons who, at any time during the financial year, were directors of the company;
- (b) the principal activities of the company in the course of the year; and
- (c) the amount (if any) that the directors recommend should be paid by way of dividend.

(2) In relation to a group directors' report, subsection (1)(b) has effect as if the reference to the company was a reference to the company and its subsidiary undertakings included in the consolidation.

(3) The directors' report must give an indication of—

- (a) *Deleted*
- (b) the company's likely future developments;
- (c) activities in the field of research and development; and
- (d) the existence of any branches of the company.

(4) Where in a financial year any shares in the company—

- (a) are acquired by the company by forfeiture or surrender in lieu of forfeiture; or
- (b) are made subject to a lien or other charge lawfully taken (whether expressly or otherwise) by the company,

the directors' report for that year shall give the reasons for the acquisition and information required by subsection (5).

(5) Where subsection (4) applies, the report must give—

- (a) the number and nominal value of the shares so acquired by the company, acquired by another person in such circumstances and so charged respectively during that year;
- (b) the maximum number and nominal value of shares which having been so acquired by the company, acquired by another person in such circumstances or so charged (whether or not during that year), are held at any time by the company or that other person during that year;
- (c) the number and nominal value of the shares so acquired by the company, acquired by another person in such circumstances or so charged (whether or not during that year) which are disposed of by the company or that other person or cancelled by the company during that year;
- (d) where the number and nominal value of the shares of any particular description are stated in pursuance of any of the preceding paragraphs, the percentage of the called up share capital which shares of that description represent;
- (e) where any of the shares have been so charged, the amount of the charge in each case; and
- (f) where any of the shares have been disposed of by the company or the persons who acquired them in such circumstances for money or money's worth, the amount or value of the consideration in each case.

(6) With respect to a financial year in which a company is a small company, a directors' report is not required, provided that any information required by subsection (4) and (5) is given in a note to the accounts.

**Directors' reports: corporate governance.**

251.(1) A mainstream company whose securities are admitted to trading on a regulated market shall include a corporate governance statement in the directors' report and that statement shall be included as a specific section of the directors' report and shall contain at least a reference to where applicable—

- (a) the corporate governance code to which the company is subject;

- (b) the corporate governance code which the company may have voluntarily decided to apply;
- (c) all relevant information about the corporate governance practices applied beyond the requirements under Gibraltar law.

(2) Where subsection (1)(a) or (b) apply, the company shall also indicate where the relevant texts are publicly available and where subsection (1)(c) applies, the company shall make its corporate governance practices publicly available.

(3) To the extent to which a company departs from a corporate governance code referred to under subsection (1)(a) or (b), it shall provide an explanation as to which parts of the corporate governance code it departs from and the reasons for doing so.

(4) Where the company has decided not to apply any provisions of a corporate governance code referred to under subsection (1)(a) or (b), it shall explain its reasons for doing so.

(5) The statement referred to in subsection (1) shall, in addition, contain the following matters—

- (a) a description of the main features of the company's internal control and risk management systems in relation to the financial reporting process;
- (b) where the company is subject to the Financial Services (Takeover Bids) Act 2006, the information required pursuant to section 18 (1)(c), (d), (f), (h) and (i) of that Act;
- (c) unless the information is already fully provided for, the operation of the shareholder meeting and its key powers, and a description of shareholders' rights and how they can be exercised; and
- (d) the composition and operation of the administrative, management and supervisory bodies and their committees.

(6) The information required by this section—

- (a) may be set out in a separate report delivered to the Registrar under section 254 together with the directors' report or by means of a reference in the directors' report where such document is publicly available on the company's website;

- (b) in the event of a separate report, may contain a reference to the directors' report in the corporate governance statement where the information required in subsection (5)(b) is made available.

(6A) In relation to a group directors' report, the information set out in subsection 5(a) shall refer to the main features of the internal controls and risk management systems for the undertakings included in the consolidation taken as a whole.

(7) The statutory auditor or audit firm shall express an opinion in accordance with section 258(2A) regarding the information prepared under subsection (1)(a) and (b), and shall check that the information referred to in subsections (1), (3), (4), (5a) and (d) has been provided.

(8) Companies which have only issued securities other than shares admitted to trading on a regulated market may choose not to apply the provisions of paragraphs (a) to (c) of subsection (1), subsections (2) to (4) and subsection (5)(c) and (d), unless such companies have issued shares which are traded in a multilateral trading facility, within the meaning of the Financial Services (Markets in Financial Instruments) Act 2007.

**Directors' report: business reviews.**

252.(1) The directors' report of a mainstream company for a financial year must contain—

- (a) a fair review of the business of the company; and
- (b) a description of the principal risks and uncertainties facing the company.

(2) The review required is a balanced and comprehensive analysis of—

- (a) the development and performance of the business of the company during the financial year; and
- (b) the position of the company at the end of the year, consistent with the size and complexity of the business.

(3) To the extent necessary for an understanding of the development, performance or position of the business of the company, the review must include—

- (a) analysis using financial key performance indicators; and
- (b) where appropriate, analysis using other key performance indicators, including information relating to environmental matters and employee matters.

(4) Where appropriate, the review must include reference to, and additional explanations of, amounts included in the annual accounts of the company.

(5) In this section, “key performance indicators” means factors by reference to which the development, performance or position of the business of the company can be measured effectively.

(6) In relation to a group directors’ report this section has effect as if the references to the company were references to the company and its subsidiary undertakings included in the consolidation.

(7) With respect to a financial year in which a company is a small or medium sized company, the directors’ report for the year need not comply with the requirements of subsection (3) so far as they relate to non-financial information.

#### **Financial instruments.**

253.(1) In relation to the use of financial instruments by a mainstream company, the directors’ report must contain an indication of–

- (a) the financial risk management objectives and policies of the company, including the policy for hedging each major type of forecasted transaction for which hedge accounting is used; and
- (b) the exposure of the company to price risk, credit risk, liquidity risk and cash flow risk,

unless such information is not material for the assessment of the assets, liabilities, financial position and profit or loss of the company.

(1A) In relation to a group directors’ report, subsection (1) has effect as if the references to the company were references to the company and its subsidiary undertakings included in the consolidation.

(2) In subsection (1) the expressions “hedge accounting”, “price risk”, “credit risk”, “liquidity risk” and “cash flow risk” have the same meaning as they have in Directive 2013/34/EU.

#### **Directors’ duties as to preparation and filing of documents.**

254.(1) The directors of a mainstream company have collectively the duty to ensure that the annual accounts, the directors’ report and, when provided separately, the corporate governance statement to be provided pursuant to section 251 are drawn up and filed with the Registrar in accordance with the



requirements of this Part, and, where applicable, in accordance with the international accounting standards adopted in accordance with the IAS Regulation.

(2) Subject to section 259 the directors of a mainstream company shall, within a reasonable period not exceeding 12 months after the balance sheet date, and in respect of each financial year, deliver to the Registrar a copy of the company's annual accounts together with a copy of the directors' report for that year and a copy of the auditors' report on those accounts.

(3) The copy of the auditors' report that is delivered to the Registrar shall state the names of the auditors and be signed by them.

(4) In all cases the annual accounts supplied in accordance with subsection (2) shall be signed by two directors, or, if there is only one director, by that director.

(5) The directors of a mainstream company other than a small company may choose as an alternative to make the directors' report available at the registered address of the company in Gibraltar and in such a case shall ensure in relation to the report that—

- (a) it is made available to the public; and
- (b) it is possible to obtain a copy of all of it upon request at a price not exceeding its administrative cost.

(6) The directors of a mainstream company which is a small company may choose to deliver to the Registrar only a copy of the company's balance sheet.

#### *Auditors and auditors' reports*

#### **Appointment of auditors.**

255.(1) Subject to subsection (2), every company shall at each annual general meeting appoint an auditor or auditors to hold office until the next annual general meeting.

(2) Subsection (1) does not require a company which is exempt under section 259 of this Act from appointing auditors, to appoint an auditor, unless, at a general meeting, a special resolution is passed requiring the company to conduct an audit for that period.

(3) A person or firm shall not be qualified for appointment as an auditor of a company, other than a company registered under Part XII, unless he is or the firm is approved in accordance with the Financial Services (Auditors) Act 2009 to carry out statutory audits.

(4) A company which appoints as auditor, a person or firm who or which under subsection (3) is not qualified to be an auditor, shall be guilty of an offence and shall be liable on summary conviction to a fine at level 5 on the standard scale.

(5) If an appointment of auditors is not made at an annual general meeting, the Registrar may, on the application of any member of the company, appoint an auditor of the company for the current year.

(6) None of the following persons shall be qualified for appointment as auditor of a company—

- (a) a director or officer or the secretary of the company; or
- (b) except where the company is a private company, a person who is a partner of or in the employment of an officer or the secretary of the company.

**Supplementary provisions as to auditors and their remuneration.**

256.(1) Subject to subsection (2), a person, other than a retiring auditor, shall not be capable of being appointed auditor at an annual general meeting unless notice of an intention to nominate that person to the office of auditor has been given by a member to the company not less than 14 days before the annual general meeting, and the company shall send a copy of any such notice to the retiring auditor, and shall give notice of it to the members, either by advertisement or in any other mode allowed by the articles, not less than 7 days before the annual general meeting.

(2) If, after notice of the intention to nominate an auditor has been so given, an annual general meeting is called for a date 14 days or less after the notice has been given, the notice, though not given within the time required by this subsection, shall be deemed to have been properly given for the purposes thereof, and the notice to be sent or given by the company may, instead of being sent or given within the time required by this subsection, be sent or given at the same time as the notice of the annual general meeting.

(3) Subject as provided below, the first auditors of the company may be appointed by the directors at any time before the first annual general meeting, and auditors so appointed shall hold office until that meeting except that—

- (a) the company may at a general meeting of which notice has been served on the auditors in the same manner as on members of the company remove those first auditors and appoint in their place any other persons being persons who have been nominated for appointment by any member of the company

and of whose nomination notice has been given to the members of the company not less than 7 days before the date of the meeting; and

- (b) if the directors fail to exercise their powers under this subsection, the company in general meeting may appoint the first auditors, and thereupon those powers of the directors shall cease.

(4) The directors may fill any casual vacancy in the office of auditor, but while any such vacancy continues, the surviving or continuing auditor or auditors (if any) may act.

(5) The remuneration of the auditors of a company shall be fixed by the company in general meeting, except that—

- (a) the remuneration of an auditor appointed before the first annual general meeting, or of an auditor appointed to fill a casual vacancy, may be fixed by the directors; and
- (b) the remuneration of an auditor appointed by the Registrar may be fixed by the Registrar.

**Auditors' report and right of access to books and right to attend general meetings.**

257.(1) The auditors shall make a report to the members on the accounts examined by them, and on all annual accounts laid before the company in general meeting during their tenure of office, and the report shall state—

- (a) whether or not they have obtained all the information and explanations they have required; and
- (b) whether, in their opinion, the annual accounts referred to in the report are properly drawn up so as to exhibit a true and fair view of the state of the company's affairs according to the best of their information and the explanations given to them, and as shown by the books of the company.

(2) Every auditor of a company shall have a right of access at all times to the books and accounts and vouchers of the company, and shall be entitled to require from the directors and officers of the company such information and explanation as may be necessary for the performance of the duties of the auditors.

(3) The auditors of a company shall be entitled to attend any general meeting of the company at which any accounts which have been examined

or reported on by them are to be laid before the company and to make any statement or explanation they desire with respect to the accounts.

**Auditors' reports.**

258.(1) Subject to section 259 where the directors of a mainstream company deliver to the Registrar the annual accounts and directors' report for a financial year, they shall also deliver, with those accounts, a full copy of the report of the person responsible for auditing the accounts.

(1A) The annual accounts and directors' report delivered under subsection (1) must be delivered in the same layout and with the same text as that used by the person responsible for auditing the accounts when drawing up his opinion.

(2) The auditors must state in their report whether in their opinion the information given in the directors' report for the financial year for which the annual accounts are prepared is consistent with those accounts and whether the directors' report has been properly prepared in accordance with this Part.

(2A) The auditors must also state in their report whether, in light of the knowledge and understanding of the company, and its environment obtained in the course of the audit, they have identified material misstatements in the directors' report and shall give an indication of the nature of any such misstatements.

(3) In addition to the information required by section 257, the auditors' report must comply with the requirements of section 28 of the Financial Services (Auditors) Act 2009.

**Exemption for small companies.**

259.(1) Where in respect of a financial year a mainstream company qualifies as a small company, the requirements of this Chapter relating to the appointment of auditors and the audit of account of that year shall not apply to the company if –

- (a) the company does not have to submit a return of its income pursuant to section 29 of the Income Tax Act; or
- (b) its turnover is such that it complies with the requirements specified in section 30 (1)(c) of the Income Tax Act (exemption from requirement that a return be accompanied by audited accounts).

(2) When, in a financial year, subsection (1) applies to a small company–

- (a) sections 241 and 242 have effect in respect of that company with the omission of references to the auditor's report;
- (b) no copy of an auditor's report need be delivered to the Registrar or laid before the company in general meeting; and
- (c) sections 255 and 256, except section 256 (5), do not apply to that company.

*Auditors' liability*

**Voidness of provisions protecting auditors from liability.**

260.

(1) This section applies to any provision—

- (a) for exempting an auditor of a company (to any extent) from any liability that would otherwise attach to him in connection with any negligence, default, breach of duty or breach of trust in relation to the company occurring in the course of the audit of accounts; or
- (b) by which a company directly or indirectly provides an indemnity (to any extent) for an auditor of the company, or of an associated company, against any liability attaching to him in connection with any negligence, default, breach of duty or breach of trust in relation to the company of which he is auditor occurring in the course of the audit of accounts.

(2) Any such provision is void, except as permitted by—

- (a) section 261 (indemnity for costs of successfully defending proceedings); or
- (b) sections 262 to 264 (liability limitation agreements).

(3) This section applies to any provision, whether contained in a company's articles or in any contract with the company or otherwise.

(4) For the purposes of this section companies are associated if one is a subsidiary of the other or both are subsidiaries of the same body corporate.

**Indemnity for costs of successfully defending proceedings.**

261. Section 260 (general voidness of provisions protecting auditors from liability) does not prevent a company from indemnifying an auditor against

any liability incurred by him in defending proceedings (whether civil or criminal) in which judgment is given in his favour or he is acquitted.

**Liability limitation agreements.**

262.(1) A “liability limitation agreement” is an agreement that purports to limit the amount of a liability owed to a company by its auditor in respect of any negligence, default, breach of duty or breach of trust, occurring in the course of the audit of accounts, of which the auditor may be guilty in relation to the company.

(2) Section 260 (general voidness of provisions protecting auditors from liability) does not affect the validity of a liability limitation agreement that—

- (a) complies with section 263 (terms of liability limitation agreement) and of any regulations under that section; and
- (b) is authorised by the members of the company in accordance with section 264.

(3) Such an agreement is effective to the extent provided by section 265.

**Terms of liability limitation agreement.**

263.(1) A liability limitation agreement—

- (a) must not apply in respect of acts or omissions occurring in the course of the audit of accounts for more than one financial year; and
- (b) must specify the financial year in relation to which it applies.

(2) The Minister may by regulations—

- (a) require liability limitation agreements to contain specified provisions or provisions of a specified description;
- (b) prohibit liability limitation agreements from containing specified provisions or provisions of a specified description.

“specified” here means specified in the regulations.

(3) Without prejudice to the generality of the power conferred by subsection (2), that power may be exercised with a view to preventing adverse effects on competition.

(4) Subject to the preceding provisions of this section, it is immaterial how a liability limitation agreement is framed.

In particular, the limit on the amount of the auditor's liability need not be a sum of money, or a formula, specified in the agreement.

**Authorisation of agreement by members of the company.**

264.(1) A liability limitation agreement is authorised by the members of the company if it has been authorised under this section and that authorisation has not been withdrawn.

(2) A liability limitation agreement between a private company and its auditor may be authorised—

- (a) by the company passing a resolution, before it enters into the agreement, waiving the need for approval;
- (b) by the company passing a resolution, before it enters into the agreement, approving the agreement's principal terms; or
- (c) by the company passing a resolution, after it enters into the agreement, approving the agreement.

(3) A liability limitation agreement between a public company and its auditor may be authorised—

- (a) by the company passing a resolution in general meeting, before it enters into the agreement, approving the agreement's principal terms; or
- (b) by the company passing a resolution in general meeting, after it enters into the agreement, approving the agreement.

(4) The "principal terms" of an agreement are terms specifying, or relevant to the determination of—

- (a) the kind (or kinds) of acts or omissions covered;
- (b) the financial year to which the agreement relates; or
- (c) the limit to which the auditor's liability is subject.

(5) Authorisation under this section may be withdrawn by the company passing an ordinary resolution to that effect—

- (a) at any time before the company enters into the agreement; or

- (b) if the company has already entered into the agreement, before the beginning of the financial year to which the agreement relates.

Paragraph (b) has effect notwithstanding anything in the agreement.

**Effect of liability limitation agreement.**

265.(1) A liability limitation agreement is not effective to limit the auditor's liability to less than such amount as is fair and reasonable in all the circumstances of the case having regard (in particular) to—

- (a) the auditor's responsibilities under this Part;
- (b) the nature and purpose of the auditor's contractual obligations to the company; and
- (c) the professional standards expected of him.

(2) A liability limitation agreement that purports to limit the auditor's liability to less than the amount mentioned in subsection (1) shall have effect as if it limited his liability to that amount.

(3) In determining what is fair and reasonable in all the circumstances of the case no account is to be taken of—

- (a) matters arising after the loss or damage in question has been incurred; or
- (b) matters (whenever arising) affecting the possibility of recovering compensation from other persons liable in respect of the same loss or damage.

**Disclosure of agreement by company.**

266.(1) A company which has entered into a liability limitation agreement must make such disclosure in connection with the agreement as the Minister may require by regulations.

(2) The regulations may provide, in particular, that any disclosure required by the regulations shall be made—

- (a) in a note to the company's annual accounts (in the case of its individual accounts) or in such manner as is specified in the regulations (in the case of group accounts); or



- (b) in the directors' report.

*Other provisions relating to accounts*

**Voluntary revision of defective accounts and reports.**

267.(1) If it appears to the directors of a company that—

- (a) the company's annual accounts; or
- (b) the directors' report,

did not comply with the requirements of this Part (or, where applicable, of Article 4 of the IAS Regulation), they may prepare revised accounts or a revised report.

(2) Where copies of the previous accounts or report have been laid before the company in general meeting or delivered to the Registrar, the revisions shall be confined to—

- (a) the correction of those respects in which the previous accounts or report did not comply with the requirements of this Part (or, where applicable, of Article 4 of the IAS Regulation); and
- (b) the making of any necessary consequential alterations.

(3) The Minister may by regulations make provision as to the application of the provisions of this Chapter in relation to—

- (a) revised annual accounts; or
- (b) a revised directors' remuneration report or directors' report.

(4) The regulations may, in particular—

- (a) make different provision according to whether the previous accounts or report are replaced or are supplemented by a document indicating the corrections to be made;
- (b) make provision with respect to the functions of the company's auditor in relation to the revised accounts or report;
- (c) require the directors to take such steps as may be specified in the regulations where the previous accounts or report have been—
  - (i) sent out to members and others under section 242,

- (ii) laid before the company in general meeting, or
- (iii) delivered to the Registrar.

**Change of accounting reference period.**

268.(1) A company may, by notice given to the Registrar, specify a new accounting reference date having effect in relation to—

- (a) the company's current accounting reference period and subsequent periods; or
- (b) the company's previous accounting reference period and subsequent periods,

and, for this purpose, a company's previous accounting reference period means the one immediately preceding its current accounting reference period.

(2) The notice must state whether the company's current or previous accounting reference period—

- (a) is to be shortened, so as to come to an end on the first occasion on which the new accounting reference period falls or fell after the beginning of the period;
- (b) is to be extended, so as to come to an end on the second occasion on which that date falls or fell after the beginning of the period.

(3) A notice extending a company's current or previous accounting reference period is not effective if given less than 3 years after the end of an earlier reference period of the company that was extended under this section.

(4) Subsection (3) does not apply—

- (a) to a notice given by a company that is a subsidiary undertaking or parent undertaking of another EEA undertaking if the new accounting reference date coincides with that of the other EEA undertaking or, where that undertaking is not a company, with the last day of its financial year; or
- (b) where the Minister directs that it should not apply, which he may do with respect to a notice that has been given or that may be given.

(5) A notice under this section may not be given in respect of a previous accounting reference period if the period for filing accounts and reports for the financial year by reference to that accounting period has already expired.

(6) An accounting reference period may not be extended so as to exceed 18 months and a notice under this section is ineffective if the current or previous accounting reference period as extended in accordance with the notice would exceed that limit; but this subsection does not apply where the company is under administration.

(7) In this section “EEA undertaking” means an undertaking established under the law of any part of the United Kingdom or Gibraltar or the law of any other EEA state.

### *Supplementary*

#### **Offences.**

269.(1) If a company’s annual accounts as approved by the board of directors and signed on behalf of the board by a director do not comply with the requirements of this Chapter including, where appropriate, international accounting standards, every director of the company who—

- (a) knew that they did not comply, or was reckless as to whether they complied; and
- (b) failed to take reasonable steps to secure compliance with those requirements or, as the case may be, to prevent the accounts from being approved,

commits an offence and shall be liable, on conviction on indictment, to a fine and, on summary conviction, to a fine not exceeding the statutory maximum.

(2) If a requirement of subsections (2) to (6) of section 254 or section 258 is not complied with before the end of the relevant period ascertained in accordance with section 272, the company and every officer of the company who is in default is guilty of an offence and shall be liable to pay a fixed penalty as described in subsection (4) to the Minister or on summary conviction to a fine up to level 3 on the standard scale.

(3) The Registrar may, within 6 months of the end of the relevant period ascertained in accordance with section 272, inform the Minister that a company or an officer of the company has failed to comply with a requirement of section 254, other than subsection (1), or section 258.

(4) On receipt of the information described in subsection (3), the Minister may issue a notice, in such form as he may decide, requiring the company or

an officer of the company to pay a penalty of such sum as he may be prescribed for the purposes of this section.

(5) If, where a notice as described in subsection (4) is served on a company or an officer of a company,—

- (a) the amount of the penalty is paid within 1 month of the receipt of the notice; and
- (b) the failure to comply to which the notice relates is remedied within 12 months of the date of payment of the penalty,

no further proceedings shall be taken against that company or officer in respect of that failure.

(6) If a company or an officer of the company served with a notice as described in subsection (4) fails to pay the amount of the penalty specified within 1 month of its receipt, that company or officer may be proceeded against for the offence of failure to comply with the requirement concerned.

(7) For the purposes of subsections (5) and (6), a company or an officer of the company shall be deemed to have received the notice described in subsection (4) on the day after it was posted to the company's registered office or, if it was delivered in person, on the day of delivery to the company's registered office.

(8) A company or person who contravenes any other requirement imposed on it or him under this Act shall be guilty of an offence and liable on summary conviction to a fine up to level 3 on the standard scale.

(9) It is a defence for a company or person charged with an offence under subsection (2) or (8) to prove that all reasonable steps were taken to ensure that the requirements of this Part (or, where applicable, of Article 4 of the IAS Regulation) would be complied with in proper time; but in any proceedings under this section it is not a defence to prove that a document necessary to comply with a requirement of this Part was in fact prepared but not delivered to the Registrar.

### **Exemptions from preparation, audit and publication of individual accounts.**

270. Any requirements made by or under this Chapter concerning the content, auditing and delivering to the Registrar of Non-IAS accounts the directors' report do not apply to a company which is a subsidiary undertaking if the following conditions are fulfilled—

- (a) the parent undertaking must be subject to the laws of Gibraltar or an EEA State;

- (b) all shareholders or members of the company must have declared their agreement to the exemption from the obligation and this declaration must be renewed each financial year;
- (c) the parent undertaking must have declared that it guarantees the commitments entered into by the company;
- (d) the declarations referred to in paragraphs (b) and (c) must be delivered to the Registrar;
- (e) the company must be included in the consolidated accounts drawn up by the parent undertaking in accordance with the provisions of Directive 2013/34/EU;
- (f) the exemption referred to in this section must be disclosed in the notes on the consolidated accounts specified in paragraph (e); and
- (g) the consolidated accounts referred to in paragraph (e), the consolidated annual report, and auditors' report are delivered to the Registrar in relation to that company.

271. *Deleted*

**Period allowed for delivering accounts and reports.**

272.(1) Subject to subsection (2) the period allowed for complying with the requirements of sections 254 (2) to 254(6) and section 258 is—

- (a) for a private company, 12 months after the end of the relevant financial year; and
- (b) for a public company, 10 months after the end of that year.

(2) If the relevant financial year is the company's first, the period allowed is 12 months after the end of the financial year.

**Delivery and publication of accounts in a primary currency.**

273.(1) The annual accounts of a company may be delivered to the Registrar in any one primary currency.

(2) In such cases, other than in the case of a small company, where accounts are not prepared in the currency of the share capital of the company, the amounts of share capital in their original currency and the exchange rate used to translate them must be given in the notes to the accounts.

(3) the Minister may by regulation amend the list of primary currencies.

**Requirements where a company wishes to circulate its accounts to the public.**

274.(1) If a company circulates to the public any of its statutory accounts, they shall be accompanied by the relevant auditors' report required to be delivered to the Registrar under section 258(1).

(2) A company which is required to prepare group accounts for a financial year must not circulate to the public its statutory individual accounts for that year without also issuing with them its statutory group accounts.

(3) If a company circulates non-statutory accounts to the public, it shall publish with them a statement indicating—

- (a) that they are not the company's statutory accounts;
- (b) whether statutory accounts dealing with any financial year with which the non-statutory accounts purport to deal have been delivered to the Registrar;
- (c) whether the company's auditors have made a report under section 258 on the statutory accounts for any such financial year; and
- (d) whether any such auditors' report—
  - (i) was qualified or unqualified, or included a reference to any matters to which the auditors drew attention by way of emphasis without qualifying the report, or
  - (ii) contained a statement under section 258 (2),

and it shall not circulate to the public any auditors' report under section 258 with the non-statutory accounts.

**Regulations.**

275. The Minister may by regulations make provision in respect of the operation of this Chapter, in particular with regard to the fees chargeable for the delivery of accounts to the Registrar.

## **CHAPTER 3**

### **Consolidated accounts**

*Interpretation and general***Parent and subsidiary undertaking.**

276.(1) In this Chapter, the expressions “parent undertaking” and “subsidiary undertaking” shall be construed in accordance with the following provisions of this section; and a “parent company” means a parent undertaking which is a public company limited by shares or by guarantee or a private company limited by shares or by guarantee.

(2) An undertaking is a parent undertaking in relation to another undertaking, and the latter is a subsidiary undertaking for the purpose of this Chapter, if—

- (a) it holds a majority of the voting rights in the undertaking;
- (b) it is a member of the undertaking and has the right to appoint or remove a majority of its board of directors;
- (c) it has the right to exercise a dominant influence over the undertaking—
  - (i) by virtue of provisions contained in the undertaking’s memorandum or articles,
  - (ii) by virtue of a control contract; or
- (d) it is a member of the undertaking and controls alone, under an agreement with other shareholders or members, a majority of the voting rights in the undertaking.

(3) For the purposes of subsection (2) an undertaking shall be treated as a member of another undertaking—

- (a) if any of its subsidiary undertakings is a member of that undertaking; or
- (b) if any shares in that other undertaking are held by a person acting on behalf of the undertaking or any of its subsidiary undertakings.

(4) An undertaking is also a parent undertaking in relation to another undertaking, (and the latter is a subsidiary undertaking), if—

- (a) it has the power to exercise, or actually exercises, dominant influence or control over it; or

- (b) it and the subsidiary undertaking are managed on a unified basis.

(5) A parent undertaking shall be treated as the parent undertaking of undertakings in relation to which any of its subsidiary undertakings are, or are to be treated as, parent undertakings; and references to its subsidiary undertakings shall be construed accordingly.

(6) Nothing in this section affects the meaning of “subsidiary undertaking” in Chapter 2.

(7) Schedule 20 contains provisions explaining expressions used in this section and otherwise supplementing this section.

**Meaning of “undertaking” and related expressions.**

277.(1) In this Chapter “undertaking” means—

- (a) a corporate body or partnership; or
- (b) an unincorporated association carrying on a trade or business, with or without a view to profit.

(2) In this Chapter references to shares—

- (a) in relation to an undertaking with a share capital, are to allotted shares;
- (b) in relation to an undertaking with capital but no share capital, are to rights to share in the capital of the undertaking; and
- (c) in relation to an undertaking without capital, are to interests—
  - (i) conferring any rights to share in the profits or liability to contribute to the losses of the undertaking, or
  - (ii) giving rise to an obligation to contribute to the debts or expenses of the undertaking in the event of a winding up.

(3) Other expressions appropriate to companies shall be construed, in relation to an undertaking which is not a company, as references to the corresponding persons, officers, documents or organs, as the case may be, appropriate to undertakings of that description; but this is subject to any specific provision providing for the definition of such expressions.

(4) References in this Chapter to “fellow subsidiary undertakings” are to undertakings which are subsidiary undertakings of the same parent



undertaking but are not parent undertakings or subsidiary undertakings of each other.

(5) In this Act “group undertaking”, in relation to an undertaking, means an undertaking which is–

- (a) a parent undertaking or subsidiary undertaking of that undertaking; or
- (b) a subsidiary undertaking of any parent undertaking of that undertaking.

**Participating interests.**

278.(1) In this Chapter a “participating interest” means an interest held by an undertaking in the shares of another undertaking which it holds on a long term basis for the purpose of securing a contribution to its activities by the exercise of control or influence arising from or related to that interest.

(2) A holding of 20 per cent or more of the shares of an undertaking shall be presumed to be a participating interest unless the contrary is shown.

(3) The reference in subsection (1) to an interest in shares includes–

- (a) an interest which is convertible into an interest in shares; and
- (b) an option to acquire shares or any such interest,

and an interest or option falls within paragraph (a) or (b) even if the shares to which it relates are, until the conversion or the exercise of the option, unissued.

(4) For the purposes of this section an interest held on behalf of an undertaking shall be treated as held by it.

(5) In the balance sheet and profit and loss formats set out in Schedules 11 and 12 “participating interest” does not include an interest in a group undertaking.

(6) For the purposes of this section as it applies in relation to the expression “participating interest”–

- (a) in those formats as they apply in relation to group accounts; and
- (b) in paragraph 18 of Schedule 21 (form and content of group accounts),

the references in subsections (1) to (4) to the interest held by, and the purposes and activities of, the undertaking concerned shall be construed as references to the interest held by, and the purposes and activities of, the group (within the meaning of paragraph 1 of Schedule 21).

**Notes to the accounts.**

279.(1) Information required by this Chapter to be given in notes to a company's annual accounts may be contained in the accounts or in a separate document annexed to the accounts and must be presented in the order in which the items to which they relate are presented in the balance sheet and in the profit and loss account.

(2) References in this Chapter to a company's annual accounts, or to a balance sheet or profit and loss account, include notes to the accounts giving information which is required by any provision made by or under this Act or international accounting standards, and required or allowed by any such provision to be given in a note to the company accounts.

**Other definitions.**

280.(1) In this Chapter, unless the context otherwise requires—

“annual report” in relation to a company means the directors' report;

“balance sheet date” means the date as at which the balance sheet was made up;

“capitalisation” in relation to work or costs, means treating that work or those costs as a fixed asset;

“Chapter 3 accounts” has the meaning assigned by section 281(4);

“group” means a parent undertaking and its subsidiary undertakings;

“included in the consolidation” in relation to group accounts, or  
“included in consolidated group accounts” means that the undertaking is included in the accounts by the method of full (and not proportional) consolidation, and references to an undertaking excluded from consolidation shall be construed accordingly;

“individual accounts” in relation to each financial year of a company means a balance sheet as at the last day of that year and a profit and loss account;

“profit and loss account”, in relation to a company that prepares IAS group accounts, includes an income statement or other equivalent

financial statement required to be prepared by international accounting standards.

(2) Any reference to a financial year of a company shall be construed as a reference to a period in respect of which a profit and loss account of the company is made up under section 240.

(3) References in this Act to “realised profits” and “realised losses”, in relation to a company’s accounts, are to such profits or losses of the company as fall to be treated as realised in accordance with principles generally accepted, at the time when the accounts are prepared, with respect to the determination for accounting purposes of realised profits or losses.

(4) Subsection (3) is without prejudice to—

- (a) the construction of any other expression (where appropriate) by reference to accepted accounting principles or practice; or
- (b) any specific provision for the treatment of profits or losses of any description as realised.

(5) References in this Chapter to accounts giving a “true and fair view” are references—

- (a) in the case of Chapter 3 accounts, to the requirement under section 282 that the accounts give a true and fair view; and
- (b) in the case of IAS group accounts, to the requirement under international accounting standards that such accounts achieve a fair presentation.

#### *Preparation of group accounts*

#### **Preparation of group accounts.**

281.(1) If at the end of a financial year a company is a parent company, the directors, as well as preparing individual accounts for the year, shall prepare consolidated accounts for the group for the year; and in this Chapter those accounts are referred to as the company’s “group accounts”.

(2) Directors drawing up the consolidated accounts pursuant to subsection (1) have collectively the duty to ensure that the consolidated accounts, the group directors’ report and, when provided separately, the corporate governance statement to be provided pursuant to section 251 are drawn up and published in accordance with the requirements of this Chapter and, where applicable, in accordance with the international accounting standards adopted in accordance with the IAS Regulation.

(3) The group accounts of certain parent companies are required by Article 4 of the IAS Regulation to be prepared in accordance with international accounting standards (“IAS group accounts”).

(4) Subject to the following provisions of this section, the group accounts of other companies may be prepared–

- (a) in accordance with section 282 (“Chapter 3 accounts”); or
- (b) in accordance with international accounting standards (“IAS group accounts”).

(5) After the first financial year in which the directors of a parent company prepare IAS group accounts (“the first IAS year”), all subsequent group accounts of the company must be prepared in accordance with international accounting standards unless there is a relevant change of circumstance.

(6) There is a relevant change of circumstance if, at any time during or after the first IAS year–

- (a) the company becomes a subsidiary undertaking of another undertaking that does not prepare IAS group accounts;
- (b) the company ceases to be a company with securities admitted to trading on a regulated market; or
- (c) a parent undertaking of the company ceases to be an undertaking with securities admitted to trading on a regulated market.

(7) If, having changed to preparing group accounts in accordance with section 282 following a relevant change of circumstance, the directors again prepare IAS group accounts for the company, subsections (5) and (6) apply again as if the first financial year for which such accounts are again prepared were the first IAS year.

(8) This section is subject to the exemptions provided by sections 285 (exemption for parent companies included in accounts of larger group), 286 (parent companies included in non-EEA group accounts), 287(6) (all subsidiary undertakings excluded from consolidation) and 292 (small and medium sized groups).

(9) In Chapter 3, Sections 240, 241, 242, 249, 253, 254, 257, 258 267, 268, 272, 273 and 274 apply to group accounts prepared under this section.

### **Chapter 3 Accounts.**

282. (A1) Chapter 3 accounts must state, in respect of the parent company—

- (a) that the company is registered in Gibraltar;
- (b) the company's name and registered number;
- (c) the legal form of the company including whether the company is a public or a private company and whether it is limited by shares or by guarantee;
- (d) the address of the company's registered office, and
- (e) where appropriate, the fact that the company is being wound-up.

(1) Chapter 3 accounts must be drawn up clearly and comprise—

- (a) a consolidated balance sheet dealing with the state of affairs of the parent company and its subsidiary undertakings; and
- (b) a consolidated profit and loss account dealing with the profit or loss of the parent company and its subsidiary undertakings.

(2) The accounts must give a true and fair view of the state of affairs as at the end of the financial year, and the profit or loss for the financial year, of the undertakings included in the consolidation as a whole, so far as concerns members of the company.

(3) Chapter 3 accounts must comply with the provisions of Schedule 21 as to the form and content of the consolidated balance sheet and consolidated profit and loss account and with the provisions of Schedule 22 in relation to additional information to be provided in notes to the accounts.

(4) Where compliance with the provisions of Schedules 21 and 22, and the other provisions made by or under this Chapter, as to the matters to be included in a company's group accounts or in notes to those accounts, would not be sufficient to give a true and fair view, the necessary additional information shall be given in the accounts or a note to them.

(5) If in exceptional circumstances compliance with any of those provisions is inconsistent with the requirement to give a true and fair view, the directors shall depart from that provision to the extent necessary to give a true and fair view; but details of any such departure, the reasons for it and its effect on the assets, liabilities, financial position and profit or loss of the undertakings included in the consolidated shall be given in a note to the accounts.

(6) The directors of a parent company shall secure that, except where in their opinion there are good reasons against it, the financial year of each of its subsidiary undertakings coincides with the company's own financial year.

(7) In addition to the requirements of section 281(9), the provisions of sections, 243(7), 244, 245(2) to (2C), 245(4), 245(6) to (8), 246 and 247 apply to group accounts prepared under this section.

**IAS group accounts.**

283.(1) IAS group accounts must state, in respect of the parent company—

- (a) that the company is registered in Gibraltar;
- (b) the company's name and registered number;
- (c) the legal form of the company including whether the company is a public or a private company and whether it is limited by shares or by guarantee;
- (d) the address of the company's registered office, and
- (e) where appropriate, the fact that the company is being wound-up.

(2) The notes to the accounts must state that the accounts have been prepared in accordance with international accounting standards.

**Consistency of accounts.**

284.(1) The directors of a parent company must secure that the individual accounts of—

- (a) the parent company; and
- (b) each of its subsidiary undertakings,

are all prepared using the same financial reporting framework, except to the extent that in their opinion there are good reasons for not doing so.

(2) Subsection (1) does not apply if the directors do not prepare group accounts for the parent company.

(3) Subsection (1) only applies to accounts of subsidiaries that are required to be prepared as Non-IAS accounts.

(4) Subsection (1)(a) does not apply where the directors of a parent company prepare IAS group accounts and IAS individual accounts under Chapter 2.

**Exemption for parent companies included in accounts of larger group.**

285.(1) Subject to subsection 2, a company is exempt from the requirement to prepare group accounts if it is itself a subsidiary undertaking and its immediate parent undertaking is established under the law of Gibraltar or an EEA State, where—

- (a) the company is a wholly-owned subsidiary of that parent undertaking; or
- (aa) that parent undertaking holds 90 per cent or more of the shares in the company and the remaining shareholders of the company have approved the exemption; or
- (b) that parent undertaking holds more than 50 per cent (but less than 90 per cent) of the shares in the company and notice requesting the preparation of group accounts has not been served on the company by shareholders holding in total at least –5 per cent of the total shares in the company.

The notice shall be served at least 6 months before the end of the financial year to which it relates.

(2) A company is exempt if—

- (a) the company and all of its subsidiary undertakings are included in consolidated accounts for a larger group drawn up to the same date, or to an earlier date in the same financial year, by a parent undertaking established under the law of Gibraltar or an EEA State;
- (b) those accounts are drawn up and audited, and that parent undertaking's annual report is drawn up, according to that law, in accordance with the provisions of Directive 2013/34/EU as amended or in accordance with international accounting standards;
- (c) the company discloses in the notes to its individual accounts that it is exempt from the obligation to prepare and deliver group accounts;
- (d) the company states in the notes to its individual accounts the name of the parent undertaking which draws up the group accounts referred to above and—

- (i) the address of the undertaking's registered office;
  - (ii) if it is unincorporated, the address of its principal place of business;
- (e) under Chapter 2, the company delivers to the Registrar, within the period allowed for delivering its individual accounts, copies of those group accounts and of the parent undertaking's annual report, together with the auditors' report on them; and
- (f) any document comprised in accounts and reports delivered in accordance with paragraph (e) is in a language other than English, there is annexed to the copy of that document a translation of it into English, certified in accordance with rule 5 of the Companies Rules to be a correct translation.

(3) The exemption under subsection (1) shall apply to a public-interest entity unless it is a company whose securities are admitted to trading on a regulated market.

(4) Shares held by directors of a company for the purpose of complying with any share qualification requirement shall be disregarded in determining for the purposes of subsection (1)(a) whether the company is a wholly owned subsidiary.

(5) For the purposes of subsection (1)(aa) and (b) shares held by a wholly owned subsidiary of the parent undertaking, or held on behalf of the parent undertaking or a wholly-owned subsidiary, shall be attributed to the parent undertaking.

(6) In subsection (3) "securities" includes—

- (a) shares and stock;
- (b) debentures, including debenture stock, loan stock, bonds, certificates of deposit and other instruments creating or acknowledging indebtedness;
- (c) warrants or other instruments entitling the holder to subscribe for securities falling within paragraph (a) or (b); and
- (d) certificates or other instruments which confer—
  - (i) property rights in respect of a security falling within paragraph (a), (b) or (c),



- (ii) any rights to acquire, dispose of, underwrite or convert a security, being a right to which the holder would be entitled if he held any such security to which the certificate or other instrument relates, or
- (iii) a contractual right (other than an option) to acquire any such security otherwise than by subscription.

**Exemption for parent companies included in non-EEA group accounts.**

286.(1) A company is exempt from the requirement to prepare group accounts if it is itself a subsidiary undertaking and its parent undertaking is not established under the law of Gibraltar or an EEA State, in the following cases—

- (a) where the company is a wholly owned subsidiary undertaking of that parent undertaking;
- (aa) where that parent undertaking holds 90 per cent or more of the shares in the company and the remaining shareholders have approved the exemption; or
- (b) where that parent undertaking holds more than 50 per cent (but less than 90 per cent) of the shares in the company and notice requesting the preparation of group accounts has not been served on the company by shareholders holding in aggregate at least 5 per cent of the total shares in the company.

Such a notice must be served at least 6 months before the end of the financial year to which it relates.

(2) Exemption is conditional upon compliance with all of the following conditions—

- (a) that the company and all of its subsidiary undertakings are included in consolidated accounts for a larger group drawn up to the same date, or to an earlier date in the same financial year, by a parent undertaking;
- (b) that those accounts and, where appropriate, the group's annual report, are drawn up—
  - (i) in accordance with the provisions of Directive 2013/34/EU;
  - (ii) in accordance with international accounting standards;

- (iii) in a manner equivalent to consolidated accounts and consolidated annual reports so drawn up; or
  - (iv) in a manner equivalent to international accounting standards as determined in accordance with Commission Regulation (EC) No 1569/2007 of 21 December establishing a mechanism for the determination of equivalence of accounting standards applied by third country issuers of securities pursuant to Directives 2003/71/EC and 2004/109/EC of the European Parliament and of the Council;
- (c) that the consolidated accounts are audited by one or more persons authorised to audit accounts under the law under which the parent undertaking which draws them up is established;
- (d) that the company discloses in its individual accounts that it is exempt from the obligation to prepare and deliver group accounts;
- (e) that the company states in its individual accounts the name of the parent undertaking which draws up the group accounts referred to above and—
- (i) the address of the undertaking's registered office; and
  - (ii) if it is unincorporated, the address of its principal place of business;
- (f) that the company delivers to the Registrar, within the period allowed for delivering its individual accounts, copies of the group accounts and, where appropriate, of the consolidated annual report, together with the auditors' report on them; and
- (g) that if any document comprised in accounts and reports delivered in accordance with paragraph (f) is in a language other than English, there is annexed to the copy of that document a translation of it into English, certified to be a correct translation.

(3) The exemption under subsection (1) shall apply to a public-interest entity unless it is a company whose securities are admitted to trading on a regulated market.

(4) Shares held by directors of a company for the purpose of complying with any share qualification requirement are disregarded in determining for the purposes of subsection (1)(a) whether the company is a wholly owned subsidiary undertaking.

(5) For the purposes of subsection (1)(aa) and (b), shares held by a wholly-owned subsidiary undertaking of the parent undertaking, or held on behalf of the parent undertaking or a wholly-owned subsidiary undertaking, are attributed to the parent undertaking.

(6) In subsection (3), “securities” includes—

- (a) shares and stock;
- (b) debentures, including debenture stock, loan stock, bonds, certificates of deposit and other instruments creating or acknowledging indebtedness;
- (c) warrants or other instruments entitling the holder to subscribe for securities falling within paragraph (a) or (b); and
- (d) certificates or other instruments which confer—
  - (i) property rights in respect of a security falling within paragraph (a), (b) or (c),
  - (ii) any right to acquire, dispose of, underwrite or convert a security, being a right to which the holder would be entitled if he held any such security to which the certificate or other instrument relates, or
  - (iii) a contractual right (other than an option) to acquire any such security otherwise than by subscription.

**Subsidiary undertakings included in the consolidation.**

287.(1) In the case of Chapter 3 accounts, subject to the exceptions authorised by this section, all the subsidiary undertakings of the parent company shall be included in the consolidation.

(2) A subsidiary undertaking may be excluded from consolidation in Chapter 3 accounts if its inclusion is not material for the purpose of giving a true and fair view; but two or more undertakings may be excluded only if they are not material taken together.

(3) Any parent undertaking including a public-interest entity, which only has subsidiary undertakings that are not material for the purposes of section 282(1) and (2), both individually and as a whole, shall without prejudice to Articles 4(2), 5 and 6 of Council Directive 83/349 EEC, be exempted from the obligation imposed by section 281(1).

(4) In addition, a subsidiary undertaking, including a public-interest entity, may be excluded from consolidation in Chapter 3 accounts if–

- (a) severe long-term restrictions substantially hinder the exercise of the rights of the parent company over the assets or management of that undertaking;
- (b) in extremely rare cases the information necessary for the preparation of group accounts cannot be obtained without disproportionate expense or undue delay; or
- (c) the interest of the parent company is held exclusively with a view to subsequent resale.

(5) The reference in paragraph (a) of subsection (4) to the rights of the parent company and the reference in paragraph (c) to the interest of the parent company are, respectively, to rights and interests held by or attributed to the company for the purposes of section 276 (definition of “parent undertakings”) in the absence of which it would not be the parent company.

(6) A parent company, including a public-interest entity, is exempt from the requirement to prepare group accounts if under subsection (2), (3) or (4) all of its subsidiary undertakings could be excluded from consolidation in Chapter 3 accounts.

**Treatment of individual profit and loss account where group accounts prepared.**

288.(1) The following provisions apply to the individual profit and loss account of a parent company where–

- (a) the company is required to prepare group accounts in accordance with this Chapter; and
- (b) the notes to the company’s individual balance sheet show the company’s profit or loss for the financial year.

(2) The profit and loss account shall be approved by the board of directors but may be omitted from the company’s annual accounts for the purposes of the other provisions of this Chapter or Chapter 2.

(3) The exemption conferred by this section shall be disclosed in the notes to the company’s annual accounts and the group accounts.

**Disclosure required in notes to accounts: related undertakings.**

289.(1) The information specified in Schedule 22 shall be given in notes to a company's annual accounts.

(2) Where the company, other than a small company, is not required to prepare group accounts, the information specified in Part I of Schedule 22 shall be given; and where the company is required to prepare group accounts, the information specified in Parts II and III of Schedule 22 shall be given.

(3) Subject to subsection (4), the information required by Schedule 22 need not be disclosed for an undertaking which—

- (a) is established under the law of a country outside the United Kingdom or Gibraltar; or
- (b) carries on business outside the United Kingdom or Gibraltar,

if in the opinion of the directors of the company the disclosure would be seriously prejudicial to the business of that undertaking, or to the business of the company or any of its subsidiary undertakings.

(4) Subsection (3) does not apply in relation to the information required under paragraphs 5(2), 6, 10, 20 or 29 of Schedule 22.

(5) If advantage is taken of subsection (3), that fact shall be stated in a note to the company's annual accounts.

**Disclosure required in notes to annual accounts: particulars of staff.**

290. A company's group accounts must contain the disclosure required by section 247 as if all the undertakings included in the consolidation were a single company.

291. *Deleted*

**Exemption for small and medium-sized groups.**

292.(1) A parent company need not prepare group accounts for a financial year in relation to which the group headed by that company qualifies as a small or medium-sized group and is not an ineligible group.

- (2) A group is ineligible if any of its members is—
- (a) a company any of whose securities are admitted to trading on a regulated market;
  - (b) an authorised institution under the Financial Services (Banking) Act;

- (c) an insurance company to which the Financial Services (Insurance Companies) Act applies; or
- (d) any other entity designated by the Minister under the Financial Services (Auditors) Act 2009 as a public-interest entity.

(3) If the directors of a company in relation to which the group headed by that company qualifies as a medium-sized group propose to take advantage of the exemption conferred by this section, it is the auditors' duty to provide them with a report stating whether in their opinion the company is entitled to the exemption.

**Qualification of group as small or medium-sized or large.**

293.(1) A group is small, medium-sized or large in relation to a financial year if the qualifying conditions are met—

- (a) in the case of the parent company's first financial year, in that year; and
- (b) in the case of any subsequent financial year, in that year and the preceding year.

(2) A group shall be treated as qualifying as small, medium-sized or large in relation to a financial year—

- (a) if it so qualified in relation to the previous financial year under subsection (1); or was treated as so qualifying under paragraph (b); or
- (b) if it was treated as so qualifying in relation to the previous year by virtue of paragraph (a) and the qualifying conditions are met in the year in question.

(3) The qualifying conditions are met by a group in a year in which it satisfies two or more of the following requirements—

**Small group.**

1. Total turnover	Not more than £10.2 million net (£12.2 million gross)
2. Aggregate balance sheet total	Not more than £5.1 million net (£6.1 million gross)
3. Total number of employees	Not more than 50

**Medium-sized group.**

1. Total turnover	Not more than £36 million net (£43.2 million gross)
2. Aggregate balance sheet total	Not more than £18 million net (£21 million gross)
3. Total number of employees	Not more than 250

**Large group.**

1. Total turnover	More than £36 million net (£43.2 million gross)
2. Aggregate balance sheet total	More than £18 million net (£21 million gross)
3. Total number of employees	More than 250

(4) The total figures shall be ascertained by aggregating the relevant figures determined in accordance with Schedule 9 for each member of the group.

(5) In relation to the total figures for turnover and balance sheet, “net” means with the set-offs and other adjustments required by Schedule 21 in

the case of group accounts and “gross” means without those set-offs and adjustments; and a company may satisfy the relevant requirements on the basis of either the net or the gross figure.

(6) The figures for each subsidiary undertaking are to be those included in its accounts for the relevant financial year, that is—

- (a) if its financial year ends with that of the parent company, that financial year; and
- (b) if not, its financial year ending last before the end of the financial year of the parent company.

(7) If those figures cannot be obtained without disproportionate expense or undue delay, the latest available figures must be taken.

**Offences.**

294. A company, and every officer of the company who is in default, which fails to comply with any requirement of this Chapter (or, where applicable, of Article 4 of the IAS Regulation) is guilty of an offence and liable on summary conviction to a fine up to level 3 on the standard scale.

**Transmission of Information.**

294A. The Minister shall ensure that the following information is transmitted to the European Commission within a reasonable period—

- (a) changes in the types of undertakings in Gibraltar law that may affect the accuracy of Annex I or II of Directive 2013/34/EU; and
- (b) any additional information required in accordance with paragraph 6 of Article 4 of Directive 2013/34/EU.

**PART VIII**

**ARRANGEMENTS AND RECONSTRUCTIONS**

**Application of sections 296 to 301.**

295.(1) The provisions of sections 296 to 301 apply where a compromise or arrangement is proposed between a company and—

- (a) its creditors, or any class of them; or
- (b) its members, or any class of them.

(2) In sections 296 to 301—



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

“company”–

- (a) in section 300 means a company within the meaning of this Act; and
- (b) elsewhere in this Part means any company liable to be wound up under the Insolvency Act.

(3) The provisions of sections 296 to 301 have effect subject to sections 303 to 351 where the latter sections apply.

*Meeting of creditors or members*

**Court order for holding of meeting.**

296.(1) The court may, on an application under this section, order a meeting of the creditors or class of creditors, or of the members of the company or class of members, to be summoned in such manner as the court directs.

(2) An application under this section may be made by–

- (a) the company;
- (b) any creditor or member of the company;
- (c) if the company is being wound up, the liquidator; or
- (d) if the company is in administration, the administrator.

**Statement to be circulated or made available.**

297.(1) Where a meeting is summoned under section 296–

- (a) every notice summoning the meeting that is sent to a creditor or member must be accompanied by a statement complying with this section; and
- (b) every notice summoning the meeting that is given by advertisement must either–
  - (i) include such a statement, or

- (ii) state where and how creditors or members entitled to attend the meeting may obtain copies of such a statement.

(2) The statement must—

- (a) explain the effect of the compromise or arrangement; and
- (b) in particular, state—
  - (i) any material interests of the directors of the company, whether as directors or as members or as creditors of the company or otherwise, and
  - (ii) the effect on those interests of the compromise or arrangement, in so far as it is different from the effect on the like interests of other persons.

(3) Where the compromise or arrangement affects the rights of debenture holders of the company, the statement must give the same explanation as respects the trustees of any deed for securing the issue of the debentures as it is required to give as respects the company's directors.

(4) Where a notice given by advertisement states that copies of an explanatory statement can be obtained by creditors or members entitled to attend the meeting, every such creditor or member shall be entitled, on making an application in the manner indicated by the notice, to be provided by the company with a copy of the statement free of charge.

(5) Subject to subsection (7), if a company makes default in complying with any requirement of this section, an offence is committed by—

- (a) the company; and
- (b) every officer of the company who is in default.

(6) For this purpose the following shall be regarded as officers of the company—

- (a) a liquidator or administrator of the company; and
- (b) a trustee of a deed for securing the issue of debentures of the company.

(7) A person shall not be guilty of an offence under this section if he shows that the default was due to the refusal of a director or trustee for debenture holders to supply the necessary particulars of his interests.

(8) A person guilty of an offence under this section shall be liable—

- (a) on conviction on indictment, to a fine;
- (b) on summary conviction, to a fine not exceeding the statutory maximum.

**Duty of directors and trustees to provide information.**

298.(1) It is the duty of—

- (a) any director of the company; and
- (b) any trustee for its debenture holders,

to give notice to the company of such matters relating to himself as may be necessary for the purposes of section 297.

(2) Any person who makes default in complying with this section commits an offence.

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

*Court sanction for compromise or arrangement*

**Court sanction for compromise or arrangement.**

299.(1) If a majority in number representing 75% in value of the—

- (a) creditors;
- (b) class of creditors;
- (c) members; or
- (d) class of members,

present and voting either in person or by proxy at the meeting summoned under section 296, agree a compromise or arrangement, the court may, on an application under this section, sanction the compromise or arrangement.

(2) An application under this section may be made by—

- (a) the company;
- (b) any creditor or member of the company;

- (c) if the company is being wound up or an administration order is in force in relation to it, the liquidator or administrator; or
  - (d) if the company is in administration, the administrator.
- (3) A compromise or agreement sanctioned by the court is binding on—
  - (a) all creditors or the class of creditors or on the members or class of members; and
  - (b) the company or, in the case of a company in the course of being wound up, the liquidator and contributories of the company.
- (4) The court's order has no effect until a copy of it has been delivered to the Registrar.
- (5) A company in relation to which an order is made under this section must cause a copy of the order to be delivered to the Registrar within 7 days after its making.

*Reconstructions and amalgamations*

**Powers of court to facilitate reconstruction or amalgamation.**

300.(1) This section applies where application is made to the court under section 299 to sanction a compromise or arrangement and it is shown that—

- (a) the compromise or arrangement is proposed for the purposes of, or in connection with, a scheme for the reconstruction of any company or companies, or the amalgamation of any two or more companies; and
  - (b) under the scheme the whole or any part of the undertaking or the property of any company concerned in the scheme (“a transferor company”) is to be transferred to another company (“the transferee company”).
- (2) The court may, either by the order sanctioning the compromise or arrangement or by a subsequent order, make provision for all or any of the following matters—
  - (a) the transfer to the transferee company of the whole or any part of the undertaking and of the property or liabilities of any transferor company;

- (b) the allotting or appropriation by the transferee company of any shares, debentures, policies or other like interests in that company which under the compromise or arrangement are to be allotted or appropriated by that company to or for any person;
- (c) the continuation by or against the transferee company of any legal proceedings pending by or against any transferor company;
- (d) the dissolution, without winding up, of any transferor company;
- (e) the provision to be made for any persons who, within such time and in such manner as the court directs, dissent from the compromise or arrangement;
- (f) such incidental, consequential and supplemental matters as are necessary to secure that the reconstruction or amalgamation is fully and effectively carried out.

(3) If an order under this section provides for the transfer of property or liabilities—

- (a) the property is by virtue of the order transferred to, and vests in, the transferee company; and
- (b) the liabilities are, by virtue of the order, transferred to and become liabilities of that company.

(4) The property, if the order so directs, vests freed from any charge that is by virtue of the compromise or arrangement to cease to have effect.

(5) Every company in relation to which an order is made under this section must cause a copy of the order to be delivered to the Registrar within 7 days after its making.

(6) If default is made in complying with subsection (5) an offence is committed by—

- (a) the company; and
- (b) every officer of the company who is in default.

(7) A person guilty of an offence under subsection (6) shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.

**Obligations of company with respect to articles etc.**

301.(1) This section applies—

- (a) to any order for sanctioning compromise or arrangement under section 299; and
- (b) to any order for facilitating reconstruction or amalgamation under section 300 that alters the company's constitution.

(2) If the order amends—

- (a) the company's articles; or
- (b) any resolution under section 25 or 29 or any other resolution or agreement affecting a company's constitution,

the copy of the order delivered to the Registrar by the company under section 299(4) or section 300(6) must be accompanied by a copy of the company's articles, or the resolution or agreement in question, as amended.

(3) Every copy of the company's articles issued by the company after the order is made must be accompanied by a copy of the order, unless the effect of the order has been incorporated into the articles by amendment.

(4) In this section—

- (a) references to the effect of the order include the effect of the compromise or arrangement to which the order relates; and
- (b) in the case of a company not having articles, references to its articles shall be read as references to the instrument constituting the company or defining its constitution.

(5) If a company makes default in complying with this section an offence is committed by—

- (a) the company; and
- (b) every officer of the company who is in default.

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

*Merger and divisions of public companies*

**Application of sections 303 to 351.**

302.(1) Sections 303 to 351 apply where—

- (a) a compromise or arrangement is proposed between a public company; and—
  - (i) its creditors or any class of them, or
  - (ii) its members or any class of them,for the purposes of, or in connection with, a scheme for the reconstruction of any company or companies or the amalgamation of any two or more companies;
- (b) the scheme involves—
  - (i) a merger within the meaning of section 304, or
  - (ii) a division within the meaning of section 325; and
- (c) the consideration for the transfer, or each of the transfers, envisaged is to be shares in the transferee company, or one or more of the transferee companies, receivable by members of the transferor company, or transferor companies, with or without any cash payment to members.

(2) In sections 303 to 351—

- (a) a “new company” means a company formed for the purposes of, or in connection with, the scheme; and
- (b) an “existing company” means a company other than one formed for the purposes of, or in connection with, the scheme.

(3) Sections 303 to 351 do not apply where the company in respect of which the compromise or arrangement is proposed is being wound up.

**Relationship of sections 303 to 351 to sections 296 to 301.**

303.(1) The court may not sanction the compromise or arrangement under sections 296 to 301 unless the relevant requirements of sections 303 to 351 have been complied with.

(2) The requirements applicable to a merger are specified in sections 305 to 317 and some of those requirements, and certain general requirements of sections 296 to 301, are modified or excluded by the provisions of sections 318 to 323.

(3) The requirements applicable to a division are specified in sections 326 to 338 and some of those requirements, and certain general requirements of sections 296 to 301 are modified or excluded by the provisions of sections 339 to 344.

### *Merger*

#### **Mergers and merging companies.**

304.(1) The scheme involves a merger where under the scheme—

- (a) the undertaking, property and liabilities of one or more public companies, including the company in respect of which the compromise or arrangement is proposed, are to be transferred to another existing public company (a “merger by absorption”); or
- (b) the undertaking, property and liabilities of two or more public companies, including the company in respect of which the compromise or arrangement is proposed, are to be transferred to a new company, whether or not a public company, (a “merger by formation of a new company”).

(2) References in this Part to “the merging companies” are—

- (a) in relation to a merger by absorption, to the transferor and transferee companies;
- (b) in relation to a merger by formation of a new company, to the transferor companies.

### *Requirements applicable to merger*

#### **Draft terms of scheme (merger).**

305.(1) A draft of the proposed terms of the scheme must be drawn up and adopted by the directors of the merging companies.

(2) The draft terms must give particulars of at least the following matters—

- (a) in respect of each transferor company and the transferee company—
  - (i) its name,
  - (ii) the address of its registered office, and



- (iii) whether it is a company limited by shares or a company limited by guarantee and having a share capital;
- (b) the number of shares in the transferee company to be allotted to members of a transferor company for a given number of their shares (the “share exchange ratio”) and the amount of any cash payment;
- (c) the terms relating to the allotment of shares in the transferee company;
- (d) the date from which the holding of shares in the transferee company will entitle the holders to participate in profits, and any special conditions affecting that entitlement;
- (e) the date from which the transactions of a transferor company are to be regarded for accounting purposes as being those of the transferee company;
- (f) any rights or restrictions attaching to shares or other securities in the transferee company to be allotted under the scheme to the holders of shares or other securities in a transferor company to which any special rights or restrictions attach, or the measures proposed concerning them;
- (g) any amount of benefit paid or given or intended to be paid or given—
  - (i) to any of the experts referred to in section 310, or
  - (ii) to any director of a merging company,

and the consideration for the payment of benefit.

(3) The requirements in subsection (2)(b), (c) and (d) are subject to the circumstances in which certain particulars are not required under section 318.

**Publication of draft terms (merger) by Registrar.**

306.(1) The directors of each of the merging companies must deliver a copy of the draft terms to the Registrar.

(2) The Registrar must publish in the Gazette notice of receipt by him from that company of a copy of the draft terms.

(3) That notice must be published at least 1 month before the date of any meeting of that company summoned for the purpose of approving the scheme.

(4) The requirements in this section are subject to section 307.

**Publication of draft terms on company website (merger).**

307.(1) Section 306 does not apply in respect of a company if the conditions in subsections (2) to (6) are met.

(2) The first condition is that the draft terms are made available on a website which—

- (a) is maintained by or on behalf of the company; and
- (b) identifies the company.

(3) The second condition is that neither access to the draft terms on the website nor the supply of a hard copy of them from the website is conditional on payment of a fee or otherwise restricted.

(4) The third condition is that the directors of the company deliver to the Registrar a notice giving details of the website on payment of such fee as the Registrar shall prescribe.

(5) The fourth condition is that the Registrar publishes the notice giving details of the website in the Gazette at least 1 month before the date of any meeting of the company summoned for the purpose of approving the scheme.

(6) The fifth condition is that the draft terms are made available on the website throughout the period beginning 1 month before the date of any such meeting and remain available until the conclusion of that meeting.

**Approval of members of merging companies.**

308.(1) The scheme must be approved by a majority in number, representing 75% in value, of each class of members of each of the merging companies, present and voting either in person or by proxy at a meeting.

(2) This requirement is subject to the circumstances in which meetings of members are not required pursuant to sections 320 to 323.

**Directors' explanatory report (merger).**

309.(1) The directors of each of the merging companies must draw up and adopt a report.

(2) The report must consist of–

- (a) the statement required by section 297; and
- (b) insofar as that statement does not deal with the following matters, a further statement–
  - (i) setting out the legal and economic grounds for the draft terms, and in particular for the share exchange ratio, and
  - (ii) specifying any special valuation difficulties.

(3) The requirement in this section is subject to the circumstance under sections 318, 319 and 324.

**Expert's report (merger).**

310.(1) An expert's report must be drawn up on behalf of each of the merging companies.

(2) The report required is a written report on the draft terms to the members of the company.

(3) The court may on the joint application of all the merging companies approve the appointment of a joint expert to draw up a single report on behalf of all those companies and if no such appointment is made, there must be a separate expert's report to the members of each merging company drawn up by a separate expert appointed on behalf of that company.

(4) The expert must be a person who–

- (a) is eligible for appointment as an auditor under section 255 (3); and
- (b) meets the independence requirement in section 346.

(5) The expert's report must–

- (a) indicate the method or methods used to arrive at the share exchange ratio;
- (b) give an opinion as to whether the method or methods used are reasonable in all the circumstances of the case, indicate the values arrived at using each such method and, if there is more than one method, give an opinion on the relative importance attributed to such methods in arriving at the value decided on;

- (c) describe any special valuation difficulties that have arisen;
  - (d) state whether in the expert's opinion the share exchange ratio is reasonable; and
  - (e) in the case of a valuation made by a person other than himself, pursuant to section 345, state that it appeared to him reasonable to arrange for it to be so made or to accept a valuation so made.
- (6) The expert, or each of them, has-
- (a) the right of access to all such documents of all the merging companies; and
  - (b) the right to require from the companies' officers all such information, as he thinks necessary for the purposes of making his report.
- (7) The requirement in this section is subject to the circumstances under sections 318 and 319.

**Supplementary accounting statement (merger).**

311.(1) This section applies if the last annual accounts of any of the merging companies relate to a financial year ending before—

- (a) the date 7 months before the first meeting of the company summoned for the purposes of approving the scheme; or
- (b) if no meeting of the company is required, by virtue of any of sections 320 to 323, the date 6 months before the directors of the company adopt the draft terms of the scheme.

(2) If the company has not made public a half-yearly financial report relating to a period ending on or after the date mentioned in subsection (1), the directors of the company must prepare a supplementary accounting statement.

(3) That statement must consist of—

- (a) a balance sheet dealing with the state of affairs of the company as at a date not more than 3 months before the draft terms were adopted by the directors; and
- (b) where the company would be required under section 281 to prepare group accounts if that date were the last day of a financial year, a consolidated balance sheet dealing with the

state of affairs of the company and the undertakings that would be included in such a consolidation.

(4) The requirements of this Act, and where relevant Article 4 of the IAS Regulation, as to the balance sheet forming part of a company's annual accounts, and the matters to be included in notes to it, apply to the balance sheet required for an accounting statement under this section, with such modifications as are necessary by reason of its being prepared otherwise than as at the last day of a financial year.

(5) The provisions of section 241 shall apply as to the signing of the balance sheet required for an accounting statement under this section.

(6) In this section “half-yearly financial report” means a report of that description required to be made public by rules under section 11 of the Financial Services (Listing of Securities) Act 2006.

(7) The requirements in this section are subject to sections 319 and 324.

(8) In this section, “IAS Regulation” means EC Regulation No. 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards as amended or replaced by another EC Regulation.

### **Inspection of documents (merger).**

312.(1) The members of each of the merging companies must be able, during the period specified below—

- (a) to inspect at the registered office of that company copies of the documents listed below relating to that company and every other merging company; and
- (b) to obtain copies of those documents or any part of them on request free of charge.

(2) The period referred to above is the period—

- (a) beginning 1 month before; and
- (b) ending on the date of,

the first meeting of the members, or any class of members, of the company for the purposes of approving the scheme.

(3) The documents referred to above are—

- (a) the draft terms;

- (b) the directors' explanatory report;
- (c) the expert's report;
- (d) the company's annual accounts and reports for the last 3 financial years ending on or before the first meeting of the members, or any class of members, of the company summoned for the purposes of approving the scheme;
- (e) any supplementary accounting statement required by section 311; and
- (f) if no statement is required by section 311 because the company has made public a recent half-yearly financial report pursuant to subsection 2 of that section, that report.

(4) The requirement in subsection (1)(a) is subject to section 313(1) in respect of publication of documents on a company website.

(5) Where a member who has consented to information being sent or supplied by the company by electronic means to him and he has not revoked that consent, there is no need to send him a hard copy of such document.

(6) The requirements in this section are subject to sections 319 and 324.

**Publication of documents on company website (merger).**

313.(1) Subject to subsection (6), section 312(1)(a) does not apply to a document if the conditions in subsections (2) to (4) are met in relation to that document.

(2) The first condition is that the document is made available on a website which—

- (a) is maintained by or on behalf of the company; and
- (b) identifies the company.

(3) The second condition is that access to the document on the website is not conditional on payment of a fee or otherwise restricted.

(4) The third condition is that the document remains available on the website throughout the period beginning 1 month before the date of any meeting of the company summoned for the purpose of approving the scheme and remains available until the conclusion of that meeting.

(5) A person is able to obtain a copy of a document as required by section 312(1)(b) if–

- (a) the conditions in subsections (2) and (3) are met in relation to that document; and
- (b) the person is able, throughout the period specified in subsection (4)–
  - (i) to retain a copy of the document as made available on the website, and
  - (ii) to produce a hard copy of it.

(6) Where members of a company are able to obtain copies of a document only as mentioned in subsection (5), section 312(1)(a) applies to that document even if the conditions in subsections (2) to (4) are met.

**Report on material changes of assets of merging companies.**

314.(1) The directors of each of the merging companies must report–

- (a) to every meeting of the members, or any class of members, of that company summoned for the purpose of agreeing to the scheme; and
- (b) to the directors of every other merging company,

any material changes in the property and liabilities of that company between the date when the draft terms were adopted and the date of the meeting in question.

(2) The directors of each of the other merging companies must in turn–

- (a) report those matters to every meeting of the members, or any class of members, of that company summoned for the purpose of agreeing to the scheme; or
- (b) send a report of those matters to every member entitled to receive notice of such a meeting.

(3) The requirement in this section is subject to sections 319 and 324.

**Approval of articles of new transferee company (merger).**

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

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

316.(1) The scheme must provide that where any securities of a transferor company (other than shares) to which special rights are attached are held by a person otherwise than as a member or creditor of the company, that person is to receive rights in the transferee company of equivalent value.

(2) Subsection (1) does not apply if–

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

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

317. The scheme must not provide for any shares in the transferee company to be allotted to a transferor company, or its nominee, in respect of shares in the transferor company held by the transferor company itself, or its nominee.

*Exceptions where shares of transferor company held by transferee company*

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

318.(1) This section applies in the case of a merger by absorption where all of the relevant securities of the transferor company, or, if there is more than one transferor company, of each of them, are held by or on behalf of the transferee company.

(2) The draft terms of the scheme need not give the particulars relating to allotment of shares to members of the transferor company mentioned in section 305(2)(b), (c) or (d).

(3) Section 297 does not apply.

(4) The requirements of the following sections do not apply–

- (a) section 309; and
- (b) section 310.



(5) The requirements of section 312 so far as relating to any document required to be drawn up under the provisions mentioned in subsection (4) do not apply.

(6) In this section “relevant securities”, in relation to a company, means shares or other securities carrying the right to vote at general meetings of the company.

**Other circumstances in which reports and inspection not required (merger).**

319.(1) This section applies in the case of a merger by absorption where 90% or more, but not all, of the relevant securities of the transferor company, or, if there is more than one transferor company, of each of them, are held by or on behalf of the transferee company.

(2) If the conditions in subsections (3) and (4) are met, the requirements of the following sections do not apply–

- (a) section 309;
- (b) section 310;
- (c) section 311;
- (d) section 312; and
- (e) section 314.

(3) The first condition is that the scheme provides that every other holder of relevant securities has the right to require the transferee company to acquire those securities.

(4) The second condition is that, if a holder of securities exercises that right, the consideration to be given for those securities is fair and reasonable.

(5) The powers of the court under section 300(2) include the power to determine, or make provision for the determination of, the consideration to be given for securities acquired under this section.

(6) In this section–

“other holder” means a person who holds securities of the transferor company otherwise than on behalf of the transferee company and does not include the transferee company itself;

“relevant securities”, in relation to a company, means shares or other securities carrying the right to vote at general meetings of the company.

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

320.(1) This section applies in the case of a merger by absorption where 90% or more, but not all, of the relevant securities of the transferor company or, if there is more than one transferor company, of each of them, are held by or on behalf of the transferee company.

(2) It is not necessary for the scheme to be approved at a meeting of the members, or any class of members, of the transferee company if the court is satisfied that the conditions in section 321 have been complied with.

(3) In this section and sections 321 and 322, “relevant securities”, in relation to a company, means shares or other securities carrying the right to vote at general meetings of the company.

**Conditions relevant to section 320.**

321.(1) The first condition relevant to section 320 is that either subsection (2) or subsection (3) is satisfied.

(2) This subsection is satisfied if publication of notice of receipt of the draft terms by the Registrar took place in respect of the transferee company at least 1 month before the date of the first meeting of members, or any class of members, of the transferor company summoned for the purpose of agreeing to the scheme.

(3) This subsection is satisfied if—

- (a) the conditions in section 307(2) to (4) are met in respect of the transferee company;
- (b) the Registrar published the notice mentioned in section 307(4) in the Gazette at least 1 month before the date of the first meeting of members, or any class of members, of the transferor company summoned for the purpose of agreeing to the scheme; and
- (c) the draft terms remained available on the website throughout the period beginning 1 month before that date and remained available until the conclusion of that meeting.

(4) The second condition relevant to section 320 is that subsection (5) or (6) is satisfied for each of the documents listed in the applicable paragraphs

of section 312(3)(a) to (f) relating to the transferee company and the transferor company or, if there is more than one transferor company, each of them.

(5) This subsection is satisfied for a document if the members of the transferee company were able during the period beginning 1 month before, and ending on, the date mentioned in subsection (2) to inspect that document at the registered office of that company.

(6) This subsection is satisfied for a document if—

- (a) the document is made available on a website which is maintained by or on behalf of the transferee company and identifies the company;
- (b) access to the document on the website is not conditional on the payment of a fee or otherwise restricted; and
- (c) the document remains available on the website throughout the period beginning 1 month before, and ending on, the date mentioned in subsection (2).

(7) The third condition relevant to section 320 is that the members of the transferee company were able to obtain copies of the documents mentioned in subsection (4), or any part of those documents, on request and free of charge, throughout the period beginning 1 month before the date mentioned in subsection (2) and remains free of charge until the conclusion of the meeting referred to in that subsection; and for the purposes of this subsection, section 313(5) applies as it applies for the purposes of section 312(1)(b).

(8) The fourth condition relevant to section 320 is that—

- (a) one or more members of the transferee company, who together held not less than 5% of the paid-up capital of the company which carried the right to vote at general meetings of the company would have been able, during that period, to require a meeting of each class of members to be called for the purpose of deciding whether or not to agree to the scheme; and
- (b) no such requirement was made.

**Circumstances in which no meetings required (merger).**

322.(1) This section applies in the case of a merger by absorption where all of the relevant securities (as defined in section 320(3)) of the transferor company, or, if there is more than one transferor company, of each of them, are held by or on behalf of the transferee company.

(2) It is not necessary for the scheme to be approved at a meeting of the members, or any class of members, of any of the merging companies if the court is satisfied that the following conditions have been complied with.

(3) The first condition is that either subsection (4) or subsection (5) is satisfied.

(4) This subsection is satisfied if publication of notice of receipt of the draft terms by the Registrar took place in respect of all the merging companies at least 1 month before the date of the court's order.

(5) This subsection is satisfied if–

- (a) the conditions in section 307(2) to (4) are met in respect of each of the merging companies;
- (b) in each case, the Registrar published the notice mentioned in section 307(4) in the Gazette at least 1 month before the date of the court's order; and
- (c) the draft terms remained available on the website throughout the period beginning 1 month before, and ending on, that date.

(6) The second condition is that either subsection (7) or subsection (8) is satisfied for each of the documents listed in the applicable paragraphs of section 312 (3)(a) to (f) relating to the transferee company and the transferor company, or, if there is more than one transferor company, each of them.

(7) This subsection is satisfied for a document if the members of the transferee company were able during the period beginning 1 month before, and ending on, the date mentioned in subsection (4) to inspect that document at the registered office of that company.

(8) This subsection is satisfied for a document if–

- (a) the document is made available on a website which is maintained by or on behalf of the transferee company and identifies the company;
- (b) access to the document on the website is not conditional on the payment of a fee or otherwise restricted; and
- (c) the document remains available on the website throughout the period beginning 1 month before the date mentioned in subsection (4) and remains available until the conclusion of that meeting.

(9) The third condition is that the members of the transferee company were able to obtain copies of the documents mentioned in subsection (4), or any part of those documents, on request and free of charge, throughout the period beginning 1 month before the date mentioned in subsection (4) and remains free of charge until the conclusion of the meeting referred to in that subsection; and for the purposes of this subsection section 313(5) applies as it applies for the purposes of section 312(1)(b).

(10) The fourth condition is that—

- (a) one or more members of the transferee company, who together held not less than 5% of the paid-up capital of the company which carried the right to vote at general meetings of the company would have been able, during that period, to require a meeting of each class of members to be called for the purpose of deciding whether or not to agree to the scheme; and
- (b) no such requirement was made.

*Other exceptions*

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

323.(1) In the case of any merger by absorption, it is not necessary for the scheme to be approved by the members of the transferee company if the court is satisfied that the following conditions have been complied with.

(2) The first condition is that either subsection (3) or subsection (4) is satisfied.

(3) This subsection is satisfied if publication of notice of receipt of the draft terms by the Registrar took place in respect of the transferee company at least 1 month before the date of the first meeting of members, or any class of members, of the transferor company, or, if there is more than one transferor company, any of them, summoned for the purposes of agreeing to the scheme.

(4) This subsection is satisfied if—

- (a) the conditions in section 307(2) to (4) are met in respect of the transferee company;
- (b) the Registrar published the notice mentioned in section 307(4) in the Gazette at least 1 month before the date of the first meeting of members, or any class of members, of the transferor company, or, if there is more than one transferor company, any

of them, summoned for the purposes of agreeing to the scheme;  
and

- (c) the draft terms remained available on the website throughout the period beginning 1 month before, and ending on, that date.

(5) The second condition is that subsection (6) or (7) is satisfied for each of the documents listed in the applicable paragraphs of section 312(3) relating to the transferee company and the transferor company, or, if there is more than one transferor company, each of them.

(6) This subsection is satisfied for a document if the members of the transferee company were able during the period beginning 1 month before, and ending on, the date of any such meeting as is mentioned in subsection (3) to inspect that document at the registered office of that company.

(7) This subsection is satisfied for a document if–

- (a) the document is made available on a website which is maintained by or on behalf of the transferee company and identifies the company;
- (b) access to the document on the website is not conditional on the payment of a fee or otherwise restricted; and
- (c) the document remains available on the website throughout the period beginning 1 month before the date of any such meeting as is mentioned in subsection (3) and remains available until the conclusion of that meeting.

(8) The third condition is that the members of the transferee company were able to obtain copies of the documents mentioned in subsection (5), or any part of those documents, on request and free of charge, throughout the period beginning 1 month before the date of any such meeting as is mentioned in subsection (3) and thereafter until the conclusion of that meeting; and, for the purposes of this section, section 313(5) applies as it applies for the purposes of section 312(1)(b).

(9) The fourth condition is that–

- (a) one or more members of that company, who together held not less than 5% of the paid-up capital of the company which carried the right to vote at general meetings of the company would have been able, during that period, to require a meeting of each class of members to be called for the purpose of deciding whether or not to agree to the scheme; and
- (b) no such requirement was made.

(10) For the purposes of subsection (9) members holding 5% or more shall be entitled to request the directors to call a meeting irrespective of section 195(1).

**Agreement to dispense with report, etc (merger).**

324.(1) If all members holding shares in, and all persons holding other securities of, the merging companies, being shares or securities that carry a right to vote in general meetings of the company in question, so agree, the requirements referred to in subsection (2) do not apply.

(2) The requirements that may be dispensed with under this section are—

- (a) the requirements of—
  - (i) section 309,
  - (ii) section 310,
  - (iii) section 311, and
  - (iv) section 314; and
- (b) the requirements of section 312 so far as relating to any document required to be drawn up under sections 309, 310 or 311.

(3) For the purposes of this section—

- (a) the members, or holders of other securities, of a company; and
- (b) whether shares or other securities carry a right to vote in general meetings of the company,

are determined as at the date of the application to the court under section 296.

*Division*

**Divisions and companies involved in a division.**

325.(1) The scheme involves a division where under the scheme the undertaking, property and liabilities of the company in respect of which the compromise or arrangement is proposed are to be divided among and transferred to two or more companies each of which is either—

- (a) an existing public company; or

- (b) a new company, whether or not a public company.

(2) References in this Part to the companies involved in the division are to the transferor company and any existing transferee companies.

*Requirements to be complied with in case of division*

**Draft terms of scheme (division).**

326.(1) A draft of the proposed terms of the scheme must be drawn up and adopted by the directors of each of the companies involved in the division.

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



(g) any amount of benefit paid or given or intended to be paid or given—

(i) to any of the experts referred to in section 331, or

(ii) to any director of a company involved in the division,

and the consideration for the payment of benefit.

(3) The draft terms must also—

(a) give particulars of the property and liabilities to be transferred, to the extent that these are known to the transferor company, and their allocation among the transferee companies;

(b) make provision for the allocation among and transfer to the transferee companies of any other property and liabilities that the transferor company has acquired or may subsequently acquire; and

(c) specify the allocation to members of the transferor company of shares in the transferee companies and the criteria upon which that allocation is based.

**Publication of draft terms by Registrar (division).**

327.(1) The directors of each company involved in the division must deliver a copy of the draft terms to the Registrar.

(2) The Registrar must publish in the Gazette notice of receipt by him from that company of a copy of the draft terms.

(3) That notice must be published at least 1 month before the date of any meeting of that company summoned for the purposes of approving the scheme.

(4) The requirements in this section for publication of draft terms on company website are subject to section 328 and the power of court to exclude certain requirements is subject to section 344.

**Publication of draft terms on company website (division).**

328.(1) Section 327 does not apply in respect of a company if the conditions in subsections (2) to (6) are met.

(2) The first condition is that the draft terms are made available on a website which—

- (a) is maintained by or on behalf of the company; and
- (b) identifies the company.

(3) The second condition is that neither access to the draft terms on the website nor the supply of a hard copy of them from the website is conditional on payment of a fee or otherwise restricted.

(4) The third condition is that the directors of the company deliver to the Registrar a notice giving details of the website.

(5) The fourth condition is that the Registrar publishes the notice in the Gazette at least 1 month before the date of any meeting of the company summoned for the purpose of approving the scheme.

(6) The fifth condition is that the draft terms remain available on the website throughout the period beginning 1 month before the date of any such meeting and remain available until the conclusion of that meeting.

**Approval of members of companies involved in the division.**

329.(1) The compromise or arrangement must be approved by a majority in number, representing 75% in value, of each class of members of each of the companies involved in the division, present and voting either in person or by proxy at a meeting.

- (2) This requirement is subject to sections 339, 340 and 341.

**Directors' explanatory report (division).**

330.(1) The directors of the transferor and each existing transferee company must draw up and adopt a report consisting of—

- (a) the statement required by section 297; and
- (b) insofar as that statement does not deal with the following matters, a further statement—
  - (i) setting out the legal and economic grounds for the draft terms, and in particular for the share exchange ratio and for the criteria on which the allocation to the members of the transferor company of shares in the transferee companies was based, and
  - (ii) specifying any special valuation difficulties.

- (2) The report must also state—

- (a) whether a report on the valuation of non-cash consideration for shares has been made to any transferee company under section 91; and
  - (b) if so, whether that report has been delivered to the Registrar.
- (3) The requirement in this section is subject to section 342 and section 343.

**Expert's report (division).**

331.(1) An expert's report must be drawn up on behalf of each company involved in the division.

(2) The report required is a written report on the draft terms to the members of the company.

(3) The court may on the joint application of the companies involved in the division approve the appointment of a joint expert to draw up a single report on behalf of all those companies and if no such appointment is made, there must be a separate expert's report to the members of each company involved in the division drawn up by a separate expert appointed on behalf of that company.

(4) The expert must be a person who—

- (a) is eligible for appointment as an auditor under section 255; and
- (b) meets the independence requirement in section 346.

(5) The expert's report must—

- (a) indicate the method or methods used to arrive at the share exchange ratio;
- (b) give an opinion as to whether the method or methods used are reasonable in all the circumstances of the case, indicate the values arrived at using each such method and, if there is more than one method, give an opinion on the relative importance attributed to such methods in arriving at the value decided on;
- (c) describe any special valuation difficulties that have arisen;
- (d) state whether in the expert's opinion the share exchange ratio is reasonable; and

- (e) in the case of a valuation made by a person other than himself pursuant to section 345, state that it appeared to him reasonable to arrange for it to be so made or to accept a valuation so made.

(6) The expert, or each of them, has–

- (a) the right of access to all such documents of the companies involved in the division; and
- (b) the right to require from the companies' officers all such information, as he thinks necessary for the purposes of making his report.

(7) The requirement in this section is subject to sections 342 and 343.

**Supplementary accounting statement (division).**

332.(1) This section applies if the last annual accounts of a company involved in the division relate to a financial year ending before–

- (a) the date 7 months before the first meeting of the company summoned for the purposes of approving the scheme; or
- (b) if no meeting of the company is required, by virtue of sections 339 and 340 or 341, the date 6 months before the directors of the company adopt the draft terms of the scheme.

(2) If the company has not made public a half-yearly financial report relating to a period ending on or after the date mentioned in subsection (1), the directors of the company must prepare a supplementary accounting statement consisting of–

- (a) a balance sheet dealing with the state of affairs of the company as at a date not more than 3 months before the draft terms were adopted by the directors; and
- (b) where the company would be required under section 281 to prepare group accounts if that date were the last day of a financial year, a consolidated balance sheet dealing with the state of affairs of the company and the undertakings that would be included in such a consolidation.

(3) The requirements of this Act, and where relevant Article 4 of the IAS Regulation, as to the balance sheet forming part of a company's annual accounts, and the matters to be included in notes to it, apply to the balance sheet required for an accounting statement under this section, with such modifications as are necessary by reason of its being prepared otherwise than as at the last day of a financial year.

(4) The provisions of section 241 of this Act shall apply as to the signing of the balance sheet required for an accounting statement under this section.

(5) In this section—

- (a) “half-yearly financial report” means a report of that description required to be made public by rules under section 11 of the Financial Services (Listing of Securities) Act 2006; and
- (b) “IAS Regulation” means EC Regulation No. 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards as amended or replaced by another EC Regulation.

(6) The requirement in this section is subject to sections 342 and 343.

**Inspection of documents (division).**

333.(1) The members of each company involved in the division must be able, during the period specified below—

- (a) to inspect at the registered office of that company copies of the documents listed below relating to that company and every other company involved in the division; and
- (b) to obtain copies of those documents or any part of them on request free of charge.

(2) The period referred to above is the period—

- (a) beginning 1 month before; and
- (b) ending on the date of, the first meeting of the members, or any class of members, of the company for the purposes of approving the scheme.

(3) The documents referred to above are—

- (a) the draft terms;
- (b) the directors’ explanatory report;
- (c) the expert’s report;
- (d) the company’s annual accounts and reports for the last 3 financial years ending

on or before the first meeting of the members, or any class of members, of the company summoned for the purposes of approving the scheme;

- (e) any supplementary accounting statement required by section 332; and
- (f) if no statement is required by section 332 because the company has made public a recent half-yearly financial report under subsection (2) of that section, that report.

(4) The requirement in subsection (1)(a) is subject to the requirement of publication of documents on the company website pursuant to section 334(1).

(5) The requirements in subsection (3)(b), (c) and (e) are subject to sections 342, 343 and 344.

(6) Where a member who has consented to information being sent to him or supplied by the company by electronic means and he has not revoked that consent, the hard copy of such document need not be sent to him.

**Publication of documents on company website (division).**

334.(1) Subject to subsection (6), section 333(1)(a) does not apply to a document if the conditions in subsections (2) to (4) are met in relation to that document.

(2) The first condition is that the document is made available on a website which—

- (a) is maintained by or on behalf of the company; and
- (b) identifies the company.

(3) The second condition is that access to the document on the website is not conditional on payment of a fee or otherwise restricted.

(4) The third condition is that the document remains available on the website throughout the period beginning 1 month before the date of any meeting of the company summoned for the purpose of approving the scheme and remains so available until the conclusion of that meeting.

(5) A person is able to obtain a copy of a document as required by section 333(1)(b) if—

- (a) the conditions in subsections (2) and (3) are met in relation to that document; and

- (b) the person is able, throughout the period specified in subsection (4)–
  - (i) to retain a copy of the document as made available on the website, and
  - (ii) to produce a hard copy of it.

(6) Where members of a company are able to obtain copies of a document only as mentioned in subsection (5), section 333(1)(a) applies to that document even if the conditions in subsections (2) to (4) are met.

**Report on material changes of assets of transferor company (division).**

335.(1) The directors of the transferor company must report–

- (a) to every meeting of the members, or any class of members, of that company summoned for the purpose of agreeing to the scheme; and
- (b) to the directors of each existing transferee company, any material changes in the property and liabilities of the transferor company between the date when the draft terms were adopted and the date of the meeting in question.

(2) The directors of each existing transferee company must in turn–

- (a) report those matters to every meeting of the members, or any class of members, of that company summoned for the purpose of agreeing to the scheme; or
- (b) send a report of those matters to every member entitled to receive notice of such a meeting.

(3) The requirement in this section is subject to sections 342 and 343.

**Approval of articles of new transferee company (division).**

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

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

337.(1) The scheme must provide that where any securities of the transferor company, other than shares, to which special rights are attached are held by

a person otherwise than as a member or creditor of the company, that person is to receive rights in a transferee company of equivalent value.

(2) Subsection (1) does not apply if–

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

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

338. The scheme must not provide for any shares in a transferee company to be allotted to–

- (a) the transferor company, or its nominee, in respect of shares in the transferor company held by the transferor company itself or its nominee; or
- (b) a transferee company, or its nominee, in respect of shares in the transferor company held by the transferee company, or its nominee

*Exceptions where shares of transferor company held by transferee company*

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

339.(1) This section applies in the case of a division where all of the shares or other securities of the transferor company carrying the right to vote at general meetings of the company are held by or on behalf of one or more existing transferee companies.

(2) It is not necessary for the scheme to be approved by a meeting of the members, or any class of members, of the transferor company if the court is satisfied that the conditions in section 340 have been complied with.

**Conditions relevant to section 339.**

340.(1) The first condition relevant to section 339 is that either subsection (2) or subsection (3) is satisfied.

(2) This subsection is satisfied if publication of notice of receipt of the draft terms by the Registrar took place in respect of all the companies involved in the division at least 1 month before the date of the court's order.

(3) This subsection is satisfied if–



- (a) the conditions in section 328(2) to (4) are met in respect of each of the companies involved in the division;
- (b) in each case, the Registrar published the notice mentioned in section 328(4) in the Gazette at least 1 month before the date of the court's order; and
- (c) the draft terms remained available on the website throughout the period beginning 1 month before, and ending on, that date.

(4) The second condition is that subsection (5) or (6) is satisfied for each of the documents listed in the applicable paragraphs of section 333(3) relating to every company involved in the division.

(5) This subsection is satisfied for a document if the members of every company involved in the division were able during the period beginning 1 month before, and ending on, the date of the court's order to inspect that document at the registered office of their company.

(6) This subsection is satisfied for a document if—

- (a) the document is made available on a website which is maintained by or on behalf of the company to which it relates and identifies the company;
- (b) access to the document on the website is not conditional on payment of a fee or otherwise restricted; and
- (c) the document remains available on the website throughout the period beginning 1 month before, and ending on, the date of the court's order.

(7) The third condition is that the members of every company involved in the division were able to obtain copies of the documents mentioned in subsection (4), or any part of those documents, on request and free of charge, throughout the period beginning 1 month before, and ending on, the date of the court's order; and for the purposes of this subsection section 334(5) applies as it applies for the purposes of section 333(1)(b).

(8) The fourth condition is that the directors of the transferor company have sent—

- (a) to every member who would have been entitled to receive notice of a meeting to agree to the scheme (had any such meeting been called); and

- (b) to the directors of every existing transferee company, a report of any material change in the property and liabilities of the transferor company between the date when the terms were adopted by the directors and the date 1 month before the date of the court's order.

*Other exceptions*

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

341.(1) In the case of a division, it is not necessary for the scheme to be approved by the members of a transferee company if the court is satisfied that the following conditions have been complied with in relation to that company; and, of those conditions, the first, second and third are subject to section 344.

(2) The first condition is that either subsection (3) or subsection (4) is satisfied.

(3) This subsection is satisfied if publication of notice of receipt of the draft terms by the Registrar took place in respect of the transferee company at least 1 month before the date of the first meeting of members of the transferor company summoned for the purposes of agreeing to the scheme.

(4) This subsection is satisfied if—

- (a) the conditions in section 328(2) to (4) are met in respect of the transferee company;
- (b) the Registrar published the notice mentioned in section 328(4) in the Gazette at least 1 month before the date of the first meeting of members of the transferor company summoned for the purposes of agreeing to the scheme; and
- (c) the draft terms remained available on the website throughout the period beginning 1 month before the date of such meeting and remains available until the conclusion of that meeting.

(5) The second condition is that subsection (6) or (7) is satisfied for each of the documents listed in the applicable paragraphs of section 333(3) relating to the transferee company and every other company involved in the division.

(6) This subsection is satisfied for a document if the members of the transferee company were able during the period beginning 1 month before, and ending on, the date mentioned in subsection (3) to inspect that document at the registered office of that company.

(7) This subsection is satisfied for a document if–

- (a) the document is made available on a website which is maintained by or on behalf of the transferee company and identifies the company;
- (b) access to the document on the website is not conditional on payment of a fee or otherwise restricted; and
- (c) the document remains available on the website throughout the period beginning 1 month before, and ending on, the date mentioned in subsection (3).

(8) The third condition is that the members of the transferee company were able to obtain copies of the documents mentioned in subsection (5), or any part of those documents, on request and free of charge, throughout the period beginning 1 month before the date mentioned in subsection (3) and remains free of charge until the conclusion of the meeting referred to in that subsection; and for the purposes of this subsection section 334(5) applies as it applies for the purposes of section 333(1)(b).

(9) The fourth condition is that–

- (a) one or more members of that company, who together held not less than 5% of the paid-up capital of the company which carried the right to vote at general meetings of the company would have been able, during that period, to require a meeting of each class of members to be called for the purpose of deciding whether or not to agree to the scheme; and
- (b) no such requirement was made.

**Agreement to dispense with reports etc (division).**

342.(1) If all members holding shares in, and all persons holding other securities of, the companies involved in the division, being shares or securities that carry a right to vote in general meetings of the company in question, so agree, the requirements referred to in subsection (2) do not apply.

(2) The requirements that may be dispensed with under this section are–

- (a) the requirements of–
  - (i) section 330,
  - (ii) section 331,

(iii) section 332, and

(iv) section 335; and

(b) the requirements of section 333 so far as relating to any document required to be drawn up under the provisions mentioned in paragraph (a)(i), (ii) or (iii).

(3) For the purposes of this section—

(a) the members, or holders of other securities, of a company; and

(b) whether shares or other securities carry a right to vote in general meetings of the company,

are determined as at the date of the application to the court under section 296.

**Certain requirements excluded where shareholders given proportional rights (division).**

343.(1) This section applies in the case of a division where each of the transferee companies is a new company.

(2) If all the shares in each of the transferee companies are to be allotted to the members of the transferor company in proportion to their rights in the allotted share capital of the transferor company, the following requirements do not apply.

(3) The requirements which do not apply are—

(a) the requirements of—

(i) section 330,

(ii) section 331,

(iii) section 332, and

(iv) section 335; and

(b) the requirements of the inspection of documents pursuant to section 333 so far as relating to any document required to be drawn up under the provisions mentioned in paragraph (a)(i), (ii) or (iii).

**Power of court to exclude certain requirements (division).**

344.(1) In the case of a division, the court may by order direct that—

- (a) in relation to any company involved in the division, the requirements of sections 327 and section 333, do not apply; and
- (b) in relation to an existing transferee company, for the purposes of determining the circumstances in which a meeting of members of the transferee company is not required pursuant to section 341, that section has effect with the omission of the first, second and third conditions specified in that section, if the court is satisfied that the following conditions will be fulfilled in relation to that company.

(2) The first condition is that the members of that company will have received, or will have been able to obtain free of charge, copies of the documents listed in section 333—

- (a) in time to examine them before the date of the first meeting of the members, or any class of members, of that company summoned for the purposes of agreeing to the scheme; or
- (b) in the case of an existing transferee company where in the circumstances described in section 341 no meeting is held, in time to require a meeting as mentioned in subsection (4) of that section.

(3) The second condition is that the creditors of that company will have received or will have been able to obtain free of charge copies of the draft terms in time to examine them—

- (a) before the date of the first meeting of the members, or any class of members, of the company summoned for the purposes of agreeing to the scheme; or
- (b) in the circumstances mentioned in subsection (2)(b), at the same time as the members of the company.

(4) The third condition is that no prejudice would be caused to the members or creditors of the transferor company or any transferee company by making the order in question.

*Expert's report and related matters*

**Expert's report: valuation by another person.**

345.(1) Where it appears to an expert—

- (a) that a valuation is reasonably necessary to enable him to draw up his report; and
- (b) that it is reasonable for that valuation, or part of it, to be made by, or for him to accept a valuation made by, another person who—
  - (i) appears to him to have the requisite knowledge and experience to make the valuation or that part of it, and
  - (ii) meets the independence requirement in section 346,

he may arrange for or accept such a valuation, together with a report which will enable him to make his own report under section 310 or 331.

(2) Where any valuation is made by a person other than the expert himself, the latter's report must state that fact and must also—

- (a) state the former's name and what knowledge and experience he has to carry out the valuation; and
- (b) describe so much of the undertaking, property and liabilities as was valued by the other person, and the method used to value them, and specify the date of the valuation.

**Experts and valuers : independence requirement.**

346.(1) A person meets the independence requirement for the purposes of section 310, 331 or 345 only if—

- (a) he is not—
  - (i) an officer or employee of any of the companies concerned in the scheme, or
  - (ii) a partner or employee of such a person, or a partnership of which such a person is a partner;
- (b) he is not—
  - (i) an officer or employee of an associated undertaking of any of the companies concerned in the scheme, or
  - (ii) a partner or employee of such a person, or a partnership of which such a person is a partner; and
- (c) there does not exist between—

- (i) the person or an associate of his, and
- (ii) any of the companies concerned in the scheme or an associated undertaking of such a company, a connection of any such description as may be specified by regulations made by the Minister.

(2) An auditor of a company shall not be regarded as an officer or employee of the company for this purpose.

(3) For the purposes of this section—

- (a) the “companies concerned in the scheme” means every transferor and existing transferee company;
- (b) “associated undertaking”, in relation to a company, means—
  - (i) a parent or subsidiary of the company, or
  - (ii) a subsidiary of a parent of the company; and
- (c) “associate” has the meaning given by section 347.

**Experts and valuers: meaning of “associate”.**

347.(1) This section defines “associate” for the purposes of section 346.

(2) In relation to an individual, “associate” means—

- (a) that individual’s spouse or minor child or step-child;
- (b) any corporate body of which that individual is a director; and
- (c) any employee or partner of that individual.

(3) In relation to a corporate body, “associate” means—

- (a) any other body corporate of which that body is a director;
- (b) any other body corporate in the same group as that body; and
- (c) any employee or partner of that body or of any other body corporate in the same group.

(4) In relation to a partnership that is a legal person under the law by which it is governed, “associate” means—

- (a) any body corporate of which that partnership is a director;
- (b) any employee of or partner in that partnership; and
- (c) any person who is an associate of a partner in that partnership.

(5) In relation to a partnership that is not a legal person under the law by which it is governed, “associate” means any person who is an associate of any of the partners.

(6) In this section, in relation to a limited liability partnership, for any reference to a “director” there shall be substituted a reference to a “member”.

#### *Powers of the court*

#### **Power of court to summon meeting of members or creditors of existing transferee company.**

348.(1) The court may order a meeting of—

- (a) the members of an existing transferee company, or any class of them; or
- (b) the creditors of an existing transferee company, or any class of them,

to be summoned in such manner as the court directs.

(2) An application for such an order may be made by—

- (a) the company concerned;
- (b) a member or creditor of the company;
- (c) if the company is being wound up, the liquidator; or
- (d) if the company is in administration, the administrator.

#### **Court to fix date for transfer of undertaking etc of transferor company.**

349.(1) Where the court sanctions the compromise or arrangement, it must—

- (a) in the order sanctioning the compromise or arrangement; or
- (b) in a subsequent order under section 300,



fix a date (“the operative date”) on which the transfer, or transfers, to the transferee company, or transferee companies, of the undertaking, property and liabilities of the transferor company is or are to take place.

(2) Any such order that provides for the dissolution of the transferor company must fix the operative date as the date for the dissolution.

(3) If it is necessary for the transferor company to take steps to ensure that the undertaking, property and liabilities are fully transferred, the court must fix a date, not later than 6 months after the operative date, by which such steps must be taken.

(4) In that case, the court may postpone the dissolution of the transferor company until the date fixed under subsection (3).

(5) The court may postpone or further postpone the date fixed under subsection (3) if it is satisfied that the steps mentioned cannot be completed by the date, or latest date, fixed under that subsection.

(6) A company in relation to which an order is made by the court under this section must cause a copy of the order to be delivered to the Registrar within 7 days after its making.

#### *Liability of transferee companies*

#### **Liability of transferee companies for each other’s defaults.**

350.(1) In the case of a division, each transferee company shall be jointly and severally liable for any liability transferred to any other transferee company under the scheme to the extent that the other company has made default in satisfying that liability.

(2) Subsection (1) is subject to subsections (3) to (5).

(3) If a majority in number representing 75% in value of the creditors or any class of creditors of the transferor company, present and voting either in person or by proxy at a meeting summoned for the purposes of agreeing to the scheme, so agree, subsection (1) does not apply in relation to the liabilities owed to the creditors or that class of creditors.

(4) A transferee company shall not be liable under this section for an amount greater than the net value transferred to it under the scheme.

(5) In this section, the “net value transferred” is the value at the time of the transfer of the property transferred to it under the scheme less the amount at that date of the liabilities so transferred.

*Disruption of websites***Disregard of website failures beyond control of company.**

351.(1) A failure to make information or a document available on the website throughout a period specified in any of the provisions mentioned in subsection (2) is to be disregarded if–

- (a) it is made available on the website for part of that period; and
- (b) the failure to make it available throughout that period is wholly attributable to circumstances that it would not be reasonable to have expected the company to prevent or avoid.

(2) The provisions referred to above are–

- (a) section 307(6);
- (b) section 313(4);
- (c) section 321(3) and (6);
- (d) section 322(5) and (8);
- (e) section 323(4) and (7);
- (f) section 328(6);
- (g) section 334(4);
- (h) section 340(3) and (6); and
- (i) section 341(4) and (7).

*Interpretation***Meaning of “liabilities” and “property”.**

352. In this Part–

“liabilities” includes duties;

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

**Power to acquire shares of shareholders dissenting from scheme or contract approved by majority.**

352(A) Where a scheme or contract involving the transfer of shares or any class of shares in a company (in this section referred to as “the transferor company”) to another company, whether a company within the meaning of this Act or not (in this section referred to as “the transferee company”) has within four months after the making of the offer in that behalf by the transferee company been approved by the holders of not less than nine-tenths in value of the shares affected, the transferee company may, at any time within two months after the expiration of such four months, give notice in the prescribed manner to any dissenting shareholder that it desires to acquire his shares, and where such a notice is given the transferee company shall, unless on an application made by the dissenting shareholder within one month from the date on which the notice was given the court thinks fit to order otherwise, be entitled and bound to acquire those shares on the terms on which under the scheme or contract the shares of the approving shareholders are to be transferred to the transferee company.

(2) Where a notice has been given by the transferee company under this section and the court has not, on an application made by the dissenting shareholder, ordered to the contrary, the transferee company shall, on the expiration of one month from the date on which the notice has been given, or, if an application to the court by the dissenting shareholder is then pending, after that application has been disposed of, transmit a copy of the notice to the transferor company and pay or transfer to the transferor company the amount or other consideration representing the price payable by the transferee company for the shares which by virtue of this section that company is entitled to acquire, and the transferor company shall thereupon register the transferee company as the holder of those shares.

(3) Any sums received by the transferor company under this section shall be paid into a separate bank account, and any such sums and any other consideration so received shall be held by that company on trust for the several persons entitled to the shares in respect of which the said sums or other consideration were respectively received.

(4) In this section, “dissenting shareholder” includes a shareholder who has not assented to the scheme or contract and any shareholder who has failed or refused to transfer his shares to the transferee company in accordance with the scheme or contract.

## PART IX

### DISTRIBUTION OF PROFITS AND ASSETS

#### **Certain distributions prohibited.**

353.(1) A public company may not make a distribution except out of funds available for the purpose.

(2) In this Part “distribution” means every description of a company’s assets to its members, whether by cash or otherwise, except a distribution by way of–

- (a) an issue of shares as fully or partly paid bonus shares;
- (b) the redemption of any of the company’s own shares out of capital (including the proceeds of any issue of shares) or out of unrealised profits;
- (c) the reduction of share capital by extinguishing or reducing the liability of any of the members of any of the company’s shares in respect of share capital not paid up, or by paying off paid-up share capital; and
- (d) a distribution of assets to members of the company on its winding up.

(3) For the purposes of this Part, a public company’s profits available for distribution are its accumulated realised profits, so far as not previously utilised by distribution or capitalisation, less its accumulated realised losses, so far as not previously written off in a reduction or reorganisation of capital duly made.

**Further provisions as to distributions.**

354.(1) A public company may only make a distribution at any time–

- (a) if at that time the amount of its net assets is not less than the total of its called-up share capital and its undistributable reserves; and
- (b) if, and to the extent that, the distribution does not reduce the amount of those assets to less than that total.

(2) A public company may not include any uncalled share capital as an asset in any accounts relevant for the purposes of this section.

(3) Subject to the following provisions of this section, an investment company may also make a distribution at any time out of its accumulated realised revenue profits, so far as not previously utilised by distribution or capitalisation, less its accumulated revenue losses (whether realised or unrealised), so far as not previously written off in a reduction or reorganisation of capital duly made–

- (a) if at that time the amount of its assets is at least equal to one and a half times the total of its liabilities; and

- (b) if, and to the extent that, the distribution does not reduce that amount to less than one and a half times that total.

(4) In subsection (3) “liabilities” includes any provision except to the extent that it is taken into account for the purposes of that subsection in calculating the value of any assets of the company in question.

(5) In this section “undistributable reserves” means—

- (a) the share premium account;
- (b) the capital redemption reserve;
- (c) the amount by which the company’s unrealised profits, so far as not previously utilised by a relevant capitalisation exceed its accumulated unrealised losses (so far as not previously written off in a reduction or reorganisation of capital duly made); and
- (d) any other reserve which the company is prohibited from distributing by any provision of this Act, or by its memorandum or articles,

and in paragraph (c) “relevant capitalisation” means any capitalisation except a transfer of profits of the company to its capital redemption reserve.

### **Investment companies**

355.(1) In section 354 “investment company” means a public company which has given notice (which has not been revoked) to the Registrar of its intention to carry on business as an investment company (the “requisite notice”) and has since the date of that notice complied with the following requirements—

- (a) that the business of the company consists of investing its funds mainly in securities, with the aim of spreading investment risk and giving members of the company the benefit of the results of the management of its funds;
- (b) that none of the company’s holdings in companies (other than companies which are for the time being investment companies) represents more than 15 per cent by value of the investing company’s investment;
- (c) that the distribution of the company’s capital profits is prohibited by its memorandum or articles of association; and
- (d) that the company has not retained, otherwise than in compliance with this Part, in respect of any accounting

reference period more than 15 per cent of the income it derives from securities.

(2) An investment company may not make a distribution by virtue of section 354(3) unless during the period beginning with the first day of the accounting reference period immediately preceding the accounting reference period in which the proposed distribution is to be made or, where the distribution is proposed to be made during the company's first accounting reference period, the first day of that period and ending with the date of the distribution, it has not—

- (a) distributed any of its capital profits; or
- (b) applied any unrealised profits or any capital profits (realised or unrealised) on paying any debentures or any amounts unpaid on any of its issued shares.

(3) An investment company may not make a distribution by virtue of section 354(3) unless the company gave the requisite notice before the beginning of the period referred to in subsection (2).

(4) A notice by a company to the Registrar under subsection (1) may be revoked at any time by the company by giving notice to the Registrar that it no longer wishes to be an investment company, within the meaning of this section, and, on giving that notice, the company shall cease to be an investment company.

#### **Insurance companies.**

356.(1) Where an insurance company carries on a long term business, any amount included in the relevant part of the balance sheet is to that part of the balance sheet—

- (a) which represents a surplus in the fund or funds maintained by it in respect of that business; and
- (b) which has not been allocated to policy holders in accordance with section 86 of the Insurance Companies Act 1987,

and any deficit in that fund or those funds shall be respectively treated for the purposes of this Part as a realised profit and a realised loss, and, subject to this, any profits or loss arising in that business will be left out of account for those purposes.

(2) In subsection (1)—

- (a) the reference to a surplus in any fund of an insurance company is a reference to an excess of the assets representing that fund

or those funds over the liabilities of the company attributable to its long term business, as shown by an actuarial investigation;

- (b) the reference to the relevant part of the balance sheet is to that part of the balance sheet which represents Liabilities item A.V (profit and loss account) in the balance sheet format set out in section B of Chapter 1 of Schedule 1 to the Insurance Companies (Accounts Directive) Regulations 1997; and
- (c) the reference to a deficit in any such fund or funds is a reference to the excess of those liabilities over those assets, as so shown.

(3) In this section—

“actuarial investigation” means an investigation to which section 78 of the Insurance Companies Act 1987 (periodic actuarial investigation of insurer with long term business) applies or which is made in pursuance of a requirement imposed by section 82 of that Act (power for Commissioner to order actuarial investigation);

“insurance company” means an insurance company to which that Act applies; and

“long term business” has the same meaning as in that Act.

### **Consequences of unlawful distribution.**

357.(1) Where a distribution, or part of one, made by a public company to one of its members is made in contravention of this Part and, at the time of the distribution, that member knows or has reasonable grounds to believe that it is so made, he is liable to repay it (or that part of it as the case may be) to the company or (in the case of a distribution made otherwise than in cash) to pay the company a sum equal to the value of the distribution or part at that time.

(2) Subsection (1) is without prejudice to any obligation imposed apart from this section on a member of a company to repay a distribution unlawfully made to him; but this section does not apply in relation to—

- (a) financial assistance given by a company in contravention of section 100; or
- (b) any payment made by the company in respect of the redemption by the company of shares in itself.

### **Amount of distribution which may be made.**

358.(1) The amount of a distribution which may be made without contravening any provisions of sections 353 to 356 shall be determined by reference to the following items as stated in the company's last annual accounts or interim accounts—

- (a) profits, losses, assets and liabilities;
- (b) provisions for depreciation, diminution in value of assets and any amounts written off by way of such provisions; and
- (c) share capital and reserves (including undistributable reserves).

(2) In relation to a proposed distribution by a public company the interim accounts must have been properly prepared or have been so prepared subject only to matters which are not material, for determining, by reference to items mentioned in subsection (1), whether the distribution would contravene any provision of sections 353 to 356.

(3) In this section—

- (a) “interim accounts” means those accounts necessary to enable a reasonable judgement to be made as to the amounts mentioned in paragraphs (a) to (c) of subsection (1) where a distribution would contravene any provision of sections 353 to 356 if reference were made only to the company's last annual accounts;
- (b) “properly prepared” in relation to interim accounts means that the accounts must comply with any requirements imposed by or under this Act and any balance sheet comprised in the accounts must have been signed in accordance with section 241;
- (c) “undistributable reserves” has the same meaning as in section 354.

## **PART X**

### **LIQUIDATION**

#### **CHAPTER 1**

#### **VOLUNTARY LIQUIDATION**

##### *Preliminary*

##### **Interpretation.**

359.(1) In this Part—



“Authorised person” has the same meaning as in the Financial Services Commission Act 2007;

“creditor” has the same meaning as in the Insolvency Act;

“debt” means a debt that, in a liquidation under the Insolvency Act, would be a provable debt;

“floating charge” means a charge created by a company which is or, as created, was a floating charge;

“Insolvency Practitioners Regulations” means the regulations made under section 486 of the Insolvency Act;

“judgement rate” means the rate of interest that, for the time being, is carried on judgements for the purposes of section 36 of the Supreme Court Act;

“liability” has the same meaning as in the Insolvency Act;

“licensed insolvency practitioner” means a person holding a licence to act as an insolvency practitioner issued under section 478 of the Insolvency Act;

“official receiver” means the Official Receiver appointed under section 468 of the Insolvency Act;

“preferential debt” means a debt of a type prescribed by the Insolvency Rules as a preferential debt for the purposes of the Insolvency Act;

“preferential creditor” has the meaning specified in subsection (2);

“qualifying floating charge” means a charge that is a qualifying floating charge for the purposes of section 48 of the Insolvency Act;

“secured creditor” has the same meaning as in the Insolvency Act; and

“unsecured creditor” has the same meaning as in the Insolvency Act.

(2) A creditor who has a preferential debt is a preferential creditor in relation to that debt.

## **Eligibility to act as voluntary liquidator.**

360.(1) A person is eligible to act as the voluntary liquidator of a company if he—

- (a) holds a licence to act as an insolvency practitioner issued under section 478 of the Insolvency Act;
- (b) has given his written consent to act as a voluntary liquidator in the prescribed form;
- (c) is not disqualified from holding a licence under section 479 of the Insolvency Act;
- (d) is not disqualified from acting under subsection (2); and
- (e) there is in force such security for the proper performance of his functions as may be specified in the Insolvency Practitioners Regulations.

(2) Subject to subsection (3) a person is disqualified from acting as the voluntary liquidator of a company if he is, or at any time in the previous 3 years has been, a director of the company.

(3) A person shall not be disqualified under subsection (2) if the appointment as director of a company was made pursuant to that person's engagement in a controlled activity by virtue of paragraph 1(1)(b)(i) of Schedule 3 to the Financial Services (Investment and Fiduciary Services) Act.

*Liability of members, former members and directors with unlimited liability*

**Liability of members and former members.**

361. In the event of a company being liquidated voluntarily under this Part, sections 184 to 197 of the Insolvency Act shall apply as if the company were being liquidated under that Act.

*Declaration of solvency*

**Statutory declaration of solvency.**

362.(1) Where it is proposed to appoint a voluntary liquidator under this Part, the directors of a company, or in the case of a company having more than two directors, the majority of them, at a meeting of directors, shall make a statutory declaration of solvency in accordance with subsection (2).

(2) A statutory declaration of solvency is a declaration to the effect that the directors have made a full enquiry into the company's affairs and that, having done so, they have formed the opinion that the company will be able to pay its debts in full, together with interest at the judgement rate, within such period, not exceeding 12 months from the commencement of the

voluntary liquidation as may be specified in the declaration; but such a declaration has no effect for the purposes of this Part unless—

- (a) it is made within the 5 weeks immediately preceding the date of the passing of the resolution for the appointment of a voluntary liquidator, or on that date but before the passing of the resolution; and
- (b) it embodies a statement of the company's assets and liabilities as at the latest practicable date before the making of the declaration.

(3) The statutory declaration of solvency shall be delivered to the Registrar for registration before the expiry of 15 days immediately following the date on which the resolution for winding up is passed.

(4) A director making a declaration under this section without having reasonable grounds for the opinion that the company will be able to pay its debts in full, together with interest at the judgement rate, within the period specified commits an offence and shall be liable—

- (a) on summary conviction to imprisonment for 6 months or a fine at level 4 on the standard scale, or both;
- (b) on conviction on indictment to imprisonment for 2 years or a fine at level 5 on the standard scale, or both.

(5) If the company is wound up in pursuance of a resolution passed within 5 weeks after the making of the declaration, and its debts, together with interest at the judgement rate, are not paid or provided for in full within the period specified, it is to be presumed (unless the contrary is shown) that the director did not have reasonable grounds for his opinion.

(6) If a declaration required by subsection (3) to be delivered to the Registrar is not so delivered within the time specified by that subsection, the company and every officer in default commits an offence and shall be liable on summary conviction to a fine at level 3 on the standard scale.

*Resolutions for, and commencement of voluntary liquidation*

**Commencement and duration of voluntary liquidation.**

363.(1) A company shall be put into voluntary liquidation by the appointment of a voluntary liquidator by resolution of the company passed in accordance with section 364.

(2) The voluntary liquidation of a company begins at the time at which the voluntary liquidator is appointed and continues until it is terminated in accordance with section 395.

(3) During the period specified in subsection (2), a company is in voluntary liquidation.

**Resolution to appoint voluntary liquidator.**

364.(1) Subject to section 365, a company may appoint a person eligible to act under section 360, as the voluntary liquidator of the company—

- (a) when the period (if any) fixed for the duration of the company by the articles expires, or the event (if any) occurs, on the occurrence of which the articles provide that the company is to be dissolved, by resolution of the company passed in general meeting; or
- (b) by special resolution of the company.

(2) Where a company appoints a voluntary liquidator under subsection (1), it shall, as soon as practicable, give the voluntary liquidator notice of his appointment.

(3) A company that contravenes subsection (2) commits an offence and shall be liable on summary conviction to twice the level 3 fine.

**Restrictions on appointment of voluntary liquidator.**

365.(1) A company may not resolve to appoint a voluntary liquidator under section 364 if—

- (a) the directors have not made a statutory declaration of solvency that complies with section 362;
- (b) an application to the Court to appoint a liquidator of the company under the Insolvency Act has been filed and served but not yet determined;
- (c) by resolution under section 146 of the Insolvency Act, the members of the company have appointed an eligible insolvency practitioner as liquidator of the company;
- (d) a liquidator of the company has been appointed by the Court under the Insolvency Act; or
- (e) the person to be appointed voluntary liquidator has not consented in writing to his appointment.

(2) A company that is an Authorised person may not appoint a voluntary liquidator unless at least 5 business days written notice of the resolution, or

such shorter period as the Commission may accept in writing, has been given to the Commission.

(3) Before a company passes a resolution appointing a voluntary liquidator, it must give written notice of the resolution to the holder of any qualifying floating charge.

(4) Where notice is given under subsection (3), a resolution for the appointment of a voluntary liquidator may be passed only—

- (a) after the end of 5 business days beginning with the day on which the notice was given; or
- (b) if the person to whom the notice was given has consented in writing to the passing of the resolution.

(5) Any resolution of the company that purports to appoint a voluntary liquidator contrary to this section shall be void and of no effect.

(6) The acts of a voluntary liquidator appointed in breach of the preceding provisions of this section are valid provided that he is not aware of the breach and the acts are carried out in good faith.

#### **Notice of resolution to appoint a voluntary liquidator.**

366.(1) When a company has passed a resolution for the appointment of a voluntary liquidator, it shall give notice of the resolution by advertisement in the Gazette, within 14 days after the passing of the resolution.

(2) If default is made in complying with this section, the company and every officer of the company who is in default shall be guilty of an offence and liable on summary conviction to a default fine, and for the purposes of this subsection the liquidator of the company shall be deemed to be an officer of the company.

#### *Effect of company's insolvency*

#### **Company in voluntary liquidation insolvent.**

367.(1) If at any time the voluntary liquidator of a company in voluntary liquidation is of the opinion that the company will be unable to pay its debts in full, together with interest at the judgement rate, within the period specified in the directors' statutory declaration of solvency, he shall at once send a notice in the prescribed form to—

- (a) the Official Receiver; and
- (b) if the company is an Authorised person, to the Commission.

(2) A voluntary liquidator who contravenes subsection (1) commits an offence and shall be liable—

- (a) on summary conviction to imprisonment for 6 months or a fine at level 4 on the standard scale, or both;
- (b) on conviction on indictment to imprisonment for 2 years or a fine at level 5 on the standard scale, or both.

**Voluntary liquidator to call meeting of creditors.**

368.(1) A voluntary liquidator who sends a notice to the Official Receiver under section 367(1) shall call a meeting of creditors of the company to be held within 21 days of the date of the notice.

(2) A meeting called under subsection (1) shall be treated as if it were the first meeting of the creditors of a company called under section 170 of the Insolvency Act by a liquidator appointed by the members of a company; and sections 170 and 171 of the Insolvency Act shall apply to the calling and holding of the meeting.

(3) Without affecting any acts carried out by the voluntary liquidator appointed under this Part prior to his sending a notice to the Official Receiver under section 367(1), section 173 of the Insolvency Act applies to a voluntary liquidator as if he was a liquidator appointed by the members under the Insolvency Act

(4) A voluntary liquidator who contravenes subsection (1) commits an offence and shall be liable—

- (a) on summary conviction to imprisonment for 6 months or a fine at level 4 on the standard scale, or both;
- (b) on conviction on indictment to imprisonment for 2 years or a fine at level 5 on the standard scale, or both.

**Insolvency Act to apply.**

369.(1) From the time that a voluntary liquidator first becomes aware that the company is not, or will not be able to pay its debts, he shall conduct the liquidation as if he had been appointed liquidator under the Insolvency Act.

(1A) Nothing in subsection (1) shall prevent a voluntary liquidator from resigning his appointment and procuring the appointment of a person licensed to undertake insolvent liquidations.

(2) Where the voluntary liquidator of a company files a notice with the Official Receiver under section 367(1)—

- (a) the Insolvency Act shall apply to the liquidation of the company subject to such modifications as are appropriate; and
- (b) the liquidation of the company shall be deemed to have begun on the date of the appointment of the liquidator under this Part.

*Consequences of voluntary liquidation*

**Effects of voluntary liquidation.**

370.(1) On the commencement of a voluntary liquidation, the company shall cease to carry on its business except so far as may be required for its beneficial liquidation.

(2) With effect from the commencement of the voluntary liquidation of a company—

- (a) the voluntary liquidator shall have custody and control of the assets of the company; and
- (b) the directors and other officers of the company shall remain in office, but shall cease to have any powers, functions or duties other than those required or permitted under this Part or authorised by the voluntary liquidator or the company in general meeting.

**Transfer after commencement of voluntary liquidation.**

371. Any transfer of shares, not being a transfer made to or with the sanction of the voluntary liquidator, and any alteration in the status of the members of the company, made after the commencement of a voluntary liquidation, shall be void.

**Saving for certain rights.**

372.(1) Subject to subsection (2), the voluntary liquidation of a company does not bar the right of any creditor or member or, where appropriate the Minister or the Commission, to apply to the Court for the appointment of a liquidator under the Insolvency Act.

(2) In the case of an application by a member, the Court must be satisfied that the rights of members will be prejudiced by a voluntary liquidation.

**Restrictions on enforcement process already commenced.**

373.(1) Subject to subsections (2) and (3), a creditor shall not be entitled to retain the benefit of any execution process, sequestration, distress or

attachment over or against the assets of a company in voluntary liquidation unless the execution, process or attachment is completed before the earlier of—

- (a) the date on which the creditor had notice of the calling of the meeting at which the resolution for the appointment of a voluntary liquidator was proposed; or
- (b) the date on which the voluntary liquidator was appointed.

(2) A person who, in good faith and for value, purchases assets of a company—

- (a) from an officer charged with an execution process; or
- (b) on which distress has been levied,

acquires a good title to the assets as against the voluntary liquidator of the company.

(3) The Court may set aside the application of subsection (1) to the extent and subject to such terms as it considers appropriate.

(4) For the purposes of this section—

- (a) an execution or distraint against personal property is completed by seizure and sale;
- (b) an attachment of a debt is completed by the receipt of the debt; and
- (c) an execution against land is completed by sale, and in the case of an equitable interest, by the appointment of a receiver.

**Duties of officer in execution process.**

374.(1) Subject to subsection (6), where—

- (a) assets of a company are taken in an execution process; and
- (b) before completion of the execution process the officer charged with the execution process receives notice that a voluntary liquidator of a company has been appointed,

he shall, on being required by the voluntary liquidator to do so, deliver or transfer the assets and any money received in satisfaction or partial satisfaction of the execution or paid to avoid a sale of the assets, to the voluntary liquidator.



(2) The costs of the execution process are a first charge on any asset delivered or transferred to the voluntary liquidator under subsection (1) and the voluntary liquidator may sell all or some of the assets to satisfy that charge.

(3) Subject to subsection (6), if, in an execution process in respect of a judgement for a sum exceeding £500, assets of a company are sold or money paid to avoid a sale, the officer charged with the execution process shall retain the proceeds of sale or the money paid for a period of 14 days.

(4) In any case where—

- (a) within the period of 14 days referred to in subsection (3), the officer has notice that a meeting of the company has been called at which a special resolution to appoint a voluntary liquidator is to be proposed; and
- (b) a voluntary liquidator is appointed in respect of the company,

the officer shall deduct the costs of execution from the amount that he has retained under subsection (3) and pay the balance to the voluntary liquidator.

(5) A voluntary liquidator to whom money has been paid under subsection (4) shall be entitled to retain it as against the execution creditor.

(6) The Court may set aside the rights conferred on a voluntary liquidator under this section to the extent and subject to such terms as it considers appropriate.

#### *Voluntary liquidators and their powers and duties*

#### **Status of voluntary liquidator.**

375. In performing his functions and undertaking his duties, a voluntary liquidator is the agent of the company in voluntary liquidation.

#### **Notice of appointment.**

376.(1) The voluntary liquidator of a company shall, within 14 days of the date of his appointment, whether under section 364 or as an additional or replacement voluntary liquidator—

- (a) advertise his appointment in such manner as may be prescribed;

- (b) file notice of his appointment with the Registrar; and
- (c) if he has been appointed in respect of a company that is or at any time has been an Authorised person, serve notice of his appointment on the Commission.

(2) A voluntary liquidator who fails to comply with subsection (1) commits an offence and shall be liable on summary conviction to a fine at level 3 on the standard scale.

**General powers of voluntary liquidator.**

377.(1) A voluntary liquidator of a company has the powers necessary to carry out the functions and duties of a voluntary liquidator under this Part and the powers conferred on him by this Part.

- (2) Without prejudice to subsection (1), a voluntary liquidator may—
- (a) with the sanction of a special resolution of the company, exercise any of the powers specified in Part 1 of Schedule 23; and
  - (b) without sanction, exercise any of the powers specified in Part 2 of Schedule 23.

(3) The voluntary liquidator of a company may, at any time, apply to the Court for directions in relation to a particular matter arising in the voluntary liquidation.

(4) The acts of a voluntary liquidator of a company are valid, notwithstanding any defect in his nomination, appointment or qualifications.

(5) Where more than one voluntary liquidator is appointed, any power given by this Act or the Regulations may be exercised by such one or more of them as may be determined at the time of their appointment, or by subsequent resolution of the company, or in default of such determination, by any number not less than 2.

**Power to apply to Court.**

378.(1) The voluntary liquidator, any member or creditor of the company, or where the company is or has been an Authorised person, the Commission, may apply to the Court to determine any question arising in the voluntary liquidation of a company, or to exercise, with respect to any matter, all or any of the powers that the Court might exercise if the company was in liquidation under the Insolvency Act.

(2) The Court, if satisfied that the determination of the question or the required exercise of power will be just and beneficial, may accede wholly or partially to the application on such terms and conditions as it considers fit, or may make such other order on the application as it thinks just.

(3) A copy of an order made under this section staying the proceedings in the liquidation shall immediately be forwarded by the company to the Registrar for registration.

**General duties of voluntary liquidator.**

379.(1) The voluntary liquidator shall pay the company's debts and adjust the rights of members among themselves.

(2) If it appears to the voluntary liquidator that the company has carried on unlicensed financial services business, he shall as soon as reasonably practicable report the matter to the Commission.

(3) Where the voluntary liquidator makes a report to the Commission under subsection (2) he shall—

- (a) send to the Commission a copy of every notice or other document that he is required under this Part to send to the company or a creditor; and
- (b) notify the Commission of any application made to the Court in connection with the liquidation.

**Power to fill vacancy in office of voluntary liquidator.**

380.(1) If a vacancy occurs by death, resignation or otherwise in the office of voluntary liquidator, the company in general meeting may, subject to any arrangement with its creditors, fill the vacancy.

(2) For that purpose a general meeting may be convened by any member or, if there were more voluntary liquidators than one, by the continuing voluntary liquidators.

(3) The meeting shall be held in the manner provided by this Act or by the articles, or in such manner as may, on application by any member or by the continuing voluntary liquidators, be determined by the Court.

(4) If for any cause there is no voluntary liquidator acting, the Court may appoint a voluntary liquidator.

**Removal of liquidator.**

381.(1) The voluntary liquidator of a company may be removed only—

- (a) by an order of the Court, for cause shown; or
- (b) by a general meeting of the company summoned specifically for that purpose.

(2) If a voluntary liquidator removed under subsection (1) is the sole voluntary liquidator, the Court or the general meeting shall appoint a replacement voluntary liquidator at the same time as the sole voluntary liquidator is removed.

**Resignation of voluntary liquidator.**

382.(1) A voluntary liquidator of a company—

- (a) shall resign if he is no longer eligible to act as the voluntary liquidator of the company; but
- (b) otherwise may only resign in accordance with this section.

(2) Where a voluntary liquidator resigns under subsection (1) (a), he shall send notice of his resignation to the company and to the Registrar and his resignation takes effect from the date that the notice is received by the company.

(3) A voluntary liquidator may resign in accordance with subsection (5)—

- (a) if he intends to cease to be in practice as an insolvency practitioner;
- (b) if there is some conflict of interest or change of personal circumstances that precludes or makes impracticable the further discharge by him of his duties; or
- (c) on the grounds of ill health.

(4) Notwithstanding subsection (3), where joint voluntary liquidators are appointed in respect of a company, one or more of the joint voluntary liquidators may resign in accordance with subsection (5) if—

- (a) all the joint voluntary liquidators are of the opinion that it is no longer necessary or expedient for the resigning voluntary liquidator or liquidators to continue in office; and
- (b) at least one of them will remain in office.

(5) Where the voluntary liquidator of a company intends to resign on one of the grounds referred to in subsection (3) or under subsection (4), he shall call a meeting of the company for the purposes of receiving his resignation.

(6) The notice of resignation under subsection (2) or the notice calling a meeting under subsection (5) shall be accompanied by an account of the voluntary liquidator's administration of the liquidation, including a summary of his receipts and payments.

(7) If there is no quorum present at the meeting summoned to receive the resignation, the meeting is deemed to have been held.

**Directors' powers where no voluntary liquidator in office.**

383.(1) If at any time whilst a company is in voluntary liquidation, there is no voluntary liquidator appointed in respect of the company, the powers of the directors shall not be exercised without the sanction of the Court.

(2) Subsection (1) does not apply in relation to the powers of the directors—

- (a) to dispose of perishable goods and other goods the value of which is likely to diminish if they are not immediately disposed of; and
- (b) to do all such things as are necessary for the protection of the company's assets.

(3) Any director of the company who, without reasonable excuse, fails to comply with this section, thereby commits an offence and shall be liable on summary conviction to imprisonment for a term not exceeding 6 months or to a fine at level 4 on the standard scale.

**Power of voluntary liquidator to accept shares as consideration for sale of property of company.**

384.(1) Where a company is proposed to be, or is in course of being, voluntarily liquidated, and the whole or part of its business or property is proposed to be transferred or sold to another company, whether a company within the meaning of this Act or not (in this section referred to as "the transferee company") the voluntary liquidator of the first-mentioned company (in this section referred to as "the transferor company") with the sanction of a special resolution of that company, conferring either a general authority on the voluntary liquidator or an authority in respect of any particular arrangement,

- (a) may receive in compensation or part compensation for the transfer or sale, shares, policies or other like interests in the transferee company, for distribution among the members of the transferor company; or
- (b) may enter into any other arrangement whereby the members of the transferor company may, in lieu of receiving cash, shares, policies, or other like interests, or in addition to that, participate in the profits of or receive any other benefit from the transferee company.

(2) Any sale or arrangement in pursuance of this section shall be binding on the members of the transferor company.

(3) If any member of the transferor company who did not vote in favour of the special resolution expresses his dissent in writing addressed to the voluntary liquidator, and left at the registered office of the company within 7 days after the passing of the resolution, he may require the voluntary liquidator either to abstain from carrying the resolution into effect, or to purchase his interest at a price to be determined by agreement or by arbitration in manner provided by this section.

(4) If the voluntary liquidator elects to purchase the member's interest, the purchase money must be paid before the company is dissolved, and be raised by the voluntary liquidator in such manner as may be determined by special resolution.

(5) A special resolution shall not be invalid for the purposes of this section by reason that it is passed before or concurrently with a resolution for the appointment of a voluntary liquidator under section 364, but, if an order is made within a year for the appointment by the Court of a liquidator under the Insolvency Act, the special resolution shall not be valid unless sanctioned by the Court.

(6) For the purposes of an arbitration under this section, the provisions of the Arbitration Act shall be incorporated with this Act, and any appointment of an arbitrator may be made under the hand of the voluntary liquidator, or if there is more than one voluntary liquidator, then of any two or more of the voluntary liquidators.

**Progress report to company at year's end.**

385.(1) Except in such cases as may be prescribed, in the event that the voluntary liquidation of a company continues for more than 1 year, the voluntary liquidator shall—

- (a) for each prescribed period, produce a progress report; and

- (b) send a copy of the progress report to—
  - (i) the members of the company, and
  - (ii) such other persons as may be prescribed.

(2) The Regulations may prescribe—

- (a) the matters to be included in the progress report;
- (b) the period within which the progress shall be sent to members and other prescribed persons.

(3) A voluntary liquidator who fails to comply with this section commits an offence and shall be liable on summary conviction to a fine at level 3 on the standard scale.

*Distribution of company's assets*

**Priority of debts and liabilities.**

386.(1) Unless and to the extent that this Act or any other enactment provides otherwise, the assets of a company in voluntary liquidation shall be applied—

- (a) in paying, in priority to all other claims, the costs and expenses properly incurred in the voluntary liquidation, including the remuneration of the voluntary liquidator;
- (b) after payment of the costs and expenses of the voluntary liquidation, in paying the preferential debts of the company;
- (c) after payment of the preferential debts, in paying all the other debts of the company to its creditors;
- (d) after payment of the debts to creditors, in paying any debts due from the company to its members in accordance with section 387;
- (e) after paying any debts due to members of the company, by distributing the assets to the members according to their rights and interests in the company.

(2) Subject to section 388 the debts referred to in subsection (1)(c) rank equally between themselves if the assets of the company are insufficient to meet the claims in full, they shall be paid rateably.

(3) For the purposes of this Part, assets held by a company in voluntary liquidation on trust for another person are not assets of the company.

**Sums due to members.**

387.(1) Any debts owed to a person who is or was a member of a company, in his character as member, whether by way of dividend, profits, redemption proceeds or otherwise, ranks in priority after the debts of other creditors who are not members, including interest at the judgement rate on the debts of such creditors.

(2) Debts specified in subsection (1) shall be taken into account for the purpose of the final adjustment of the rights of members amongst themselves.

**Preferential debts.**

388. The preferential debts of a company in voluntary liquidation rank equally among themselves and shall be paid in full.

**Costs, expenses and debts having priority over floating charges.**

389.(1) So far as the assets of a company in voluntary liquidation which are available for payment of the debts of unsecured creditors are insufficient to pay—

- (a) the costs and expenses of the voluntary liquidation; and
- (b) the preferential creditors,

those costs, expenses and preferential creditors have priority over the claims of chargees in respect of assets that are subject to a floating charge created by the company and shall be paid accordingly out of those assets.

**Interest after commencement of voluntary liquidation.**

390.(1) Interest is payable on any claim in the voluntary liquidation of a company in respect of the period after the commencement of the voluntary liquidation in accordance with this section.

(2) Any surplus remaining after the payment of all debts in the voluntary liquidation of a company, before being applied for any other purpose, shall be applied in paying interest on those debts in respect of the periods during which they have been unpaid since the commencement of the voluntary liquidation.

(3) Subject to section 137 of the Insolvency Act, all interest payable under this section ranks equally, whether or not the claims on which it is payable



rank equally and if the assets of the company are insufficient to meet the claims in full, they shall be paid rateably.

- (4) The rate of interest payable under this section shall be the greater of –
- (a) the judgement rate; and
  - (b) the rate that would be applicable to the claim if a voluntary liquidator of the company had not been appointed.

*Application of certain provisions of Insolvency Act*

**Application of certain provisions in Part 5 of Insolvency Act.**

391. Sections 134 to 140 of the Insolvency Act apply in relation to a voluntary liquidation, with such modifications as are necessary.

**Disclaimer.**

392. Sections 209 to 216 of the Insolvency Act apply in relation to a voluntary liquidation as if the voluntary liquidator were the liquidator of a company in liquidation under the Insolvency Act and with such other modifications as are necessary.

**Application of certain provisions in Part 8 of Insolvency Act.**

393. Sections 231 to 234 and sections 240 to 241 of the Insolvency Act apply to a voluntary liquidation with such modifications as are necessary, including the following modifications–

- (a) the voluntary liquidator shall be considered to be an “office holder”;
- (b) “liquidation” shall be treated as including “voluntary liquidation”;
- (c) sections 240 and 241 shall apply as if all references to the Official Receiver were deleted.

*Miscellaneous Provisions*

**Notification of voluntary liquidation on public documents.**

394.(1) Where a company is in voluntary liquidation the company’s website, if any, and every document of a type specified in subsection (2) shall–

- (a) contain a statement that the company is in voluntary liquidation; and
- (b) specify the name of the voluntary liquidator.

(2) Subsection (1) applies to—

- (a) every public document issued by or on behalf of the company;
- (b) every public document issued by or on behalf of the voluntary liquidator of the company on which the name of the company appears.

(3) A failure to comply with subsection (1) does not affect the validity of the document.

(4) If subsection (1) is contravened, each voluntary liquidator of the company who, without reasonable excuse, causes, permits or acquiesces in the contravention, commits an offence and shall be liable—

- (a) on summary conviction to imprisonment for 6 months or a fine at level 4 on the standard scale, or both;
- (b) on conviction on indictment to imprisonment for 12 months or a fine at level 5 on the standard scale, or both.

#### *Termination of voluntary liquidation*

#### **Termination of voluntary liquidation.**

395. The liquidation of a company terminates on the first occurring of—

- (a) the making of an order by the Court terminating the liquidation under section 396, or such later date as may be specified in the order;
- (b) the dissolution of the company under section 397.

#### **Order terminating liquidation.**

396.(1) At any time after the appointment of a voluntary liquidator of a company, the Court may make an order terminating the voluntary liquidation if it is satisfied that it is just and equitable to do so.

(2) An application under this section may be made by the voluntary liquidator, a member, a director or a creditor of the company.

(3) Before making an order under subsection (1), the Court may require the voluntary liquidator to file a report with respect to any matters relevant to the application.

(4) An order under subsection (1) may be made subject to such terms and conditions as the Court considers appropriate and, on making the order or at any time afterwards, the Court may give such supplemental directions or make such other order as it considers appropriate in connection with the termination of the liquidation.

(5) Where the Court makes an order under subsection (1), the company ceases to be in voluntary liquidation and the voluntary liquidator ceases to hold office with effect from the date of the order or such later date as may be specified in the order.

(6) Where the Court makes an order under subsection (1), within 10 days of the date of the order, the person who applied for the order shall file a sealed copy of the order with the Registrar.

(7) A person who contravenes subsection (6) commits an offence and shall be liable—

- (a) on summary conviction to a fine at level 4 on the standard scale;
- (b) on conviction on indictment to imprisonment for 12 months or a fine at level 5 on the standard scale, or both.

#### **Final meeting prior to dissolution.**

397.(1) As soon as the company's affairs are fully wound up, the voluntary liquidator shall make up an account of the voluntary liquidation, showing how it has been conducted and the company's property has been disposed of, and shall then call a general meeting of the company for the purpose of laying the account before it, and giving an explanation of it

(2) The meeting shall be called by advertisement in the Gazette, specifying its time, place and object and published at least 1 month before the meeting.

(3) Within 1 week after the meeting, the voluntary liquidator shall send to the Registrar a copy of the account, and shall make a return to him of the holding of the meeting and of its date.

(4) If a quorum is not present at the meeting, in lieu of the return referred to in subsection (3), the voluntary liquidator shall make a return that the meeting was duly summoned and that no quorum was present, and upon

such a return being made, the provisions of subsection (3) as to the making of the return shall be deemed complied with.

(5) On receiving the account and the return referred to in subsection (3) or, as the case may be, subsection (4), the Registrar shall register them and, subject to subsection (6), on the expiry of 3 months from the registration of the return, the company shall be deemed to be dissolved.

(6) On the application of the liquidator or any other person who appears to the Court to be interested, the Court may make an order deferring the date at which the dissolution of the company is to take effect for such period as the Court considers appropriate.

(7) Where the Court makes an order under subsection (6), then, within 10 days of the date of the order, the person who applied for the order shall file a sealed copy of the order with the Registrar.

(8) If the voluntary liquidator fails to call a general meeting of the company as required by subsection (1) or fails to send the documents required by subsection (3) to the Registrar, he commits an offence and shall be liable on summary conviction to a fine at level 4 on the standard scale.

(9) A person who contravenes subsection (7) commits an offence and shall be liable on summary conviction to a fine at level 4 on the standard scale.

## CHAPTER 2

### OTHER LIQUIDATION PROVISIONS

#### *Offences antecedent to or in course of winding up*

#### **Offences by officers of companies in liquidation.**

398.(1) Subject to subsection (2), a person who, being a past or present director, manager or other officer of a company which at the time of the commission of the alleged offence is being wound up voluntarily or subsequently passes a resolution for voluntary winding up—

- (a) does not to the best of his knowledge and belief fully and truly disclose to the liquidator the property, real and personal, of the company, and how and to whom and for what consideration and when the company disposed of any part of it, excluding any part that has been disposed of in the ordinary way of the business of the company; or
- (b) does not deliver up to the liquidator, or as he directs, every part of the real and personal property of the company which is in

his custody or under his control, and which he is required by law to deliver up; or

- (c) does not deliver up to the liquidator, or as he directs, all books and papers in his custody or under his control belonging to the company and which he is required by law to deliver up; or
- (d) within 12 months next before the commencement of the voluntary winding up or at any time thereafter conceals any part of the property of the company to the value of £50 or upwards, or conceals any debt due to or from the company; or
- (e) within 12 months next before the commencement of the voluntary winding up or at any time thereafter fraudulently removes any part of the property of the company to the value of £50 or upwards; or
- (f) after the commencement of the voluntary winding up prevents the production of any book or paper affecting or relating to the property or affairs of the company; or
- (g) within 12 months next before the commencement of the voluntary winding up or at any time thereafter, conceals, destroys, mutilates or falsifies, or is privy to the concealment, destruction, mutilation or falsification of, any book or paper affecting or relating to the property or affairs of the company; or
- (h) within 12 months next before the commencement of the voluntary winding up or at any time thereafter makes or is privy to the making of any false entry in any book or paper affecting or relating to the property or affairs of the company; or
- (i) within 12 months next before the commencement of the voluntary winding up or at any time thereafter fraudulently parts with, alters or makes any omission in, or is privy to the fraudulent parting with, altering or making any omission in, any document affecting or relating to the property or affairs of the company; or
- (j) after the commencement of the voluntary winding up or at any meeting of the creditors of the company within 12 months next before the commencement of the winding up attempts to account for any part of the property of the company by fictitious losses or expenses; or

- (k) has within 12 months next before the commencement of the voluntary winding up or at any time thereafter, by any false representation or other fraud, obtained any property for or on behalf of the company on credit which the company does not subsequently pay for; or
- (l) within 12 months next before the commencement of the voluntary winding up or at any time thereafter, under the false pretence that the company is carrying on its business, obtains on credit, for or on behalf of the company, any property which the company does not subsequently pay for; or
- (m) within 12 months next before the commencement of the voluntary winding up or at any time thereafter pawns, pledges or disposes of any property of the company which has been obtained on credit and has not been paid for, unless the pawning, pledging or disposing is in the ordinary way of the business of the company; or
- (n) is guilty of any false representation or other fraud for the purpose of obtaining the consent of the creditors of the company or any of them to an agreement with reference to the affairs of the company or to the voluntary winding up,

is guilty of an offence and, in the case of the offences mentioned respectively in paragraphs (k), (l) and (m), shall be liable on conviction on indictment to imprisonment for 5 years, or on summary conviction to imprisonment for 12 months, and in the case of any other offence shall be liable on conviction on indictment to imprisonment for 2 years, or on summary conviction to imprisonment for 12 months.

(2) It shall be a good defence—

- (a) to a charge under any of paragraphs (a), (b), (c), (d), (l) and (m) of subsection (1), if the accused proves that he had no intent to defraud; and
- (b) to a charge under any of paragraphs (f), (g) and (h) of subsection (1) if he proves that he had no intent to conceal the state of affairs of the company or to defeat the law.

(3) Where any person pawns, pledges or disposes of any property in circumstances which amount to an offence under paragraph (m) of subsection (1), a person who takes in pawn or pledge or otherwise receives the property knowing it to be pawned, pledged or disposed of in such circumstances as aforesaid is guilty of an offence and shall be liable on conviction to be punished in the same way as if he had received the property knowing it to have been obtained in circumstances amounting to an offence.

(4) For the purposes of this section, “director” includes any person in accordance with whose directions or instructions the directors of a company have been accustomed to act.

**Penalty for falsification of books.**

399. A director, manager or other officer, or member of any company which is being wound up under this Part who destroys, mutilates, alters or falsifies any books, papers or securities or makes or is privy to the making of any false or fraudulent entry in any register, book of account or document belonging to the company with intent to defraud or deceive any person, is guilty of an offence, and liable on conviction to imprisonment for 2 years.

**Frauds by officers of companies which have gone into liquidation.**

400. A person who, being at the time of the commission of the alleged offence a director, manager or other officer of a company which subsequently passes a resolution for voluntary winding up under this Part—

- (a) has by false pretences or by means of any other fraud induced any person to give credit to the company;
- (b) with intent to defraud creditors of the company, has made or caused to be made any gift or transfer of or charge on, or has caused or connived at the levying of any execution against, the property of the company;
- (c) with intent to defraud creditors of the company, has concealed or removed any part of the property of the company since, or within 2 months before, the date of any unsatisfied judgment or order for payment of money obtained against the company,

is guilty of an offence and shall be liable on conviction on indictment to imprisonment for 2 years, or on summary conviction to imprisonment for 12 months.

**Liability where proper accounts not kept.**

401.(1) Subject to subsection (1), if where a company is wound up under this Part it is shown that proper books of account were not kept by the company throughout the period of 2 years immediately preceding the commencement of the winding up, every director, manager or other officer of the company who was knowingly a party to or connived at the default of the company is guilty of an offence and shall be liable on conviction on indictment to imprisonment for 1 year, or on summary conviction to imprisonment for 6 months.

(2) For the purposes of subsection (1), it shall be a defence for the person concerned to show that he acted honestly or that in the circumstances in which the business of the company was carried on the default was excusable,

(3) For the purposes of this section, proper books of account shall be deemed not to have been kept in the case of any company if there have not been kept such books or accounts as are necessary to exhibit and explain—

- (a) the transactions and financial position of the trade or business of the company, including books containing entries from day to day in sufficient detail of all cash received and cash paid; and
- (b) where the trade or business has involved dealings in goods, statements of the annual stocktakings, and (except in the case of goods sold by way of ordinary retail trade) of all goods sold and purchased, showing the goods and the buyers and sellers thereof in sufficient detail to enable those goods and those buyers and sellers to be identified.

**Power of court to assess damages against delinquent directors.**

402.(1) If in the course of winding up a company under this Part it appears that any person who has taken part in the formation or promotion of the company, or any past or present director, manager or liquidator, or any officer of the company—

- (a) has misapplied or retained or become liable or accountable for any money or property of the company; or
- (b) been guilty of any misfeasance or breach of trust in relation to the company,

then, on the application of the official receiver, or of the liquidator, or of any creditor or member, the court may examine into the conduct of the promoter, director, manager, liquidator or officer, and compel him to repay or restore the money or property or any part thereof respectively with interest at such rate as the court thinks just, or to contribute such sum to the assets of the company by way of compensation in respect of the misapplication, retainer, misfeasance or breach of trust as the court thinks just.

(2) The provisions of this section shall have effect notwithstanding that the offence is one for which the offender may be criminally liable.



(3) Where in the case of a winding up under this Part an order for payment of money is made under this section, the order shall be deemed to be a bankruptcy order within the meaning of section 318 of the Insolvency Act.

**Prosecution of delinquent officers and members of company.**

403.(1) If it appears to the liquidator in the course of a voluntary winding up that any past or present director, manager or other officer or any member of the company has been guilty of any offence in relation to the company for which he is criminally liable, he shall forthwith report the matter to the Attorney-General, and shall furnish to the Attorney-General such information and give to him such access to and facilities for inspecting and taking copies of any documents in the possession or under the control of the liquidator and relating to the matter in question, as he may require.

(2) If on any report to the Attorney-General under subsection (1) it appears to him that the case is not one in which proceedings ought to be taken by him, he shall inform the liquidator accordingly, and thereupon, subject to the previous sanction of the court, the liquidator may himself take proceedings against the offender.

(3) If it appears to the court in the course of a voluntary winding up—

- (a) that any past or present director, manager or other officer or any member, of the company has been guilty of an offence as mentioned in subsection (1); and
- (b) that no report with respect to the matter has been made by the liquidator to the Attorney-General under subsection (1),

the court may, on the application of any person interested in the winding up or of its own motion, direct the liquidator to make such a report, and, on a report being made accordingly, the provisions of this section shall have effect as though the report had been made in pursuance of the provisions of subsection (1).

(4) If, where any matter is reported or referred to the Attorney-General under this section, he considers that the case is one in which a prosecution ought to be instituted and, further, that it is desirable in the public interest that the proceedings in the prosecution should be conducted by him, he shall institute proceedings accordingly, and it shall be the duty of the liquidator and of every officer and agent of the company past and present (other than the defendant in the proceeding) to give him all assistance in connection with the prosecution which he is reasonably able to give.

(5) For the purposes of subsection (4), “agent” in relation to a company shall be deemed to include any banker or solicitor of the company and any

person employed by the company as auditor, whether that person is or is not an officer of the company.

(6) If any person fails or neglects to give assistance in manner required by subsection (4), then, on the application of the Attorney-General, the court may direct that person to comply with the requirements of that subsection, and where any such application is made with respect to a liquidator, then, unless it appears to the court that the failure or neglect to comply was due to the liquidator not having in hand sufficient assets of the company to enable him so to do, the court may direct that the costs of the application shall be borne by the liquidator personally.

(7) The court may direct that the whole or any part of any costs and expenses properly incurred by the liquidator in proceedings duly brought by him under this section shall be defrayed out of the public funds; and subject to any direction under this subsection and to any mortgages or charges on the assets of the company and any debts to which priority is given under any enactment, all such costs and expenses shall be payable out of those assets in priority to all other liabilities payable out of those assets.

*Supplementary provisions as to winding up*

**Exemption of certain documents from stamp duty on winding up of companies.**

404.(1) Where a company is in liquidation under the Insolvency Act—

- (a) every assurance relating solely to freehold or leasehold property, or to any mortgage, charge or other encumbrance on, or, any estate, right or interest in, any real or personal property, which forms part of the assets of the company and which, after the execution of the assurance, either at law or in equity, is or remains part of the assets of the company; and
- (b) every power of attorney, proxy paper, writ, order, certificate, affidavit, bond or other instrument or writing relating solely to the property of any company which is being so wound up, or to any proceeding under any such winding up,

shall be exempt from duties chargeable under the enactments relating to stamp duties.

(2) In this section, “assurance” includes deed, conveyance, assignment and surrender.

**Disposal of books and papers of company.**

405.(1) When the liquidation or voluntary liquidation of a company has terminated and the company is about to be dissolved, the books and papers of the company and of the liquidators or voluntary liquidators may be disposed of as follows—

- (a) in the case of a liquidator appointed by the Court under the Insolvency Act, in such a way as the Court directs;
- (b) in the case of a liquidator appointed by the members of the company under the Insolvency Act, in such a way as the committee of inspection or, if there is no such committee, the creditors, may direct;
- (c) in the case of a voluntary liquidator appointed under this Act, in such a way as the company by extraordinary resolution directs.

(2) After 5 years from the dissolution of the company no responsibility shall rest on the company, the liquidators, or any person to whom the custody of the books and papers has been committed, by reason of any book or paper not being forthcoming to any person claiming to be interested in those books and papers.

(3) Provision may be made by general rules for enabling the court to prevent, for such period (not exceeding 5 years from the dissolution of the company) as the court may think proper, the destruction of the books and papers of a company which has been wound up, and for enabling any creditor or member of the company to make representations to the court.

(4) A person who acts in contravention of any general rules made for the purposes of this section shall be guilty of an offence and liable on summary conviction to a fine at level 3 on the standard scale.

#### **Information as to pending liquidations.**

406.(1) If the liquidation or voluntary liquidation of a company is not concluded within 1 year after its commencement, the liquidator or voluntary liquidator, at such intervals as may be prescribed until the liquidation or voluntary liquidation is concluded, shall send the Registrar a statement in the prescribed form and containing the prescribed particulars with respect to the proceedings in and position of the liquidation.

(2) Any person stating himself in writing to be a creditor or member of the company shall be entitled, by himself or by his agent, at all reasonable times, on payment of the prescribed fee, to inspect the statement, and to receive a copy thereof or extract therefrom.

(3) A liquidator or voluntary liquidator who fails to comply with this section commits an offence and shall be liable on summary conviction to a fine at level 4 on the standard scale.

(4) A person who untruthfully states himself to be a creditor or member of the company for the purposes of subsection (2) commits an offence and shall be liable on summary conviction to a fine at level 4 on the standard scale.

**Resolutions passed at adjourned meetings of creditors and members.**

407. Where a resolution is passed at an adjourned meeting of any creditors or members of a company, the resolution, for all purposes, shall be treated as having been passed on the date on which it was in fact passed, and not on any earlier date.

**Judicial notice of signature of officers.**

408. In all proceedings under this Part, all courts, judges and persons judicially acting, and all officers, judicial or ministerial, of any court, or employed in enforcing the process of any court, shall take judicial notice of the signature of any officer of the Supreme Court, and also of the official seal or stamp of the office of the Supreme Court appended to or impressed on any document made, issued or signed under the provisions of this Part, or any official copy of such a document.

**Affidavits in Gibraltar, United Kingdom or elsewhere within the Commonwealth, etc.**

409.(1) Any affidavit required to be sworn under the provisions of, or for the purposes of, this Part may be sworn—

- (a) in Gibraltar, the United Kingdom or elsewhere within the Commonwealth, before any court, judge or person lawfully authorised to take and receive affidavits; or
- (b) in any place outside the Commonwealth before any of Her Majesty's consuls or vice-consuls or before any person having authority to administer an oath, provided that that authority is certified by one of Her Majesty's consuls or vice-consuls.

(2) All courts, judges, justices, commissioners and persons acting judicially shall take judicial notice of the seal or stamp or signature, as the case may be, of any such court, judge, person, consul or vice-consul attached, appended or subscribed to any such affidavit, or to any other document to be used for the purposes of this Part.

**Power of court to declare dissolution of company void.**

410.(1) Where a company has been dissolved, then, at any time within 2 years of the date of the dissolution, on an application made to the Registrar of the Court for the purpose by the liquidator or voluntary liquidator of the company or by any other person who appears to that Registrar to be interested, the Registrar of the Court may make an order, upon such terms as he thinks fit, declaring the dissolution to have been void, and, upon the making of such an order, such proceedings may be taken as might have been taken if the company had not been dissolved.

(2) It shall be the duty of the person on whose application the order was made, within 7 days after the making of the order, or such further time as the Registrar of the Court may allow, to deliver to the Registrar for registration an office copy of the order, and, if that person fails to do so, he is guilty of an offence and shall be liable on summary conviction to a fine.

#### **Companies in default in respect of annual returns.**

411.(1) Subject to the provisions of subsections (2) to (4), the Registrar may strike off the register the name of any company, other than a public limited company, in respect of which no annual return has been filed contrary to the requirements of section 188 or section 190, as the case may be, in the previous 3 calendar years.

(2) Where the Registrar proposes to strike off the name of any company he shall publish in the Gazette the name of that company and notice of his intention to strike off the name and shall not strike the name off the register before the expiration of 3 calendar months from the date of publication.

(3) Unless the Registrar receives within 3 months of the date of publication written representations showing cause to the contrary he may strike off the name of the company and shall publish notice of that in the Gazette, and on the publication in the Gazette of this notice the company shall be dissolved.

(4) If the Registrar has received written representations under subsection (3) he may decide not to strike off the name of the company and, if he so decides, he may require the company to take such action and pay such fees as he sees fit to satisfy the requirements of section 188 or section 190, as the case may be, in respect of the years since the annual return was last filed and the date of the publication of the notice in the Gazette under subsection (2).

#### **Registrar may strike defunct company off register.**

412.(1) Where the Registrar has reasonable cause to believe that a company is not carrying on business or is not in operation, he may send a registered letter by post to the company enquiring whether the company is carrying on

business or is not in operation and stating that, if an answer is not received to the letter within 1 month from the date on which the letter was sent, a notice will be published in the Gazette with a view to striking the name of the company off the register.

(2) If the Registrar either—

- (a) receives an answer to the effect that the company is not carrying on business or in operation; or
- (b) does not, within the period of 1 month referred to in subsection (1), receive any documents in respect of the deposit of which with the Registrar a company is in default, he may publish in the Gazette, and send to the company by post, a notice that, unless cause is shown to the contrary, at the expiry of 3 months from the date of that notice, the name of the company mentioned in the notice will be struck off the register and the company will be dissolved.

(3) If, in any case where a company is being wound up, the Registrar has reasonable cause to believe either that no liquidator is acting, or that the affairs of the company are fully wound up, and the returns required to be made by the liquidator have not been made for a period of 6 consecutive months, the Registrar shall publish in the Gazette and send to the company or the liquidator (if any) a notice similar to that provided for in subsection (2).

(4) Subject to subsection (5) at the expiry of the time mentioned in the notice, unless cause to the contrary is previously shown by the company, the Registrar may strike its name off the register, and shall publish notice of that in the Gazette, and on the publication in the Gazette of this notice the company shall be dissolved.

(5) When a company is dissolved in accordance with the provisions of this section—

- (a) the liability (if any) of every director, managing officer and member of the company shall continue and may be enforced as if the company had not been dissolved; and
- (b) nothing in this subsection shall affect the power of the court to wind up a company the name of which has been struck off the register.

(6) A notice to be sent under this section or under section 414 to a liquidator may be addressed to the liquidator at his last known place of business, and a letter or notice to be sent under this section to a company may be addressed to the company at its registered office, or, if no office has

been registered, to the care of some director or officer of the company, or, if there is no director or officer of the company whose name and address are known to the Registrar, may be sent to each of the persons who subscribed the memorandum, addressed to him at the address mentioned in the memorandum.

**Voluntary request to strike company off register.**

413.(1) On an application by a company, the Registrar may strike the company's name off the Register.

(2) The application—

- (a) must be made on the company's behalf in writing by its directors or by a majority of them; and
- (b) must state that the company has no assets or liabilities.

(3) The Registrar may not strike a company off under this section until after the expiry of 3 months from the publication by the Registrar of a notice in the Gazette stating that, unless cause is shown to the contrary, the name of the company mentioned in the notice will be struck off the register and the company will be dissolved.

(4) The Registrar must publish notice in the Gazette of the company's name having been struck off and on publication of the notice the company is dissolved.

(5) When a company is dissolved in accordance with the provisions of this section—

- (a) the liability (if any) of every director, managing officer and member of the company shall continue and may be enforced as if the company had not been dissolved; and
- (b) nothing in this subsection affects the power of the court to wind up a company the name of which has been struck off the register.

**Restoration of dissolved companies to the register: the Registrar's functions.**

414.(1) A company or any member or creditor of a company who feels aggrieved by the company having been struck off the register under section 411, 412 or 413, before the expiry of 10 years from the publication of a notice under section 411 or 412 or, as the case may be, section 413 may make an application to the Registrar to restore the company to the register.

(2) An application made under subsection (1) must be accompanied by–

- (a) an affidavit of–
    - (i) the applicant's interest in the matter,
    - (ii) a statement of the facts on which the application is based,
    - (iii) where the company was–
      - (aa) authorised or licensed under the Financial Services (Banking) Act, 1992 or the Financial Services (Markets in Financial Instruments) Act, 2006; or
      - (bb) licensed or authorised in accordance with a Community requirement other than one falling within (aa),

evidence of the consent of the competent authority under the relevant legislation to the restoration of the company to the register,

  - (iv) the relief sought; and
- (b) the fee prescribed in Schedule 24.

(3) In his discretion the Registrar may require that a person making an application under subsection (1) give notice of that application (including the facts on which the application is based and the relief sought) to such other person as the Registrar may specify, being a person who appears to the Registrar to be concerned or to have an interest.

(4) On an application being made to the Registrar to restore a company, the Registrar shall publish a notice in the Gazette to the effect that the applicant has made an application to the Registrar to restore the company to the register and that unless written objection is made to the Registrar within 30 days of the date of publication, the Registrar may restore the company to the register.

(5) The Registrar shall not make a direction under this section to restore the name of the company to the register or otherwise earlier than 30 days after the date of publication of the notice published for the purposes of subsection (4).



(6) On receipt of any written objection to the restoration of the company, the Registrar shall proceed to notify the applicant of the receipt of the objection, the terms of the objection, and of the identity of the objector.

(7) On receipt of an application under this section the Registrar, if satisfied that there are good grounds for restoration of the company to the register, may direct the name of the company to be restored to the register.

(8) A direction given under this section may be made subject to conditions, and the Registrar may include such further directions and such provisions, as seem just for placing the company and all other persons in the same position as nearly as may be as if the name of the company had not been struck off.

(9) On the Registrar restoring a company to the register the company shall be deemed to have continued in existence as if its name had not been struck off; and the Registrar may make such provisions as seem just for placing the company and all other persons in the same position as nearly as may be as if the name of the company had not been struck off.

**Restoration of dissolved companies to the register: the Court's functions.**

415.(1) Where an application to restore a company to the register has been made under section 414, in his discretion, the Registrar may refuse to consider the application and require that the person by whom the application was made apply to the Court for an order to restore the company.

(2) On an application to the Court under subsection (1), the Court may refuse the application or order the Registrar to restore the company to the register.

(3) In any proceedings under this section, the Court may determine any question which may be necessary or expedient to decide in connection with the restoration of the company to the register.

(4) The Registrar shall be entitled to appear and be heard on any application to the Court under this section and shall appear if so directed by the Court.

(5) An order made by the Court under this section shall direct that notice of the order shall be served on the Registrar in the prescribed manner and, on receipt of the notice, the Registrar shall act accordingly.

(6) After the expiry of the period of 10 years referred to in section 414(1), if a company or any member or creditor of a company feels aggrieved by the company having been struck off the register, then, on an application made by the company or member, the Registrar of the Court may, if

satisfied that the company was at the time of the striking off carrying on business or in operation, or otherwise that it is just that the company be restored to the register, order the name of the company to be restored to the register.

(7) Upon an office copy of an order under subsection (6) being delivered to the Registrar for registration, the company shall be deemed to have continued in existence as if its name had not been struck off; and the Registrar of the Supreme Court may by the order give such directions and make such provisions as seem just for placing the company and all other persons in the same position as nearly as may be as if the name of the company had not been struck off.

**Property of dissolved company to be bona vacantia.**

416.(1) Where a company is dissolved, all property and rights vested in, or held on trust for, the company immediately before its dissolution (including leasehold property but not including property held by the company on trust for any other person) shall be deemed to be bona vacantia and shall accordingly belong to the Crown, and shall vest and may be dealt with in the same manner as other bona vacantia accruing to the Crown.

(2) Subsection (1) is subject and without prejudice to any order or direction which may at any time be made by the Court or Registrar under sections 410 and 415.

*Rules, fees and remuneration of officers*

**Rules of court.**

417. Subject to the approval of the Minister, the Chief Justice may make rules of court—

- (a) prescribing the fees, percentages and costs to be charged in respect of proceedings under this Act, and the remuneration to be allowed to the official receiver and other officers of the court; and
- (b) generally for carrying into effect the provisions of this Act.

**Remuneration of officers.**

418. The Minister shall direct whether any and, if so, what remuneration is to be allowed to any person performing any duties under this Act, and may from time to time vary, increase or diminish that remuneration.

**PART XI**

## GENERAL PROVISIONS AS TO REGISTRATION

**Registration office.**

419. For the purposes of the registration of companies under this Act there shall be an office at such address as the Minister may think fit.

**Appointment of Registrar.**

420.(1) The Minister may appoint a Registrar of Companies for the purposes of this Act and in default of such an appointment the Registrar of the Supreme Court shall be the Registrar of Companies.

(2) At any time when the Registrar of the Supreme Court is the Registrar of Companies the registry of the Supreme Court shall be the office for the registration of companies under this Act.

(3) The Registrar of Companies shall have a seal and that seal shall bear the words “Registrar of Companies, Gibraltar”.

(4) The Minister may appoint one or more Assistant Registrars of Companies, and any Assistant Registrar so appointed may, subject to any directions given to him by the Registrar of Companies, exercise all the powers and perform all the duties of the Registrar of Companies.

**Documents to be submitted to the Registrar.**

421.(1) This section applies in relation to the authentication of a document or information sent or supplied by a person or a company to the Registrar.

(2) A document or information sent or supplied in hard copy form is sufficiently authenticated if it is signed by the person sending or supplying it.

(3) A document or information sent or supplied in electronic form is sufficiently authenticated—

- (a) if the identity of the sender is confirmed in a manner specified by the Registrar; or
- (b) where no such manner has been specified by the Registrar, if the communication contains or is accompanied by a statement of the identity of the sender and the Registrar has no reason to doubt the truth of that statement.

**Registrar’s requirements as to form, authentication and manner of delivery.**

422.(1) The Registrar may impose requirements as to the form, authentication and manner of delivery of documents required or authorised to be delivered to the Registrar under any enactment.

(2) As regards the form of the document, the Registrar may–

- (a) require the contents of the document to be in a standard form;
- (b) impose requirements for the purpose of enabling the document to be scanned or copied.

(3) As regards authentication, the Registrar may–

- (a) require the document to be authenticated by a particular person or a person of a particular description;
- (b) specify the means of authentication;
- (c) require the document to contain or be accompanied by the name or registered number of the company to which it relates (or both).

(4) As regards the manner of delivery, the Registrar may specify requirements as to–

- (a) the physical form of the document (for example, hard copy or electronic form);
- (b) the means to be used for delivering the document (for example, by post or electronic means);
- (c) the address to which the document is to be sent;
- (d) in the case of a document to be delivered by electronic means, the hardware and software to be used, and technical specifications (for example, matters relating to protocol, security, anti-virus protection or encryption).

(5) The power conferred by this section does not authorise the Registrar to require documents to be delivered by electronic means.

(6) Requirements imposed under this section must not be inconsistent with requirements imposed by any enactment with respect to the form, authentication or manner of delivery of the document concerned.

**Delivery to the Registrar of documents.**

423.(1) This section applies to the delivery to the Registrar of documents under any provision of this Act.

(2) The document must state in a prominent position the name and the registered number of the company to which it relates.

(3) If a document is delivered to the Registrar which does not comply with the requirements of this section, he may serve on the person by whom the document was delivered (or if there are two or more such persons, on any of them), a notice indicating the respect in which the document does not comply.

(4) Subject to subsection (5), where the Registrar serves a notice as is specified in subsection (3), then, unless a replacement document—

- (a) is delivered to him within 14 days after the service of the notice; and
- (b) complies with the requirements of this section or is not rejected by him for failure to comply with those requirements,

the original document shall be deemed not to have been delivered to him.

(5) For the purposes of any enactment imposing a penalty for failure to deliver, so far as it imposes a penalty for continued contravention, no account shall be taken of the period between the delivery of the original document and the end of the period of 14 days after service of the Registrar's notice.

**Delivery of documents in different languages.**

424.(1) The documents referred to in section 423 as being documents that have to be delivered to the Registrar under any provision of this Act shall be drawn up in English.

(2) Without prejudice to subsection (1), the Registrar shall, additionally, also allow any document referred to in that subsection to be delivered voluntarily in—

- (a) any other official language of the European Union; or
- (b) any other language,

provided, in each case, that it is accompanied by a translation of it into English certified in accordance with rule 5 of the Companies Rules to be a correct translation.

(3) Where a certified translation has been voluntarily provided pursuant to subsection (2) and there is a discrepancy between a document required to be

delivered to the Registrar pursuant to subsection (1) and the certified translation accompanying it, the certified translation—

- (a) may not be relied upon by the company as against any person dealing with the company; but
- (b) may be relied upon by a person dealing with the company as against that company, unless the company proves that the person dealing with the company had knowledge of the document whose delivery was mandatory pursuant to subsection (1).

**Keeping of company records by the Registrar.**

425.(1) The information contained in a document delivered to the Registrar under this Act, may be recorded and kept by him in any form he thinks fit, provided it is possible to inspect the information and to produce a copy of it in printed or electronic form; and this shall be sufficient compliance with any duty of his to keep, file or register the document.

(2) The originals of documents delivered to the Registrar in printed form shall be kept by him for 10 years, after which they may be destroyed.

**Fees.**

426.(1) The fees shown in the table set out in Schedule 24 shall be payable to the Registrar in addition to any other fee which the Registrar may specify for his performance of any function under this Act, including the receipt by him of any notice or other document which under this Act is required to be given, delivered, sent or forwarded to him.

(2) Where a notice or document which under this Act is required to be given, delivered, sent or forwarded to the Registrar or lodged with the Registrar within a specified time is—

- (a) given, delivered, sent or forwarded to the Registrar or lodged with him outside the specified time; or
- (b) substituted by a notice or document outside the specified time,

the supplementary fee specified in subsection (4) in respect of that late or substituted notice or document shall be payable, in addition to the fee due at the date the late or substituted document is delivered, sent or forwarded to the Registrar or lodged with him as provided from time to time in the Table set out in Schedule 24 in respect of that notice or document.

(3) The Registrar may charge a fee for any services provided by him otherwise than in pursuance of an obligation imposed on him by law.

(4) The supplementary fees referred to in subsection (2) are—

- (a) in respect of lodging an Annual Return with the Registrar after the due date for lodging of that Annual Return or lodging a substitute Annual Return after the due date for lodging of that Annual Return—
  - (i) in the first year after the due date, £30.00,
  - (ii) in the second year after the due date, £60.00,
  - (iii) in the third year after the due date, £90.00, and
  - (iv) in any year after the third year after the due date, £120.00;
- (b) in respect of filing of accounts—
  - (i) more than 13 months but not more than 24 months after the financial period to which they relate, £50.00, and
  - (ii) more than 24 months after the financial period to which they relate, £100.00;
- (c) in respect of lodging or filing of any document other than the one specified in paragraph (a) or (b) of this subsection after the due date for filing or lodging of that document or filing or lodging of a substitute document after the due date for filing or lodging of that document, £15.00.

(5) Notwithstanding any other provision of this Act, the Minister may by regulations prescribe or amend any fee stated to be payable to the Registrar pursuant to this Act.

### **Inspection, production and evidence of documents kept by Registrar.**

427.(1) Any person may inspect any records kept by the Registrar for the purposes of this Act and may require—

- (a) a copy in such form as the Registrar considers appropriate of any information contained in those records; or
- (b) a certified copy of, or extract from any such record.

(2) The right of inspection extends to the originals of documents delivered to the Registrar in printed form only where the record kept by the Registrar of the contents of the document is illegible or unavailable.

(3) In all legal proceedings, a copy of an extract from a record certified in writing by the Registrar to be an accurate record of the contents of any document delivered to him under this Act, shall be admissible in evidence—

- (a) as of equal validity with the original document; and
- (b) as evidence of any facts stated in it of which direct oral evidence would be admissible,

and, for this purpose, it shall not be necessary to prove the official position of the Registrar.

(4) Copies of or extracts from records furnished by the Registrar, instead of being certified by him in writing to be an accurate record, may be sealed with his official seal.

(5) Any person may require a certificate of the incorporation of a company, signed by the Registrar or authenticated by his official seal.

(6) Any requirement of the Act as to the supply by the Registrar of a document may, if the Registrar thinks fit, be satisfied by the communication by the Registrar of the requisite information in any non-printed form provided for by Schedule 7 for the purposes of this section or approved by him; and if, in such a case, the document concerned is required to be signed by him or sealed with his official seal, it shall instead be authenticated as may be provided for in Schedule 7, in section 428 or approved by the Registrar.

(7) No process for compelling the production of a record by the Registrar shall issue from any court except with the leave of the court, and any such process shall bear on it a statement that it is issued with the leave of the court.

**Certification of electronic copies by Registrar.**

428.(1) Where—

- (a) a person requires a copy of material on the register under section 427;
- (b) that person expressly requests that the copy be certified as a true copy; and
- (c) the Registrar provides the copy in electronic form,



the Registrar's certificate that the copy is an accurate record of the contents of the original document shall be provided in accordance with subsections (2) and (3).

(2) The certificate shall be authenticated by means of an electronic signature which—

- (a) is uniquely linked to the Registrar;
- (b) indicates that the Registrar has caused it to be applied;
- (c) is created using means that the Registrar can maintain under his sole control; and
- (d) is linked to the certificate and to the copy provided under section 427 in such a manner that any subsequent change of the data comprised in either is detectable.

(3) For the purposes of this section, an “electronic signature” means data in electronic form which is attached to or logically associated with other electronic data and which serve as a method of authentication.

#### **Enforcement of duty of company to make returns to Registrar.**

429.(1) Where a company—

- (a) has made default in complying with any provision of this Act which requires it to file with, deliver or send to the Registrar any return, account or other document, or to give notice to him of any matter, and
- (b) fails to make good the default within 14 days after the service of a notice on the company requiring it to do so,

then, on an application made to the court by any member or creditor of the company or by the Registrar, the court may make an order directing the company and any officer of it to make good the default within such time as may be specified in the order.

(2) The order of the court may provide that all costs of and incidental to the application shall be borne by the company or by any officers of the company responsible for the default.

(3) Nothing in this section shall be taken to prejudice the operation of any enactment imposing penalties on a company or its officers in respect of any such default.

#### **Official notification.**

430.(1) The Registrar shall cause to be published in the Gazette notice of the issue or receipt by him of documents of any of the following descriptions (stating in the notice the name of the company, the description of the document and the date of issue or receipt), that is to say—

- (a) any certificate of incorporation of a company;
- (b) any document making or evidencing an alteration in the memorandum or articles of association of a company;
- (c) any return relating to a company's register of directors or secretary, or notification of a change among its directors or secretary;
- (d) a company's annual return;
- (e) any balance sheet or profit and loss account of a company and other annual returns and accounting documents which are required to be delivered to the Registrar under this Act or any other enactment;
- (f) any notice of the situation of a company's registered office, or of any change of registered office;
- (g) any copy of an order of the Court appointing a liquidator of a company;
- (h) any order for the dissolution of a company on its liquidation;
- (i) any return by a voluntary liquidator of the final meeting of a company on its voluntary liquidation;
- (j) any return relating to a company's register of members, or notification of a change among its members including any notification of a purchase of own shares by the company;
- (k) any application for re-registration under Chapter 3 of Part III and any certificate issued under that Part;
- (l) any copy of an order in respect of a compromise or arrangement under Part VIII;
- (m) any copy of an order under section 299 or 300.

(2) A company shall not be entitled to rely against other persons on the happening of any of the following events, that is to say—

- (a) the appointment by the Court or members of a liquidator of a company under the Insolvency Act or the appointment of a voluntary liquidator of a company under this Act; or
- (b) any alteration of the company's memorandum or articles of association; or
- (c) any change among the company's directors or secretary; or
- (d) (as regards service of any document on the company) any change in the situation of the company's registered office—

if the event had not been officially notified at the material time and is not shown by the company to have been known at that time to the person concerned, or if the material time fell on or before the 15<sup>th</sup> day after the date of official notification (or, where the 15<sup>th</sup> day was a non-business day, on or before the next day that was not) and it is shown that the person concerned was unavoidably prevented from knowing of the event at that time.

(3) For the purposes of subsection (2) “non-business day” means a Saturday or Sunday, Christmas Day, Good Friday and any other day which is a public holiday under section 55 of the Interpretation and General Clauses Act or a bank holiday under section 2 of the Banking and Financial Dealings Act.

(4) In subsection (2), “official notification” means—

- (a) in relation to the appointment of a liquidator the notice thereof under section 169(1) of the Insolvency Act or section 376, as the case may be; and
- (b) in the case of any other event, the notification of the document relating to that event in the Gazette under subsection (1),

and “officially notified” shall be construed accordingly.

## **PART XII**

### **COMPANIES INCORPORATED OUTSIDE GIBRALTAR CARRYING ON BUSINESS WITHIN GIBRALTAR**

#### **Companies to which Part XII applies.**

431. This Part applies to all companies incorporated outside Gibraltar which, after the commencement of this Act, establish a place of business within Gibraltar; and in this Part any such company is referred to as “an overseas company”.

**Documents to be delivered to Registrar by companies carrying on business in Gibraltar.**

432. Overseas companies incorporated outside Gibraltar which establish a place of business within Gibraltar, shall, within 1 month from the establishment of the place of business, deliver to the Registrar for registration—

- (a) a certified copy of the charter, statutes or memorandum and articles of the company, or other instrument constituting or defining the constitution of the company, and, if the instrument is not written in English, a certified translation of it;
- (b) a list of the directors of the company, containing such particulars with respect to the directors as are by this Act required to be contained with respect to directors in the register of the directors of a company;
- (c) the names and addresses of some one or more persons resident in Gibraltar authorised to accept on behalf of the company service of process and any notices required to be served on the company.

**Return to be delivered to Registrar where documents altered.**

433. If in the case of an overseas company, any alteration is made in—

- (a) any of the documents specified in section 432(a);
- (b) the directors of the company or the particulars contained in the list of the directors; or
- (c) the names or addresses of the persons authorised to accept service on behalf of the company,

the company shall, within the prescribed time, deliver to the Registrar for registration a return containing the prescribed particulars of the alteration.

**Application of sections 432 and 433.**

434. Sections 432 and 433 shall not apply to any limited company which—

- (a) is incorporated outside the United Kingdom and Gibraltar; and
- (b) has a branch in Gibraltar.

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**Obligation to state name of company, whether limited, and country where incorporated.**

435. Every overseas company shall—

- (a) in every prospectus inviting subscriptions for its shares or debentures in Gibraltar state the country in which the company is incorporated;
- (b) conspicuously exhibit on every place where it carries on business in Gibraltar the name of the company and the country in which the company is incorporated;
- (c) cause the name of the company and of the country in which the company is incorporated to be stated in legible characters in all bill-heads and letter paper, and in all notices, advertisements and other official publications of the company; and
- (d) if the liability of the members of the company is limited, cause notice of that fact—
  - (i) to be stated in legible characters in every such prospectus as is referred to in paragraph (a) and in all bill-heads, letter paper, notices, advertisements and other official publications of the company as are referred to in paragraph (c), and
  - (ii) to be affixed on every place where it carries on its business.

**Company contracts.**

436.(1) Under the law of Gibraltar a contract may be made—

- (a) by an overseas company, by writing under its common seal or in any manner permitted by the laws of the territory in which the company is incorporated for the execution of documents by that company; and
- (b) on behalf of an overseas company, by any person who, in accordance with the laws of the territory in which the company is incorporated, is acting under the authority (express or implied) of that company.

(2) Unless a contrary intention appears, any formalities required by law in the case of a contract made by an individual also apply to a contract made by or on behalf of an overseas company.

**Execution of documents.**

437.(1) Under the law of Gibraltar a document may be executed by an overseas company—

- (a) by the affixing of its common seal; or
- (b) if it is executed in any manner permitted by the laws of the territory in which the company is incorporated for the execution of documents by that company.

(2) A document which—

- (a) is signed by a person who, in accordance with the laws of the territory in which an overseas company is incorporated, is acting under the authority (express or implied) of the company; and
- (b) is expressed (in whatever form of words) to be executed by the company,

shall have the same effect in relation to that company as it would have in relation to a company incorporated in Gibraltar if the document were executed under the common seal of a company so incorporated.

(3) In favour of a purchaser a document shall be deemed to have been duly executed by an overseas company if it purports to be signed in accordance with subsection (2); and, for this purpose, 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.

(4) Where a document is to be signed by a person on behalf of more than one overseas company, it shall not be regarded as duly signed by that person for the purposes of this section unless he signs it separately in each capacity.

(5) References in this section to a document being (or purporting) to be signed by a person who, in accordance with the laws of the territory in which an overseas company is incorporated, is acting under the authority (express or implied) of the company shall be construed, in a case where that person is a firm, as references to its being (or purporting to be) signed by an individual authorised by the firm to sign on its behalf.

(6) This section applies to a document that is (or purports to be) executed by an overseas company in the name of or on behalf of another person whether or not that person is also an overseas company.

**Execution of deeds.**

438.(1) A document shall be regarded as duly executed by an overseas company as a deed 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.

### **Service on overseas company.**

439.(1) Any process or notice required to be served on an overseas company shall be sufficiently served if addressed to any person whose name has been delivered to the Registrar under this Part and left at or sent by post to the address which has been so delivered.

(2) In any case where—

- (a) an overseas company fails to deliver to the Registrar the name and address of a person resident in Gibraltar who is authorised to accept on behalf of the company service of process or notice; or
- (b) at any time all the persons whose names and addresses have been so delivered are dead or have ceased to reside in Gibraltar, or refuse to accept service on behalf of the company, or for any other reason cannot be served,

a document may be served on the company by leaving it at or sending it by post to any place of business established by the company in Gibraltar.

### **Penalties.**

440. If a company to which this Part applies fails to comply with any of the provisions of this Part, the company, and every officer or agent of the company, shall be guilty of an offence and liable on summary conviction to a fine at level 2 on the standard scale, or, in the case of a continuing offence, of one tenth of the amount at that level for every day during which the default continues.

### **Interpretation of Part XII.**

441. For the purposes of this Part—

“branch” means a branch within the meaning of Council Directive 89/666/EEC on the disclosure requirements in respect of branches opened in a member State by certain types of company governed by the law of another member State;

“certified” means certified in the prescribed manner to be a true copy or a correct translation;

“director”, in relation to a company, includes any person in accordance with whose directions or instructions the directors of the company are accustomed to act;

“place of business” includes a share transfer or share registration office; and

“prospectus” has the same meaning as when used in relation to a company incorporated under this Act.

### **PART XIII**

#### **RE-DOMICILIATION**

##### **Companies to which Part XIII applies.**

442.(1) This Part applies to companies—

- (a) incorporated outside Gibraltar in a relevant State which re-domicile in Gibraltar; or
- (b) incorporated in Gibraltar which re-domicile to a relevant State.

(2) In this part “relevant State” means a State which—

- (a) regulates companies in a manner compatible with the provisions of this Part and regulations made under this section; and
- (b) is prescribed by the Minister for the purposes of this Part.

(3) The Minister may by regulation in respect of a company incorporated outside Gibraltar in a relevant State make provision for—

- (a) eligibility of a company to re-domicile in Gibraltar;
- (b) the form of application for registration as a company re-domiciled in Gibraltar;



- (c) evidence to be submitted in support of an application for registration in accordance with paragraph (b); and
- (d) the form and effect of registration as a company re-domiciled in Gibraltar.

(4) The Minister may in respect of a company incorporated in Gibraltar by regulation make provision for—

- (a) the eligibility of a company to re-domicile into a relevant State;
- (b) the form of application for re-domiciliation into a relevant State;
- (c) the evidence to be submitted in support of an application for re-domiciliation in accordance with paragraph (b); and
- (d) the conditions to be satisfied by a company prior to and during re-domiciliation.

(5) References in this section to a document being (or purporting) to be signed by a person who, in accordance with the laws of the territory in which an overseas company is incorporated, is acting under the authority (express or implied) of the company shall be construed, in a case where that person is a firm, as references to its being (or purporting to be) signed by an individual authorised by the firm to sign on its behalf.

(6) This section applies to a document that is (or purports to be) executed by an overseas company in the name of or on behalf of another person whether or not that person is also an overseas company.

#### **PART XIV**

##### **BRANCH DISCLOSURE**

#### **Application of Part XIV.**

443. This Part applies to any limited company which—

- (a) is incorporated outside the United Kingdom and Gibraltar; and
- (b) has a branch in Gibraltar.

#### **Registration of branches of companies.**

444.(1) For each company to which this Part applies, the Registrar shall keep, in such form as he thinks fit, a register of branches registered by the company under section 445.

(2) The Registrar shall allocate to every branch registered by him under this section a number, which shall be known as the branch's registered number.

(3) Branches' registered numbers shall be in such form, consisting of one or more sequences of figures or letters, as the Registrar may from time to time determine.

(4) The Registrar may, upon adopting a new form of registered number, make such changes of existing registered numbers as appear to him necessary.

(5) A change of a branch's registered number has effect from the date on which the company is notified by the Registrar of the change, but for a period of 3 years beginning with the date on which that notification is sent by the Registrar the requirement of section 456(1) as to the use of the branch's registered number on business letters and order forms is satisfied by the use of either the old number or the new.

(6) Where a company to which this Part applies files particulars, in any circumstances permitted by or under the Act, by—

- (a) adopting particulars already filed in respect of another branch; or
- (b) including in one document particulars which relate to two or more branches,

the Registrar shall ensure that the particulars concerned become part of the registered particulars of each branch concerned.

**Duty to register.**

445.(1) A company shall, within 1 month of having opened a branch in Gibraltar, deliver to the Registrar for registration a return containing—

- (a) such particulars about the company as are specified in section 446;
- (b) such particulars about the branch as are specified in section 447; and
- (c) if the company is one to which section 443 applies, such particulars in relation to the registration of documents under Schedule 26 as are specified in section 448.

(2) The return shall, except where subsection (3) applies, be accompanied by the documents specified in section 449 and, if the company is one to which Part I of Schedule 26 applies, the documents specified in section 450.

(3) This section applies where—

- (a) at the time the return is delivered, the company has another branch in the United Kingdom or Gibraltar;
- (b) the return contains a statement to the effect that the documents specified in section 449 and, if the company is one to which Part I of Schedule 26 applies, section 450, are included in the material registered in respect of the other branch; and
- (c) the return states where the other branch is registered and what its registered number is.

(4) In subsection (1), the reference to having opened a branch in Gibraltar includes a reference to a branch having become situated there on ceasing to be situated elsewhere.

(5) If at the date on which the company opens a branch in Gibraltar the company is subject to any proceedings referred to in section 461(1) (winding up) or section 462(1) (insolvency proceedings etc), the company shall deliver a return under section 461(1) or (as the case may be) section 462(1) within 1 month of that date.

(6) If on or before that date a person has been appointed to be liquidator of the company and continues in that office at that date, section 461(3) and (4) (liquidator to make return within 14 days of appointment) shall have effect as if it required a return to be made under that section within 1 month of the date of the branch being opened.

**Particulars required about the company.**

446.(1) The particulars referred to in section 445(1)(a) are—

- (a) the corporate name of the company;
- (b) its legal form;
- (c) if it is registered in the country of its incorporation, the identity of the register in which it is registered and the number with which it is so registered;
- (d) a list of the company's directors and secretary, containing—

- (i) with respect to each director, the particulars specified in subsection (3), and
- (ii) with respect to the secretary (or where there are joint secretaries, with respect to each of them) the particulars specified in subsection (4);
- (e) the extent of the powers of the directors to represent the company in dealings with third parties and in legal proceedings, together with a statement as to whether they may act alone or must act jointly and, if jointly, the name of any other person concerned; and
- (f) whether the company is an institution to which Schedule 25 applies.

(2) In the case of a company which is not incorporated in a member State, those particulars also include—

- (a) the law under which the company is incorporated;
- (b) in the case of a company to which paragraphs 2 and 3 of Part I of Schedule 26 apply, the period for which the company is required by the law under which it is incorporated to prepare accounts, together with the period allowed for the preparation and public disclosure of accounts for such a period; and
- (c) unless disclosed by the documents specified in section 449—
  - (i) the address of its principal place of business,
  - (ii) its objects, and
  - (iii) the amount of its issued share capital.

(3) The particulars referred to in subsection (1)(d)(i) with respect to a director are—

- (a) his name and any former name;
- (b) his date of birth;
- (c) his usual residential address;
- (d) his nationality;
- (e) his business occupation (if any); and

- (f) particulars of any other directorships held by him.

(4) The particulars referred to in subsection (1)(d)(ii) with respect to a secretary or joint secretary are his name, any former name and his usual residential address; but, instead of those particulars, in any case where all the partners in a firm are joint secretaries of the company, the name and principal office of the firm may be stated.

(5) In subsections (3)(a) and (4)–

- (a) “name” means a person’s forename and surname, except that in the case of a peer, or an individual usually known by a title, the title may be stated instead of his forename and surname, or in addition to either or both of them; and
- (b) the reference to a former name does not include–
  - (i) in the case of a peer, or an individual normally known by a title, the name by which he was known previous to the adoption of or succession to the title,
  - (ii) in the case of any person, a former name which was changed or disused before he attained the age of 18 years or which has been changed or disused for 20 years or more,
  - (iii) in the case of a married woman, the name by which she was known previous to the marriage.

(6) Where–

- (a) at the time a return is delivered under section 445(1) the company has another branch in Gibraltar; and
- (b) the company has delivered the particulars required by subsections (1)(b) to (f) and (2) to (5) to the Registrar with respect to that branch (or to the extent it is required to do so by virtue of section 454 or 455) and has no outstanding obligation to make a return to the Registrar in respect of that branch under section 451 in relation to any alteration to those particulars,

the company may adopt the particulars so delivered as particulars which the Registrar is to treat as having been filed by the return by referring in the return to the fact that the particulars have been filed in respect of that other branch and giving the number with which the other branch is registered.

**Further particulars about the branch.**

447. The particulars referred to in section 445(1)(b) are—

- (a) the address of the branch;
- (b) the date on which it was opened;
- (c) the business carried on at it;
- (d) if different from the name of the company, the name in which that business is carried on;
- (e) a list of the names and addresses of all persons resident in Gibraltar authorised to accept on the company's behalf service of process in respect of the business of the branch and of any notices required to be served on the company in respect of the business of the branch;
- (f) a list of the names and usual residential addresses of all persons authorised to represent the company as permanent representatives of the company for the business of the branch;
- (g) the extent of the authority of any person falling within subparagraph (f), including whether that person is authorised to act alone or jointly; and
- (h) if a person falling within subparagraph (f) is not authorised to act alone, the name of any person with whom he is authorised to act.

**Further particulars about registration of documents.**

448. The particulars referred to in section 445(1)(c) are—

- (a) whether it is intended to register documents under section 446(2) or, as the case may be, paragraph 9(1) of Schedule 26 in respect of the branch or in respect of some other branch in Gibraltar or the United Kingdom; and
- (b) if it is, where that other branch is registered and what is its registered number.

**Documents required.**

449. The documents first referred to in section 445(2) are—

- (a) a certified copy of the charter, statutes or memorandum and articles of the company (or other instrument constituting or defining the company's constitution); and
- (b) if any of the documents mentioned in subparagraph (a) is not written in English, a translation of it into English certified in accordance with rule 5 of the Companies Rules to be a correct translation.

**Further documents required in certain cases.**

450.(1) The documents secondly referred to in section 445(2) are—

- (a) copies of the latest accounting documents prepared in relation to a financial period of the company and publicly disclosed in accordance with the law of the country in which it is incorporated before the end of the period allowed for compliance with section 445 in respect of the branch or, if earlier, the date on which the company complies with section 445 in respect of the branch; and
- (b) if any of the documents mentioned in paragraph (a) is not written in English, a translation of it into English certified in accordance with rule 5 of the Companies Rules to be a correct translation.

(2) In subsection (1)(a) “financial period” and “accounting documents” shall be construed in accordance with paragraph 6 of Schedule 26.

**Alterations.**

451.(1) Subject to subsection (2), if, after a company has delivered a return under section 445(1), any alteration is made in—

- (a) its charter, statutes or memorandum and articles (or other instrument constituting or defining its constitution); or
- (b) any of the particulars referred to in section 445(1),

the company shall, within the time specified in subsection (2), deliver to the Registrar for registration a return containing particulars of the alteration.

(2) In the case of an alteration to any of the documents referred to in subsection (1)(a), the return shall be accompanied by a certified copy of the document as altered, together, if the document is not written in English, with a translation of it into English certified in accordance with rule 5 of the Companies Rules to be a correct translation.

- (3) The time for the delivery of the return required –
- (a) in the case of an alteration in any of the particulars specified in section 447, is 21 days after the alteration is made; and
  - (b) in the case of any other alteration, is 21 days after the date on which notice of the alteration in question could have been received in Gibraltar in due course of post (if despatched with due diligence).
- (4) Where–
- (a) a company has more than one branch in Gibraltar; and
  - (b) an alteration relates to more than one of those branches, subsection (1) shall have effect to require the company to deliver a return in respect of each of the branches to which the alteration relates.
- (5) For the purposes of subsection (4)–
- (a) an alteration in any of the particulars specified in section 446 shall be treated as relating to every branch of the company (though where the company has more than one branch in Gibraltar a return in respect of an alteration in any of those particulars which gives the branch numbers of two or more such branches shall be treated as a return in respect of each branch whose number is given); but
  - (b) an alteration in the company's charter, statutes or memorandum and articles (or other instrument constituting or defining its constitution) shall only be treated as relating to a branch if the document altered is included in the material registered in respect of it.

**Time periods.**

452.(1) Subsection (2) applies where–

- (a) a company's return under section 445(1) includes a statement to the effect mentioned in section 445(3)(b); and
- (b) the statement ceases to be true so far as concerns the documents specified in section 449.

(2) The company shall, within the time specified in subsection (3), deliver to the Registrar for registration in respect of the branch to which the return relates–



- (a) the documents specified in section 449; or
- (b) a return—
  - (i) containing a statement to the effect that those documents are included in the material which is registered in respect of another branch of the company in Gibraltar or the United Kingdom, and
  - (ii) stating where the other branch is registered and what is its registered number.

(3) The time for complying with subsection (2) is 21 days after the date on which notice of the fact that the statement in the earlier return has ceased to be true could have been received in Gibraltar in due course of post (if despatched with due diligence).

(4) Subsection (2) shall also apply where, after a company has made a return under subsection (2)(b), the statement to the effect mentioned in subsection (2)(b)(i) ceases to be true.

(5) For the purposes of subsection (2)(b), where the company has more than one branch in Gibraltar a return which gives the branch numbers of two or more such branches shall be treated as a return in respect of each branch whose number is given.

## **PART XV**

### **CHANGE IN REGISTRATION REGIME**

#### **Change in registration regime.**

453.(1) Where a company ceases to be a company to which Part XIV applies and, immediately after ceasing to be such a company continues to have in Gibraltar a place of business which it had immediately before ceasing to be such a company, it shall be treated for the purposes of Part XII of this Act as having established the place of business on the date when it ceased to be a company to which Part XIV applies.

(2) Where a limited company incorporated outside the United Kingdom and Gibraltar—

- (a) ceases to have a branch in the United Kingdom; and
- (b) both immediately before and immediately after ceasing to do so, has a place of business, but not a branch, in Gibraltar,

it shall be treated for the purposes of Part XII of the Act as having established the place of business on the date when it ceased to have a branch in the United Kingdom.

(3) Sections 454 and 455 (transitional provisions in relation to change in registration regime) shall have effect.

**Change in registration regime: transitional provisions.**

454.(1) This section applies where a company which becomes a company to which Part XIV applies was, immediately before becoming such a company (referred to in this section as the relevant time), a company to which Part XII of this Act applies.

(2) The company need not include the particulars specified in section 446(1)(d) in the first return to be delivered under section 445(1) to the Registrar if at the relevant time—

- (a) it had an established place of business in Gibraltar;
- (b) it had complied with its obligations under section 432(b); and
- (c) it had no outstanding obligation to make a return to the Registrar under section 433, so far as concerns any alteration of the kind mentioned in paragraph (b) of that section,

and if it states in the return that the particulars have been previously filed in respect of a place of business of the company, giving the company's registered number.

(3) The company shall not be required to deliver the documents mentioned in section 449 with the first return to be delivered under section 445(1) to the Registrar if at the relevant time—

- (a) it had an established place of business in Gibraltar;
- (b) it had delivered the documents mentioned in section 432(a) to the Registrar; and
- (c) it had no outstanding obligation to make a return to the Registrar under section 433 so far as concerns any alteration in any of the documents mentioned in paragraph (a) of that section,

and if it states in the return that the documents have been previously filed in respect of a place of business of the company, giving the company's registered number.

**Change in registration regime: further transitional provisions.**

455.(1) This section applies where a company which becomes a company to which Part XII applies was, immediately before becoming such a company (referred to in this section as the relevant time), a company to which Part XIV applies.

(2) The company shall not be required to deliver the documents mentioned in section 432(a) to the Registrar if at the relevant time—

- (a) it had a branch in Gibraltar;
- (b) the documents mentioned in section 450 were included in the material registered in respect of the branch; and
- (c) it had no outstanding obligation to make a return to the Registrar under section 451 so far as concerns any alteration in any of the documents mentioned in sub-section (1)(a) of that section,

and if it states in the return that the documents have previously been filed in respect of a branch of the company, giving the branch's registered number.

(3) The company need not include the particulars mentioned in section 432(b) in the return to be delivered under that section to the Registrar if at the relevant time—

- (a) it had a branch in Gibraltar;
- (b) it had complied with its obligations under section 445(1)(a) in respect of the branch, so far as the particulars required by section 446(1)(d) are concerned; and
- (c) it had no outstanding obligation to make a return to the Registrar under section 451, so far as concerns any alteration in any of the particulars required by section 446(1)(d),

and if it states in the return that the particulars have been previously filed in respect of a branch of the company, giving the branch's registered number.

(4) Where subsection (3) applies, the reference in section 433(b) to the list of the directors shall be construed as a reference to the list contained in the return under section 445(1) with any alterations in respect of which a return under section 451(1) has been made.

**Duty to state name, etc.**

456.(1) Every company to which Part XIV applies shall, in the case of each branch of the company registered under section 445, cause the following particulars to be stated in legible characters in all letter paper and order forms used in carrying on the business of the branch—

- (a) the place of registration of the branch; and
- (b) the registered number of the branch.

(2) Every company to which Part XIV applies, which is not incorporated in a member State and which is required by the law of the country in which it is incorporated to be registered under section 445, shall, in the case of each branch of the company, cause the following particulars to be stated in legible characters in all letter paper and order forms used in carrying on the business of the branch—

- (a) the identity of the registry in which the company is registered in its country of incorporation; and
- (b) the number with which it is registered.

(3) Every company to which Part XIV applies and which is not incorporated in a member State shall, in the case of each branch of the company registered under section 445, cause the following particulars to be stated in legible characters in all letter paper and order forms used in carrying on the business of the branch—

- (a) the legal form of the company;
- (b) the location of its head office; and
- (c) if applicable, the fact that it is being wound up.

**Service of documents: companies to which Part XIV applies.**

457.(1) This section applies to any company to which Part XIV applies.

(2) Any process or notice required to be served on a company to which this section applies in respect of the carrying on of the business of a branch registered by it under section 445 is sufficiently served if—

- (a) addressed to any person whose name has, in respect of the branch, been delivered to the Registrar as a person falling within section 447(e); and
- (b) left at or sent by post to the address for that person which has been so delivered.

(3) Where—

- (a) a company to which this section applies makes default, in respect of a branch, in delivering to the Registrar the particulars mentioned in section 447(e); or
- (b) all the persons whose names have, in respect of a branch, been delivered to the Registrar under section 445 as persons falling within section 447(e) are dead or have ceased to reside in Gibraltar, or refuse to accept service on the company's behalf, or for any reason cannot be served,

a document may be served on the company in respect of the carrying on of the business of the branch by leaving it at, or sending it by post to, any place of business established by the company in Gibraltar.

(4) Where a company to which this section applies has more than one branch in Gibraltar, any notice or process required to be served on the company which is not required to be served in respect of the carrying on of the business of one branch rather than another shall be treated for the purposes of this section as required to be served in respect of the carrying on of the business of each of its branches.

**Documents to be filed on cessation of business: companies to which Part XIV applies.**

458. If a company to which Part XIV applies closes a branch in Gibraltar, it shall forthwith give notice of that fact to the Registrar; and from the date on which notice is so given it shall no longer be obliged to deliver documents to the Registrar in respect of that branch.

**Penalties for non-compliance.**

459. If a company fails to comply with sections 445 to 453 or section 458, the company and every officer or agent of the company who knowingly authorises or permits the default is liable on summary conviction to a fine not exceeding level 3 on the standard scale, and in the case of a continuing offence, to a daily default fine not exceeding level 1 on the standard scale for continued contravention.

**Delivery of accounts and reports: companies to which the Eleventh Company Law Directive applies.**

460.(1) This section applies to any limited company which—

- (a) is incorporated outside the United Kingdom and Gibraltar;
- (b) has a branch in Gibraltar; and

(c) is not an institution to which Schedule 25 applies.

(2) Schedule 26 (delivery of accounts and reports) shall have effect in relation to any company to which this section applies.

## **PART XVI**

### **PARTICULARS TO BE DELIVERED TO REGISTRAR: WINDING UP ETC.**

#### **Particulars to be delivered to the Registrar: winding up.**

461.(1) Subject to subsection (5), where a company to which Part XIV applies is being wound up, then, within 14 days from the date on which the winding up begins, the company shall deliver to the Registrar for registration a return in the prescribed form containing the following particulars—

- (a) the name of the company;
- (b) whether the company is being wound up by an order of a court and, if so, the name and address of the court and the date of the order;
- (c) if the company is not being so wound up, as a result of what action the winding up has commenced;
- (d) whether the winding up has been instigated by—
  - (i) the company's members,
  - (ii) the company's creditors, or
  - (iii) some other person or persons,

and, in the case of subparagraph (iii) the identity of that person or those persons shall be given; and

- (e) the date on which the winding up became or will become effective.

(2) Subject to subsection (5), within 14 days from the date of his appointment, a person appointed to be the liquidator of a company to which Part XIV applies shall deliver to the Registrar for registration a return in the prescribed form containing the following particulars—

- (a) his name and address;

- (b) the date of his appointment; and
- (c) a description of such of his powers, if any, as are derived otherwise than from the general law or the company's constitution.

(3) Subject to subsection (5), the liquidator of a company to which Part XIV applies shall deliver to the Registrar for registration a return in the prescribed form upon the occurrence of the following events—

- (a) the termination of the winding up of the company; and
- (b) the company ceasing to be registered, in circumstances where ceasing to be registered is an event of legal significance,

and the return shall be delivered within 14 days from the date of the event concerned and shall also give the following particulars—

- (i) in the case of paragraph (a), the name of the company and the date on which the winding up terminated, and
- (ii) in the case of paragraph (b), the name of the company and the date on which it ceased to be registered.

(4) The obligation to deliver a return under any of subsections (1) to (3) shall apply in respect of each branch which the company has in Gibraltar, (though where the company has more than one branch in Gibraltar, a return which gives the branch numbers of two or more such branches is to be regarded as a return in respect of each branch whose number is given).

(5) No return is required under any of subsections (1) to (3) in respect of a winding up of an unregistered company.

**Particulars to be delivered to the Registrar: insolvency proceedings, etc.**

462.(1) Where a company to which Part XIV applies becomes subject to any of the following proceedings (other than proceedings for the winding up of the company), that is to say, insolvency proceedings or an arrangement or composition or any analogous proceedings, it shall deliver to the Registrar for registration in the prescribed form, a return containing the following particulars—

- (a) the name of the company;
- (b) whether the proceedings are by order of a court and, if so, the name and address of the court and the date of the order;

- (c) if the proceedings are not by order of a court, as a result of what action the proceedings have been commenced;
- (d) whether the proceedings have been instigated by—
  - (i) the company's members,
  - (ii) the company's creditors, or
  - (iii) some other person or persons,and in the case of (iii), the identity of that person or those persons shall be given; and
- (e) the date on which the proceedings became or will become effective.

(2) Where a company to which Part XIV applies ceases to be subject to any of the proceedings mentioned in subsection (1), it shall deliver to the Registrar for registration a return containing the following particulars—

- (a) the name of the company; and
- (b) the date on which it ceased to be subject to the proceedings.

(3) The period allowed for delivery of a return under subsection (1) or (2) is 14 days from the date on which the company becomes subject or, as the case may be, ceases to be subject to the proceedings concerned.

(4) The obligation to deliver a return under this section shall apply in respect of each branch which the company has in Gibraltar (though where the company has more than one branch in Gibraltar, a return which gives the branch number of two or more such branches is to be regarded as a return in respect of each branch whose number is given).

**Penalty for non-compliance.**

463.(1) If a company fails to comply with section 461(1) or 462(1) or (2) within the period allowed for compliance, it, and every person who immediately before the end of that period was a director of it, is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale and, for continued contravention, to a daily default fine not exceeding level 1 on the standard scale.

(2) If a liquidator fails to comply with section 461(2) or (3) within the period allowed for compliance, he is guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale



and, for continued contravention, to a daily default fine not exceeding level 1 on the standard scale.

(3) It is a defence for a person charged with an offence under this section to prove that he took all reasonable steps for securing compliance with the requirements concerned.

**Disclosure of branches.**

464.(1) A director's report prepared in accordance with section 249 shall contain an indication of the existence of branches of the company outside Gibraltar.

(2) Subsection (1) shall not apply in relation to an unlimited company.

**PART XVII**

**RESTRICTIONS ON SALE OF SHARES AND OFFERS OF SHARES  
FOR SALE**

**Prospectuses of foreign companies inviting subscriptions for shares or offering shares for sale.**

465.(1) Subject to subsection (2), it shall not be lawful for any person—

- (a) to issue, circulate or distribute in Gibraltar any prospectus offering for subscription shares in or debentures of a company incorporated or to be incorporated outside Gibraltar, whether the company has or has not established, or when formed will or will not establish a place of business in Gibraltar; unless—
  - (i) before the issue, circulation or distribution of the prospectus in Gibraltar a copy thereof certified by the chairman and two other directors of the company as having been approved by resolution of the managing body, has been delivered for registration to the Registrar,
  - (ii) the prospectus states on the face of it that the copy has been so delivered,
  - (iii) the prospectus is dated,
  - (iv) the prospectus otherwise complies with this Part; or
- (b) to issue to any person in Gibraltar a form of application for shares in or debentures of such a company or intended company, unless the form is issued with a prospectus which complies with this Part.

(2) Subsection (1) shall not apply if it is shown that the form of application was issued in connection with a bona fide invitation to a person to enter into an underwriting agreement with respect to the shares or debentures.

(3) This section shall not apply to the issue to debenture holders of a company of a prospectus or form of application relating to shares in or debentures of the company, whether an applicant for shares or debentures will or will not have the right to renounce in favour of other persons, but, subject to that, this section shall apply to a prospectus or form of application whether issued on or with reference to the formation of a company or subsequently.

(4) Where any document by which any shares in or debentures of a company incorporated outside Gibraltar are offered for sale to the public would, if the company concerned had been a company within the meaning of this Act, have been deemed by virtue of section 82 to be a prospectus issued by the company, that document shall be deemed to be for the purposes of this section, a prospectus issued by the company.

(5) An offer of shares or debentures for subscription or sale to any person whose ordinary business or part of whose ordinary business it is to buy or sell shares or debentures, whether as principal or agent, shall not be deemed an offer to the public for the purposes of this section.

(6) With the exception of the requirements contained in paragraph (a)(i), the provisions of subsection (1) shall not apply to a prospectus or form of application which—

- (a) is issued in a member State of the European Union in accordance with the laws of that state regulating the issue of such a prospectus or form of application;
- (b) is in English or, if not in English, is accompanied by a certified translation into English; and
- (c) contains or is accompanied by details of the name and address of the competent authority in the member State in which the prospectus or form of application was issued and with which it is registered or by which its issue, circulation or distribution was authorised.

(7) In this section and sections 466 and 467 “prospectus”, “shares”, and “debentures” have the same meanings as when used in relation to a company incorporated under this Act.

**Penalties relevant to section 465.**

466.(1) Section 81 shall extend to every prospectus to which section 465 applies.

(2) A person who is knowingly responsible for the issue, circulation or distribution of any prospectus, or for the issue of a form of application for shares or debentures, in contravention of the provisions of section 465 is guilty of an offence and shall be liable on summary conviction to a fine at level 5 on the standard scale.

**Requirements as to prospectus.**

467.(1) Subject to subsection (2), in order to comply with this Part, a prospectus in addition to complying with the provisions of subparagraphs (ii) and (iii) of paragraph (a) of section 465(1) must—

- (a) contain particulars with respect to the following matters—
  - (i) the objects of the company,
  - (ii) the instrument constituting or defining the constitution of the company,
  - (iii) the enactments, or provisions having the force of an enactment, by or under which the company was incorporated,
  - (iv) an address in Gibraltar where such instrument, enactments or provisions, or copies thereof, and if the same are in a foreign language a translation thereof certified in the prescribed manner, can be inspected,
  - (v) the date on which and the country in which the company was incorporated,
  - (vi) whether the company has established a place of business in Gibraltar, and, if so, the address of its principal office;
- (b) subject to the provisions of this section, state the matters specified in Part I of Schedule 2 (other than those specified in paragraph 1 of Part I) and set out the reports specified in Part II of that Schedule subject always to the provisions contained in Part III of that Schedule.

(2) The provisions of subparagraphs (i), (ii), (iii) and (iv) of paragraph (a) of subsection (1) do not apply in the case of a prospectus issued more than 2 years after the date at which the company is entitled to commence business;

and, with respect to the application of provisions of Schedule 2 by virtue of paragraph (b) of that subsection—

- (a) where any prospectus is published as a newspaper advertisement, it shall be a sufficient compliance with the requirement that the prospectus must specify the objects of the company if the advertisement specifies the primary object with which the company was formed;
- (b) in paragraph 3 of Part I of Schedule 2 a reference to the constitution of the company shall be substituted for the reference to the articles; and
- (c) paragraph 1 of Part III of that Schedule shall have effect as if the reference to the memorandum were omitted.

(3) Any condition requiring or binding any applicant for shares or debentures to waive compliance with any requirement of this section, or purporting to affect him with notice of any contract, document or matter not specifically referred to in the prospectus, shall be void.

(4) In the event of non-compliance with or contravention of any of the requirements of this section, a director or other person responsible for the prospectus shall not incur any liability by reason of the non-compliance or contravention, if—

- (a) as regards any matter not disclosed, he proves that he was not aware of it; or
- (b) he proves that the non-compliance or contravention arose from an honest mistake of fact on his part; or
- (c) the non-compliance or contravention was in respect of matters which, in the opinion of the court dealing with the case, were immaterial or were otherwise such as ought, in the opinion of that court, having regard to all the circumstances of the case, reasonably to be excused,

except that in the event of failure to include in a prospectus a statement with respect to the matters contained in paragraph 15 of Part I of Schedule 2 no director or other person shall incur any liability in respect of the failure unless it be proved that he had knowledge of the matters not disclosed.

(5) Nothing in this section shall limit or diminish any liability which any person may incur under the general law or this Act, apart from this section.

(6) The provisions of subsection (1) do not apply to a prospectus which—

- (a) is issued in a member State of the European Union in accordance with the laws of that state regulating the issue of such a prospectus;
- (b) is in English or, if not in English, is accompanied by a certified translation into English; and
- (c) contains or is accompanied by details of the name and address of the competent authority in the member State in which the prospectus was issued and with which it is registered or by which its issue, circulation or distribution was authorised.

**Restrictions on offering of shares for subscription or sale.**

468.(1) It shall not be lawful for any person to go from house to house offering shares for subscription or purchase to the public or any member of the public; and, for this purpose, “house” does not include an office used for business purposes.

(2) Subject to subsection (3), it shall not be lawful to make an offer in writing to any member of the public (not being a person whose ordinary business or part of whose ordinary business it is to buy or sell shares, whether as principal or agent) of any shares for purchase, unless the offer is accompanied by a statement in writing (which must be signed by the person making the offer and dated) containing—

- (a) such particulars as are required by this section to be included in it and otherwise complying with the requirements of this section; or
- (b) in the case of shares in a company incorporated outside Gibraltar, either by such a statement or by such a prospectus as complies with this Part.

(3) The provisions of subsection (2) do not apply—

- (a) where the shares to which the offer relates are shares which are quoted on, or in respect of which permission to deal has been granted by, any recognised stock exchange in Gibraltar and the offer so states and specifies the stock exchange; or
- (b) where the shares to which the offer relates are shares which a company has allotted or agreed to allot with a view to their being offered for sale to the public; or

- (c) where the offer was made only to persons with whom the person making the offer has been in the habit of doing regular business in the purchase or sale of shares.

(4) The statement shall not contain any matter other than the particulars required by this section to be included in it, and shall not be in characters less large or less legible than any characters used in the offer or in any document accompanying it.

(5) The statement shall contain particulars with respect to the following matters—

- (a) whether the person making the offer is acting as principal or agent, and if as agent the name of his principal and an address in Gibraltar where that principal can be served with process;
- (b) the date on which and the country in which the company was incorporated and the address of its registered or principal office in Gibraltar;
- (c) the authorised share capital of the company and the amount of that share capital which has been issued, the classes into which it is divided and the rights of each class of shareholders in respect of capital, dividends and voting;
- (d) the dividends (if any) paid by the company on each class of shares during each of the 3 financial years immediately preceding the offer, and if no dividend has been paid in respect of shares of any particular class during any of those years, a statement to that effect;
- (e) the total amount of any debentures issued by the company and outstanding at the date of the statement, together with the rate of interest payable on those debentures;
- (f) the names and addresses of the directors of the company;
- (g) whether or not the shares offered are fully paid up, and, if not, to what extent they are paid up;
- (h) whether or not the shares are quoted on, or permission to deal therein has been granted by, any recognised stock exchange in Gibraltar or elsewhere, and, if so, which, and, if not, a statement that they are not so quoted or that no such permission has been granted; and
- (i) where the offer relates to units, particulars of the names and addresses of the persons in whom the shares represented by the

units are vested, the date of and the parties to any document defining the terms on which those shares are held, and an address in Gibraltar where that document or a copy thereof can be inspected,

and in this subsection, “company” means the company by which the shares to which the statement relates were or are to be issued.

(6) In this section and section 469, unless the context otherwise requires, “shares” mean the shares of a company, whether a company within the meaning of this Act or not, and includes debentures and units, and “unit” means any right or interest (by whatever name called) in a share, and for the purposes of this section a person shall not in relation to a company be regarded as not being a member of the public by reason only that he is a holder of shares in the company or a purchaser of goods from the company.

#### **Offences relating to section 468.**

469.(1) A person who acts, or incites, causes or procures any person to act, in contravention of section 468, is guilty of an offence and shall be liable on summary conviction to imprisonment for 6 months and to a fine at level 4 on the standard scale, and in the case of a second or subsequent offence to imprisonment for 12 months and to a fine at level 5 on the standard scale.

(2) Where a person convicted of an offence against section 468 is a company (whether a company within the meaning of this Act or not), every director and every officer concerned in the management of the company is guilty of the like offence unless he proves that the act constituting the offence took place without his knowledge or consent.

(3) Where any person is convicted of having made an offer in contravention of the provisions of section 468, the court before which he is convicted may order that any contract made as a result of the offer shall be void, and where it makes any such order, may give such consequential directions as it thinks proper for the repayment of any money or the retransfer of any shares.

### **PART XVIII**

#### **MISCELLANEOUS**

##### *Miscellaneous offences*

#### **Penalty for false statement.**

470.(1) Subject to subsections (2) and (3), a person who in any return, report, certificate, balance sheet or other document, required by or for the purpose of any of the provisions of this Act specified in Schedule 27 knowingly makes a statement false in any material particular, knowing it to

be false, is guilty of an offence, and is liable on summary conviction to imprisonment for 4 months, and to a fine in lieu of or in addition to the period of imprisonment.

(2) A fine imposed on summary conviction shall not exceed level 3 on the standard scale.

(3) Nothing in this section affects the provisions of Part 18 of the Crimes Act.

**Penalty for improper use of “limited”.**

471. If any person or persons trade or carry on business under any name or title of which “Limited”, or any contraction or imitation of that word, is the last word and that person or those persons are not duly incorporated with limited liability, he or they shall be guilty of an offence and liable on summary conviction to a fine of one half of the amount at level 1 on the standard scale for every day upon which that name or title has been used.

*General provisions as to offences*

**Provision with respect to default fines and meaning of “officer in default”.**

472.(1) Where by any enactment in this Act it is provided that a company and every officer of the company who is in default are liable to a default fine, the company, then, for every day during which the default, refusal or contravention continues, the company and every such officer shall be liable to a fine not exceeding the amount which is specified in the enactment, or, if the amount of the fine is not so specified, to a fine of one half of the amount at level 1 on the standard scale.

(2) For the purpose of any enactment in this Act which provides that an officer of a company who is in default is liable to a fine or penalty, the expression “officer who is in default” means any director, manager or other officer of the company, who knowingly authorises or permits the default, refusal or contravention mentioned in the enactment.

**Application of fines.**

473. The court imposing any fine under this Act may direct that the whole or any part thereof shall be applied in or towards payment of the costs of the proceedings, or in or towards rewarding the person on whose information or at whose suit the fine is recovered, and subject to any such direction all fines under this Act shall be paid into the Consolidated Fund.

**Savings relating to proceedings instituted by the Attorney General.**



474.(1) Nothing in this Act relating to the institution of criminal proceedings by the Attorney-General shall be taken to preclude any person from instituting or carrying on any such proceedings.

(2) Where proceedings are instituted under this Act against any person by the Attorney-General, nothing in this Act shall be taken to require any person who has acted as solicitor for the defendant to disclose any privileged communication made to him in that capacity.

*Service of documents and legal proceedings*

**Service of documents on company.**

475. A document may be served on a company by leaving it at or sending it by post to the registered office of the company.

**Costs in actions by certain limited companies.**

476. In any case where—

- (a) a limited company is plaintiff in any action or other legal proceedings; and
- (b) it appears by credible testimony that there is reason to believe that the company will be unable to pay the costs of the defendant if successful in his defence,

any judge having jurisdiction in the matter may require sufficient security to be given for those costs, and may stay all proceedings until the security is given.

**Power of court to grant relief in certain cases.**

477.(1) If, in any proceedings for negligence, default, breach of duty or breach of trust against a person to whom this section applies it appears to the court hearing the case that that person is or may be liable in respect of the negligence, default, breach of duty or breach of trust, but that he has acted honestly and reasonably, and that, having regard to all circumstances of the case, including those connected with his appointment, he ought fairly to be excused for the negligence, default, breach of duty or breach of trust, that court may relieve him, either wholly or partly, from his liability on such terms as the court thinks fit.

(2) The persons to whom this section applies are persons acting in a particular capacity in relation to a company, namely—

- (a) the directors of a company;

- (b) the managers of a company;
- (c) the officers of a company; and
- (d) persons employed by a company as auditors, whether they are or are not officers of the company.

(3) Where any person to whom this section applies has reason to apprehend that any claim will or might be made against him in respect of any negligence, default, breach of duty or breach of trust, he may apply to the Court for relief, and the Court on any such application shall have the same power to relieve him as under this section it would have had if it had been a court before which proceedings had been brought against that person for negligence, default, breach of duty or breach of trust.

(4) Where any case to which subsection (1) applies is being tried by a judge with a jury, the judge, after hearing the evidence, may, if he is satisfied that the defendant ought in pursuance of that subsection to be relieved either in whole or in part from the liability sought to be enforced against him, withdraw the case in whole or in part from the jury and forthwith direct judgment to be entered for the defendant on such terms as to costs or otherwise as the judge may think proper.

#### **Power to enforce orders.**

478. Orders made by the Court under this Act may be enforced in the same manner as orders made in an action pending in the Court.

#### *General provisions*

#### **Financial Secretary.**

479. Any approval, sanction or licence, or revocation of licence, which under this Act may be given or made by the Minister or any other act or thing required or authorised by this Act to be done by the Minister may be given, made or done by the Financial Secretary or any other person authorised on that behalf by the Minister.

#### **Orders and certificates of the Minister or the Financial Secretary to be evidence.**

480. All documents purporting to be orders or certificates made or issued by the Minister for the purposes of this Act or to be signed by the Minister or the Financial Secretary or any person authorised on that behalf by the Minister shall be received in evidence and, unless the contrary is shown, shall be deemed to be such orders or certificates without further proof.

#### *Companies: Supplementary Provisions*

**Documents and production of documents.**

481.(1) In this Part, any reference to a document includes a reference to information recorded in any form.

(2) Any power (however expressed) in any provision of this Act to require production of a document includes power, in the case of a document not in hard copy form, to require the production of a copy of the document—

- (a) in hard copy form; or
- (b) in a form from which a hard copy can readily be obtained,

and any provision under which a person may take copies of or extracts from a document includes a power to take such copies or extracts from a copy of the document produced as mentioned in paragraph (a) or paragraph (b).

**Sending or supplying documents or information.**

482.(1) Documents or information to be sent or supplied to a company must be sent or supplied in accordance with the provisions of Schedule 6.

(2) Documents or information to be sent or supplied by a company must be sent or supplied in accordance with the provisions of Schedule 7.

(3) The provisions referred to in subsection (2) apply (and those referred to in subsection (1) do not apply) in relation to documents or information that are to be sent or supplied by one company to another.

**Right to hard copy version.**

483.(1) Where a member of a company or a holder of a company's debentures has received a document or information from the company otherwise than in hard copy form, he is entitled to require the company to send him a version of the document or information in hard copy form.

(2) The company must send the document or information in hard copy form within 21 days of receipt of the request from the member or debenture holder.

(3) The company may not make a charge for providing the document or information in that form.

(4) If a company fails to comply with this section, an offence is committed by the company and every officer of it 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.

**Requirement of authentication.**

484.(1) This section applies in relation to the authentication of a document or information sent or supplied by a person to a company.

(2) A document or information sent or supplied in hard copy form is sufficiently authenticated if it is signed by the person sending or supplying it.

(3) A document or information sent or supplied in electronic form is sufficiently authenticated—

- (a) if the identity of the sender is confirmed in a manner specified by the company; or
- (b) where no such manner has been specified by the company, if the communication contains or is accompanied by a statement of the identity of the sender and the company has no reason to doubt the truth of that statement.

(4) Where a document or information is sent or supplied by one person on behalf of another, nothing in this section affects any provision of the company's articles under which the company may require reasonable evidence of the authority of the former to act on behalf of the latter.

**Hard copy and electronic form and related expressions.**

485.(1) The following provisions apply for the purposes of this Act.

(2) A document or information is sent or supplied in hard copy form if it is sent or supplied in a paper copy or similar form capable of being read.

References to hard copy have a corresponding meaning.

(3) A document or information is sent or supplied in electronic form if it is sent or supplied—

- (a) by electronic means (for example, by e-mail or fax); or
- (b) by any other means while in an electronic form (for example, sending a disk by post).

References to electronic copy have a corresponding meaning.

(4) A document or information is sent or supplied by electronic means if it is—

- (a) sent initially and received at its destination by means of electronic equipment for the processing (which expression includes digital compression) or storage of data; and
- (b) entirely transmitted, conveyed and received by wire, by radio, by optical means or by other electromagnetic means.

References to electronic means have a corresponding meaning.

(5) A document or information authorised or required to be sent or supplied in electronic form must be sent or supplied in a form, and by a means, that the sender or supplier reasonably considers will enable the recipient—

- (a) to read it; and
- (b) to retain a copy of it.

(6) For the purposes of this section, a document or information can be read only if—

- (a) it can be read with the naked eye; or
- (b) to the extent that it consists of images (for example photographs, pictures, maps, plans or drawings), it can be seen with the naked eye.

(7) The provisions of this section apply whether the provision of this Act in question uses the words “sent” or “supplied” or uses other words (such as “deliver”, “provide”, “produce” or, in the case of a notice, “give”) to refer to the sending or supplying of a document or information.

### **Designation of capital.**

486. Notwithstanding anything to the contrary in this Act contained, the capital of a company may be expressed in a currency other than sterling.

### **European Union Law.**

487.(1) The Minister may make regulations to give effect in Gibraltar to the law of the European Union relating to any of the matters contained in this Act, or having as its intention the regulation of companies and their affairs.

(2) Regulations made under this section may make provision for the repeal or modification of any provision of this Act where such a provision is—

- (a) in conflict with;
- (b) made unclear by; or
- (c) rendered unnecessary by,

a regulation made under this Act.

**Transitional provisions.**

488.(1) The following provisions are without prejudice to the operation of sections 32 and 33 of the Interpretation and General Clauses Act (effect of repeals).

(2) Except in so far as regulations under section 6 or section 23 make provision for the forms of memorandum or articles of a company, the forms specified in Schedule 1 to the former Companies Act shall have effect as if made by regulations under the section concerned.

(3) Until such time as a form of statement in lieu of a prospectus is prescribed under section 20, the form set out in Schedule 2 to the former Companies Act shall have effect as if made by regulations under that section.

(4) Companies rules made under the former Companies Act may be revoked or amended by Companies rules made under section 417 but, subject to that, shall continue in force as if made under section 417.

**Consequential amendments.**

489. The Minister may by regulations make such amendments in any enactment as appear to him to be appropriate in consequence of the provisions of this Act.

**Repeals.**

490.(1) The enactments specified in Schedule 29 are hereby repealed to the extent stated in the Schedule.

(2) The repeal of those enactments is subject to any transitional provisions made by or under section 488.

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**SCHEDULES****SCHEDULE 1**

Sections 67 and 68

**PART I****DE-REGISTRATION OF CERTAIN COMPANIES ON BECOMING  
LIMITED PARTNERSHIPS**

1.(1) Subject to the provisions of this Schedule, a company which is registered as limited by shares or by guarantee or by shares and guarantee may be de-registered on being registered as a limited partnership under the Limited Partnerships Act if—

- (a) a special resolution that it should be so re-registered is passed by the vote of each member entitled to receive notice of an extraordinary meeting of the company; and
- (b) the requirements of this paragraph and paragraph 2 are complied with in respect of the resolution and otherwise.

(2) A public company shall not be de-registered under this section.

(3) The special resolution referred to in subparagraph (1)(a) shall state the share capital or the total amount of the guarantee or both, as the case may be, of the company and shall provide—

- (a) that the total amount of the capital of the limited partnership from time to time shall not fall below the amount of the share capital or the total amount of the guarantee or the total of both, as the case may be, of the company at the date of the resolution; and
- (b) for the method of converting shares or membership or both, as the case may be, into participation in the capital of the limited partnership, specifying which members shall become the limited partners and which shall become the general partners and the sum contributed to the capital of the limited partnership by each shareholder or member or both, as the case may be; and
- (c) for the making of such alterations in the memorandum and articles as are necessary to bring them (in substance and in form) into conformity with the requirements of the Partnership Act and the Limited Partnerships Act as the partnership agreement.

(4) The special resolution referred to in subparagraph (1)(a) is subject to section 206 (copy to be forwarded to the Registrar within 30 days).

(5) A cancellation of shares in pursuance of this Schedule shall not be deemed to be a reduction of share capital within the meaning of this Act.

(6) For the purposes of this paragraph “share capital” shall include—

- (a) the nominal value of the allotted shares of every class in the company, whether or not paid up and whether or not paid up in cash or otherwise; and
- (b) any amount in the share premium account (as defined by section 125(1)) of the company.

2.(1) An application for the company to be de-registered on registration under the Limited Partnerships Act as a limited partnership, framed in the prescribed form and signed by a director or by the secretary of the company, shall be lodged with the Registrar, as follows—

- (a) it shall be lodged not earlier than the day on which the copy of the special resolution forwarded under section 206 is received by him; and
- (b) it shall be accompanied by the documents referred to in subparagraph (2) and the prescribed fee.

(2) The documents required to be lodged with the Registrar for the purposes of subparagraph (1)(a) are—

- (a) a printed copy of the memorandum and articles as altered in pursuance of the special resolution for the company to become a limited partnership containing—
  - (i) the name of the company and the firm name under which registration as a limited partnership is to be sought,
  - (ii) the proposed principal place of business of the limited partnership,
  - (iii) the date on which it is proposed to register under the Limited Partnerships Act, and
  - (iv) a copy of the statement to be submitted to the Registrar of Limited Partnerships in accordance with section 7A of the Limited Partnerships Act.



- (b) a certificate of good standing in respect of the company issued by the Registrar;
- (c) where the company carries on in or from within Gibraltar a business which is—
  - (i) licensed under the Financial Services (Investment and Fiduciary Services) Act,
  - (ii) authorised under the Financial Services (Banking) Act or the Financial Services (Markets in Financial Instruments) Act 2006, or
  - (iii) licensed or authorised in accordance with a Community requirement other than one falling within subparagraph (i) or (ii),

evidence of the consent of the competent authority under the relevant legislation to the company de-registering under this Act and registering under the Limited Partnerships Act,

- (d) evidence to the satisfaction of the Registrar that no proceedings for insolvency have been commenced against the company in Gibraltar; and
- (e) evidence to the satisfaction of the Registrar that any mortgage or other charge recorded in respect of that company has been discharged in accordance with the Act or the consent in writing to the de-registration of every registered mortgagee or chargee has been obtained.

3.(1) The Registrar shall—

- (a) retain the application and other documents lodged with him under paragraph 2; and
- (b) provide to the Registrar of Limited Partnerships appointed under section 13 of the Limited Partnerships Act the document provided for in section 7A of that Act.

(2) The Registrar—

- (a) on being satisfied that the requirements of paragraphs 1 and 2 are satisfied; and
- (b) having received notice in writing from the Registrar of Limited Partnerships appointed under section 13 of the Limited Partnerships Act that, on receipt of confirmation from the

Registrar that the requirements of this Schedule have been met in respect of the body, the body may be registered under section 4 of that Act,

shall de-register the body as a company registered under this Act with effect from the date and the time which the Registrar of Limited Partnerships notifies to the Registrar as the date and time at which the registration of the body under section 4 of the Limited Partnerships Act is to take effect.

(3) On the date and immediately before the time notified to the Registrar under subparagraph (2) the alterations in the memorandum of the company specified in the special resolution and the alterations in, and additions to, the articles of the company so specified take effect.

(4) The notification given by the Registrar of Limited Partnerships under subparagraph (2) is conclusive evidence that the requirements of this Schedule in respect of de-registration and of matters precedent and incidental to it have been complied with, and that the company was authorised to be de-registered in pursuance of this Schedule and was duly so de-registered.

(5) For the avoidance of doubt it is hereby declared that a limited partnership registered under section 4 of the Limited Partnerships Act as a result of the procedures contained in—

- (a) this Schedule; and
- (b) section 7A of the Limited Partnerships Act,

is on the date and time referred to in subparagraph (2) a continuation of the undertaking of the company de-registered by virtue of the procedures referred to in paragraph (a).

## **PART II**

### **DE-REGISTRATION OF LIMITED PARTNERSHIPS ON BECOMING A REGISTERED COMPANY**

1.(1) Subject to the provisions of this Schedule, a limited partnership which is registered as a limited partnership under the Limited Partnership Act may be de-registered on being registered as a company limited by shares or by guarantee if—

- (a) a special resolution that it should be so re-registered is passed by the general partner of the limited partnership; and

- (b) the requirements of this paragraph and paragraph 2 are complied with in respect of the resolution and otherwise.

(2) The special resolution referred to in subparagraph (1)(a) shall state the capital contributions of the limited partnership and shall provide—

- (a) that the total amount of the capital of the company from time to time shall not fall below the amount of the capital of the limited partnership at the date of the resolution;
- (b) for the method of converting participation in the capital of the limited partnership, into shares or membership, as the case may be, specifying which limited partners shall become members and how the general partner shall be treated and the sum contributed to the capital of the company by each partner; and
- (c) for the making of such alterations in the partnership agreement as are necessary to bring them (in substance and in form) into conformity with the requirements of memorandum and articles of the Company under this Act.

(3) The special resolution referred to in subparagraph (1)(a) is subject to section 206 (copy to be forwarded to the Registrar within 30 days).

2.(1) An application for the limited partnership to be de-registered on registration as a company under this Act, framed in the prescribed form and signed by a director or by the secretary of the company, shall be lodged with the Registrar, as follows—

- (a) it shall be lodged not earlier than the day on which the copy of the special resolution forwarded under section 206 is received by him; and
- (b) it shall be accompanied by the documents referred to in subparagraph (2) and the prescribed fee.

(2) The documents required to be lodged with the Registrar for the purposes of subparagraph (1)(a) are—

- (a) a printed copy of the limited partnership agreement as altered in pursuance of the special resolution to be the memorandum and articles containing—
  - (i) the name of the limited partnership and the firm name under which registration as a company is to be sought,
  - (ii) the proposed principal place of business of the company,

- (iii) the date on which it is proposed to register under this Act, and
- (iv) a copy of the statement to be submitted to the Registrar of Limited Partnerships in accordance with section 7A of the Limited Partnerships Act;
- (b) a certificate of good standing in respect of the limited partnership issued by the Registrar;
- (c) evidence to the satisfaction of the Registrar that no proceedings for insolvency have been commenced against the limited partnership in Gibraltar; and
- (d) evidence to the satisfaction of the Registrar that any mortgage or other charge recorded in respect of that limited partnership has been discharged in accordance with the Limited Partnership Act or the consent in writing to the de-registration of every registered mortgagee or chargee has been obtained.

3.(1) The Registrar shall–

- (a) retain the application and other documents lodged with him under paragraph 2; and
- (b) provide to the Registrar of Limited Partnerships appointed under section 13 of the Limited Partnerships Act the document provided for in section 7A of that Act.

(2) The Registrar–

- (a) on being satisfied that the requirements of paragraphs 1 and 2 are satisfied; and
- (b) having received notice in writing from the Registrar of Limited Partnerships appointed under section 13 of the Limited Partnerships Act that, on receipt of confirmation from the Registrar that the requirements of this Schedule have been met in respect of the body, the body may be registered as a company under this Act,

shall de-register the body as a limited partnership registered under the Limited Partnership Act with effect from the date and the time when the company is registered as a company under this Act.

(3) On the date and immediately before the time notified to the Registrar under subparagraph (2) the alterations in the memorandum of the company

specified in the special resolution and the alterations in, and additions to, the articles of the company so specified take effect.

(4) The notification given by the Registrar of Limited Partnerships under subparagraph (2) is conclusive evidence that the requirements of this Schedule in respect of de-registration and of matters precedent and incidental to it have been complied with, and that the limited partnership was authorised to be de-registered in pursuance of this Schedule and was duly so de-registered.

(5) For the avoidance of doubt it is hereby declared that a company registered under this Act as a result of the procedures contained in this Schedule is on the date and time referred to in subparagraph (2) a continuation of the undertaking of the limited partnership de-registered by virtue of the procedures referred to in paragraph (a).

### **CONSEQUENTIAL AMENDMENTS OF LIMITED PARTNERSHIPS ACT**

4.(1) In section 7A of the Limited Partnerships Act, after the words “Companies Act” in each place where they occur, there shall be inserted 2014”.

(2) Section 7A shall also be subject to the following amendments—

- (a) in subsection (2)(a) for the words “section 37 of” there shall be substituted “paragraph 1 of Schedule 1 to”;
- (b) in subsection (2)(b) for the words “section 37(5)(a) of” there shall be substituted “paragraph 2(1)(a) of Schedule 1 to”;
- (c) in subsection (2)(c) for the words “section 37 of” there shall be substituted the words “paragraph 1 of Schedule 1 to”;
- (d) for subsection (4) there shall be substituted the following subsection—

“(4) When the Registrar has received from the Registrar of Companies the document specified in subsection (2)(c), he shall—

- (a) register the limited partnership under this Act with effect from the date and time specified in subsection (3); and
- (b) issue a Certificate of Registration and Continuation as a Limited Partnership”; and

- (e) in subsection (5)(b) for the words “sections 37 and 38 of” there shall be substituted the words “Part 1 of Schedule 1 to”; and for “subsection (4)” there shall be substituted “subsection (3)”; and
- (f) in subsection (6) for the words “means the person appointed under section 343 of” there shall be substituted the words “has the same meaning as in”.

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SCHEDULE 2

Section 79

**PROSPECTUSES****PART I****MATTERS REQUIRED TO BE STATED IN PROSPECTUS.**

1. Except where the prospectus is published as a newspaper advertisement, the contents of the memorandum, with the names, descriptions and addresses of the signatories, and the number of shares subscribed for by them respectively.
2. The number of founders or management or deferred shares (if any) and the nature and extent of the interest of the holders in the property and profits of the company.
3. The number of shares (if any) fixed by the articles as the qualification of a director, and any provision in the articles as to the remuneration of the directors.
4. The names, descriptions and addresses of the directors or proposed directors.
5. Where shares are offered to the public for subscription particulars as to—
  - (a) the minimum amount which, in the opinion of the directors, must be raised by the issue of those shares in order to provide the sums, or, if any part thereof is to be defrayed in any other manner, the balance of the sums, required to be provided in respect of each of the following matters—
    - (i) the purchase price of any property purchased or to be purchased which is to be defrayed in whole or in part out of the proceeds of the issue,
    - (ii) any preliminary expenses payable by the company, and any commission payable to any person in consideration of his agreeing to subscribe for, or of his procuring or agreeing to procure subscriptions for, any shares in the company,
    - (iii) the repayment of any moneys borrowed by the company in respect of any of the preceding matters,

(iv) working capital; and

- (b) the amounts to be provided in respect of the matters referred to above otherwise than out of the proceeds of the issue and the sources out of which those amounts are to be provided.

6.(1) Subject to subparagraphs (2) to (4), the amount payable on application and allotment on each share, and, in the case of a second or subsequent offer of shares, the amount offered for subscription on each previous allotment made within the 2 preceding years, the amount actually allotted, and the amount (if any) paid on the shares so allotted.

(2) The requirements of subparagraph (1) shall not apply to a prospectus issued by an open-ended investment company inviting the public to subscribe for the company's redeemable preference shares.

(3) The prospectus of an open-ended investment company inviting the public to subscribe for the company's redeemable preference shares shall—

- (a) in the case of the first prospectus issued by the company state—
- (i) the period during which the subscription lists for the shares being offered shall remain open (“the initial subscription period”), and
  - (ii) the amounts payable on application and allotment on each share offered during the initial subscription period; and
- (b) in the case of any subsequent prospectus issued by the company state—
- (i) the number of shares offered for subscription on each previous issue made within the 2 preceding years, and
  - (ii) the number of shares of the company remaining unallotted or unredeemed on a date not earlier than 14 days prior to the date on which the prospectus was published; and
- (c) in either case shall specify the method by which the amount payable on the redemption of the company's shares will be determined.

(4) For the purpose of subparagraphs (2) and (3) an open-ended investment company means a company—



- (a) the sole object of which is to invest its funds in property of any description, including money, with the aim of spreading investment risk and giving its shareholders the benefit of the results of the management of those funds by, or on behalf of, the company; and
- (b) which gives to the holders of redeemable preference shares in the company the right to have those shares redeemed by or out of the funds of the company at a price related to the net asset value of the company, for the purposes of which it has established regular dealing days.

7. The number and amount of shares and debentures which within the 2 preceding years have been issued, or agreed to be issued, as fully or partly paid up otherwise than in cash, and in the latter case the extent to which they are so paid up, and in either case the consideration for which those shares or debentures have been issued or are proposed or intended to be issued.

8. The names and addresses of the vendors of any property purchased or acquired by the company, or proposed so to be purchased or acquired, which is to be paid for wholly or partly out of the proceeds of the issue offered for subscription by the prospectus, or the purchase or acquisition of which has not been completed at the date of issue of the prospectus, and the amount payable in cash, shares or debentures, to the vendor, and where there is more than one separate vendor, or the company is a sub-purchaser, the amount so payable to each vendor.

9. The amount (if any) paid or payable as purchase money in cash, shares or debentures, for any such property as is referred to above, specifying the amount (if any) payable for goodwill.

10. The amount (if any) paid within the 2 preceding years, or payable, as commission (but not including commission to sub-underwriters) for subscribing or agreeing to subscribe, or procuring or agreeing to procure subscriptions, for any shares in, or debentures of, the company, or the rate of any such commission.

11. The amount or estimated amount of preliminary expenses.

12. The amount paid within the 2 preceding years or intended to be paid to any promoter, and the consideration for any such payment.

13. The dates of and parties to every material contract, not being a contract entered into in the ordinary course of the business carried on or intended to be carried on by the company or a contract entered into more than 2 years before the date of issue of the prospectus, and a reasonable time and place at which the material contract or a copy of it may be inspected.

14. The names and addresses of the auditors (if any) of the company.
15. Full particulars of the nature and extent of the interest (if any) of every director in the promotion of, or in the property proposed to be acquired by, the company, or, where the interest of that director consists in being a partner in a firm, the nature and extent of the interest of the firm, with a statement of all sums paid or agreed to be paid to him or to the firm in cash or shares or otherwise by any person either to induce him to become, or to qualify him as a director, or otherwise for services rendered by him or by the firm in connection with the promotion or formation of the company.
16. If the prospectus invites the public to subscribe for shares in the company and the share capital of the company is divided into different classes of shares, the right of voting at meetings of the company conferred by, and the rights in respect of capital and dividends attached to, the several classes of shares respectively.
17. In the case of a company which has been carrying on business, or of a business which has been carried on for less than 3 years, the length of time during which the business of the company or the business to be acquired, as the case may be, has been carried on.

## **PART II**

### **REPORTS TO BE SET OUT IN PROSPECTUS**

18. A report by the auditors of the company concerning—
- (a) the profits of the company in respect of each of the 3 financial years immediately preceding the issue of the prospectus; and
  - (b) the rates of the dividends (if any) paid by the company in respect of each class of shares in the company in respect of each of the said 3 years, giving particulars of each such class of shares on which such dividends have been paid and particulars of the cases in which no dividends have been paid in respect of any class of shares in respect of any of those years; and,
- if no accounts have been made up in respect of any part of the period of 3 years ending on a date 3 months before the issue of the prospectus, containing a statement of that fact.
19. If the proceeds, or any part of the proceeds, of the issue of the shares or debentures are or is to be applied directly or indirectly in the purchase of any business, a report made by accountants who shall be named in the prospectus upon the profits of the business in respect of each of the 3 financial years immediately preceding the issue of the prospectus.

**PART III****PROVISIONS APPLYING TO PARTS I AND II OF SCHEDULE**

20. The provisions of this Schedule with respect to the memorandum and the qualification, remuneration and interest of directors, the names, descriptions and addresses of directors or proposed directors, and the amount or estimated amount of the preliminary expenses, shall not apply in the case of a prospectus issued more than 2 years after the date at which the company is entitled to commence business.

21. Every person shall for the purposes of this Schedule be deemed to be a vendor who has entered into any contract, absolute or conditional, for the sale or purchase, or for any option of purchase, of any property to be acquired by the company, in any case where—

- (a) the purchase money is not fully paid at the date of the issue of the prospectus;
- (b) the purchase money is to be paid or satisfied wholly or in part out of the proceeds of the issue offered for subscription by the prospectus; and
- (c) the contract depends for its validity or fulfilment on the result of that issue.

22. Where any property to be acquired by the company is to be taken on lease, this Schedule shall have effect as if “vendor” included the lessor, “purchase money” included the consideration for the lease, and “sub-purchaser” included a sub-lessee.

23. For the purposes of paragraph 8 of Part I of this Schedule where the vendors or any of them are a firm, the members of the firm shall not be treated as separate vendors.

24. If in the case of a company which has been carrying on business, or of a business which has been carried on for less than 3 years, the accounts of the company or business have only been made up in respect of 2 years or 1 year, Part II of this Schedule shall have effect as if references to 2 years or 1 year, as the case may be, were substituted for references to 3 years.

25. The expression “financial year” in Part II of this Schedule means the year in respect of which the accounts of the company or of the business, as the case may be, are made up, and where by reason of any alteration of the date on which the financial year of the company or business terminates the accounts of the company or business have been made up for a period greater

or less than a year, that greater or less period shall for the purpose of the said Part of this Schedule be deemed to be a financial year.

## Section 84

## THE COMPANIES ACT

Pursuant to section 84(1) of the Companies Act

The consideration for the intended issue of those shares and debentures.

Names and addresses of vendors of property purchased or acquired, or proposed to be purchased or acquired by the company.

Amount (in cash, shares or debentures) payable to each separate vendor.	Price	£
	Cash	£
	Shares	£
	Debentures	£
	Goodwill	£
	Total purchase	£

Amount (if any) paid or payable (in cash, shares or debentures) for any such property, specifying amount (if any) paid or payable for goodwill.

Amount (if any) paid or payable as commission for subscribing or agreeing to subscribe or procuring or agreeing to procure subscriptions for any shares or debentures in the company; or	Amount paid
	Amount payable

Rate of the commission	Rate per cent
------------------------	---------------

The number of shares (if any) which persons have agreed for a commission to subscribe absolutely.

Estimated amount of preliminary expenses.	£
---	---

Amount paid or intended to be paid to any promoter	Name of promoter
	Amount £

Consideration for the payment	Consideration:
-------------------------------	----------------

Dates of, and parties to, every material contract (other than contracts entered into in the ordinary course of the business intended to be carried on by the company or entered into more than 2 years before the delivery of this statement).

Time and place at which the contracts or copies thereof may be inspected.

Names and addresses of the auditors of the company (if any).

Full particulars of the nature and extent of the interest of every director in the promotion of or in the property proposed to be acquired by the company, or, where the interest of that director consists in being a partner in a firm, the nature and extent of the interest of the firm, with a statement of all sums paid or agreed to be paid to him or to the firm in cash or shares, or

otherwise, by any person either to induce him to become, or to qualify him as, a director  
or otherwise for services rendered by him or by the firm in connection with the promotion or formation of the company.

If it is proposed to acquire any business, the amount, as certified by the persons by whom the accounts of the business have been audited of the net profits of the business in respect of each of the 3 financial years immediately preceding the date of this statement provided that in the case of a business which has been carried on for less than 3 years and the accounts of which have only been made up in respect of 2 years or 1 year the above requirement shall have effect as if references to 2 years or 1 year, as the case may be, were substituted for references to 3 years, and in any such case the statement shall say how long the business to be acquired has been carried on.

(Signatures of the persons above-named as directors or proposed directors or of their agents authorised in writing).

Date

*Note.*—In this Schedule, “vendor” includes a vendor as defined in Part III of Schedule 2 to the Act, and “financial year” has the meaning assigned to it in that Part of that Schedule.

**SCHEDULE 4**

Section 91

**VALUATION PROVISIONS****PART I**

1. The valuation and report required by section 91 shall be made by an independent person, that is to say a person qualified at the time of the report to be appointed, or continue to be, an auditor of the company.

2. However, where it appears to the independent person (in this Schedule referred to as “the valuer”) to be reasonable for the valuation of the consideration, or part of it, to be made (or for him to accept such a valuation) by another person who—

- (a) appears to him to have the requisite knowledge and experience to value the consideration or that part of it; and
- (b) is not an officer or employee of the company or any other corporate body which is that company’s subsidiary or holding company or a subsidiary of that company’s holding company or a partner or employee of such an officer or employee,

he may arrange for or accept such a valuation, together with a report which will enable him to make his own report under this Part and provide the note required by paragraph 6.

3. The reference in paragraph 2(b) to an officer or employee does not include an auditor.

4. The valuer’s report shall state—

- (a) the nominal value of the shares to be wholly or partly paid for by the consideration in question;
- (b) the amount of any premium payable on the shares;
- (c) the description of the consideration and, as respects so much of the consideration as he himself has valued, a description of that part of the consideration, the method used to value it and the date of the valuation; and
- (d) the extent to which the nominal value of the shares and any premium are to be treated as paid up—
  - (i) by the consideration, and



(ii) in cash.

5. Where the consideration or part of it is valued by a person other than the valuer himself, the latter's report shall state that fact and also—

- (a) state the former's name and what knowledge and experience he has to carry out the valuation; and
- (b) describe so much of the consideration as was valued by the other person, and the method used to value it, and specify the date of the valuation.

6. The valuer's report shall contain or be accompanied by a note by him—

- (a) in the case of a valuation made by a person other than himself, that it appeared to himself reasonable to arrange for it to be so made or to accept a valuation so made;
- (b) whoever made the valuation, that the method of valuation was reasonable in all the circumstances;
- (c) that it appears to the valuer that there has been no material change in the value of the consideration in question since the valuation; and
- (d) that on the basis of the valuation the value of the consideration, together with any cash by which the nominal value of the shares or any premium payable on them is to be paid up, is not less than so much of the total of the nominal value and the whole of any such premium as is treated as paid up by the consideration and any such cash.

7. Where the consideration to be valued is accepted partly in payment up of the nominal value of the shares and any premium and partly for some other consideration given by the company, section 91 and the above provisions of this Part apply as if references to the consideration accepted by the company included the proportion of that consideration, which is properly attributable to the payment up of that value and any premium and—

- (a) the valuer shall carry out, or arrange for, such other valuations as will enable him to determine that proportion; and
- (b) his report shall state what valuations have been made under this paragraph and also the reason for, and method and date of any such valuation and any other matters which may be relevant to that determination.

## PART II

8. Paragraphs 1 to 3 and 5 apply to the valuation and report for the purposes of section 93.

9. The valuer's report for those purposes shall—

- (a) state the consideration to be received by the company, describing the asset in question (specifying the amount to be received in cash) and the consideration to be given by the company (specifying the amount to be given in cash);
- (b) state the method and date of valuation;
- (c) contain or be accompanied by a note as to the matters mentioned in paragraph 6(a) to (c); and
- (d) contain or be accompanied by a note that on the basis of the valuation the value of the consideration to be received by the company is not less than the value of the consideration to be given by it.

10. A reference in section 93 or this Part to consideration given for the transfer of an asset includes consideration given partly for its transfer; but—

- (a) the value of any consideration partly so given shall be taken as the proportion of the consideration properly attributable to its transfer;
- (b) the valuer shall carry out or arrange for such valuations of anything else as will enable him to determine that proportion; and
- (c) his report for the purposes of section 93 shall state what valuation has been made under this paragraph and also the reason for, and method and date of, any such valuation and any other matters which may be relevant to that determination.

### **PART III**

#### **ENTITLEMENT OF VALUER TO FULL DISCLOSURE**

11. A person carrying out a valuation or making a report under section 91 or 93, with respect to any consideration proposed to be accepted or given by a company, is entitled to require from the officers of the company such information and explanation as he thinks necessary to enable him to carry out the valuation or make the report and provide a note under paragraph 6 of Part I or (as the case may be) paragraph 2(c) of Part II.

12. A person who knowingly or recklessly makes a statement which—

- (a) is misleading, false or deceptive in a material particular; and
- (b) is a statement to which this paragraph applies,

shall be guilty of an offence and liable on summary conviction to imprisonment for a term of 6 months or to a fine up to a maximum of level 5 on the standard scale or both.

13. Paragraph 12 applies to any statement made (whether orally or in writing) to a person carrying out a valuation or making a report under Part I or II, being a statement which conveys or purports to convey any information or explanation which that person requires, or may require, under paragraph 11.

## SCHEDULE 5

Section 188

**Form of Annual Return of a Company having a Share Capital:-**  
As required by PART VI of the Companies Act (Section 188)

**Company  
Number**

.....  
.....

**Company  
Name**

.....  
.....

**Registered  
Office  
address:-**

.....  
.....  
.....  
.....

**Annual Return made up to the ..... day of .....**

**Summary of Share Capital and Shares:**

1. Nominal Share Capital .....  
divided into ..... Ordinary Shares of  
..... Each
2. Total Number of Shares taken up to the  
..... day of ..... being the  
date ..... of ..... the .....  
Return.....  
.....
3. Number of Shares issued subject to  
payment ..... wholly ..... in .....  
Cash.....
4. Number of Shares issued as fully paid  
up otherwise than in Cash .....  
.....
5. Number of Shares issued as partly paid

- up to the extent of ..... per share  
otherwise than in Cash .....
- .....
6. Number of .....Shares (if any)  
issued at a Discount .....
- .....
7. Number of ..... Shares (if  
any) issued at a Discount .....
- .....
8. Total amount of discount on the issue  
of Shares which has not been written  
off at the date of the Return .....
- .....
- .
9. There has been called up on each of  
.....Shares .....
- .....
10. There has been called up on each of  
.....Shares..... .....
- .....
11. There has been called up on each of  
.....Shares..... .....
- .....
12. Total Amount of Calls received,  
including Payments on Applications .....  
and Allotments
13. Total Amount (if any) agreed to be  
considered as paid on  
.....  
which have been issued as fully paid up .....  
otherwise than in  
Cash.....
14. Total Amount (if any) agreed to be  
considered as paid on  
..... Shares

- which have been issued as partly paid  
up to the extent of .....per .....  
Share otherwise than in  
Cash.....
15. Total Amount of Calls unpaid .....
- .....
16. Total Amount of the sums (if any) paid  
by way of Commission in respect of  
any Shares or Debentures or allowed by  
way of Discount in respect of any  
Debenture since the date of the last .....  
Annual Return  
.....
17. Total Number of Shares forfeited .....
- .....
18. Total Amount paid (if any) on Shares .....  
forfeited
19. Total Amount of Indebtedness of the  
Company in respect of all Mortgages  
and charges of the kind which are  
required to be registered with the  
Registrar of Companies under the .....  
Companies Act  
.....

**Delivered for filing by:-**

Name

Address

Email

**List of Persons holding Shares in  
LIMITED**

on the .....day of ..... and of Persons  
who have held Shares therein at any time since the date of the Last Annual  
Return, or (in the case of the first Return) of the Incorporation of the  
Company, showing their

Folio in Register Ledger containing Particulars	NAMES, ADDRESSES, AND OCCUPATIONS		
	Given Names & Surname	Address	Occupation

--	--	--	--

Names and Addresses and an Account of Shares so held.

ACCOUNT OF SHARES					
Number of Shares held by existing Members at date of Return	Particulars of Shares transferred since the date of the last Return, (or (in the case of the first Return) of the Incorporation of the Company, by persons who are still Members		Particulars of Shares transferred since the date of the last Return, or (in the case of the first Return) of the Incorporation of the Company, by persons who have ceased to be Members		REMARKS
	Number	Date of Registration of Transfer	Number	Date of Registration of Transfer	

--	--	--	--	--	--

**Certificate to be given by a Private Company**

**I certify that the Company has not since *\*the date of the last Annual Return, Incorporation* issued any invitation to the public to subscribe for any Shares or Debenture of the Company**

**Signature** \_\_\_\_\_

\_\_\_\_\_  
**Write Name in Full**

Director,

Manager or Secretary

**\*Delete as appropriate**

**Particulars of Directors of  
Limited  
at the date of the Annual Return**

The Present Fore Name or Names and Surname	Any former Fore Name or Names or Surname	Nation ality	Nation- ality of Origin	Usual Residen- -tial Address	Business Occupation

**Particulars of Secretaries of  
Limited**



**at the date of the Annual Return**

The Present Fore Name or Names and Surname	Any former Fore Name or Names or Surname	Nation-ality	Nation-ality of Origin	Usual Residen-tial Address	Business Occupation

**Main Activity of the Company**

**Main Activity of the Company**  
**Enter Reference Code as per**  
**attached schedule:**

**Size of Company**

			<b>Please tick the appropriate box</b>
<b>Size of large Company as company per Schedule 9 of the medium-sized Companies Act 2014</b>	<b>large company</b>	<input type="checkbox"/>	
	<b>medium-sized company</b>	<input type="checkbox"/>	
	<b>small company</b>	<input type="checkbox"/>	
	<b>micro-entity</b>	<input type="checkbox"/>	

**Number of Employees**

	<b>Enter number of employees</b>
<b>Number of Employees excluding directors</b>	<input type="text"/>

	<b>dd/mm</b>
<b>Financial Year End</b>	<input type="text"/>
	<input type="text"/>

Signature\_\_\_\_\_

\_\_\_\_\_  
**Write Name in Full**

Director, Manager or Secretary

**Classification of a company's main activity**

**A company must define its main activity and provide the information to Companies House by entering the relevant activity code in the box provided.**

**A complete list of activities and their corresponding codes can be found on the Companies House website at: [www.companieshouse.gi](http://www.companieshouse.gi).**

**SCHEDULE 6****DOCUMENTS AND INFORMATION SENT OR SUPPLIED TO A COMPANY****PART 1***Application of Schedule*

1.(1) This Schedule applies to documents or information sent or supplied to a company.

(2) It does not apply to documents or information sent or supplied by another company (see section 482(3) and Schedule 7).

**PART 2****COMMUNICATIONS IN HARD COPY FORM**

2. A document or information is validly sent or supplied to a company if it is sent or supplied in hard copy form in accordance with this Part of this Schedule.

*Method of communication in hard copy form*

3.(1) A document or information in hard copy form may be sent or supplied by hand or by post to an address (in accordance with paragraph 4).

(2) For the purposes of this Schedule, a person sends a document or information by post if he posts a prepaid envelope containing the document or information.

*Address for communications in hard copy form*

4. A document or information in hard copy form may be sent or supplied—

- (a) to an address specified by the company for the purpose;
- (b) to the company's registered office;
- (c) to an address to which any provision of this Act authorises the document or information to be sent or supplied.

**PART 3****COMMUNICATIONS IN ELECTRONIC FORM**

5. A document or information is validly sent or supplied to a company if it is sent or supplied in electronic form in accordance with this Part of this Schedule.

*Conditions for use of communications in electronic form*

6. A document or information may only be sent or supplied to a company in electronic form if—

- (a) the company has agreed (generally or specifically) that the document or information may be sent or supplied in that form (and has not revoked that agreement); or
- (b) the company is deemed to have so agreed by a provision in this Act.

*Address for communications in electronic form*

7.(1) Where the document or information is sent or supplied by electronic means, it may only be sent or supplied to an address—

- (a) specified for the purpose by the company (generally or specifically); or
- (b) deemed by a provision in this Act to have been so specified.

(2) Where the document or information is sent or supplied in electronic form by hand or by post, it must be sent or supplied to an address to which it could be validly sent if it were in hard copy form.

**PART 4**

**OTHER AGREED FORMS OF COMMUNICATION**

8. A document or information that is sent or supplied to a company otherwise than in hard copy form or electronic form is validly sent or supplied if it is sent or supplied in a form or manner that has been agreed by the company.

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**SCHEDULE 7****COMMUNICATIONS BY A COMPANY****PART 1***Application of this Schedule*

1. This Schedule applies to documents or information sent or supplied by a company.

**PART 2****COMMUNICATIONS IN HARD COPY FORM**

2. A document or information is validly sent or supplied by a company if it is sent or supplied in hard copy form in accordance with this Part of this Schedule.

*Method of communication in hard copy form*

- 3.(1) A document or information in hard copy form must be—
- (a) handed to the intended recipient; or
  - (b) sent or supplied by hand or by post to an address (in accordance with paragraph 4).
- (2) For the purposes of this Schedule, a person sends a document or information by post if he posts a prepaid envelope containing the document or information.

*Address for communications in hard copy form*

- 4.(1) A document or information in hard copy form may be sent or supplied by the company—
- (a) to an address specified for the purpose by the intended recipient;
  - (b) to a company at its registered office;
  - (c) to a person in his capacity as a member of the company at his address as shown in the company's register of members;
  - (d) to a person in his capacity as a director of the company at his address as shown in the company's register of directors;

- (e) to an address to which any provision of this Act authorises the document or information to be sent or supplied.

(2) Where the company is unable to obtain an address falling within subparagraph (1), the document or information may be sent or supplied to the intended recipient's last address known to the company.

### **PART 3**

#### **COMMUNICATIONS IN ELECTRONIC FORM**

5. A document or information is validly sent or supplied by a company if it is sent in electronic form in accordance with this Part of this Schedule.

##### *Agreement to communications in electronic form*

6. A document or information may only be sent or supplied by a company in electronic form—

- (a) to a person who has agreed (generally or specifically) that the document or information may be sent or supplied in that form (and has not revoked that agreement); or
- (b) to a company that is deemed to have so agreed by a provision in this Act.

##### *Address for communications in electronic form*

7.(1) Where the document or information is sent or supplied by electronic means, it may only be sent or supplied to an address—

- (a) specified for the purpose by the intended recipient (generally or specifically); or
- (b) where the intended recipient is a company, deemed by a provision of this Act to have been so specified.

(2) Where the document or information is sent or supplied in electronic form by hand or by post, it must be—

- (a) handed to the intended recipient; or
- (b) sent or supplied to an address to which it could be validly sent if it were in hard copy form.

### **PART 4**

#### **COMMUNICATIONS BY MEANS OF A WEBSITE**

*Use of website*

8. A document or information is validly sent or supplied by a company if it is made available on a website in accordance with this Part of this Schedule.

*Agreement to use of website*

9. A document or information may only be sent or supplied by the company to a person by being made available on a website if the person—

- (a) has agreed (generally or specifically) that the document or information may be sent or supplied to him in that manner; or
- (b) is taken to have so agreed under—
  - (i) paragraph 10 (members of the company etc), or
  - (ii) paragraph 11 (debenture holders), and has not revoked that agreement.

*Deemed agreement of members of company etc to use of website*

10.(1) This paragraph applies to a document or information to be sent or supplied to a person—

- (a) as a member of the company; or
- (b) as a person nominated by a member in accordance with the company's articles to enjoy or exercise all or any specified rights of the member in relation to the company.

(2) To the extent that—

- (a) the members of the company have resolved that the company may send or supply documents or information to members by making them available on a website; or
- (b) the company's articles contain provision to that effect,

a person in relation to whom the following conditions are met is taken to have agreed that the company may send or supply documents or information to him in that manner.

(3) The conditions are that—

- (a) the person has been asked individually by the company to agree that the company may send or supply documents or

information generally, or the documents or information in question, to him by means of a website; and

- (b) the company has not received a response within the period of 28 days beginning with the date on which the company's request was sent.

(4) A person is not taken to have so agreed if the company's request—

- (a) did not state clearly what the effect of a failure to respond would be; or
- (b) was sent less than 12 months after a previous request made to him for the purposes of this paragraph in respect of the same or a similar class of documents or information.

(5) Section 206 applies to a resolution under this paragraph.

*Deemed agreement of debenture holders to use of website*

11.(1) This paragraph applies to a document or information to be sent or supplied to a person as holder of a company's debentures.

(2) To the extent that—

- (a) the relevant debenture holders have duly resolved that the company may send or supply documents or information to them by making them available on a website; or
- (b) the instrument creating the debenture in question contains provision to that effect, a debenture holder in relation to whom the following conditions are met is taken to have agreed that the company may send or supply documents or information to him in that manner.

(3) The conditions are that—

- (a) the debenture holder has been asked individually by the company to agree that the company may send or supply documents or information generally, or the documents or information in question, to him by means of a website; and
- (b) the company has not received a response within the period of 28 days beginning with the date on which the company's request was sent.

(4) A person is not taken to have so agreed if the company's request—



- (a) did not state clearly what the effect of a failure to respond would be; or
  - (b) was sent less than twelve months after a previous request made to him for the purposes of this paragraph in respect of the same or a similar class of documents or information.
- (5) For the purposes of this paragraph—
- (a) the relevant debenture holders are the holders of debentures of the company ranking *pari passu* for all purposes with the intended recipient; and
  - (b) a resolution of the relevant debenture holders is duly passed if they agree in accordance with the provisions of the instruments creating the debentures.

*Availability of document or information*

12.(1) A document or information authorised or required to be sent or supplied by means of a website must be made available in a form, and by a means, that the company reasonably considers will enable the recipient—

- (a) to read it; and
  - (b) to retain a copy of it.
- (2) For this purpose a document or information can be read only if—
- (a) it can be read with the naked eye; or
  - (b) to the extent that it consists of images (for example photographs, pictures, maps, plans or drawings), it can be seen with the naked eye.

*Notification of availability*

13.(1) The company must notify the intended recipient of—

- (a) the presence of the document or information on the website;
  - (b) the address of the website;
  - (c) the place on the website where it may be accessed; and
  - (d) how to access the document or information.
- (2) The document or information is taken to be sent—

- (a) on the date on which the notification required by this paragraph is sent; or
- (b) if later, the date on which the document or information first appears on the website after that notification is sent.

*Period of availability on website*

14.(1) The company must make the document or information available on the website throughout–

- (a) the period specified by any applicable provision of this Act; or
- (b) if no such period is specified, the period of 28 days beginning with the date on which the notification required under paragraph 13 is sent to the person in question.

(2) For the purposes of this paragraph, a failure to make a document or information available on a website throughout the period mentioned in subparagraph (1) shall be disregarded if–

- (a) it is made available on the website for part of that period; and
- (b) the failure to make it available throughout that period is wholly attributable to circumstances that it would not be reasonable to have expected the company to prevent or avoid.

**PART 5**

**OTHER AGREED FORMS OF COMMUNICATION**

15. A document or information that is sent or supplied otherwise than in hard copy or electronic form or by means of a website is validly sent or supplied if it is sent or supplied in a form or manner that has been agreed by the intended recipient.

**PART 6**

**SUPPLEMENTARY PROVISIONS**

*Joint holders of shares or debentures*

16.(1) This paragraph applies in relation to documents or information to be sent or supplied to joint holders of shares or debentures of a company.

(2) Anything to be agreed or specified by the holder must be agreed or specified by all the joint holders.

(3) Anything authorised or required to be sent or supplied to the holder may be sent or supplied either–

- (a) to each of the joint holders; or
- (b) to the holder whose name appears first in the register of members or the relevant register of debenture holders.

(4) This paragraph has effect subject to anything in the company's articles.

*Death or bankruptcy of holder of shares*

17.(1) This paragraph has effect in the case of the death or bankruptcy of a holder of a company's shares.

(2) Documents or information required or authorised to be sent or supplied to the member may be sent or supplied to the persons claiming to be entitled to the shares in consequence of the death or bankruptcy–

- (a) by name; or
- (b) by the title of representatives of the deceased, or trustee of the bankrupt, or by any like description, at the address in the United Kingdom supplied for the purpose by those so claiming.

(3) Until such an address has been so supplied, a document or information may be sent or supplied in any manner in which it might have been sent or supplied if the death or bankruptcy had not occurred.

(4) This paragraph has effect subject to anything in the company's articles.

## SCHEDULE 8

Section 211

**INVESTIGATION OF COMPANIES AND THEIR AFFAIRS:  
REQUISITION OF DOCUMENTS***Appointment and functions of inspectors***Investigation of a company on its own application or that of its members.**

1.(1) The Minister may appoint one or more competent inspectors to investigate the affairs of a company and to report on them in such manner as he may direct.

(2) The appointment may be made—

- (a) in the case of a company having a share capital, on the application either of not less than 200 members or of members holding not less than one-tenth of the shares issued;
- (b) in the case of a company not having a share capital, on the application of not less than one-fifth in number of the persons on the company's register of members; and
- (c) in any case, on application of the company.

(3) The application shall be supported by such evidence as the Minister may require for the purpose of showing that the applicant or applicants have good reason for requiring the investigation.

(4) The Minister may, before appointing inspectors, require the applicant or applicants to give security, to such amount as he may by order specify, for payment of the costs of the investigation.

(5) The Minister may at any time terminate the appointment of the inspectors.

**Other company investigations.**

2.(1) The Minister shall appoint one or more competent inspectors to investigate the affairs of a company and report on them in such manner as he directs, if the court by order declares that its affairs ought to be so investigated.

(2) The Minister may make such an appointment if it appears to him that there are circumstances suggesting—

- (a) that the company's affairs are being or have been conducted with intent to defraud its creditors or the creditors of any other person, or otherwise for a fraudulent or unlawful purpose, or in a manner which is unfairly prejudicial to some part of its members; or
- (b) that any actual or proposed act or omission of the company (including an act or omission on its behalf) is or would be so prejudicial, or that the company was formed for any fraudulent or unlawful purpose; or
- (c) that persons concerned with the company's formation or the management of its affairs have in connection with the company been guilty of fraud, misfeasance or other misconduct towards it or towards its members; or
- (d) that the company's members have not been given all the information with respect to its affairs which they might reasonably expect; or
- (e) that the company's affairs are being or have been conducted in a manner detrimental to the reputation of Gibraltar as a financial centre or otherwise contrary to the public interest.

(3) Subparagraphs (1) and (2) are without prejudice to the powers of the Minister under paragraph 1; and the power conferred by subparagraph (2) is exercisable with respect to a corporate body notwithstanding that it is in the course of being voluntarily wound up.

(4) The reference in subparagraph (2) (a) to a company's members includes any person who is not a member but to whom shares in the company have been transferred or transmitted by operation of law.

#### **Inspectors' powers during investigation.**

3.(1) If inspectors appointed under paragraph 1 or 2 to investigate the affairs of a company think it necessary for the purposes of their investigation to investigate also the affairs of another corporate body which is or at any relevant time has been the company's subsidiary or holding company, or a subsidiary of its holding company or a holding company of its subsidiary, they have power to do so; and they shall report on the affairs of the other corporate body so far as they think that the results of their investigation of its affairs are relevant to the investigation of the affairs of the company first mentioned above.

(2) Inspectors appointed under either paragraph may at any time in the course of their investigation, without the necessity of making an interim

report, inform the Minister of matters coming to their knowledge as a result of the investigation tending to show that an offence has been committed.

**Production of documents and evidence to inspectors.**

4.(1) When inspectors are appointed under paragraph 1 or 2, it is the duty of all officers and agents of the company, and of all officers and agents of any other corporate body whose affairs are investigated under paragraph 3(1)–

- (a) to produce to the inspectors all books and documents of or relating to the company or, as the case may be, the other corporate body which are in their custody or power;
- (b) to attend before the inspectors when required to do so; and
- (c) otherwise to give the inspectors all assistance in connection with the investigation which they are reasonably able to give.

(2) If the inspectors consider that a person other than an officer or agent of the company or other corporate body is or may be in possession of information concerning its affairs, they may require that person to produce to them any books or documents in his custody or power relating to the company or other corporate body, to attend before them and otherwise to give them all assistance in connection with the investigation which he is reasonably able to give; and it is that person's duty to comply with the requirement.

(3) An inspector may examine on oath the officers and agents of the company or other corporate body, and any such person as is mentioned in subparagraph (2), in relation to the affairs of the company or other body, and may administer an oath accordingly.

(4) In this paragraph a reference to officers or to agents includes past, as well as present, officers or agents (as the case may be); and "agents", in relation to a company or other corporate body, includes its bankers and solicitors and persons employed by it as auditors, whether these persons are or are not officers of the company or other corporate body.

(5) An answer given by a person to a question put to him in exercise of powers conferred by this paragraph (whether as it has effect in relation to an investigation under any of paragraphs 1 to 3, or as applied by any other paragraph in this Schedule) may be used in evidence against him.

**Power of inspector to call for directors' bank accounts.**

5. If an inspector has reasonable grounds for believing that a director, or past director, of the company or other corporate body whose affairs he is

investigating maintains or has maintained a bank account of any description (whether alone or jointly with another person and whether in Gibraltar or elsewhere), into or out of which there has been paid—

- (a) the emoluments or part of the emoluments of his office as director, particulars of which have not been disclosed to the shareholders of the company or other corporate body; or
- (b) any money which has resulted from or been used in the financing of any transaction, arrangement or agreement, entered into by the company or other corporate body and which has not been recorded in the annual accounts; or
- (c) any money which has been in any way connected with an act or omission, or series of acts or omissions, which on the part of that director constituted misconduct (whether fraudulent or not) towards the company or corporate body or its members,

the inspector may require the director to produce to him all documents in the director's possession, or under his control, relating to that bank account.

**Obstruction of inspectors treated as contempt of court.**

6.(1) When inspectors are appointed under paragraph 1 or 2 to investigate the affairs of a company, the following applies in the case of—

- (a) any officer or agent of the company;
- (b) any officer or agent of another corporate body whose affairs are investigated under paragraph 3;
- (c) any such person as is mentioned in paragraph 4(2).

(2) Paragraph 4(4) applies with regard to references in subparagraph (1) to an officer or agent.

(3) If that person—

- (a) refuses to produce any book or document which it is his duty under paragraph 4 or 5 to produce; or
- (b) refuses to attend before the inspectors when required to do so; or
- (c) refuses to answer any question put to him by the inspectors with respect to the affairs of the company or other corporate body (as the case may be),

the inspectors may certify the refusal in writing to the court.

(4) The court may then enquire into the case; and after hearing any witnesses who may be produced against or on behalf of the alleged offender and after hearing any statement which may be offered in defence, the court may punish the offender in like manner as if he had been guilty of contempt of the court.

**Inspectors' reports.**

7.(1) The inspectors may, and if so directed by the Minister shall, make interim reports to the Minister, and on the conclusion of their investigation shall make a final report to him, and shall forward a copy of every such report to the Attorney-General. Any such report shall be written or printed, as the Minister directs.

(2) If the inspectors were appointed under paragraph 2 in pursuance of an order of the court, the Minister shall furnish a copy of any report of theirs to the court.

(3) In any case the Minister may, if he thinks fit—

- (a) forward a copy of any report made by the inspectors to the company's registered office;
- (b) furnish a copy on request and on payment of the prescribed fee to—
  - (i) any member of the company or other corporate body which is the subject of the report,
  - (ii) any person whose conduct is referred to in the report,
  - (iii) the auditors of that company or corporate body,
  - (iv) the applicants for the investigation,
  - (v) any other person whose financial interests appear to the Minister to be affected by the matters dealt with in the report, whether as a creditor of the company or corporate body, or otherwise; and
- (c) cause any such report to be printed and published.

(4) The Minister may require former inspectors whose appointments have been terminated, to provide information which may assist the inspectors in preparing their report.



**Power to bring civil proceedings on company's behalf.**

8.(1) If, from any report made under paragraph 7 or from information or documents obtained under paragraph 15 or 16 below, it appears to the Attorney-General that any civil proceedings ought in the public interest to be brought by any corporate body, he may himself bring such proceedings in the name and on behalf of the corporate body.

(2) The Attorney-General shall indemnify the corporate body against any costs or expenses incurred by it in or in connection with proceedings brought under this paragraph.

**Expenses of investigating a company's affairs.**

9.(1) The expenses of and incidental to an investigation by inspectors appointed by the Minister shall, in the first instance, be a charge to the Consolidated Fund; but shall be recoverable from the persons mentioned in the following 4 subparagraphs, to the extent there specified.

(2) A person who is convicted on a prosecution instituted as a result of the investigation, or is ordered to pay the whole or any part of the costs of proceedings brought under paragraph 8, may in the same proceedings be ordered to pay those expenses to such extent as may be specified in the order.

(3) A corporate body in whose name proceedings are brought under that paragraph is liable to repay to the Consolidated Fund the amount or value of any sums or property recovered by it as a result of those proceedings; and any amount for which a corporate body is liable under this subparagraph is a first charge on the sums or property recovered.

(4) A corporate body dealt with by the inspectors' report, where the inspectors were appointed otherwise than of the Minister's own motion, is liable except where it was the applicant for the investigation to repay to the Consolidated Fund the full amount of those expenses except so far as the Minister otherwise directs.

(5) The applicant or applicants for the investigation, where the inspectors were appointed under paragraph 1, is or are liable to repay to the Consolidated Fund the full amount of those expenses except so far as the Minister otherwise directs.

(6) The report of inspectors appointed otherwise than of the Minister's own motion may, if they think fit, and shall if the Minister so directs, include a recommendation as to the directions (if any) which they think appropriate, in the light of their investigation, to be given under subparagraph (4) or (5) above.

(7) For purposes of this paragraph, any costs or expenses charged to the Consolidated Fund in or in connection with proceedings brought under paragraph 8 (including expenses incurred under subparagraph (2) of it) are to be treated as expenses of the investigation giving rise to the proceedings.

(8) Any liability to repay to the Consolidated Fund imposed by subparagraphs (2) and (3) above is (subject to satisfaction of his right to repayment) a liability also to indemnify all persons against liability under subparagraphs (4) and (5); and any such liability imposed by subparagraph (2) is (subject as mentioned above) a liability also to indemnify all persons against liability under subparagraph (3).

(9) A person liable under any one of those subparagraphs is entitled to contribution from any other person liable under the same subparagraph, according to the amount of their respective liabilities under it.

**Power of the Minister to present winding-up petition.**

10. If in the case of a corporate body liable to be wound up under this Act it appears to the Minister from a report made by inspectors under paragraph 7, or from information or documents obtained under paragraphs 15 or 16 below, that it is expedient in the public interest that the body should be wound up, he may (unless the body is already being wound up by the court) present a petition for it to be so wound up if the court thinks it just and equitable for it to be so.

**Inspectors' report to be evidence.**

11.(1) A copy of any report of inspectors appointed under paragraph 1 or 2, certified by the Minister to be a true copy, is admissible in any legal proceedings as evidence of the opinion of the inspectors in relation to any matter contained in the report.

(2) A document purporting to be such a certificate as is mentioned above shall be received in evidence and be deemed to be such a certificate, unless the contrary is proved.

*Other powers of investigation available to the Minister*

**Power to investigate company ownership.**

12.(1) Where it appears to the Minister that there is good reason to do so, he may appoint one or more competent inspectors to investigate and report on the membership of any company, and otherwise with respect to the company, for the purpose of determining the true persons who are or have been financially interested in the success or failure (real or apparent) of the company or able to control or materially to influence its policy.

(2) The appointment of inspectors under this paragraph may define the scope of their investigation (whether as respects the matter or the period to which it is to extend or otherwise) and in particular may limit the investigation to matters connected with particular shares or debentures.

(3) If an application for an investigation under this paragraph with respect to particular shares or debentures of a company is made to the Minister by members of the company, and the number of applicants or the amount of the shares held by them is not less than that required for an application for the appointment of inspectors under paragraph 1(2) (a) and (b)–

- (a) the Minister shall appoint inspectors to conduct the investigation (unless he is satisfied that the application is vexatious); and
- (b) the inspectors' appointment shall not exclude from the scope of their investigation any matter which the application seeks to have included, except in so far as the Minister is satisfied that it is unreasonable for that matter to be investigated.

(4) Subject to the terms of their appointment, the inspectors' powers extend to the investigation of any circumstances suggesting the existence of an arrangement or understanding which, though not legally binding, is or was observed or likely to be observed in practice and which is relevant to the purposes of the investigation.

**Provisions applicable on investigation under paragraph 12.**

13.(1) For the purposes of an investigation under paragraph 12, paragraphs 3(1), 4, 6 and 7 apply with the necessary modifications of references to the affairs of the company or to those of any other corporate body, subject however to the following subparagraphs.

(2) Those paragraphs apply to–

- (a) all persons who are or have been, or whom the inspector has reasonable cause to believe to be or have been, financially interested in the success or failure or the apparent success or failure of the company or any other corporate body whose membership is investigated with that of the company, or able to control or materially influence its policy (including persons concerned only on behalf of others); and
- (b) any other person whom the inspector has reasonable cause to believe possesses information relevant to the investigation,

as they apply in relation to officers and agents of the company or the other corporate body (as the case may be).

(3) If the Minister is of the opinion that there is good reason for not divulging any part of a report made by virtue of paragraph 12 and this paragraph, he may under paragraph 7 disclose the report with the omission of that part; and he may cause to be kept by the Registrar a copy of the report with that part omitted or, in the case of any other such report, a copy of the whole report.

(4) The expenses of an investigation under paragraph 12 shall be defrayed by the Consolidated Fund.

**Power to obtain information as to those interested in shares, etc.**

14.(1) If it appears to the Minister that there is good reason to investigate the ownership of any shares in or debentures of a company and that it is unnecessary to appoint inspectors for the purpose, he may require any person whom he has reasonable cause to believe to have or to be able to obtain any information as to the present and past interests in those shares or debentures and the names and addresses of the persons interested and of any persons who act or have acted on their behalf in relation to the shares or debentures to give any such information to the Minister.

(2) For this purpose a person is deemed to have an interest in shares or debentures if he has any right to acquire or dispose of them or of any interest in them, or to vote in respect of them, or if his consent is necessary for the exercise of any of the rights of other persons interested in them, or if other persons interested in them can be required, or are accustomed, to exercise their rights in accordance with his instructions.

(3) A person who fails to give information required of him under this paragraph, or who in giving such information makes any statement which he knows to be false in a material particular, or recklessly makes any statement which is false in a material particular, shall be liable to imprisonment for 5 years and a fine.

*Requisition and seizure of books and papers*

**Minister's power to require production of documents.**

15.(1) The powers of this paragraph are exercisable in relation to the following bodies—

- (a) a company, formed and registered under this Act;
- (b) an unregistered company having its principal place of business in Gibraltar, and, for this purpose, the expression “unregistered company” includes any partnership, whether limited or not,

any association and any company other than a registered company; and

- (c) a corporate body, whether or not registered under Part XII which is carrying on business in Gibraltar or has at any time carried on business in Gibraltar.

(2) The Minister may at any time, if he thinks there is good reason to do so, give directions to any body requiring it, at a time and place as may be specified in the directions, to produce such books or papers as may be so specified.

(3) The Minister may at any time, if he thinks there is good reason to do so, authorise a public officer to require any such body to produce to him (the officer) at once any books or papers which the officer may specify, provided that such officer shall, if required by such a body, produce evidence of his authority.

(4) Where by virtue of subparagraph (2) or (3) the Minister or public officer has power to require the production of books or papers from any body, he or the officer has the like power to require production of those books or papers from any person who appears to him or the officer to be in possession of them; but where that person claims a lien on books or papers produced by him, the production is without prejudice to the lien.

(5) The power under this paragraph to require a body or other person to produce books or papers includes power—

- (a) if the books or papers are produced—
  - (i) to take copies of them or extracts from them, and
  - (ii) to require that person, or any other person who is a present or past officer of, or is or was at any time employed by, the body in question, to provide an explanation of any of them;
- (b) if the books or papers are not produced, to require the person who was required to produce them to state, to the best of his knowledge and belief, where they are.

(6) If the requirement to produce books or papers or provide an explanation or make a statement is not complied with, the body or other person on whom the requirement was so imposed shall be guilty of an offence and liable to a fine.

(7) However, where a person is charged with an offence under subparagraph (6) in respect of a requirement to produce any books or

papers, it is a defence to prove that they were not in his possession or under his control and that it was not reasonably practicable for him to comply with the requirement.

(8) A statement made by a person in compliance with such a requirement may be used in evidence against him.

**Entry and search of premises.**

16.(1) The following applies if a justice of the peace is satisfied on information on oath laid by a public officer authorised under paragraph 15(3), that there are reasonable grounds for suspecting that there are on any premises any books or papers of which production has been required under paragraph 15 and which have not been produced in compliance with that requirement.

(2) The justice may issue a warrant authorising any police officer, together with any other persons named in the warrant and any other police officers, to enter the premises specified in the information (using such force as is reasonably necessary for the purpose) and to search the premises and take possession of any books or papers appearing to be such books or papers as are mentioned above, or to take, in relation to any books or papers so appearing, any other steps which may appear to be necessary for preserving them and preventing interference with them.

(3) A warrant so issued continues in force until the end of 1 month after the date on which it is issued.

(4) Any books or papers of which possession is taken under this paragraph may be retained—

- (a) for a period of 3 months; or
- (b) if within that period any criminal proceedings such as are mentioned in paragraph 17 (1)(a) are begun (being proceedings to which the books or papers are relevant), until the conclusion of those proceedings.

(5) A person who obstructs the exercise of a right of entry or search conferred by a warrant issued under this paragraph, or who obstructs the exercise of a right so conferred to take possession of any books or papers, shall be guilty of an offence and liable to a fine.

**Provision for security of information obtained.**

17.(1) No information or document relating to a body which has been obtained under paragraph 15 or 16 shall, without the previous consent in

writing of that body, be published or disclosed, except to a competent authority, unless the publication or disclosure is required—

- (a) with a view to the institution of, or otherwise for the purposes of, any criminal proceedings for an offence entailing misconduct in connection with the management of the body's affairs or misapplication or wrongful retention of its property;
- (b) for the purposes of the examination of any person by inspectors appointed under paragraph 1, 2 or 12 in the course of their investigation;
- (c) for the purpose of enabling the Minister or any other public officer to exercise, in relation to that or any other body, any of his functions under this Act or any other law;
- (d) for the purposes of proceedings under paragraph 16.

(2) A person who publishes or discloses any information or document in contravention of this paragraph shall be guilty of an offence and liable to imprisonment for 2 years and a fine.

(3) For the purposes of this paragraph in relation to any information or document relating to a body, each of the following is a competent authority—

- (a) an inspector appointed by the Minister under this Schedule;
- (b) the Attorney-General;
- (c) the Financial Secretary and any officer authorised by him;
- (d) the Commissioner of Banking and the Banking Supervisor;
- (e) the Commissioner of Insurance and the Insurance Supervisor;
- (f) the Registrar; and
- (g) any police officer.

**Punishment for destroying, mutilating etc., company documents.**

18.(1) A person, being an officer of any such body as is mentioned in subparagraphs (a) to (c) of paragraph 15(1) who—

- (a) destroys, mutilates or falsifies, or is privy to the destruction, mutilation or falsification of a document affecting or relating to the body's property or affairs; or

- (b) makes, or is privy to the making of, a false entry in such a document,

shall be guilty of an offence, unless he proves that he had no intention to conceal the state of affairs of the body or to defeat the law.

(2) Such a person as is mentioned in subsection (1) who fraudulently either parts with, alters or makes an omission in any such document or is privy to fraudulent parting with, fraudulent altering or fraudulent making of an omission in, any such document, shall be guilty of an offence.

(3) A person guilty of an offence under this paragraph is liable to imprisonment for 10 years and a fine.

**Punishment for furnishing false information.**

19. A person who, in purported compliance with a requirement imposed under paragraph 15 to provide an explanation or make a statement, provides or makes an explanation or statement which he knows to be false in a material particular or recklessly provides or makes an explanation or statement which is so false, shall be guilty of an offence and liable to imprisonment for 10 years and a fine.

*Supplementary*

**Privileged information.**

20.(1) Nothing in paragraphs 1 to 14 requires the disclosure to the Minister or to an inspector appointed by him—

- (a) by any person of information which he would in an action in the Supreme Court be entitled to refuse to disclose on grounds of legal professional privilege except, if he is a lawyer, the name and address of his client;
- (b) by a company's bankers (as such) of information as to the affairs of any of their customers other than the company.

(2) Nothing in paragraphs 15 to 19 compels the production by any person of a document which he would in an action in the Supreme Court be entitled to refuse to produce on grounds of legal professional privilege, or authorises the taking of possession of any such document which is in the person's possession.

(3) The Minister shall not under paragraph 15 require, or authorise a public officer to require, the production by a person carrying on the business of banking of a document relating to the affairs of a customer of his unless either it appears to the Minister that it is necessary to do so for the purpose



of investigating the affairs of the first-mentioned person, or the customer is a person on whom a requirement has been imposed under that section, or under section 98 of the Insurance Companies Act, 1987.

(4) Subject to the provisions of this paragraph, any requirement or direction made under paragraphs 4 or 15, or any duty or obligation imposed by the provisions of either paragraph, shall have effect notwithstanding any obligation as to secrecy or other restriction on the disclosure of information or the production of documents imposed by legislation, contract or otherwise.

## **Investigation of overseas companies.**

21. Paragraphs 2 to 7, 9, 11 and 20(1) apply to all corporate bodies incorporated outside Gibraltar which are carrying on business in Gibraltar or have at any time carried on business there as if they were companies under this Act, but subject to such (if any) adaptations and modifications as may be specified by regulations made by the Minister.

**SCHEDULE 9**

Section 293

**DEFINITION OF MICRO-ENTITY, SMALL, MEDIUM-SIZED AND  
LARGE COMPANIES**

1ZA. Subject to paragraph 3 in respect of any financial year (“the relevant year”) a company is a micro-entity if, in respect of the year or years specified in paragraph 4(2), the entity satisfied at least two of the following conditions–

- (a) that the amount of the entity’s net turnover did not exceed £632,000;
- (b) that its balance sheet total did not exceed £316,000;
- (c) that the average number of persons employed by the entity in each year did not exceed 10.

1. Subject to paragraph 3 in respect of any financial year (“the relevant year”) a company is a small company if, in respect of the year or years specified in paragraph 4(2), the company satisfied at least two of the following conditions–

- (a) that the amount of the company’s net turnover did not exceed £10.2 million;
- (b) that its balance sheet total did not exceed £5.1 million;
- (c) that the average number of persons employed by the company in each year did not exceed 50.

2. Subject to paragraph 3 in respect of any financial year (“the relevant year”) a company is a medium-sized company if, in respect of the year or years specified in paragraph 4(2), the company satisfied was not a micro-entity or small company and at least two of the following conditions–

- (a) that the amount of its net turnover did not exceed £36 million;
- (b) that its balance sheet total did not exceed £18 million;
- (c) that the average number of persons employed by the company in each year did not exceed 250.

2A. In respect of any financial year (“the relevant year”) a company is a large company if, in respect of the year or years specified in paragraph 4(2), the company satisfied at least two of the following conditions—

- (a) that the amount of its net turnover exceeded £36 million;
- (b) that its balance sheet total exceeded £18 million;
- (c) that the average number of persons employed by the company in each year exceeded 250.

3. A company is not a micro-entity, a small company or a medium-sized company if it is, or was at any time within the financial year to which the accounts relate, a public company.

4.(1) In paragraphs 1 and 2 “net turnover” means the amounts derived from the provision of goods and services falling within the company’s ordinary activities, after deduction of trade discounts and sales-based taxes (for example excise duty and value added tax).

(2) The following years are specified for the purposes of paragraphs 1ZA, 1, 2 or 2A—

- (a) the relevant year, if that is the company’s first financial year;  
or
- (b) if a micro-entity, small, medium-sized or large company exceeds or ceases to exceed the limits of more than one of the conditions in paragraphs 1ZA, 1, 2 or 2A in a financial year, that fact will not affect its qualification as a micro-entity, small, medium-sized or large company for the relevant year unless it occurs in 2 consecutive years.

5. In this Schedule, balance sheet total, in relation to any financial year of a company means—

- (a) in the case of Non-IAS accounts—
  - (i) the aggregate of the amounts shown in the balance sheet under the headings corresponding to items A to D of Format I set out in Schedule 11, or
  - (ii) if Format 2 is adopted, the aggregate of the amounts shown under the general heading “ASSETS”;
- (b) in the case of IAS accounts, the aggregate of the amounts shown as assets in the balance sheet.

6. In the application of this Schedule to any year which is a financial year of a company, but not a year, the maximum figures for turnover set out in paragraphs 1 and 2 must be proportionately adjusted.

**SCHEDULE 10****FORM OF STATEMENT TO BE PUBLISHED BY INSURANCE  
COMPANIES AND DEPOSIT, PROVIDENT, OR BENEFIT  
SOCIETIES**

\* The share capital of the company is , divided into  
shares of each.

The number of shares issued is

Calls to the amount of pounds per share have been made, under which  
the sum of pounds has been received.

The liabilities of the company on the first day of January (or July) were—

Debts owing to sundry persons by the company.

On judgment, £  
On specialty, £  
On notes or bills, £  
On simple contracts, £  
On estimated liabilities, £

The assets of the company on that day were—

Government securities (*stating them*)  
Bills of exchange and promissory notes, £  
Cash at the bankers, £  
Other securities, £

*\* If the company has no share capital the portion of the  
statement relating to capital and shares must be omitted.*

**SCHEDULE 11**

Section 245

**BALANCE SHEET FORMAT 1**

A. Called up share capital not paid (1)

B. Fixed assets

I Intangible assets

1. Development costs
2. Concessions, patents, licences, trade marks, and similar rights and assets (2)
3. Goodwill (4)
4. Payments on account

II Tangible assets

1. Land and buildings (3)
2. Plant and machinery
3. Fixtures, fittings, tools and equipment
4. Payments on account and assets in course of construction

III Investments

1. Shares in group undertakings
2. Loans to group undertakings
3. Participating interests
4. Loans to undertakings in which the company has a participating interest
5. Other investments other than loans
6. Other loans
7. Own shares (5)

C. Current assets

I Stocks

1. Raw materials and consumables
2. Work in progress
3. Finished goods and goods for resale

4. Payments on account

## II Debtors (6)

1. Trade debtors
2. Amounts owed by group undertakings
3. Amounts owed by undertakings in which the company has a participating interest
4. Other debtors
5. Called up share capital not paid (1)
6. Prepayments and accrued income (7)

## III Investments

1. Shares in group undertakings
2. Own shares (5)
3. Other investments

## IV Cash at bank and in hand

### D. Prepayments and accrued income (7)

### E. Creditors amounts falling due within 1 year

1. Debenture loans (8)
2. Bank loans and overdrafts
3. Payments received on account (9)
4. Trade creditors
5. Bills of exchange payable
6. Amounts owed to group undertakings
7. Amounts owed to undertakings in which the company has a participating interest
8. Other creditors including taxation and social security (10)
9. Accruals and deferred income (11)

### F. Net current assets (liabilities) (12)

### G. Total assets less current liabilities

## H. Creditors amounts falling due after more than 1 year

1. Debenture loans (8)
2. Bank loans and overdrafts
3. Payments received on account (9)
4. Trade creditors
5. Bills of exchange payable
6. Amounts owed to group undertakings
7. Amounts owed to undertakings in which the company has a participating interest
8. Other creditors including taxation and social security (10)
9. Accruals and deferred income (11)

## I. Provisions for liabilities

1. Pensions and similar obligations
2. Taxation, including deferred taxation
3. Other provisions

## J. Accruals and deferred income (11)

## K. Capital and reserves

## I Called up share capital

## II Share premium account

## III Revaluation reserve

## IV Other reserves

1. Capital redemption reserve
2. Reserve for own shares
3. Reserves provided for by the articles of association
4. Other reserves, including the fair value reserve

## V Profit and loss account

**BALANCE SHEET FORMAT 2**



## ASSETS

### A. Called-up share capital not paid (1)

### B. Fixed assets

#### I Intangible assets

1. Development costs
2. Concessions, patents, licences, trade marks and similar rights and assets (2)
3. Goodwill (4)
4. Payments on account

#### II Tangible assets

1. Land and buildings (3)
2. Plant and machinery
3. Fixtures, fittings, tools and equipment
4. Payments on account and assets in course of construction

### III Investments

1. Shares in group undertakings
2. Loans to group undertakings
3. Participating interests
4. Loans to undertakings in which the company has a participating interest
5. Other investments other than loans
6. Other loans
7. Own shares (5)

### C. Current Assets

#### I Stocks

1. Raw materials and consumables
2. Work in progress
3. Finished goods and goods for resale
4. Payments on account

#### II Debtors (6)

1. Trade debtors
2. Amounts owed by group undertakings
3. Amounts owed by undertakings in which the company has a participating interest
4. Other debtors
5. Called-up share capital not paid (1)
6. Prepayments and accrued income (7)

### III Investments

1. Shares in group undertakings
2. Own shares (5)
3. Other investments

### IV Cash at bank and in hand

### D. Prepayments and accrued income (7)

## CAPITAL, RESERVES AND LIABILITIES

### A. Capital and reserves

#### I Called-up share capital (13)

#### II Share premium account

#### III Revaluation reserve

#### IV Other reserves

1. Capital redemption reserve
2. Reserve for own shares
3. Reserves provided for by the articles of association
4. Other reserves, including the fair value reserve

#### V Profit and loss account

### B. Provisions for liabilities (16)

1. Pensions and similar obligations
2. Taxation including deferred taxation

3. Other provisions

## C. Creditors (14)

1. Debenture loans (8)

2. Bank loans and overdrafts

3. Payments received on account (9)

4. Trade creditors

5. Bills of exchange payable

6. Amounts owed to group undertakings

7. Amounts owed to undertakings in which the company has a participating interest

8. Other creditors including taxation and social security (10)

9. Accruals and deferred income (11)

## D. Accruals and deferred income (11)

### **Notes on the balance sheet formats.**

(1) Called-up share capital not paid

(Formats 1 and 2, items A and C, II.5)

This item may be shown in either of the two positions given in Formats 1 and 2.

(2) Concessions, patents, licences, trade marks and similar rights and assets

(Formats 1 and 2, item B.I.2.)

Amounts in respect of assets may only be included in a company's balance sheet under this item if either—

(a) the assets were acquired for valuable consideration and are not required to be shown under goodwill; or

(b) the assets in question were created by the company itself.

(3) Land and buildings

(Formats 1 and 2, items B. II. 1)

Rights to immovables and other similar rights must be shown under land and buildings.

(4) Goodwill

(Formats 1 and 2, item B.I.3)

Amounts representing goodwill may only be included to the extent that the goodwill was acquired for valuable consideration.

(5) Own shares

(Formats 1 and 2, items B.III.7 and C.III.2.)

The nominal value of the shares held must be shown separately.

(6) Debtors

(Formats 1 and 2, items C.II.1 to 6)

The amount falling due after more than 1 year must be shown separately for each item included under debtors. A small company need not comply with this requirement if it discloses in the notes to its accounts the aggregate amount included under “Debtors” falling due after more than 1 year.

(7) Prepayments and accrued income

(Formats 1 and 2, items C.II.6 and D)

This item may be shown in either of the two positions given in Formats 1 and 2.

(8) Debenture loans

(Formats 1, item E.I and H.I and Format 2, item C.I)

The amount of any convertible loans must be shown separately.

(9) Payments received on account

(Format 1, items E.3 and H.3 and Format 2, item C.3)

Payments received on account of orders must be shown for each of these items in so far as they are not shown as deduction from stocks.

(10) Other creditors including taxation and social security

(Format 1, items E.8 and H.8 and Format 2, item C.8)

The amount for creditors in respect of taxation and social security must be shown separately from the amount for other creditors.

(11) Accruals and deferred income

(Format 1, items E.9, H.9 and J and Format 2, items C.9 and D)

The two positions given for this item in Format 1 at E.9 and H.9 are an alternative to the position at J, but if the item is not shown in a position corresponding to that at J it may be shown in either or both of the other two positions (as the case may require).

The two positions given for this item in Format 2 are alternatives.

(12) Net current assets (liabilities)

(Format 1, item F)

In determining the amount to be shown for this item any amounts shown under “prepayments and accrued income” must be taken into account wherever shown.

(13) Called-up share capital

(Format 1, item K. 1 and Format 2, item A.1)

The amount of allotted share capital and the amount of called-up share capital which has been paid up must be shown separately.

(14) Creditors

(Format 2, items C. 1 to 9)

Amounts falling due within 1 year and after 1 year must be shown separately for each of these items and their aggregate must be shown separately for all of these items. A small company need not comply with this requirement if it discloses in the notes to its accounts the aggregate amount included under “Creditors” falling due within 1 year and the aggregate amount falling due after 1 year.

Provisions for liabilities

(15) Deleted

(16)(1) Provisions for liabilities are intended to cover losses or debts the nature of which is clearly defined and which at the date of the balance sheet are either likely to be incurred, or certain to be incurred but uncertain as to

amount or as to the date on which they will arise. At the balance sheet date, a provision must represent the best estimate of the expenses likely to be incurred or, in the case of a liability, of the amount required to meet that liability.

(2) Provisions for liabilities may not be used to adjust the values of assets.

(17)(1) Where an asset or liability relates to more than one layout item, its relationship to other items must be disclosed either under the item where it appears or in the notes on the accounts.

(2) Own shares and shares in affiliated undertakings must be shown only under the items prescribed for that purpose.

(18) All commitments by way of guarantee of any kind, if there is no obligation to show them as liabilities, must be clearly set out at the foot of the balance sheet or in the notes on the accounts, and a distinction made between the various types of guarantee. Specific disclosure must be made of any valuable security which has been provided. Commitments of this kind existing in respect of affiliated undertakings must be shown separately.

## SCHEDULE 12

Section 245

## PROFIT AND LOSS ACCOUNT FORMATS

**Format 1**

(see note (22) below)

1. Turnover
2. Cost of sales (19)
3. Gross profit or loss
4. Distribution costs (19)
5. Administrative expenses (19)
6. Other operating income
7. Income from shares in group undertakings
8. Income from participating interests
9. Income from other fixed asset investments (20)
10. Other interests receivable and similar income (20)
11. Amounts written off investments
12. Interest payable and similar expenses (21)
13. Tax on profit or loss
14. Profit or loss after taxation
15. *Deleted*
16. *Deleted*
17. *Deleted*
18. *Deleted*
19. Other taxes not shown under the above items
20. Profit or loss for the financial year.

**Format 2**

1. Turnover
2. Change in stocks of finished goods and in work in progress
3. Own work capitalised
4. Other operating income
5. (a) Raw materials and consumables  
(b) Other external expenses
6. Staff costs—
  - (a) wages and salaries
  - (b) social security costs
  - (c) other pension costs
7. (a) depreciation and other amounts written off tangible and intangible fixed assets  
(b) exceptional amounts written off current assets, to the extent that they exceed write-offs which are normal in the undertaking concerned
8. Other operating expenses
9. Income from shares in group undertakings
10. Income from participating interests
11. Income from other fixed asset investments (20)
12. Other interest receivable and similar income (20)
13. Amounts written off investments
14. Interest payable and similar expenses (21)
15. Tax on profit or loss
16. Profit or loss after taxation
17. *Deleted*



18. *Deleted*

19. *Deleted*

20. *Deleted*

21. Other taxes not shown under the above items

22. Profit or loss for the financial year.

**Format 3**

*Deleted*

**Format 4**

A. Charges

1. Reduction in stocks of finished goods and in work in progress

2. (a) Raw materials and consumables

(b) Other external charges

3. Staff costs—

(a) wages and salaries

(b) social security costs

(c) other pension costs

4. (a) Depreciation and other amounts written off tangible and intangible fixed assets

(b) Exceptional amounts written off current assets

5. Other operating charges

6. Amounts written off investments

7. Interest payable and similar charges (21)

8. Tax on profit or loss on ordinary activities

9. Profit or loss on ordinary activities after taxation

10. Extraordinary charges

11. Tax on extraordinary profit or loss

12. Other taxes not shown under the above items

13. Profit or loss for the financial year

**B. Income**

1. Turnover

2. Increase in stocks of finished goods and in work in progress

3. Own work capitalised

4. Other operating income

5. Income from shares in group undertakings

6. Income from participating interests

7. Income from other fixed asset investments (20)

8. Other interest receivable and similar income (20)

9. Profit or loss on ordinary activities after taxation

10. Extraordinary income

11. Profit or loss for the financial year.

**Notes on the profit and loss account formats**

(19) Cost of sales: distribution costs: administrative expenses

(Format 1, items 2, 4 and 5)

These items must be stated after taking into account any necessary provisions for depreciation or diminution in value of assets.

(20) Income from other fixed asset investments: other interest receivable and similar income

(Format 1, items 9 and 10: Format 2, items 11 and 12)

Income and interest derived from group undertakings must be shown separately from income and interest derived from other sources.

(21) Interest payable and similar expenses

(Format 1, item 12: Format 2, item 14)

The amount payable to group undertakings must be shown separately.

(22) Format 1

The amount of any provisions for depreciation and diminution in value of tangible and intangible fixed assets falling to be shown under item 7(a) in Format 2 must be disclosed in a note to the accounts in any case where the profit and loss account is prepared by reference to Format 1.

## **SCHEDULE 13**

Section 245

### **EXEMPTIONS WITH RESPECT TO PREPARATION OF BALANCE SHEET OF SMALL COMPANIES**

#### **PART I**

##### **Individual accounts.**

1. The following provisions of this Schedule apply to the individual accounts of a small company.

##### **Balance sheet.**

2.(1) A small company may prepare its balance sheet wholly or partially in accordance with either of the abbreviated formats set out in Part II.

(2) Where any modifications are applied by a small company, Schedule 11 shall be read as if the balance sheet formats were the formats as modified and references to the formats and the items in them shall be construed accordingly.

(3) The notes on the balance sheet formats continue to apply to items which have been renumbered or combined into other items in accordance with this Schedule.

3. The provisions of section 241 on signing the balance sheet apply to a copy of an abbreviated balance sheet delivered to the Registrar in accordance with this Schedule.

#### **PART II**

##### **Small company balance sheet formats**

##### **Format 1**

- A. Called-up share capital not paid (1)
- B. Fixed assets
  - I Intangible assets
  - II Tangible assets
  - III Investments
- C. Current assets
  - I Stocks
  - II Debtors (6)
  - III Investments
  - IV Cash at bank and in hand
- D. Prepayments and accrued income (7)
- E. Creditors amounts falling due and payable within 1 year
- F. Net current assets (liabilities) (12)
- G. Total assets less current liabilities
- H. Creditors amounts falling due and payable after more than 1 year
- I. Provisions for liabilities
- J. Accruals and deferred income (11)
- K. Capital and reserves
  - I Called-up share capital (13)
  - II Share premium account
  - III Revaluation reserve
  - IV Other reserves
  - V Profit and loss account

**Small company balance sheet formats**

**Format 2**

ASSETS

A. Called-up share capital not paid (1)

B. Fixed assets

I Intangible assets

II Tangible assets

III Investments

C. Current assets

I Stocks

II Debtors (6)

III Investments

IV Cash at bank and in hand

D. Prepayments and accrued income (7)

CAPITAL, RESERVES AND LIABILITIES

A. Capital and reserves

I Called-up share capital (13)

II Share premium account

III Revaluation reserve

IV Other reserves

V Profit and loss account

B. Provisions for liabilities

C. Creditors (14)

D. Accruals and deferred income (11)

**SCHEDULE 14**

Section 245

**MEDIUM-SIZED AND SMALL COMPANIES**

**PROFIT AND LOSS ACCOUNT**

1. A medium-sized company may deliver to the Registrar a profit and loss account in which the following items listed in the profit and loss account formats set out in Schedule 12 are combined as one item under the heading “gross profit or loss”–

Items 1, 2, 3 and 6 in Format 1;

Items 1 to 5 in Format 2.

2. Where a small company delivers to the Registrar a profit and loss account it may do so in accordance with paragraph 1.

## SCHEDULE 15

Section 245

**AMOUNTS TO BE INCLUDED IN RESPECT OF ITEMS SHOWN  
IN COMPANY ACCOUNTS.****SECTION A - HISTORICAL COST ACCOUNTING RULES**

Subject to sections B and C, the amounts to be included in respect of all items shown in the company's accounts shall be determined in accordance with rules set out in paragraphs 1 to 15.

*Fixed assets***General rules.**

1. Subject to any provision for depreciation or diminution in value made in accordance with paragraph 2 or 3 the amount to be included in respect of any fixed asset must be its purchase price or production cost.

2. In the case of any fixed asset which has a limited useful economic life, the amount of—

- (a) its purchase price or production cost; or
- (b) where it is estimated that the asset will have a residual value at the end of the period of its useful economic life, its purchase price or production cost less that estimated residual value,

must be reduced by provisions for depreciation calculated to write off that amount systematically over the period of the asset's useful economic life.

3.(1) Where a fixed asset investment of a description falling to be included under item B.III of any of the balance sheet formats set out in Schedule 11 has diminished in value, provisions for diminution in value may be made in respect of it and the amount to be included in respect of it may be reduced accordingly; and those provisions must be charged to the profit and loss account and disclosed separately in a note to the accounts if not shown separately in the profit and loss account.

(2) Provisions for diminution in value must be made in respect of any fixed asset which has diminished in value if the reduction in its value is expected to be permanent (whether its useful economic life is limited or not), and the amount to be included in respect of it will be reduced accordingly; and those provisions must be charged to the profit and loss

account and disclosed separately in a note to the accounts if not shown separately in the profit and loss account.

(3) Where the reasons for which any provision was made in accordance with subparagraph (1) or (2) have ceased to apply to any extent, that provision will be written back to the extent that it is no longer necessary; and any amounts written back under this subparagraph must be recognized in the profit and loss account and disclosed separately in a note to the accounts if not shown separately in the profit and loss account.

(4) Subparagraph (3) shall not apply to value adjustments made in respect of goodwill.

#### **Development Costs.**

4.(1) Where this is in accordance with generally accepted accounting principles or practice, development costs may be included in “other tangible assets” under “fixed assets” in the balance sheet formats set out in Schedule 11.

(2) If any amount is included in a company’s balance sheet in respect of development costs, the note on accounting policies must include the following information—

- (a) the period over which the amount of those costs originally capitalized is being or is to be written off, and
- (b) the reasons for capitalizing the development costs in question.

(3) If any amount is included in a company’s balance sheet under “Assets” in respect of development costs, and insofar as development costs have not been completely written off, no distribution of profits may take place unless the amount of the reserves available for distribution and profits brought forward is at least equal to that of the cost not written off.

#### **Intangible Assets.**

5.(1) Intangible assets must be written off over the useful economic life of the intangible asset.

(2) Where in exceptional cases the useful life of intangible assets cannot be reliably estimated, such assets must be written off over a period chosen by the directors of the company.

(3) The period referred to in subparagraph (2) must not exceed 10 years.

(4) There must be disclosed in a note to the accounts the period referred to in subparagraph (2) and the reasons for choosing that period.



**Formation expenses.**

6.(1) Formation expenses included under “Assets” must be written off within a maximum period of 5 years.

(2) Insofar as formation expenses have not been completely written off, no distribution of profits can take place unless the amount of the reserves available for distribution and profits brought forward is at least equal to that of the expenses not written off.

**Current assets.**

7. Subject to paragraph 8, the amount to be included in respect of any current asset will be its purchase price or production cost.

8.(1) If the net realisable value of any current asset is lower than its purchase price or production cost the amount to be included in respect of that asset will be the net realisable value.

(2) Where the reasons for which any provision for diminution in value was made in accordance with subparagraph (1) have ceased to apply to any extent, that provision will be written back to the extent that it is no longer necessary.

*Miscellaneous and supplementary provisions***Excess of money owed over value received as an asset item.**

9.(1) Where the amount repayable on any debt owed by a company is greater than the value of the consideration received in the transaction giving rise to the debt, the amount of the difference may be regarded as an asset.

(2) Where any amount is regarded as an asset in accordance with subparagraph (1)–

- (a) it shall be written off by reasonable amounts each year and must be completely written off before repayment of the debt; and
- (b) if the current amount is not shown as a separate item in the company’s balance sheet it must be disclosed in a note to the accounts.

10. *Deleted*

**Determination of purchase price or production cost.**

11.(1) The purchase price of an asset shall be determined by adding to the actual price paid any expenses incidental to its acquisition minus any incidental reductions in the cost of acquisition.

(2) The production cost of an asset shall be determined by adding to the purchase price of the raw materials and consumables used the amount of the costs incurred by the company which are directly attributable to the production of that asset.

(3) In addition, there may be included in the production cost of an asset—

- (a) a reasonable proportion of the costs incurred by the company which are only indirectly attributable to the production of that asset, but only to the extent that they relate to the period of production; and
- (b) interest on capital borrowed to finance the production of that asset, to the extent that it accrues in respect of the period of production,

but in a case within (b) the inclusion of the interest in determining the cost of that asset and the amount of the interest so included must be disclosed in a note to the accounts.

(4) Distribution costs may not be included in production costs.

#### *Stocks*

12. (1) Subject to subparagraph (2), the purchase price or production cost of—

- (a) any assets which fall to be included under any item shown in a company's balance sheet under the general item "stocks"; and
- (b) any assets which are fungible assets (including investments),

may be determined by the application of any of the methods mentioned in subparagraph (3) below in relation to any such assets of the same class.

(2) The method chosen must be one which appears to the directors to be appropriate in the circumstances of the company.

(3) Those methods are—

- (a) the method known as "first in, first out" (FIFO);
- (b) the method known as "last in, first out" (LIFO);

- (c) a weighted average price; and
- (d) any other method reflecting generally accepted best practice.

(4) *Deleted*

(5) Subject to subparagraph (6), for the purposes of subparagraph (4)(b), the relevant alternative amount, in relation to any item shown in a company's balance sheet, is the amount which would have been shown in respect of that item if assets of any class included under that item at an amount determined by any method permitted by this paragraph had instead been included at their replacement cost as at the balance sheet date.

(6) The relevant alternative amount may be determined by reference to the most recent actual purchase price or production cost before the balance sheet date of assets of any class included under the item in question instead of by reference to their replacement cost as at that date, but only if the former appears to the directors of the company to constitute the more appropriate standard of comparison in the case of assets of that class.

(7) For the purposes of this paragraph, assets of any description shall be regarded as fungible if assets of that description are substantially indistinguishable one from another.

**Substitution of original stated amount where price or cost unknown.**

13. Where there is no record of the purchase price or production cost of any asset of a company or of any price, expenses or costs relevant for determining its purchase price or production cost in accordance with paragraph 11, or any such record cannot be obtained without unreasonable expense or delay, its purchase price or production cost shall be taken for the purposes of paragraphs 1 to 8 to be the value given to it in the earliest available record of its value made on or after its acquisition or production by the company.

13A.(1) Participating interests may be accounted for using the equity method.

- (2) If participating interests are accounted for using the equity method—
  - (a) the proportion of profit or loss attributable to a participating interest and recognized in the profit and loss account may be that proportion which corresponds to the amount of any dividends, and
  - (b) where the profit attributable to a participating interest and recognized in the profit and loss account exceeds the amount of

any dividends, the difference must be placed in a reserve which cannot be distributed to shareholders.

(3) The reference to “dividends” in subparagraph (2) includes dividends already paid to those whose payment can be claimed.

14. Value adjustments comprise all adjustments intended to take account of changes in the values of individual assets established at the balance sheet date whether that change is final or not.

15.(1) Whether particular assets are to be shown as fixed assets or current assets depends upon the purpose for which they are intended.

(2) Fixed assets comprise those assets which are intended for use on a continuing basis for the purposes of the undertaking’s activities.

(3) The following information must be given in the notes to the accounts for the various fixed asset items—

- (a) the purchase price or production cost or, where an alternative basis of measurement has been followed, the fair value or revalued amount at the beginning and end of the financial year;
- (b) additions, disposals and transfers during the financial year;
- (c) the accumulated value adjustments at the beginning and end of the financial year;
- (d) value adjustments charged during the year;
- (e) movements in accumulated value adjustments in respect of additions, disposals and transfers during the financial year; and
- (f) where interest is capitalized in accordance with paragraph 11(3)(b) above, the amount capitalized during the financial year.

(4) *Deleted*

(5) *Deleted*

## **SECTION B– ALTERNATIVE ACCOUNTING RULES**

### **Preliminary.**

16. The rules set out in Section A are referred to in this Schedule as the historical cost accounting rules and the rules set out in Section B are referred to in this Schedule as the alternative accounting rules.

**Alternative accounting rules.**

17.(1) Intangible fixed assets, other than goodwill, may be included at their current cost.

(2) Tangible fixed assets may be included at a market value determined at the date of their last valuation or at their current cost.

(3) Fixed asset investments of any description may be included either–

- (a) at a market value determined as at the date of their last valuation; or
- (b) at a value determined on a basis which appears to the directors to be appropriate in the circumstances of the company,

but in the latter case particulars of the method of valuation adopted and of the reasons for adopting it must be disclosed in a note to the accounts.

(4) *Deleted*

(5) *Deleted*

**Application of the depreciation rules.**

18.(1) Where the value of any asset of a company is determined on a basis mentioned in paragraph 17 that value will be, or (as the case may require) will be the starting point for determining, the amount to be included in respect of that asset in the company's accounts, instead of its purchase price or production cost or any value previously so determined for that asset; and the depreciation rules apply accordingly in relation to any such asset with the substitution for any reference to its purchase price or production cost of a reference to the value most recently determined for that asset on any basis mentioned in paragraph 17.

(2) The amount of any provision for depreciation required in the case of any fixed asset by paragraph 2 or 3 as it applies by virtue of subparagraph (1) is referred to in this paragraph as the adjusted amount, and the amount of any provision which would be required by that paragraph in the case of that asset according to the historical cost accounting rules is referred to as the historical cost amount.

(3) Where subparagraph (1) applies in the case of any fixed asset the amount of any provision for depreciation in respect of that asset–

- (a) included in any item shown in the profit and loss account in respect of amounts written off assets of the description in question; or
- (b) taken into account in stating any item so shown which is required to be disclosed by note (19) of the notes on the profit and loss account formats set out in Schedule 12 to be stated after taking into account any necessary provisions for depreciation or diminution in value of assets included under it,

may be the historical cost amount instead of the adjusted amount on the condition that the amount of any difference between the two is shown separately in the profit and loss account or in a note to the accounts.

**Additional information to be provided in case of departure from historical cost accounting rules.**

19.(1) This paragraph applies where the amounts to be included in respect of assets covered by any items shown in a company's accounts have been determined on any basis mentioned in paragraph 17.

(2) The items affected, and the basis of valuation adopted in determining the amounts of the assets in question in the case of each such item must be disclosed in a note on accounting policies.

(3) In the case of each balance sheet item affected, the comparable amounts determined according to the historical cost accounting rules must be shown in a note to the accounts.

(4) In subparagraph (3), references in relation to any item to the comparable amounts determined as there mentioned are references to—

- (a) the total amount which would be required to be shown in respect of that item if the amounts to be included in respect of all the assets covered by that item were determined according to the historical cost accounting rules; and
- (b) the total amount of the cumulative provisions for depreciation or diminution in value which would be permitted or required in determining those amounts according to those rules.

**Revaluation reserve.**

20.(1) With respect to any determination of the value of an asset of a company on any basis mentioned in paragraph 17, the amount of any profit or loss arising from that determination (after allowing, where appropriate, for any provisions for depreciation or diminution in value made otherwise than by reference to the value so determined and any adjustments of any

such provisions made in the light of that determination) shall be credited or (as the case may be) debited to a separate reserve (“the revaluation reserve”).

(2) The amount of the revaluation reserve shall be shown in the company’s balance sheet under a separate sub-heading in the position given for the item “revaluation reserve” under Capital and Reserves in Format 1 or 2 of the balance sheet formats set out in Schedule 11.

(3) An amount may be transferred from the revaluation reserve—

- (a) to the profit and loss account, if the amount was previously charged to that account or represents realised profit; or
- (b) on capitalisation,

and the revaluation reserve shall be reduced to the extent that the amounts transferred to it are no longer necessary for the purposes of the valuation method used.

(4) In subparagraph (3)(b) “capitalisation”, in relation to an amount standing to the credit of the revaluation reserve, means applying it in wholly or partly paying up unissued shares in the company to be allotted to members of the company as fully or partly paid up shares.

(5) The revaluation reserve may not be reduced except as mentioned in this paragraph.

(6) The treatment for taxation purposes of amounts credited or debited to the revaluation reserve must be disclosed in a note to the accounts.

**Special provisions where the company is an investment company.**

21.(1) Paragraph 20 does not apply to the amount of any profit or loss arising from a determination of the value of any investments of an investment company on any basis mentioned in paragraph 17(3).

(2) Any provisions made by virtue of paragraph 3(1) or (2) in the case of an investment company in respect of any fixed assets investments need not be charged to the profit and loss account provided they are either—

- (a) charged against any reserve account to which any account excluded by subparagraph (1) from the requirements of paragraph 20 has been credited; or
- (b) shown as a separate item in the company’s balance sheet under the sub-heading “other reserves”.

(3) For the purposes of this paragraph, as it applies in relation to any company, “fixed asset investment” means any asset falling to be included under any item shown in the company’s balance sheet under the subdivision ‘investments’ under the general item ‘fixed assets’.

### **SECTION C – FAIR VALUE ACCOUNTING**

#### **Inclusion of financial instruments at fair value.**

22.(1) Subject to sub-paragraphs (2) to (4), financial instruments (including derivatives) may be included at fair value.

(2) Sub-paragraph (1) does not apply to financial instruments which constitute liabilities unless–

- (a) they are held as part of a trading portfolio; or
- (b) they are derivatives.

(3) Sub-paragraph (1) does not apply to–

- (a) financial instruments (other than derivatives) held to maturity;
- (b) loans and receivables originated by the company and not held for trading purposes;
- (c) interests in subsidiary undertakings, associated undertakings and joint ventures;
- (d) equity instruments issued by the company;
- (e) contracts for contingent consideration in a business combination;
- (f) other financial instruments with such special characteristics that the instruments, according to generally accepted accounting principles or practice, should be accounted for differently from other financial instruments.

(4) If the fair value of a financial instrument cannot be determined reliably in accordance with paragraph 23, sub-paragraph (1) does not apply to that financial instrument.

(5) Financial instruments that, under international accounting standards adopted in accordance with the IAS Regulation, may be included in accounts at fair value, may be so included, provided that the disclosures required by such accounting standards are made.



(6) In this paragraph—

“associated undertaking” has the meaning given by paragraph 17 of Schedule 21; and

“joint venture” has the meaning given by paragraph 16 of Schedule 21.

**Determination of fair value.**

23.(1) The fair value of a financial instrument is determined in accordance with this paragraph.

(2) If a reliable market can readily be identified for the financial instrument, its fair value is determined by reference to its market value.

(3) If a reliable market cannot readily be identified for the financial instrument but can be identified for its components or for a similar instrument, its fair value is determined by reference to the market value of its components or of the similar instrument.

(4) If neither sub-paragraph (2) nor (3) applies, the fair value of the financial instrument is a value resulting from generally accepted valuation models and techniques.

(5) Any valuation models and techniques used for the purposes of subparagraph (4) must ensure a reasonable approximation of the market value.

(6) Financial instruments that cannot be measured reliably by any of the methods described in this paragraph shall, so far as possible, be included at purchase price or production cost.

**Inclusion of hedged items at fair value.**

24. A company may include any assets and liabilities that qualify as hedged items under a fair value hedge accounting system, or identified portions of such assets or liabilities, at the amount required under that system.

**Other items that may be included at fair value.**

25.(1) This paragraph applies to—

- (a) investment property; and
- (b) living animals and plants,

which, under international accounting standards, may be included in accounts at fair value.

(2) Such investment property and such living animals and plants may be included at fair value, provided that all such investment property or, as the case may be, all such living animals and plants are so included where their fair value can reliably be determined.

(3) In this paragraph, “fair value” means fair value determined in accordance with relevant international accounting standards.

**Accounting for changes in value.**

26.(1) This paragraph applies where a financial instrument is valued in accordance with paragraph 22 or 24 or an asset is valued in accordance with paragraph 25.

(2) Notwithstanding section 244, and subject to sub-paragraphs (3) and (4) below, a change in the value of the financial instrument or of the investment property or living animal or plant must be included in the profit and loss account.

(3) Where—

- (a) the financial instrument accounted for is a hedging instrument under a hedge accounting system that allows some or all of the change in value not to be shown in the profit and loss account; or
- (b) the change in value relates to an exchange difference arising on a monetary item that forms part of a company’s net investment in a foreign entity,

the amount of the change in value must be credited to or (as the case may be) debited from a separate reserve (the “fair value reserve”).

(4) Where the instrument accounted for—

- (a) is an available for sale financial asset; and
- (b) is not a derivative,

the change in value may be credited to or (as the case may be) debited from the fair value reserve.

**The fair value reserve.**

27.(1) The fair value reserve must be adjusted to the extent that the amounts shown in it are no longer necessary for the purposes of paragraph 26(3) or (4).

(2) The treatment for taxation purposes of amounts credited or debited to the fair value reserve must be disclosed in a note to the accounts.

**Interpretation of paragraphs 22 to 27.**

28.(1) References to “derivatives” include commodity-based contracts that give either contracting party the right to settle in cash or in some other financial instrument, except when such contracts—

- (a) were entered into for the purpose of, and continue to meet, the company’s expected purchase, sale or usage requirements;
- (b) were designated for such purpose at their inception; and
- (c) are expected to be settled by delivery of the commodity.

(2) The expressions listed in sub-paragraph (3) have the same meaning as they have in Council Directive 2013/34/EU.

(3) Those expressions are “available for sale financial asset”, “business combination”, “commodity-based contracts”, “derivative”, “equity instrument”, “exchange difference”, “fair value hedge accounting system”, “financial fixed asset”, “financial instrument”, “foreign entity”, “hedge accounting”, “hedge accounting system”, “hedged items”, “hedging instrument”, “held for trading purposes”, “held to maturity”, “monetary item”, “receivables”, “reliable market” and “trading portfolio”.

**SCHEDULE 16**

Section 246

**NOTES ON ACCOUNTS - MINIMUM REQUIREMENTS**

1. In addition to the information required under other provisions of this Act the notes on the accounts must disclose information in respect of the following matters at least—

- (a) the accounting policies adopted;
- (b) the name and registered office of each of the undertakings in which the company, either itself or through a person acting in his own name but on the company's behalf, holds a participating interest showing the proportion of the capital held, the amount of capital and reserves, and the profit and loss for the latest financial year of the undertaking concerned for which accounts have been adopted.

The information concerning capital and reserves and the profit or loss may also be omitted where the undertaking concerned does not publish its balance sheet and is not controlled by the company;

- (c) the name, the head or registered office and the legal form of each of the undertakings of which the company or firm is a member having unlimited liability;
- (d) the number and the nominal value or in the absence of a nominal value, the accounting par value of the shares subscribed during the financial year within the limits of authorised capital;
- (e) where there is more than one class of shares, the number and the nominal value or, in the absence of a nominal value, the accounting par value of each class;
- (f) the existence of any participation certificates, convertible debentures or similar securities or rights, with an indication of their number and the rights they confer;
- (g) amounts owed by the company becoming due and payable after more than 5 years as well as the company's entire debts covered by valuable security furnished by the company with an indication of the nature and form of the security;

- (h) the total amount of any financial commitments, guarantees or contingencies that are not included in the balance sheet, and an indication of the nature and form of any valuable security that has been provided.

Any commitments concerning pensions and affiliated or associated undertakings must be disclosed separately;

- (i) the nature and business purpose of the company's arrangements that are not included in the balance sheet and the financial impact on the company of those arrangements, provided that the risks or benefits arising from such arrangements are material and in so far as the disclosure of such risks or benefits is necessary for assessing the financial position of the company;
- (j) subject to paragraph 2, transactions which have been entered into with related parties, as defined in the IAS Regulation, by the company, including the amount of such transactions, the nature of the related party relationship and other information about the transactions necessary for an understanding of the financial position of the company, if such transactions and have not been concluded under normal market conditions.

Information about individual transactions may be aggregated according to their nature except where separate information is necessary for an understanding of the effects of related party transactions on the financial position of the company;

- (k) the net turnover broken down by categories of activity and into geographical markets in so far as, taking account of the manner in which the sale of products and the provision of services falling within the company's ordinary activities are organised, these categories and markets differ substantially from one another;
- (l) *Deleted*
- (m) where a provision for deferred tax is recognized in the balance sheet, the deferred tax balances at the end of the financial year, and the movement in those balances during the financial year;
- (n) the amount of the emoluments granted in respect of the financial year to the directors by reason of their responsibilities, and any commitments arising or entered into in respect of retirement pensions for former directors, with an indication of the total for each category; and

- (o) the amount of advances and credits granted to the directors with indications of the interest rates, main conditions and any amounts repaid, written off or waived, as well as commitments entered into on their behalf by way of guarantees of any kind, with an indication of the total for each category.
- (p) separately, the total fees for the financial year charged by the statutory auditor or audit firm for the statutory audit of annual accounts, the total fees charged for other assurance services, the total fees charged for tax advisory services and the total fees charged for other non-audit services.

The Minister may by regulations provide that this requirement shall not apply where the company is included within the consolidated accounts required to be drawn up under the provisions of Chapter 3 of Part VII, provided that such information is given in the notes to the consolidated accounts.

- (q) the amount and nature of individual items of income or expenditure which are of exceptional size or incidence;
- (r) the proposed appropriation of profit or treatment of loss, or where applicable, particulars of the appropriation of the profit or treatment of the loss;
- (s) the nature and the financial effect of material events arising from the balance sheet date which are not reflected in the profit and loss account or balance sheet.

2.(1) Sub-paragraph (j) of paragraph 1 has effect subject to the following provisions—

- (a) medium-sized companies may limit disclosure to, as a minimum, transactions entered into directly or indirectly with—
  - (i) shareholders that have a participating interest in the company,
  - (ii) undertakings in which the company itself has a participating interest; and
  - (iii) the members of the administrative, management and supervisory bodies of the company;
- (b) transactions entered into between two or more members of a group are exempt from the provisions of paragraph (j) provided

that subsidiaries which are party to the transaction are wholly owned by such a member; and

- (c) In relation to group accounts, paragraph 1(j) applies to transactions which the parent company, or other undertakings included in the consolidation, have entered into with related parties, unless they are intra-group transactions.

3. Small companies may omit the disclosure of information required under—

- (a) paragraphs 1(b), (c), (d), (e), (f), (i), (j), (k), (m), (n), (q) and (r) and paragraphs 8, 9 and 10 of this Schedule; and
- (b) paragraph 15(3) of Schedule 15.

3A. Medium-sized companies may omit the disclosure of information required under paragraphs 1(k) and (p).

4. Where disclosure in accordance with paragraph 1(n) makes it possible to identify the position of a specific person the disclosure is not mandatory.

5. Disclosures required under paragraph 1(b) of this Schedule may be omitted when their nature is such that they would be seriously prejudicial to any of the undertakings to which they relate. Any such omission must be disclosed in the notes on the accounts.

5A. A parent company may omit the information required under paragraph 1(b) where—

- (a) the undertaking in which that parent company holds a participating interest for the purposes of paragraph 1(b) is included in the consolidated accounts drawn up by the parent company, or in the consolidated accounts of a larger body of undertakings as referred to in section 285; or
- (b) that participating interest has been dealt with by that parent company in its annual accounts in accordance with paragraph 13A of Schedule 15, or in the consolidated accounts drawn up by that parent company in accordance with paragraph 19 of Schedule 21.

5B. Disclosures required under paragraph 1(k) of this Schedule may be omitted where disclosure of that information would be seriously prejudicial to the undertaking provided that any such omission shall be disclosed in the notes to the accounts.

6. *Deleted*

7.(1) This paragraph applies where financial instruments have been valued in accordance with paragraphs 22, 24 or 25 of Schedule 15.

(2) There must be stated—

- (a) where the fair value of the instruments has been determined in accordance with paragraph 23(4) of Schedule 15, the significant assumptions underlying the valuation models and techniques used;
- (b) for each category of financial instrument or other asset, the fair value of the instruments or assets in that category and the changes in value—
  - (i) included directly in the profit and loss account, and
  - (ii) credited to or (as the case may be) debited from the fair value reserve, in respect of those instruments or other assets; and
- (c) for each class of derivatives, the extent and nature of the instruments, including significant terms and conditions that may affect the amount, timing and certainty of future cash flows.

(3) Where any amount is transferred to or from the fair value reserve during the financial year, there must be stated in tabular form—

- (a) the amount of the reserve as at the date of the beginning of the financial year and as at the balance sheet date respectively; and
- (b) the amount transferred to or from the reserve during that year.

8. Where the company has derivatives that have been measured at purchase price or production cost, there must be stated for each class of such derivatives—

- (a) the fair value of the derivatives, if such a value can be determined in accordance with paragraph 23(2) or (3) of Schedule 15; and
- (b) the extent and nature of the derivatives.

9.(1) Sub-paragraph (2) applies if—

- (a) the company has financial fixed assets that have been measured at purchase price or production cost; and



- (b) the amount at which those assets are included under any item in the company's accounts is in excess of their fair value.

(2) There must be stated—

- (a) the amount at which either the individual assets or appropriate groupings of those individual assets are included in the company's accounts;
- (b) the fair value of those assets or groupings; and
- (c) the reasons for not making a provision for diminution in value of those assets, including the nature of the evidence that provides the basis for the belief that the amount at which they are stated in the accounts will be recovered.

10.(1) This paragraph applies where the amounts to be included in a company's accounts in respect of investment property or living animals and plants have been determined in accordance with paragraph 25 of Schedule 15.

(2) The balance sheet items affected and the basis of valuation adopted in determining the amounts of the assets in question in the case of each such item must be disclosed in a note to the accounts.

(3) In the case of investment property, for each balance sheet item affected there must be shown, either separately in the balance sheet or in a note to the accounts—

- (a) the comparable amounts determined according to the historical cost accounting rules; or
- (b) the differences between those amounts and the corresponding amounts actually shown in the balance sheet in respect of that item.

(4) In subparagraph (3), references in relation to any item to the comparable amounts determined in accordance with that subparagraph are references to—

- (a) the aggregate amount which would be required to be shown in respect of that item if the amounts to be included in respect of all the assets covered by that item were determined according to the historical cost accounting rules; and
- (b) the aggregate amount of the cumulative provisions for depreciation or diminution in value which would be permitted

or required in determining those amounts according to those rules.

10A.(1) This paragraph applies where fixed assets are measured at revalued amounts.

(2) Where this paragraph applies, the following information must be given in tabular form—

- (a) movements in the revaluation reserve in the financial year, with an explanation of the tax treatment of items therein; and
- (b) the carrying amount in the balance sheet that would have been recognized had the fixed assets not been revalued.

11. Where used in this Schedule, the expressions defined in paragraph 28 of Schedule 15 have the same meaning as in that Schedule.

**SCHEDULE 17***Deleted***SCHEDULE 18***Deleted***SCHEDULE 19***Deleted***SCHEDULE 20**

Section 275(6)

**PARENT AND SUBSIDIARY UNDERTAKINGS:  
SUPPLEMENTARY PROVISIONS****Introduction.**

1. The provisions of this Schedule explain expressions used in section 276 and otherwise supplement that section.

**Voting rights in an undertaking.**

2.(1) In section 276 (2)(a) and (d) the references to the voting rights in an undertaking are to the rights conferred on shareholders in respect of their shares or, in the case of an undertaking not having a share capital, on members, to vote at general meetings of the undertaking on all, or substantially all, matters.

(2) In relation to an undertaking which does not have general meetings at which matters are decided by the exercise of voting rights, the reference to holding a majority of the voting rights in the undertaking is to having the right under the constitution of the undertaking to direct the overall policy of the undertaking or to alter the terms of its constitution.

**Right to appoint or remove a majority of the directors.**

3.(1) In section 276 (2)(b) the reference to the right to appoint or remove a majority of the board of directors is to the right to appoint or remove directors holding a majority of the voting rights at meetings of the board on all, or substantially all, matters.

(2) An undertaking has the right to appoint a directorship if–

- (a) a person's appointment to it follows necessarily from his appointment as director of the undertaking; or

- (b) the directorship is held by the undertaking itself.

(3) A right to appoint or remove which is exercisable only with the consent or concurrence of another person will be left out of account unless no other person has a right to appoint or, as the case may be, remove in relation to that directorship.

**Right to exercise dominant influence.**

4.(1) For the purposes of section 276(2)(c) an undertaking shall not be regarded as having the right to exercise a dominant influence over another undertaking unless it has a right to give directions with respect to the operating and financial policies of that other undertaking with which its directors are obliged to comply, whether or not they are for the benefit of that other undertaking.

(2) A “control contract” means a contract in writing conferring such a right which—

- (a) is of a kind authorised by the memorandum or articles of the undertaking in relation to which the right is exercisable; and
- (b) is permitted by the law under which that undertaking is established.

(3) This paragraph shall not be read as affecting the construction of the expression “actually exercises a dominant influence” in section 276(4)(a).

**Rights which are exercisable only in certain circumstances or temporarily incapable of exercise.**

5.(1) Rights which are exercisable only in certain circumstances shall be taken into account only—

- (a) when the circumstances have arisen, and for as long as they continue to exist; or
- (b) when the circumstances are within the control of the person having the rights.

(2) Rights which are normally exercisable but are temporarily incapable of exercise shall continue to be taken into account.

**Rights held by one person on behalf of another.**

6. Rights held by a person in a fiduciary capacity shall be regarded as not held by him.

7.(1) Rights held by a person as nominee for another shall be regarded as held by the other.

(2) Rights shall be regarded as held as nominee for another if they are exercisable only on his instructions or with his consent.

**Rights attached to shares held by way of security.**

8.(1) Rights attached to shares held by way of security shall be regarded as held by the person providing the security—

- (a) where, apart from the right to exercise them for the purpose of preserving the value of the security, or of realising it, the rights are exercisable only in accordance with his instructions; and
- (b) where the shares are held in connection with the granting of loans as part of normal business activities and apart from the right to exercise them for the purpose of preserving the value of the security, or of realising it, the rights are exercisable only in his interests.

**Rights attributed to parent undertaking.**

9.(1) Rights shall be regarded as held by a parent undertaking if they are held by any of its subsidiary undertakings.

(2) Nothing in paragraph 7 or 8 shall be construed as requiring rights held by a parent undertaking to be regarded as held by any of its subsidiary undertakings.

(3) For the purpose of paragraph 8 rights shall be regarded as being exercisable in accordance with the instructions or in the interests of an undertaking if they are exercisable in accordance with the instructions of or, as the case may be, in the interests of any group undertaking.

**Disregard of certain rights.**

10. The voting rights in an undertaking must be reduced by any rights not held by the undertaking itself.

**Supplementary.**

11. References in any provision of paragraphs 6 to 10 to rights held by a person include rights falling to be regarded as held by him by virtue of any other provision of those paragraphs but not rights which by virtue of any such provision are to be regarded as not held by him.

**SCHEDULE 21**

Section 282

**FORM AND CONTENT OF GROUP ACCOUNTS****General rules.**

1.(1) Group accounts must comply so far as practicable with the provisions of Schedules 11, 12, 15 and 16 as if the undertakings included in the consolidation (“the group”) were a single company.

(2) Where a company is a parent company or a subsidiary undertaking and any item required by Schedule 11 to be shown in the company’s balance sheet in relation to group undertakings includes–

- (a) amounts attributable to dealings with or interests in any parent undertaking or fellow subsidiary undertaking; or
- (b) amounts attributable to dealings with or interests in any subsidiary undertaking of the company,

the total amounts within (a) and (b) respectively must be shown as separate items, either by way of sub-division of the relevant item or in a note to the company’s accounts.

(3) For the purposes of subparagraph (2) as it applies to group accounts–

- (a) any subsidiary undertakings of the parent company not included in the consolidation shall be regarded as subsidiary undertakings of the group; and
- (b) if the parent company is itself a subsidiary undertaking, the group shall be regarded as a subsidiary undertaking of any parent undertaking of that company, and the reference to fellow subsidiary undertakings shall be construed accordingly.

2.(1) The consolidated balance sheet and profit and loss account must incorporate in full the information contained in the individual accounts of the undertakings included in the consolidation, subject to the adjustments authorised or required by the following provisions of this Schedule and to such other adjustments (if any) as may be appropriate in accordance with generally accepted accounting principles or practice.

(1A) Group accounts must be drawn up as at the same date as the accounts of the parent company.

(2) If the financial year of a subsidiary undertaking included in the consolidation differs from that of the parent company, the group accounts must be made up-

- (a) from the accounts of the subsidiary undertaking for its last financial year before the end of the parent company's financial year, provided it ended no more than 3 months before the parent company's; or
- (b) from interim accounts prepared by the subsidiary undertaking as at the end of the parent company's financial year.

3.(1) Where assets and liabilities to be included in the group accounts have been valued or otherwise determined by undertakings according to accounting rules differing from those used for the group accounts, the values or amounts shall be adjusted so as to accord with the rules used for the group accounts.

(2) If it appears to the directors of the parent company that there are special reasons for departing from subparagraph (1) they may do so, but details of any departure, the reasons for it and its effect must be given in a note to the accounts.

(3) The adjustments referred to in this paragraph need not be made if they are not material for the purpose of giving a true and fair view.

4. Any differences of accounting rules as between a parent company's individual accounts for a financial year and its group accounts must be disclosed in a note to the latter accounts and the reasons for the difference given.

5. Amounts which in the particular context of any provision of this Schedule are not material may be disregarded for the purposes of that provision.

#### **Elimination of group transactions.**

6.(1) Debts and claims between undertakings included in the consolidation, and income and expenditure relating to transactions between such undertakings, must be eliminated in preparing the group accounts.

(2) Where profits and losses resulting from transactions between undertakings included in the consolidation are included in the book value of assets, they must be eliminated in preparing the group accounts.

(3) *Deleted*

(4) Subparagraphs (1) and (2) need not be complied with if the amounts concerned are not material for the purpose of giving a true and fair view.

**Acquisition accounting.**

7.(1) The following provisions apply where an undertaking becomes a subsidiary undertaking of the parent company.

(2) That event is referred to in those provisions as an “acquisition”, and references to the “undertaking acquired” will be construed accordingly.

8. An acquisition shall be accounted for by the acquisition method of accounting.

9.(1) The acquisition method of accounting is as follows—

(2) The identifiable assets and liabilities of the undertaking acquired must be included in the consolidated balance sheet at their fair value as at the date of acquisition.

In this paragraph the “identifiable” assets or liabilities of the undertaking acquired means the assets or liabilities which are capable of being disposed of or discharged separately, without disposing of a business of the undertaking.

(3) The income and expenditure of the undertaking acquired shall be brought into the group accounts only as from the date of the acquisition.

(4) The interest of the parent company and its subsidiary undertakings in the adjusted capital and reserves of the undertaking acquired shall be set off against the acquisition cost of the interest in the shares of the undertaking held by the parent company and its subsidiary undertakings.

For this purpose—

- (a) “the acquisition cost” means the amount of any cash consideration and the fair value of any other consideration, together with such amount (if any) in respect of fees and other expenses of the acquisition as the company may determine; and
- (b) “the adjusted capital and reserves” of the undertaking acquired means its capital and reserves at the date of the acquisition after adjusting the identifiable assets and liabilities of the undertaking to fair values as at that date.

(5) The resulting amount (if positive) shall be regarded as goodwill, and (if negative) as consolidation difference.



(6) Negative goodwill may be transferred to the consolidated profit and loss account where such a treatment is in accordance with the principles and rules of section 244 and schedule 15.

10.(1) Where a group is acquired, paragraph 9 applies with the following adaptations.

(2) References to the undertaking acquired shall be construed as references to the group, and references to the assets and liabilities, income and expenditure and capital and reserves of the undertaking acquired shall be construed as references to the assets and liabilities, income and expenditure and capital and reserves of the group after making the set-offs and other adjustments required by this Schedule in the case of group accounts.

11.(1) The following information with respect to acquisitions taking place in the financial year shall be given in a note to the accounts.

(2) The name of the undertaking acquired or, where a group was acquired, the name of the parent undertaking of that group must be stated, and in relation to an acquisition which significantly affects the figures shown in the group accounts, the following further information must be given.

(3) The composition and fair value of the consideration for the acquisition given by the parent company and its subsidiary undertakings shall be stated.

(4) The profit or loss of the undertaking or group acquired shall be stated-

- (a) for the period from the beginning of the financial year (and the date that year began) of the undertaking or group, up to the date of the acquisition; and
- (b) for the previous financial year of that undertaking or parent undertaking.

(5) The book values immediately prior to the acquisition, and the fair values at the date of acquisition, of each class of assets and liabilities of the undertaking or group acquired shall be stated in tabular form, including a statement of the amount of any goodwill or negative consolidation difference arising on the acquisition, together with an explanation of any significant adjustments made.

(6) In ascertaining for the purposes of subparagraph (4) or (5) the profit or loss of a group, the book values and fair values of assets and liabilities of a group or the amount of the assets and liabilities of a group, the set-offs and other adjustments required by this Schedule in the case of group accounts must be made.

12.(1) A note to the accounts shall state the cumulative amount of goodwill resulting from acquisitions in that and earlier financial years which has been written off.

(2) That figure shall be shown net of any goodwill attributable to subsidiary undertakings or business disposed of prior to the balance sheet date.

13. Where during the financial year there has been a disposal of an undertaking or group which significantly affects the figures shown in the group accounts, a note to the accounts shall state—

- (a) the name of that undertaking or, as the case may be, of the parent undertaking of that group; and
- (b) the extent to which the profit or loss shown in the group accounts is attributable to profit or loss of that undertaking or group.

14. The information required by paragraph 11, 12 or 13 need not be disclosed with respect to an undertaking which—

- (a) is established under the law of a country outside the United Kingdom or Gibraltar; or
- (b) carries on business outside the United Kingdom or Gibraltar,

if in the opinion of the directors of the parent company the disclosure would be seriously prejudicial to the business of the parent company or any of its subsidiary undertakings.

**Non-controlling interests.**

15.(1) The formats in Schedules 11 and 12 have effect in relation to group accounts with the following additions.

(2) In the Balance Sheet Formats a further item headed “Non-controlling interests” is added—

- (a) in Format 1, either after item J or at the end (after item K); and
- (b) in Format 2, under the general heading “CAPITAL RESERVES AND LIABILITIES”, between items A and B,

and that item shall include the amount of capital and reserves attributable to shares in subsidiary undertakings included in the consolidation held by or on behalf of persons other than the parent company and its subsidiary undertakings.

(3) In the Profit and Loss Account Formats a further item headed “Non-controlling interests” is added—

- (a) in Format 1, after item 14; and
- (b) in Format 2, after item 16;

and that item shall include the amount of any profit or loss attributable to shares in subsidiary undertakings included in the consolidation held by or on behalf of persons other than the parent company and its subsidiary undertakings.

#### **Joint ventures.**

16.(1) Where an undertaking included in the consolidation manages another undertaking jointly with one or more undertakings not included in the consolidation, that other undertaking (“the joint venture”) may be dealt with in the group accounts by the method of proportional consolidation, if it is not—

- (a) a corporate body; or
- (b) a subsidiary undertaking of the parent company.

(2) The provisions of this Schedule relating to the preparation of consolidated accounts and section 287(3), (4) and (6) apply, with any necessary modifications, to proportional consolidation under this paragraph.

(3) In addition to the disclosure of the average number of employees employed during the financial year, there shall be a separate disclosure in the notes to the accounts of the average number of employees employed by undertakings that are proportionately consolidated.

#### **Associated undertakings.**

17.(1) An “associated undertaking” means an undertaking in which an undertaking included in the consolidation has a participating interest and over whose operating and financial policy it exercises a significant influence, and which is not—

- (a) a subsidiary undertaking of the parent company; or
- (b) a joint venture dealt with in accordance with paragraph 16.

(2) Where an undertaking holds 20 per cent or more of the voting rights in another undertaking, it shall be presumed to exercise a significant influence over it unless the contrary is shown.

(3) The voting rights in an undertaking means the rights conferred on shareholders in respect of their shares or, in the case of an undertaking not having a share capital, on members, to vote at general meetings of the undertaking on all, or substantially all, matters.

(4) The provisions of paragraphs 5 to 11 of Schedule 20 apply in determining for the purposes of this paragraph whether an undertaking holds 20 per cent or more of the voting rights in another undertaking.

18.(1) The formats set out in Schedules 11 and 12 have effect in relation to group accounts with the following modifications.

(2) In the Balance Sheet Formats the items headed “Participating interest”, that is—

(a) in Format 1, item B.III.3; and

(b) in Format 2, item B.III.3 under the heading “ASSETS,

are replaced by two items, “Interests in associated undertakings” and “Other participating interests”.

(3) In the Profit and Loss Account Formats, the items headed “Income from participating interests”, that is—

(a) in Format 1, item 8; and

(b) in Format 2, item 10,

are replaced by two items, “Income from interests in associated undertakings” and “Income from other participating interests.

19.(1) The interest of an undertaking in an associated undertaking, and the amount of profit or loss attributable to such an interest, shall be shown by the equity method of accounting (including dealing with any goodwill arising in accordance with paragraphs 1 to 3 and 5 of section A of Schedule 15).

(2) Where the associated undertaking is itself a parent undertaking, the net assets and profits or losses to be taken into account are those of the parent and its subsidiary undertakings (after making any consolidation adjustments).

(3) The equity method of accounting need not be applied if the amounts in question are not material for the purpose of giving a true and fair view.

**Deferred tax balances.**

20. Deferred tax balances must be recognized on consolidation where it is probable that a charge to tax will arise within the foreseeable future for one of the undertakings included in the consolidation.

**SCHEDULE 22**

Section 289

**DISCLOSURE OF INFORMATION: RELATED UNDERTAKINGS****PART I****COMPANIES NOT REQUIRED TO PREPARE GROUP ACCOUNTS****Subsidiary undertakings.**

1. The following information shall be given where at the end of the financial year the company has subsidiary undertakings—

- (a) the name of each subsidiary undertaking;
- (b) for each subsidiary undertaking—
  - (i) if it has its registered office outside the United Kingdom or Gibraltar, the country in which it has its registered office, or
  - (ii) if it is unincorporated, the address of its principal place of business;
- (c) the reason why the company is not required to prepare group accounts; and
- (d) if that reason is that all the subsidiary undertakings of the company fall within the exclusions provided for in section 287, with respect to each subsidiary undertaking which of those exclusions applies.

**Holdings in subsidiary undertakings.**

2.(1) In relation to shares of each class held by the company in a subsidiary undertaking the following shall be shown—

- (a) the identity of the class; and
- (b) the proportion of the nominal value of the shares of that class represented by those shares.

(2) The shares held by or for the company itself shall be distinguished from those attributed to the company which are held by or for a subsidiary undertaking.

**Financial information about subsidiary undertakings.**

3.(1) For each subsidiary undertaking the following shall be shown—

- (a) the total amount of its capital and reserves as at the end of its relevant financial year; and
- (b) its profit or loss for that year.

(2) The information in subparagraph (1) need not be given if—

- (a) the company is exempt by virtue of section 285 from the requirement to prepare group accounts (parent company included in accounts of larger group);
- (b) the subsidiary undertaking is not required by any provision made by or under the Companies Act to deliver to the Registrar a copy of its balance sheet for its relevant financial year and does not otherwise publish that balance sheet in Gibraltar or elsewhere; and
- (c) the company's holding is less than 50 per cent of the nominal value of the shares in the undertaking.

(4) Information otherwise required by this paragraph need not be given if it is not material.

(5) For the purposes of this paragraph the “relevant financial year” of a subsidiary undertaking is—

- (a) if its financial year ends with that of the company, that year; and
- (b) if not, its financial year ending last before the end of the company's financial year.

**Financial years of subsidiary undertakings.**

4. Where the financial year of one or more subsidiary undertakings did not end with that of the company, there shall be shown in relation to each such undertaking—

- (a) the reasons why the company's directors consider that its financial year should not end with that of the company; and
- (b) the date its latest financial year ended.

Instead of the dates required by subparagraph (b) being given for each subsidiary undertaking the earliest and latest of those dates may be given.

**Further information about subsidiary undertakings.**

5.(1) There shall be shown—

- (a) any qualifications contained in the auditors' reports on the accounts of subsidiary undertakings for financial years ending with or during the financial year of the company; and
- (b) any note or saving contained in such accounts to call attention to a matter which, apart from the note or saving, would properly have been referred to in such a qualification,

insofar as the matter which is the subject of the qualification or note is not covered by the company's own accounts and is material from the point of view of its members.

(2) The amount of the total investment of the company in the shares of subsidiary undertakings shall be stated by way of the equity method of valuation, unless—

- (a) the company is exempt from the requirement to prepare group accounts by virtue of section 285; and
- (b) the directors state their opinion that the total value of the assets of the company consisting of shares in, or amounts owing (whether on account of a loan or otherwise) from, the company's subsidiary undertakings is not less than the total of the amounts at which those assets are stated or included in the company's balance sheet.

(3) In so far as information required by this paragraph is not obtainable, a statement to that effect shall be given instead.

**Shares and debentures of company held by subsidiary undertakings.**

6.(1) The number, description and amount of the shares in and debentures of the company held by or on behalf of its subsidiary undertakings shall be shown.



(2) Subparagraph (1) does not apply in relation to shares or debentures in the case of which the subsidiary undertaking is concerned as personal representative or, subject to subparagraph (3), as trustee.

(3) The exception for shares or debentures in relation to which the subsidiary undertaking is concerned as trustee does not apply if the company, or any subsidiary undertaking of the company, is beneficially interested under the trust, otherwise than by way of security only for the purposes of a transaction entered into by it in the ordinary course of a business which includes the lending of money.

**Significant holdings in undertaking other than subsidiary undertakings.**

7.(1) The information required by paragraphs 8 and 9 shall be given where at the end of the financial year the company has a significant holding in an undertaking which is not a subsidiary undertaking of the company.

(2) A holding is significant for this purpose if—

- (a) it amounts to 10 per cent or more of the nominal value of any class of shares in the undertaking; or
- (b) the amount of the holding (as stated or included in the company's accounts) exceeds one-tenth of the amount (as so stated) of the company's assets.

8.(1) There shall be stated—

- (a) the name of the undertaking;
- (b) if the undertaking has its registered office outside Gibraltar, the country in which it has its registered office; and
- (c) if it is unincorporated, the address of its principal place of business.

(2) There shall also be stated—

- (a) the identity of each class of shares in the undertaking held by the company; and
- (b) the proportion of the nominal value of the shares of that class represented by those shares.

9.(1) Where the company has a significant holding in an undertaking amounting to 20 per cent or more of the nominal value of the shares in the undertaking, there shall also be stated—

- (a) the total amount of the capital and reserves of the undertaking as at the end of its relevant financial year; and
  - (b) its profit or loss for that year.
- (2) That information need not be given if—
  - (a) the company is exempt by virtue of section 285 from the requirement to prepare group accounts; and
  - (b) the investment of the company in all undertakings in which it has such a holding as is mentioned in subparagraph (1) is shown, in total, in the notes to the accounts by way of the equity method of valuation.
- (3) That information need not be given in respect of an undertaking if—
  - (a) the undertaking is not required by any provision made by or under the Act to deliver to the Registrar a copy of its balance sheet for its relevant financial year and does not otherwise publish that balance sheet in Gibraltar or elsewhere; and
  - (b) the company's holding is less than 50 per cent of the nominal value of the shares in the undertaking.
- (4) Information otherwise required by this paragraph need not be given if it is not material.
- (5) For the purposes of this paragraph the “relevant financial year” of an undertaking is—
  - (a) if its financial year ends with that of the company, that year; and
  - (b) if not, its financial year ending last before the end of the company's financial year.

**Membership of certain undertakings.**

10.(1) The information required by this paragraph shall be given where at the end of the financial year the company is a member of a qualifying undertaking.

- (2) There shall be stated—
  - (a) the name and legal form of the undertaking; and

- (b) the address of the undertaking's registered office (whether in or outside Gibraltar) or, if it does not have such an office, its head office (whether in or outside Gibraltar).

(3) Information otherwise required by subparagraph (2) need not be given if it is not material.

(4) In this paragraph "qualifying undertaking" means a qualifying partnership or a qualifying company.

**Parent undertaking drawing up accounts for larger group.**

11.(1) Where the company is a subsidiary undertaking, the following information shall be given with respect to the parent undertaking of—

- (a) the largest group of undertakings for which group accounts are drawn up and of which the company is a member; and
- (b) the smallest such group of undertakings.

(2) There shall be stated—

- (a) the name of the parent undertaking;
- (b) the address of the undertaking's registered office; and
- (c) if it is unincorporated, the address of its principal place of business.

(3) If copies of the group accounts referred to in subparagraph (1) are available to the public, the addresses from which copies of the accounts can be obtained must be given.

**Identification of ultimate parent company.**

12.(1) Where the company is a subsidiary undertaking, the following information shall be given about the company (if any) regarded by the directors as being the company's ultimate parent company—

- (a) the name of that company; and
- (b) the country in which it is incorporated, if it is incorporated outside Gibraltar and that country is known to the directors.

(2) In this paragraph "company" includes any corporate body.

**Construction of references to shares held by company.**

13.(1) References in this Part to shares held by a company shall be construed as follows.

(2) For the purposes of paragraphs 2 to 5 (information about subsidiary undertakings)–

- (a) the company shall be regarded as holding any shares held by a subsidiary undertaking, or by a person acting for the company or a subsidiary undertaking; but
- (b) the company shall not be regarded as holding any shares held for a person other than the company or a subsidiary undertaking.

(3) For the purposes of paragraphs 7 to 9 (information about undertakings other than subsidiary undertakings)–

- (a) the company shall be regarded as holding shares held for it by any person; but
- (b) the company shall not be regarded as holding shares held for a person other than the company.

(4) For the purposes of any of those provisions, shares held by way of security shall be regarded as held by the person providing the security–

- (a) where apart from the right to exercise them for the purpose of preserving the value of the security, or of realising it, the rights attached to the shares are exercisable only in accordance with his instructions; and
- (b) where the shares are held in connection with the granting of loans as part of normal business activities and apart from the right to exercise them for the purpose of preserving the value of the security, or of realising it, the rights attached to the shares are exercisable only in his interests.

## **PART II**

### **COMPANIES REQUIRED TO PREPARE GROUP ACCOUNTS**

#### **Introductory.**

14. In this Part “the group” means the group consisting of the parent company and its subsidiary undertakings.

#### **Subsidiary undertakings.**

15.(1) The following information shall be given with respect to the undertakings which are subsidiary undertakings of the parent company at the end of the financial year—

- (a) the name of each undertaking;
- (b) the address of the undertaking's registered office; and
- (c) if it is unincorporated, the address of its principal place of business.

(2) It shall also be stated whether the subsidiary undertaking is included in the consolidation and, if it is not, the reasons for excluding it from consolidation shall be given.

(3) It shall be stated with respect to each subsidiary undertaking by virtue of which of the conditions specified in section 276(2) or (4) it is a subsidiary undertaking of its immediate parent undertaking.

That information need not be given if the relevant condition is that specified in section 276(2)(a) (holding of a majority of the voting rights) and the immediate parent undertaking holds the same proportion of the shares in the undertaking as it holds voting rights.

**Holdings in subsidiary undertakings.**

16.(1) The following information shall be given with respect to the shares of a subsidiary undertaking held—

- (a) by the parent company; and
- (b) by the group,

and the information under heads (a) and (b) must (if different) be shown separately.

(2) There must be stated—

- (a) the identity of each class of shares held; and
- (b) the proportion of the nominal value of the shares of that class represented by those shares.

**Financial information about subsidiary undertakings not included in the consolidation.**

17.(1) Each subsidiary undertaking not included in the consolidation shall disclose—

- (a) the total amount of its capital and reserves as at the end of its relevant financial year; and
- (b) its profit or loss for that year.

(2) That information need not be given if the group's investment in the undertaking is included in the accounts by way of the equity method of valuation or if—

- (a) the undertaking is not required by any provision under this Act to deliver to the Registrar a copy of its balance sheet for its relevant financial year and does not otherwise publish that balance sheet in Gibraltar or elsewhere; and
- (b) the holding of the group is less than 50 per cent of the nominal value of the shares in the undertaking.

(3) Information otherwise required by this paragraph need not be given if it is not material.

(4) For the purposes of this paragraph the “relevant financial year” of a subsidiary undertaking is—

- (a) if its financial year ends with that of the company, that year; and
- (b) if not, its financial year ending last before the end of the company's financial year.

**Further information about subsidiary undertakings excluded from consolidation.**

18.(1) The following information shall be given about subsidiary undertakings excluded from consolidation.

(2) There shall be disclosed—

- (a) any qualifications contained in the auditors' reports on the accounts of the undertaking for financial years ending with or during the financial year of the company; and
- (b) any note or saving contained in such accounts to call attention to a matter which, apart from the note or saving, would properly have been referred to in such a qualification, insofar as the matter which is the subject of the qualification or note is not covered by the consolidated accounts and is material from the point of view of the members of the parent company.

(3) In so far as information required by this paragraph is not obtainable, a statement to that effect shall be given.

**Financial years of subsidiary undertakings.**

19. Where the financial year of one or more subsidiary undertakings did not end with that of the company, there shall be stated in relation to each such undertaking—

- (a) the reasons why the company's directors consider that its financial year should not end with that of the company; and
- (b) the date its latest financial year ended.

Instead of the dates required by subparagraph (b) being given for each subsidiary undertaking the earliest and latest of those dates may be given.

**Shares and debentures of company held by subsidiary undertakings.**

20.(1) The number, description and amount of the shares in and debentures of the company held by or on behalf of its subsidiary undertakings shall be disclosed.

(2) Subparagraph (1) does not apply in relation to shares or debentures in the case of which the subsidiary undertaking is concerned as personal representatives or, subject to subparagraph (3), as trustee.

(3) The exception for shares or debentures in relation to which the subsidiary undertaking is concerned as trustee does not apply if the company or any of its subsidiary undertakings is beneficially interested under the trust, otherwise than by way of security only for the purposes of a transaction entered into by it in the ordinary course of a business which includes the lending of money.

**Joint ventures.**

21.(1) The following information shall be given where an undertaking is dealt with in the consolidated accounts by the method of proportional consolidation in accordance with paragraph 16 of Schedule 21 (joint ventures)—

- (a) the name of the undertaking;
- (b) the address of the undertaking's registered office;
- (c) the factors on which joint management of the undertaking is based; and

- (d) the proportion of the capital of the undertaking held by or on behalf of undertakings included in the consolidation.

(2) Where the financial year of the undertaking did not end with that of the company, the date on which a financial year of the undertaking last ended before that date shall be given.

**Associated undertakings.**

22.(1) The following information shall be given where an undertaking included in the consolidation has an interest in an associated undertaking—

- (a) the name of the associated undertaking;
- (b) the address of the undertaking's registered office; and
- (c) if it is unincorporated, the address of its principal place of business.

(2) The following information shall be given about the shares of the undertaking held—

- (a) by the parent company; and
- (b) by the group,

and the information under heads (a) and (b) shall be shown separately.

(3) Information shall be given about—

- (a) the identity of each class of shares held; and
- (b) the proportion of the nominal value of the shares of that class represented by those shares.

(4) In this paragraph “associated undertaking” has the meaning given by paragraph 17 of Schedule 21; and the information required by this paragraph shall be given notwithstanding that paragraph 19(3) of that Schedule (materiality) applies in relation to the accounts themselves.

**Other significant holdings of parent company or group.**

23.(1) The information required by paragraph 24 and 25 shall be given where at the end of the financial year the parent company has a participating interest in an undertaking which is not one of its subsidiary undertakings and does not fall within paragraph 21 (joint ventures) or paragraph 22 (associated undertakings).



(2) *Deleted*

24.(1) The information required is—

- (a) the name of the undertaking;
- (b) the address of the undertaking's registered office; and
- (c) if it is unincorporated, the address of its principal place of business.

(2) The following information shall be given about the shares of the undertaking held by the parent company—

- (a) the identity of each class of shares held; and
- (b) the proportion of the nominal value of the shares of that class represented by those shares.

25.(1) The accounts must contain—

- (a) the total amount of the capital and reserves of the undertaking as at the end of its relevant financial year; and
- (b) its profit or loss for that year.

(2) That information need not be given in respect of an undertaking if—

- (a) the undertaking is not required by any provision made by this Act to deliver to the Registrar a copy of its balance sheet for its relevant financial year and does not otherwise publish that balance sheet in Gibraltar or elsewhere;

(b) *Deleted*

(3) *Deleted*

(4) For the purposes of this paragraph the “relevant financial year” of an undertaking is—

- (a) if its financial year ends with that of the company, that year; and
- (b) if not, its financial year ending last before the end of the company's financial year.

26.(1) The information required by paragraphs 27 and 28 shall be given where at the end of the financial year the group has a participating interests in an undertaking which is not a subsidiary undertaking of the parent company and does not fall within paragraph 21 (joint ventures) or paragraph 22 (associated undertakings).

(2) *Deleted*

27.(1) The information required is—

- (a) the name of the undertaking;
- (b) the address of the undertaking's registered office; and
- (c) if it is unincorporated, the address of its principal place of business.

(2) The following information shall be given about the shares of the undertaking held by the group—

- (a) the identity of each class of shares held; and
- (b) the proportion of the nominal value of the shares of that class represented by those shares.

28.(1) There must also be stated—

- (a) the total amount of the capital and reserves of the undertaking as at the end of its relevant financial year;
- (b) its profit or loss for that year.

(2) That information need not be given if—

- (a) the undertaking is not required by any provision made by this Act to deliver to the Registrar a copy of its balance sheet for its relevant financial year and does not otherwise publish that balance sheet in Gibraltar or elsewhere;
- (b) *Deleted*

(3) *Deleted*

(4) For the purposes of this paragraph the “relevant financial year” of an undertaking is—

- (a) if its financial year ends with that of the parent company, that year; and

- (b) if not, its financial year ending last before the end of the parent company's financial year.

**Parent company's or group's membership of certain undertakings.**

29.(1) The information required by this paragraph shall be given where at the end of the financial year the parent company or group is a member of a qualifying undertaking.

(2) The information required is—

- (a) the name and legal form of the undertaking; and
- (b) the address of the undertaking's registered office (whether in or outside Gibraltar) or, if it does not have such an office, its head office (whether in or outside Gibraltar).

(3) The information required by subparagraph (2) need not be given if it is not material.

(4) In this paragraph "qualifying undertaking" means a qualifying partnership or a qualifying company.

**Parent undertaking drawing up accounts for larger group.**

30.(1) Where the parent company is itself a subsidiary undertaking, the following information shall be given about that parent company which heads—

- (a) the largest group of undertakings for which group accounts are drawn up and of which that company is a member; and
- (b) the smallest such group of undertakings.

(2) There shall be stated—

- (a) the name of that parent undertaking;
- (b) the address of the undertaking's registered office; and
- (c) if it is unincorporated, the address of its principal place of business.

(3) If copies of the group accounts referred to in subparagraph (1) are available to the public, the addresses from which copies of the accounts can be obtained shall also be given.

**Identification of ultimate parent company.**

31.(1) Where the parent company is itself a subsidiary undertaking, the following information shall be given about the company (if any) regarded by the directors as being that company's ultimate parent company—

- (a) the name of that company; and
- (b) the country in which it has its registered office, if that office is outside Gibraltar and the country is known to the directors.

(2) In this paragraph “company” includes any corporate body.

**Construction of references to shares held by parent company or group.**

32.(1) References in this Part to shares held by the parent company or the group shall be construed as follows.

(2) For the purposes of paragraphs 16, 22(4) and (5) and 23 to 25 (information about holdings in subsidiary and other undertakings)—

- (a) the parent company shall be regarded as holding shares held for it by any person; but
- (b) the parent company shall not be regarded as holding shares held for a person other than the company.

(3) References to shares held by the group are to any shares held by or for the parent company or any of its subsidiary undertakings; but any shares held for a person other than the parent company or any of its subsidiary undertakings shall not be regarded as held by the group.

(4) Shares held by way of security shall be regarded as held by the person providing the security—

- (a) where apart from the right to exercise them for the purpose of preserving the value of the security, or of realising it, the rights attached to the shares are exercisable only in accordance with his instructions; and
- (b) where the shares are held in connection with the granting of loans as part of normal business activities and apart from the right to exercise them for the purpose of preserving the value of the security, or of realising it, the rights attached to the shares are exercisable only in his interests.

**Risk management systems.**

33.(1) A consolidated annual report shall give a description of the main features of the group's internal control and risk management systems in relation to the process for preparing consolidated accounts, where an undertaking has its securities admitted to trading on a regulated market within the meaning of the Financial Services (Markets in Financial Instruments) Act 2006. In the event that the consolidated annual report and the directors' report are presented as a single report, this information must be included in the section of the report containing the corporate governance statement as provided for in section 251.

(2) Where the information required by section 251 is set out in a separate report published together with the directors' report in the manner prescribed by this Act, the information provided under subsection (1) shall also form part of that separate report, which shall be audited in accordance with the provisions of this Act.

### **PART III**

#### **EMOLUMENTS OF DIRECTORS AND STAFF COSTS**

1. When applying subparagraphs (n) and (o) of paragraph 1 of Schedule 16 to group accounts, only the amounts granted to the directors of the parent company by the parent company and any of its subsidiary undertakings must be disclosed in the notes to the accounts.

**SCHEDULE 23**

Section 377

**POWERS OF VOLUNTARY LIQUIDATOR****PART I****POWERS EXERCISABLE WITH SANCTION**

1. Power to pay any class of creditors in full.
2. Power to make a compromise or arrangement with creditors or persons claiming to be creditors, or having or alleging that they have any claim against the company, whether present or future, certain or contingent, ascertained or not.

**PART II****POWERS EXERCISABLE WITHOUT SANCTION**

3. Power to commence, continue, discontinue or defend any action or other legal proceedings in the name and on behalf of the company.
4. Power to carry on the business of the company so far as may be necessary for its beneficial liquidation.
5. Power to sell or otherwise dispose of property of the company.
6. Power to compromise, on such terms as may be agreed—
  - (a) calls and liabilities to calls, debts and liabilities capable of resulting in debts, and claims, whether present or future, certain or contingent, ascertained or not, subsisting or supposed to subsist between the company and any person; and
  - (b) questions in any way relating to or affecting the assets or the liquidation of the company,

and take security for the discharge of any such call, debt, liability or claim and give a complete discharge in respect of it.

7. Power to do all acts and execute, in the name and on behalf of the company, any deeds, receipts or other documents.
8. Power to use the company's seal.

9. Power to prove, rank and claim in the bankruptcy, liquidation, insolvency or sequestration of any member or past member for any balance against his estate, and to receive dividends, in the bankruptcy, liquidation, insolvency, sequestration or in respect of that balance, as a separate debt due from the bankrupt or insolvent, and rateably with the other separate creditors.

10. Power to draw, accept, make and endorse any bill of exchange or promissory note in the name and on behalf of the company with the same effect with respect to the company's liability as if the bill or note had been drawn, accepted, made or indorsed by or on behalf of the company in the course of its business.

11. Power to borrow money, whether on the security of the assets of the company or otherwise.

12. Power to take out in his official name letters of administration to any deceased member or past member or debtor, and to do any other act necessary for obtaining payment of any money due from a member or past member or debtor, or his estate, that cannot conveniently be done in the name of the company. For the purposes of enabling the voluntary liquidator to take out letters of administration or do any other act under this paragraph, to be due to the voluntary liquidator himself.

13. Power to call meetings of creditors or members for—

- (a) the purpose of informing creditors or members concerning the progress of or matters arising in the liquidation;
- (b) the purpose of ascertaining the views of creditors or members on any matter arising in the liquidation; or
- (c) such other purpose connected with the liquidation as the voluntary liquidator considers appropriate.

14. Power to appoint a solicitor, accountant or other professionally qualified person to assist him in the performance of his duties.

15. Power to appoint an agent to do any business that the voluntary liquidator is unable to do himself, or which can be more conveniently done by an agent.

## SCHEDULE 24

**TABLE OF FEES TO BE PAID TO THE REGISTRAR OF  
COMPANIES BY OR IN RESPECT OF COMPANIES HAVING A  
SHARE CAPITAL, COMPANIES NOT HAVING A SHARE  
CAPITAL, COMPANIES TO WHICH PARTS XII AND XIII APPLY  
AND COMPANIES TO WHICH REGULATION (EC) No. 2157/2001  
(THE “EC REGULATION”) APPLIES**

**ITEM****FEE**

1.(a) Incorporation, registration (including registration under Part XII of the Act) or submission of any change in status of a company, that is to say, the fact of its being public or private or limited or unlimited or limited by shares or by guarantee or de-registering on registering as limited partnership (except on re-domiciliation) regardless of share capital	£100.00
*Stamp Duty payment on nominal share capital and increases with share capital will be payable at Companies House at the time of incorporation and increase	£10.00
(b) Same day urgency fee for incorporation or registration of a company including registration or re-registration under Part XII (correct documents to be lodged with the Registrar before 12.00 midday)	£200.00
(c) Registration of a company as re-domiciled in Gibraltar under section 442(3) Or re-domiciling outside Gibraltar under section 442(4)	£200.00 £500.00
(d) Registration of Prospectus	£200.00
(e) Registration of change of name	£100.00
(f) Same day urgency fee for registration of a change of name of a company (correct documents to be lodged with the Registrar before 12.00 midday)	£200.00
(g) Lodging of annual return for the current year	£75.00
Plus where a company is a cell company, in respect of each cell of the company	£75.00
Annual or voluntary Statement of Allotments, Redemptions and Purchase of Own Shares under section 189	£100.00
Supplementary Fees for late filing of Annual Returns (see section 426(4) of the Companies Act)	1 year- £105.00 2 years- £135.00 3 years- £165.00 3+ years- £195.00
Lodging of the late Annual Return or substitution of an annual return after date due for the filing of that return	



(h) Lodging of particulars of directors and/or secretaries or any change in directors and/or secretaries	£15.00
(i) Lodging any document required to be given, delivered, sent, forwarded, lodged or filed by the Registrar (except where otherwise specified) or to lodge a substitute document for a document lodged or filed in the Register (other than an Annual Return)	£15.00
Supplementary fees for late filing of any document other than Annual Returns and the filing of Accounts (see section 426(4) of the Companies Act)  Lodging or filing of any document other than Annual Returns and the filing of Accounts after the due date for filing or lodging that document or filing or lodging of a substitute document after the due date for filing or lodging of that document	£15.00
(j) Mortgage  (i) Lodging prescribed particulars for registration of a charge or any other forms of security  (ii) The fee prescribed under section 172 (1) for entry in the Register of Charges and issue of certificate of registration of charge  (iii) Entry of memorandum of satisfaction under section 174  (iv) Certificate of discharge under section 174	£25.00  £50.00  £20.00  £30.00
(k) Filing of accounts  Supplementary fees for late filing of Accounts (see section 426(4) of the Companies Act)  (i) more than 13 months but not more than 24 months after the end of the financial period to which they relate  (ii) more than 24 months after the end of the financial period to which they relate	£15.00  £50.00  £100.00
(l) Application to Registrar to file Return of Allotments out of time	£75.00
(m) Lodging with the Registrar information for the purposes of enabling the Registrar to commence the procedure to strike off a Company or in compliance with regulation 10(2) of the Companies Re-domiciliation) Regulation 1996 (as amended)	£30.00
(n) Application to the Registrar to restore to the register a company which has been struck off	£200.00
(o) Application for a licence under section 28	£200.00
(p) Certificate of good standing	£45.00

(q) Inspection of document–	
(i) personal search	£15.00
(ii) electronic archive copy of company record	
(manual)	£15.00
(on-line)	£10.00
(iii) electronic archive copy of company record	
(within same day)	£20.00
(iv) Certified copy of a certificate:	
(aa) if available from the original record (exclusive of search)	£5.00
(bb) 1st copy produced from electronic archive	£15.00
(cc) each subsequent copy supplied on the same occasion and of the same company from electronic archive	£10.00
(v) Certified copy of any other document:	
(aa) If available from the original record, per page (exclusive of search)	£00.50
(bb) 1st copy produced from electronic archive; per document	£15.00
(cc) 1st copy produced from electronic archive; per document (within same day)	£30.00
(dd) each subsequent copy supplied on the same occasion and of the same company from electronic archive, per document	£10.00
(vi) Copy of any document:	
(aa) If available from the original record, per page (exclusive of search)	
(bb) 1st copy produced from electronic archive; per document(inclusive of search)	£00.25
(cc) 1st copy produced from electronic archive; per document (within same day)	£15.00
(dd) each subsequent copy supplied on the same occasion and of the same company from electronic archive, per document	£15.00
	£2.50
(u) Postal Search (electronic archive copy of company record)	£15.00
(v) Merger of Companies	
(i) up to and including 5 merging bodies	£750.00
(ii) more than 5 merging bodies	£1250.00
(iii) Mergers of Companies where the Registry considers that the structure is of a more complex nature	£2000.00
(w) Exceptional Work (per hour)	£300.00

**2. For Registration of an SE whose registered office is in Gibraltar on its formation**

2.(a) By merger in accordance with Article 2(1) of the EC Regulation	£200.00
(b) By the formation of a holding SE in accordance with Article 2(2) of EC Regulation	£200.00
(c) By the formation of a subsidiary SE in accordance with Article 2(3) of the EC Regulation	£200.00
(d) By the transference of a public company in accordance with Article 2(4) of the EC Regulation	£200.00
(e) By the formation of a subsidiary SE in accordance with Article 3(2) of the EC Regulation	£200.00
3. For Registration of a public company by the conversion of an SE in accordance with Article 66 of the EC Regulation	£200.00
4. For registration of an SE on the transfer of its registered office to Gibraltar in accordance with Article 8 of the EC Regulation	£250.00
5. For an application for a certificate under Article 8(8) of the EC Regulation attesting to the completion of the acts and formalities to be accomplished before the transfer of the registered office of an SE from Gibraltar	£250.00

## SCHEDULE 25

Sections 446 and 460

**CREDIT AND FINANCIAL INSTITUTIONS TO WHICH THE  
BANK BRANCHES DIRECTIVE (89/117/EEC) APPLIES**

1. This Schedule applies to any credit or financial institution—
  - (a) which is incorporated or otherwise formed outside the United Kingdom and Gibraltar;
  - (b) whose head office is outside the United Kingdom and Gibraltar; and
  - (c) which has a branch in Gibraltar.

2. In this Schedule—

“branch”, in relation to a credit or financial institution, means a place of business which forms a legally dependent part of the institution and which conducts directly all or some of the operations inherent in its business;

“credit institution” means a credit institution as defined in Article 1 of the First Council Directive on the coordination of laws, sections and administrative provisions relating to the taking up and pursuit of the business of credit institutions (77/780/EEC), that is to say, an undertaking whose business is to receive deposits or other repayable funds from the public and to grant credits for its own account; and

“financial institution” means a financial institution within the meaning of Article 1 of the Council Directive on the obligations of branches established in a member State of credit and financial institutions having their head offices outside that member State regarding the publication of annual accounting documents (the Bank Branches Directive 89/117/EEC).

**SCHEDULE 26**

Section 460

**DELIVERY OF REPORTS AND ACCOUNTS: COMPANIES TO WHICH THE ELEVENTH COMPANY LAW DIRECTIVE APPLIES****PART I****COMPANIES REQUIRED TO MAKE DISCLOSURE UNDER PARENT LAW****Scope of Part.**

1.(1) This Part applies to any company to which section 460 applies which is required by its parent law to prepare, have audited and disclose accounts.

(2) This Part of this Schedule also applies to any company to which section 443 applies which is incorporated in a member State and—

- (a) is required by its parent law to prepare and disclose accounts but, by virtue of Article 51 of the Fourth Council Directive, is not required by that law to have those accounts audited; or
- (b) is not required by its parent law to prepare, have audited and disclose accounts if—
  - (i) its parent undertaking prepares, had audited and discloses consolidated accounts, and
  - (ii) in pursuance of Article 57 of that Directive, its accounts are included in those consolidated accounts.

**Duty to deliver copies in Gibraltar.**

2.(1) This paragraph applies in respect of each branch which a company to which this Part applies has in Gibraltar.

(2) The company shall deliver to the Registrar for registration in respect of the branch copies of all the accounting documents prepared in relation to a financial period of the company which are disclosed in accordance with its parent law on or after the end of the period allowed for compliance in respect of the branch with section 445 or, if earlier, the date on which the company complies with that section in respect of the branch.

(3) Where the company's parent law permits it to discharge its obligation with respect to the disclosure of accounting documents by disclosing documents in a modified form, it may discharge its obligations under

subparagraph (2) by delivering copies of documents modified as permitted by that law.

(4) If any document, a copy of which is delivered under subparagraph (2), is in a language other than English, the company shall annex to the copy delivered a translation of it into English, certified in accordance with rule 5 of the Companies Rules to be a correct translation.

**Exemptions from paragraph 2.**

3. Paragraph 2 shall not require documents to be delivered in respect of a branch if—

- (a) before the end of the period allowed for compliance with that paragraph, they are delivered in respect of another branch in the United Kingdom; and
- (b) the particulars registered under sections 445 to 453 in respect of the branch indicate an intention that they are to be registered in respect of that other branch and include the details of that other branch mentioned in section 448 (b).

**Time for delivery.**

4. The period allowed for delivery, in relation to a document required to be delivered under paragraph 2, is 3 months from the date on which the document is first disclosed in accordance with the company's parent law.

**Penalty for non-compliance.**

5.(1) If a company fails to comply with paragraph 2 before the end of the period allowed for compliance, it, and every person who immediately before the end of that period was a director of it, is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale and for continued contravention, to a daily default fine not exceeding level 1 on the standard scale.

(2) It is a defence for a person charged with an offence under this paragraph to prove that he took all reasonable steps for securing compliance with paragraph 2.

**Interpretation.**

6.(1) In this Part—

“financial period”—

- (a) in relation to a company falling within paragraph (2)(a) above, means a period for which the company is required or permitted by its parent law to prepare accounts; and
- (b) in relation to a company falling within paragraph (2)(b) above, means a period for which its parent undertaking is required or permitted by the undertaking's parent law to prepare consolidated accounts,

“the Fourth Council Directive” means the Fourth Council Directive of 25th July 1978 based on Article 54(3)(g) of the Treaty on the annual accounts of certain types of companies (78/660/EEC); and

“parent law”, in relation to a company, means the law of the country in which the company is incorporated; and references to disclosure are to public disclosure.

(2) For the purposes of this Part of this Schedule, the following are accounting documents in relation to a financial period of a company falling within paragraph (1) above—

- (a) the accounts of the company for the period, including, if it has one or more subsidiaries, any consolidated accounts of the group;
- (b) any annual report of the directors for the period; and
- (c) in the case of a company falling within paragraph 1—
  - (i) any report of the auditors on the accounts mentioned in paragraph (a), and
  - (ii) any report of the auditors on the report mentioned in paragraph (b).

(3) For the purposes of this Part of this Schedule, the accounting documents in relation to a financial period of a company falling within paragraph (2)(b) are the consolidated accounts of its parent undertaking.

## **PART II**

### **COMPANIES NOT REQUIRED TO MAKE DISCLOSURE UNDER PARENT LAW**

#### **Scope of Part.**

7.(1) This Part of this Schedule applies to any company to which section 460 applies which does not fall within Part I.

(2) This Part applies to any company to which section 460 applies which is not required by the law of the country in which it is incorporated to prepare, have audited and to disclose publicly accounts.

**Preparation of accounts and reports.**

8. A company to which this Part applies shall in respect of each financial year of the company prepare the like accounts and directors' report, and cause to be prepared such an auditor's report as would be required if the company were a company to which section 288 applied.

**Duty to deliver accounts and reports.**

9.(1) A company to which this Part applies shall, in respect of each financial year of the company, deliver to the Registrar copies of the accounts and reports prepared in accordance with paragraph 8.

(2) If any document comprised in those accounts or reports is in a language other than English, the company shall annex to the copy delivered a translation of it into English, certified in accordance with rule 5 of the Companies Rules to be a correct translation.

(3) A company required to deliver documents under this paragraph in respect of a financial year shall deliver them in respect of each branch which it has in Gibraltar at the end of that year.

(4) Subparagraph (3) is without prejudice to section 458.

10. Paragraph 9 shall not require documents to be delivered in respect of a branch if—

- (a) before the end of the period allowed for compliance with that paragraph, they are delivered in respect of another branch in Gibraltar or the United Kingdom; and
- (b) the particulars registered under section 445 in respect of the branch indicate an intention that they are to be registered in respect of that other branch and include the details of that other branch mentioned in section 448(b).

**Time for delivery.**

11.(1) The period allowed for delivering accounts and reports under paragraph 9 is 13 months after the end of the relevant accounting reference period, subject to the following provisions of this paragraph.



(2) If the relevant accounting reference period is the company's first and is a period of more than 12 months, the period allowed is 13 months from the first anniversary of the company becoming a company to which this Part applies.

(3) In this paragraph "the relevant accounting reference period" means the accounting reference period by reference to which the financial year for the accounts in question was determined.

**Penalty for non-compliance.**

12.(1) If the requirements of paragraph 9 are not complied with before the end of the period allowed for delivering accounts and reports, or if the accounts and reports delivered do not comply with the requirements made by or under the Act, the company and every person who immediately before the end of that period was a director of the company shall be guilty of an offence and liable—

- (a) on summary conviction to a fine not exceeding level 4 on the standard scale; and
- (b) for continued contravention to a daily default fine not exceeding level 1 on the standard scale.

(2) It is a defence for a person charged with such an offence to prove that he took all reasonable steps for securing that the requirements in question would be complied with.

(3) It is not a defence in relation to a failure to deliver copies to the Registrar to prove that the documents in question were not in fact prepared as required by or under the Act.

**SCHEDULE 27**

Section 470

**PROVISIONS REFERRED TO IN SECTION 470**

Provisions relating to—

Conclusiveness of certificate of incorporation; ss.14-16.

Specific requirements as to particulars in prospectus; s.79.

Prohibition of allotment in certain cases unless statement in lieu of prospectus delivered to Registrar; s.84.

Return as to allotments; s.86.

Registration of charges created by companies registered in Gibraltar; s.168.

Duty of company to register charges created by company; s.170(1).

Duty of company to register charges existing on property acquired; s.171.

Restrictions on commencement of business; s.181.

The particulars as to directors and indebtedness of the company; s.188 (4)–(6).

Statutory meeting and statutory report; s.194.

Restrictions on appointment or advertisement of director; s.257.

Auditors' report and right to information and explanations; s.194.

Documents to be delivered to Registrar by companies carrying on business in Gibraltar; s.432.

Return to be delivered to Registrar where documents altered; s.433.

Obligation to state name of company. s.435.

## SCHEDULE 28

## INDEX OF DEFINED EXPRESSIONS

Annual accounts (in Part VII)	237(1)
Annual report (in Part V Chapter 3)	280(7)
Annual return	188-190
Arrangement (in section 41)	41(7)(b)(ii)
Arrangement (in sections 295-301)	295(2)
Articles (in Part I)	2(1)
Associate (in section 346)	347
Associated undertaking (in section 346)	346(2)(b)
Authorised minimum, in relation to the paid up share capital of a public company	135
Authorised person (in Part X)	359(1)
Authorised signatories (in section 73(2))	73(3)
Available profits of the company (in section 116(3)(a))	114(1)
Balance sheet date (in Part VII Chapter 3)	280(1)
Balance sheet total, in relation to any financial year of a company (in Schedule 9)	Schedule 9, paragraph 5
Branch (in Part XII)	441
Branch (in Schedule 25)	Schedule 25, paragraph 2
Capital redemption reserve	115(1)
Capitalisation, in relation to work or costs (in Part VII Chapter 3)	280(1)
Certified (in Part XII)	441
Chapter 3 accounts (in Part VII Chapter 3)	280(4)
Charge (in Part V)	168(1)
Commission (in Part 1)	2(1)
Companies Rules	2(1)
Company	2(1)
Company (in section 300)	295(2)
Company (in Part VII except section 299)	295(2)
Company being wound up (in Part 1)	2(3)
Company's constitution	21
Companies involved in the division (in Part VII)	325(2)
Control contract	Schedule 20, paragraph 4(2)
Court (in Part VI)	2(1)
Creditor (in Part X)	359(1)
Credit institution (in Schedule 25)	Schedule 25, paragraph 1
Debenture (except in sections 465-466)	2(1)
Debenture (in sections 465-467)	465(7)
Debt (in Part X)	359(1)
Director (in Part I)	2(1)
Director (in sections 188-191)	191(6)
Director (in Part XII)	398
Director's report (in Part VII Chapter 2)	249(1)
Distributable profits (in sections 106-123)	105(4)
Distribution (in Part IX)	353(2)
Document	2(1)
EEA undertaking	268(7)
Electronic address	203(2)
Electronic signature (in section 428)	428(3)
Emoluments (in section 226)	226(7)

Existing company (in sections 303-351)	302(2)(b)
Expert (in section 81)	81(5)
Extraordinary resolution	201
Fellow subsidiary undertakings (in Part VII Chapter 3)	277(4)
Financial holding company (in Part VII)	Schedule 17, paragraph 2
Financial institution (in Schedule 25)	Schedule 25, paragraph 2
Financial period (in Schedule 26)	Schedule 26, paragraph 6
Financial year of a company (in Part VII)	280(2)
Financial year of a company (in Schedules 2 and 3)	Schedule 2, paragraph 25
Floating charge (in Part X)	359(1)
Former Companies Act, The	2(1)
Fourth Council Directive (in Schedule 26)	Schedule 26, paragraph 6(1)
Gross	293(5)
Group (in Part VII Chapter 3)	280(1)
Group (in Schedule 21)	Schedule 21, paragraph 14
Group accounts (in Part VII Chapter 3)	281(1)
Group director's reports (in Part VII Chapter 2)	249(2)
Group undertaking	277(1)
Group undertaking (in Part VII)	237(1)
Hedge accounting (in section 253)	253(2)
Half-yearly financial report (in section 311)	311(6)
IAS accounts	237(1)
IAS group accounts	281(3)
IAS regulation	237(1)
Included in this consolidation, in relation to group accounts (in Part VII Chapter 3)	280(1)
Included in consolidated group accounts (in Part VII Chapter 3)	280(1)
Individual accounts, in relation to each financial year of a company (in Part VII Chapter 3)	280(1)
Initial period (in section 93)	93(2)
Insolvency Act	2(1)
Interim accounts (in section 358)	358(3)
International accounting standards (in Part VII)	237(1)
Investment company (in section 354)	355(1)
Investment company (in Part VII)	237(1)
Investment property (in Part VII)	237(1)
Judgement rate (in Part X)	359(1)
Key performance indicators (in section 252)	252(5)
Liabilities	352
Liability limitation agreement	262
Licensed insolvency practitioner (in Part X)	359(1)
Limited by guarantee	3(3)
Limited by shares	3(2)
Limited company	3(1)
Liquidation	393(b)
Liquidator (in Part I)	2(1)
Mainstream companies (in Part VII)	237
Market purchase, by a company of its own shares	108(3)
Medium-sized company	237(1)

Member	17(2)
Memorandum	2(1)
Merger by absorption	304(1)
Merger by formation of new company	304(1)
Merging companies (in Part VII)	304(2)
Minister, the	2(1)
Net	293(5)
Net assets (in Part III)	40(6)
Net value transferred (in section 350)	350(5)
New company (in sections 303-351)	302(2)
Next annual return (in section 289)	289(7)
Non-business day (in section 430)	430(3)
Non-IAS accounts	237(1)
Off-market purchase, by a company of its own shares	108(1)
Officer (in sections 188-191)	191(4)
Officer who is in default	472
Official notification (in section 430)	430(4)
Official receiver (in section 220)	220(3)
Ordinary resolution	200
Other holder (in section 319)	319(6)
Overseas company (in Part XII)	431
Parent company (in Part VII Chapter 3)	276(1)
Parent law (in Schedule 26)	Schedule 26, paragraph 6
Parent undertaking (in Part VIII Chapter 3)	276(1)
Participating interests (in Part VII Chapter 3)	278(1)
Payment out of capital	105(1), 112
Pension costs (in section 247)	247(7)
Permissible capital payment	105(4), 112
Place of business (in Part XII)	441
Preferential creditor (in Part X)	358(1)
Preferential debt (in Part X)	358
Prescribed	2(1)
Price risk (in section 253)	253(2)
Principal terms	264(4)
Primary currency	237(1)
Private company	4(2), 19
Profit and loss account (in Part VII)	237(1)
Profit and loss account, in relation to a company that prepares IAS group accounts (in Part VII Chapter 3)	280(1)
Promoter (in section 81)	81(5)
Proper books of account (in Part I)	2(1)
Properly prepared (in section 358)	358(3)
Property (in Part VIII)	352
Prospectus	2(1)
Prospectus (in Part XII)	441
Prospectus (in sections 465-466)	465(7)
Public company	4(1)
Qualifying floating charge (in Part X)	359(1)
Realised loss, in relation to a company's accounts	280(3)
Realised profits, in relation to a company's accounts	280(3)
Redenomination, in relation to a company's share capital (in Part V)	159

Registrar	2(1)
Regulated market (in Part VII)	237(1)
Related party (in Part VII Chapter 3)	291(3)
Relevant model articles	24(2)
Relevant resolutions and agreements (in s21)	21(2)
Relevant securities (in section 94)	94(2)
Relevant securities (in section 318)	318(6)
Relevant state (in Part XIII)	442(2)
Resolution for reducing share capital	136(2)
Return date	188(1)
Secured creditor (in Part X)	359(1)
Share	2(1)
Shares (in Part VII Chapter 3)	277(2)
Shares (in sections 465-466)	465(7)
Shares (in sections 467-468)	468(6)
Share exchange ratio	305(2), 326(2)
Share premium account	125(1)
Social security costs (in s247)	247(6)
Special resolution	201
Specified company (in Part VII)	237(1)
Statutory report	194
Subsidiary	2(1)
Subsidiary undertaking (in Part VII)	237(1)
Subsidiary undertaking (in Part VII Chapter 3)	276(1)
Transfer (in section 152)	152
Transferor company (in Part VIII)	300(1)(b)
Transferee company (in Part VIII)	300(1)(b)
True and fair view, in relation to company accounts	237(1)
Undertaking (in Part VII)	277(1)
Undistributable reserves (in Part III)	354(5)
Unqualified report (in section 40)	40(3)
Unlimited company	3(4)
Unsecured creditor (in Part X)	359(1)
Valuer (in Schedule 4)	Schedule 4, paragraph 2
Variation (in section 143)	143
Vendor (in Schedules 2 & 3)	Schedule 2, paragraph 2
Voluntary liquidation (in Part I)	2(1)
Voluntary liquidator (in Part I)	2(1)
Winding up of a company (in Part I)	2(3)

**SCHEDULE 29**

Section 490

**ENACTMENTS REPEALED**

1. The former Companies Act: subject to the transitional provisions in section 488, the whole Act.
2. The Companies (Amendment) Act 1987 (1987 No.30): the whole Act.
3. The Companies (Amendment) Act 1988 (1988 No.22): the whole Act.
4. The Companies (Amendment) Act 1992 (1992 No.07): the whole Act.
5. The Companies Act (Amendment to Schedule)(No.2) Order 1993 L.N.1993=178: the whole Order.
6. The Companies Act (Amendment to Schedule) Order 1993 L.N. 1993=104: the whole Order.
7. The Companies Act (Amendment to Schedule) Order 1994 L.N. 1994=031: the whole Order.
8. The Companies Act (Amendment) Act 1996 (1996 No.04): the whole Act.
9. The Companies Act (Amendment) Act 1997 (1997 No.07): the whole Act.
10. The Companies (Share Allotment and Capital Maintenance) Act 1998 (1998 No.20): the whole Act.
11. The Companies (Mergers and Divisions) Act 1998 (1998 No.21): the whole Act.
12. The Companies (Amendment) Act 1998 (1998 No.29): the whole Act.
13. The Companies Act (Amendment) Act 1998 (1998 No.31): the whole Act.
14. The Companies (Consolidated Accounts) Act 1999 (1999 No.28): the whole Act.
15. The Companies (Accounts) Act 1999 (1999 No.29): the whole Act.
16. The Companies (Amendment) Act 1999 (1999 No.30): the whole Act

17. The Companies (Execution of Documents by Foreign Companies) Act 2001 (2001 No. 2): the whole Act.
18. The Companies (Amendment) Act 2001 (2001 No.03): the whole Act.
19. The Companies Act (Schedule 8) Order L.N.2001=105: the whole Order.
20. The Companies (Amendment) Act 2003 (2003 No.9): the whole Act.
21. The Companies (Amendment) Act 2005 (2005 No.52): the whole Act.
22. The Companies (Schedule 8) Order 2005 L.N. 2005=144: the whole Order.
23. The Companies (Consolidated Accounts) (Amendment) (No.2) Act 2009 (2009 No.23):the whole Act.
- 24 . The Companies (Accounts) (Amendment) (No.2) Act 2010 (2010 No. 56): the whole Act.
25. The Companies Act (Amendment) Regulations 2011 L. N. 2011=026: the whole of the regulations.
26. The Companies (Accounts) Act 1999 (Amendment) Regulations 2011 L.N. No 2011=159: the whole of the regulations.
27. The Companies (Consolidated Accounts) Act 1999 (Amendment) Regulations 2011 L.N. 2011=160: the whole of the regulations.
- 28.. The Companies, Partnerships and Trusts (Miscellaneous Amendments) Act 2012 s.2(2)(4).
29. The Companies Act (Schedule 8) Order 2012: L.N.2012: the whole Order.