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STATUTORY INSTRUMENTS

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1981 No. 838 (N.I. 19)

NORTHERN IRELAND

The Companies  
(Northern Ireland) Order 1981

*Made* 10th June 1981  
*Laid before Parliament* 24th June 1981  
*Coming into operation on days to be appointed under Article 1(1).*



BELFAST  
HER MAJESTY'S STATIONERY OFFICE  
1981



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At the Court at Buckingham Palace, the 10th day of June 1981

Present,

The Queen's Most Excellent Majesty in Council

Whereas this Order in Council is made only for purposes corresponding to the purposes of the Companies Act 1980 **(a)**:

Now, therefore, Her Majesty, in exercise of the powers conferred by paragraph 1 of Schedule 1 to the Northern Ireland Act 1974 **(b)** (as modified

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**(a)** 1980 c. 22.      **(b)** 1974 c. 28.

by section 89 of the said Act of 1980) and of all other powers enabling Her in that behalf, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:-

## PART I

### INTRODUCTORY

#### *Title, commencement and citation*

**1.**—(1) This Order may be cited as the Companies (Northern Ireland) Order 1981 and shall come into operation on such day or days as the Head of the Department may by order appoint.

(2) This Order and the Companies Acts (Northern Ireland) 1960 and 1978 (a) may be cited together as the Companies Acts (Northern Ireland) 1960 to 1981.

#### *Interpretation*

**2.**—(1) The Interpretation Act (Northern Ireland) 1954 (b) shall apply to Article 1 and the following provisions of this Order as it applies to a Measure of the Northern Ireland Assembly.

(2) In this Order—

“accounting reference period” has the meaning given by Article 4 of the 1978 Order;

“appointed day”, in relation to any provision of this Order, means the day appointed under Article 1 (1) for the coming into operation of that provision;

“the appropriate rate”, in relation to interest, means five per cent. per annum or such other rate as may be specified by order made by the Department subject to negative resolution;

“balance sheet date” in relation to a balance sheet, means the date as at which the balance sheet was prepared;

“called-up share capital”, in relation to a company, means so much of its share capital as equals the aggregate amount of the calls made on its shares, whether or not those calls have been paid, together with any share capital paid up without being called and any share capital to be paid on a specified future date under the articles, the terms of allotment of the relevant shares or any other arrangements for payment of those shares, and “uncalled share capital” shall be construed accordingly;

“conditional sale agreement” has the same meaning as in the Consumer Credit Act 1974 (c);

“employees’ share scheme” means a scheme for encouraging or facilitating the holding of shares or debentures in a company by or for the benefit of—

(a) the bona fide employees or former employees of the company, the company’s subsidiary or holding company or a subsidiary of the company’s holding company; or

(b) the wives, husbands, widows, widowers or children or step-children under the age of 18 of such employees or former employees;

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(a) 1960 c. 22 (N.I.); S.I. 1978/1042 (N.I. 12).

(b) 1954 c. 33 (N.I.).

(c) 1974 c. 39.

“hire-purchase agreement” has the same meaning as in the Consumer Credit Act 1974;

“non-cash asset” means any property or interest in property other than cash (including foreign currency);

“old public company” has the meaning given by Article 10;

“the principal Act” means the Companies Act (Northern Ireland) 1960;

“the 1978 Order” means the Companies (Northern Ireland) Order 1978;

“re-registration period” has the meaning given by Article 11;

“the statutory maximum” means £1,000, or such higher amount as may be specified by order made by the Department subject to negative resolution;

“transitional period” means the period of 18 months from the appointed day in question.

(3) For the purposes of this Order—

(a) any reference to the transfer or acquisition of a non-cash asset includes a reference to the creation or extinction of an estate or interest in, or a right over, any property and also a reference to the discharge of any person’s liability, other than a liability for a liquidated sum; and

(b) the net assets of a company are the aggregate of its assets less the aggregate of its liabilities;

and in sub-paragraph (b) “liabilities” includes any provision (within the meaning of Schedule 6 to the principal Act) except to the extent that that provision is taken into account in calculating the value of any asset of the company.

(4) The principal Act, the 1978 Order and this Order shall be construed as one and, accordingly, section 399 (1) of the principal Act (interpretation) shall have effect subject to the following amendments, namely—

(a) for the words from the beginning to “1978” there shall be substituted the words “In this Act, the Companies (Northern Ireland) Order 1978 and the Companies (Northern Ireland) Order 1981”;

(b) in the definition of “the Companies Acts” for the words “and 1978” there shall be substituted the words “to 1981”.

(5) At the end of section 399 of the principal Act there shall be added the following subsections—

“(7) In relation to an allotment of shares in a company, the shares shall be taken for the purposes of the Companies Acts to be allotted when a person acquires the unconditional right to be included in the company’s register of members in respect of those shares.

(8) For the purposes of the Companies Acts—

(a) a share in a company shall be taken to have been paid up (as to its nominal value or any premium on it) in cash or allotted for cash if the consideration for the allotment or the payment up is cash received by the company or is a cheque received by the company in good faith which the directors have no reason for suspecting will not be paid or is the release of a liability of the company for a liquidated sum or is an undertaking to pay cash to the company at a future date; and



- (b) in relation to the allotment or payment up of any shares in a company, references in the Companies Acts, except in Article 19 of the Companies (Northern Ireland) Order 1981, to consideration other than cash and to the payment up of shares and premiums on shares otherwise than in cash include references to the payment of, or an undertaking to pay, cash to any person other than the company;

and for the purposes of determining whether a share is or is to be allotted for cash or paid up in cash, “cash” includes foreign currency.”.

## PART II

### CLASSIFICATION AND REGISTRATION OF COMPANIES, ETC.

#### *Classification of companies*

##### *Classification of companies*

**3.—**(1) Subject to Article 10 (2), in the Companies Acts—

“public company” means a company limited by shares or limited by guarantee and having a share capital, being a company—

- (a) the memorandum of which states that the company is to be a public company; and
- (b) in relation to which the provisions of the Companies Acts as to the registration or re-registration of a company as a public company have been complied with on or after the appointed day and

“private company”, unless the context otherwise requires, means a company that is not a public company.

(2) On or after the appointed day, no company may be formed as, or become, a company limited by guarantee with a share capital.

(3) Section 21 (2) of the principal Act (meaning of provision for share capital in relation to a company limited by guarantee) shall apply for the purposes of this Article as it applies for the purposes of that section.

##### *Membership and name of a public company*

**4.—**(1) The minimum number of persons who may form a public company under section 1 of the principal Act (mode of forming an incorporated company) shall be two instead of seven.

(2) The name of a public company must end with the words “public limited company” and those words may not be preceded by the word “limited”.

(3) Subject to paragraph (2), a resolution that a company be re-registered as a public company or, in the case of a company applying to be registered in accordance with Article 15, that it be a public company may change the name of the company by deleting the word “company” or the words “and company” including any abbreviation of them.

(4) The memorandum of a public company shall be in the form set out in Part I of Schedule 1 or, if it is a company limited by guarantee and having a share capital, in the form set out in Part II of that Schedule or, in either case, as near thereto as circumstances admit; and those forms supersede in the case of a public company the forms of memorandum set out respectively in Tables B and D in Schedule 1 to the principal Act.

*Registration and re-registration of companies, etc.*

*Registration of companies*

5.—(1) Where any memorandum is delivered for registration under section 12 of the principal Act (registration of memorandum and articles), the registrar shall not register the memorandum unless he is satisfied that all the requirements of the Companies Acts in respect of registration and of matters precedent and incidental thereto have been complied with.

(2) Where a memorandum which is so delivered states that the association to be registered is to be a public company, the amount of the share capital stated in the memorandum to be that with which the company proposes to be registered must not be less than the authorised minimum.

(3) Where the registrar registers an association's memorandum which states that the association is to be a public company, the certificate of incorporation given in respect of that association under section 13 of the principal Act (effect of registration) shall contain a statement that the company is a public company.

(4) A certificate of incorporation given under that section in respect of any association shall be conclusive evidence—

- (a) that the requirements mentioned in paragraph (1) have been complied with, and that the association is a company authorised to be registered and is duly registered under the principal Act; and
- (b) if the certificate contains a statement that the company is a public company, that the company is such a company.

(5) A statutory declaration in the prescribed form by a solicitor engaged in the formation of a company, or by a person named as a director or secretary of the company in the statement delivered under Article 57 of the 1978 Order (statement of first directors and secretary), that the requirements mentioned in paragraph (1) have been complied with shall be delivered to the registrar, and the registrar may accept such a declaration as sufficient evidence of compliance.

*Public company not to do business unless requirements as to share capital complied with*

6.—(1) A company registered as a public company on its original incorporation shall not do business or exercise any borrowing powers unless the registrar of companies has issued it with a certificate under this Article or the company is re-registered as a private company.

(2) The registrar shall issue a company with a certificate under this Article if, on an application made to him in the prescribed form by the company, he is satisfied that the nominal value of the company's allotted share capital is not less than the authorised minimum, and there is delivered to him a statutory declaration complying with paragraph (3).

(3) The statutory declaration shall be in the prescribed form and signed by a director or secretary of the company and shall state—

- (a) the nominal value of the company's allotted share capital is not less than the authorised minimum;
- (b) the amount paid up, at the time of the application, on the allotted share capital of the company;

- (c) the amount, or estimated amount, of the preliminary expenses of the company and the persons by whom any of those expenses have been paid or are payable; and
- (d) any amount or benefit paid or given or intended to be paid or given to any promoter of the company, and the consideration for the payment or benefit.

(4) For the purposes of paragraph (2), a share allotted in pursuance of an employees' share scheme may not be taken into account in determining the nominal value of the company's allotted share capital unless it is paid up at least as to one-quarter of the nominal value of the share and the whole of any premium on the share.

(5) The registrar may accept a statutory declaration delivered to him under paragraph (2) as sufficient evidence of the matters stated therein.

(6) A certificate under this Article in respect of any company is conclusive evidence that the company is entitled to do business and exercise any borrowing powers.

(7) If a company does business or exercises borrowing powers in contravention of this Article, the company and any officer of the company who is in default shall be liable on conviction on indictment to a fine and on summary conviction to a fine not exceeding the statutory maximum.

(8) The provisions of this Article are without prejudice to the validity of any transaction entered into by a company; but, if a company enters into a transaction in contravention of those provisions and fails to comply with its obligations in connection therewith 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 failure of the company to comply with those obligations.

#### *Re-registration of private companies as public companies*

7.—(1) Subject to Article 9, a private company, other than a company not having a share capital or an old public company, may be re-registered as a public company if—

- (a) a special resolution, complying with paragraph (2), that it should be so re-registered is passed; and
  - (b) an application for the purpose, in the prescribed form and signed by a director or secretary of the company, is delivered to the registrar, together with the documents mentioned in paragraph (3); and
  - (c) the conditions specified in paragraph (5) (a) and (b) (where applicable) and Article 8 (1) (a) to (d) are satisfied in relation to the company.
- (2) The special resolution must—
- (a) alter the company's memorandum so that it states that the company is to be a public company;
  - (b) make such other alterations in the memorandum as are necessary to bring it in substance and in form into conformity with the requirements of this Order with respect to the memorandum of a public company; and

(c) make such alterations in the company's articles as are requisite in the circumstances.

(3) The documents referred to in paragraph (1) are—

(a) a printed copy of the memorandum and articles as altered in pursuance of the resolution;

(b) a copy of a written statement by the auditors of the company that in their opinion the relevant balance sheet shows that 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;

(c) a copy of the relevant balance sheet, together with a copy of an unqualified report by the company's auditors in relation to that balance sheet;

(d) a copy of any report prepared under paragraph (5) (b); and

(e) a statutory declaration in the prescribed form by a director or secretary of the company—

(i) that the special resolution mentioned in paragraph (1) (a) has been passed and that the conditions specified in paragraph (1) (c) have been satisfied; and

(ii) that, between the balance sheet date and the application of the company for re-registration, there has been no change in the financial position of the company that has resulted in the amount of the company's net assets becoming less than the aggregate of its called-up share capital and undistributable reserves.

(4) The registrar may accept a declaration under paragraph (3) (e) as sufficient evidence that the special resolution has been passed and the said conditions have been satisfied.

(5) Where shares are allotted by the company between the balance sheet date and the passing of the special resolution as fully or partly paid up as to their nominal value or any premium on them otherwise than in cash, the company shall not make an application for re-registration under this Article unless before the making of the application—

(a) the consideration for that allotment has been valued in accordance with the provisions of Article 26 applied by this paragraph; and

(b) a report with respect to its value has been made to the company in accordance with those provisions during the six months immediately preceding the allotment of the shares;

and paragraphs (2) to (7) and (11) and (12) of that Article shall apply for the purposes of this paragraph as they apply for the purposes of that Article and as if the references to paragraph (1) of that Article were references to this paragraph.

(6) If the registrar is satisfied on an application made under paragraph (1) that a company may be re-registered under this Article as a public company, he shall—

(a) retain the application and other documents delivered to him under that paragraph; and

(b) issue the company with a certificate of incorporation stating that the company is a public company.

(7) The registrar shall not issue a certificate of incorporation under paragraph (6) if it appears to him that the court has made an order confirming a reduction of the company's capital which has the effect of bringing the nominal value of the company's allotted share capital below the authorised minimum.

(8) Upon the issue to a company of a certificate of incorporation under paragraph (6)—

- (a) the company shall by virtue of the issue of that certificate become a public company; and
- (b) any alterations in the memorandum and articles set out in the resolution shall take effect accordingly.

(9) A certificate of incorporation issued to a company under paragraph (6) shall be conclusive evidence—

- (a) that the requirements of this Order in respect of re-registration and of matters precedent and incidental thereto have been complied with; and
- (b) that the company is a public company.

(10) In this Article—

“undistributable reserves” has the same meaning as in Article 42;

“relevant balance sheet” means, in relation to a company, a balance sheet prepared as at a date not more than seven months before the company's application for re-registration under this Article; and

“unqualified report” means, in relation to a balance sheet of a company—

(a) if the balance sheet was prepared in respect of an accounting reference period of the company, a report made in pursuance of Article 33 (3) (a) or (b) of the 1978 Order (auditors' report) and stating without material qualification—

(i) that, in the opinion of the person making the report, the balance sheet has been properly prepared in accordance with the provisions of the Companies Acts; and

(ii) where the report is made in pursuance of the said Article 33 (3) (a), that, in the opinion of that person, the balance sheet gives a true and fair view of the state of the company's affairs as at the balance sheet date; and

(b) in any other case, a report stating without material qualification—

(i) that, in the opinion of the person making the report, the balance sheet complies with the requirements of sections 143 and 149 of the principal Act (contents, form and signing of accounts); and

(ii) without prejudice to head (i), that, except where the company is entitled to avail itself, and has availed itself, of the benefit of any of the provisions of Part III of Schedule 6 to the principal Act (exceptions from requirements as to accounts), in the opinion of that person, the balance sheet gives a true and fair view of the state of the company's affairs as at the balance sheet date.

(11) A qualification shall be treated for the purposes of the definition of an unqualified report in paragraph (10) as being not material in relation to any balance sheet if, but only if, the person making the report states in

writing that the thing giving rise to the qualification is not material for the purpose of determining, by reference to that 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.

(12) For the purposes of the making, in relation to the balance sheet of a company, of a report falling within sub-paragraph (b) of the definition in paragraph (10) of an unqualified report, section 143 of and Schedule 6 to the principal Act shall be deemed to have effect in relation to that balance sheet with such modifications as are necessary by reason of the fact that that balance sheet is prepared otherwise than in respect of an accounting reference period.

*Requirements as to share capital of private company applying to re-register as public*

**8.**—(1) Subject to paragraph (2), a private company shall not be re-registered under Article 7 as a public company unless, at the time the special resolution referred to in that Article is passed—

- (a) the nominal value of the company's allotted share capital is not less than the authorised minimum;
  - (b) each of its allotted shares is paid up at least as to one-quarter of the nominal value of that share and the whole of any premium on it;
  - (c) where any share in the company or any premium payable on it has been fully or partly paid up by an undertaking given by any person that he or another should do work or perform services for the company or another, the undertaking has been performed or otherwise discharged; and
  - (d) where shares have been allotted as fully or partly paid up as to their nominal value or any premium payable on them otherwise than in cash and the consideration for the allotment consists of or includes an undertaking (other than one to which sub-paragraph (c) applies) to the company, either—
    - (i) that undertaking has been performed or otherwise discharged;  
or
    - (ii) there is a contract between the company and any person pursuant to which that undertaking must be performed within five years from that time.
- (2) Subject to paragraph (3), any share allotted by the company—
- (a) which was allotted before the end of the transitional period, or
  - (b) which was allotted in pursuance of an employees' share scheme and by reason of which the company would, but for this paragraph, be precluded under paragraph (1) (b), but not otherwise, from being re-registered as a public company,

may be disregarded for the purpose of determining whether paragraph (1) (b) to (d) is complied with in relation to the company, and a share so disregarded shall be treated for the purposes of paragraph (1) (a) as if it were not part of the allotted share capital of the company.

(3) A share shall not be disregarded by virtue of paragraph (2) (a) if the aggregate in nominal value of that share and the other shares which it is proposed so to disregard is more than one-tenth of the nominal value of the company's allotted share capital (not including any share disregarded by virtue of paragraph (2) (b)).

*Re-registration of unlimited company as public company*

**9.**—(1) In its application to unlimited companies Article 7 shall have effect subject to the modifications contained in the following provisions of this Article.

(2) The special resolution required by Article 7 (1) must, in addition to the matters mentioned in Article 7 (2)—

- (a) state that the liability of the members is to be limited by shares and what the share capital of the company is to be; and
- (b) make such alterations in the company's memorandum as are necessary to bring it in substance and in form into conformity with the requirements of the Companies Acts with respect to the memorandum of a company limited by shares.

(3) The certificate of incorporation issued under Article 7 (6) shall, in addition to containing the statement required by sub-paragraph (b) of that paragraph, state that the company has been incorporated as a company limited by shares and—

- (a) the company shall by virtue of the issue of that certificate become a public company so limited; and
- (b) the certificate shall be conclusive evidence of the fact that it is such a public company.

(4) In section 64 of the principal Act (power of unlimited company to provide for reserve capital by resolution for registration as a limited company or re-registration as a limited company in pursuance of Article 119 of the 1978 Order) after the words "1978" there shall be inserted the words "or re-registration as a public company under Article 7 of the Companies (Northern Ireland) Order 1981".

(5) Article 119 (7) of the 1978 Order (provisions supplementary to re-registration of an unlimited company as a limited company) shall have effect as if any reference to the re-registration of a company in pursuance of that Article included a reference to the re-registration of an unlimited company as a public company under Article 7, but except as aforesaid the said Article 119 shall not apply in relation to the re-registration of an unlimited company as a public company under Article 7.

*Old public companies*

**10.**—(1) In this Order "old public company" means a company limited by shares or a company limited by guarantee and having a share capital in respect of which the following conditions are satisfied, that is to say—

- (a) the company either existed on the appointed day or was incorporated after that day pursuant to an application made before that day;
- (b) on that day, or, if later, on the day of the company's incorporation, the company was not, or, as the case may be, would not have been, a private company within the meaning of section 28 of the principal Act (meaning of private company); and
- (c) the company has not since the appointed day or the day of the company's incorporation, as the case may be, either been re-registered as a public company or become a private company.

(2) The references in the Companies Acts (Northern Ireland) 1960 and 1978 and, after the end of the transitional period, in this Order other than this Part to a public company or a company other than a private company

shall, unless the context otherwise requires, include references to an old public company; and references in the Companies Acts to a private company shall be construed accordingly.

(3) An old public company may (either before or after the end of the transitional period) be re-registered as a public company if—

- (a) the directors pass a resolution, complying with paragraph (4), that it should be so re-registered; and
- (b) an application for the purpose in the prescribed form and signed by a director or secretary of the company is delivered to the registrar, together with the documents mentioned in paragraph (5); and
- (c) at the time of the resolution, the conditions specified in paragraph (11) are satisfied.

(4) The resolution referred to in paragraph (3) must alter the company's memorandum so that it states that the company is to be a public company and make such other alterations in it as are necessary to bring it in substance and in form into conformity with the requirements of this Order with respect to the memorandum of a public company.

(5) The documents referred to in paragraph (3) are—

- (a) a printed copy of the memorandum as altered in pursuance of the resolution; and
  - (b) a statutory declaration in the prescribed form by a director or secretary of the company that the resolution mentioned in paragraph (3) (a) has been passed and that the conditions specified in paragraph (11) were satisfied at the time of the resolution.
- (6) The registrar may accept a declaration under paragraph (5) (b) as sufficient evidence that the said resolution has been passed and the said conditions were so satisfied.

(7) Paragraphs (6) to (9) of Article 7 shall apply on an application for re-registration under this Article as they apply on an application for re-registration under that and as if the reference to paragraph (1) of that Article were a reference to paragraph (3) of this.

(8) An old public company may pass a special resolution not to be re-registered under this Article as a public company and if either—

- (a) 28 days from the passing of the resolution expire without an application being made under Article 13 (2) for the cancellation of the resolution; or
- (b) such an application is made under that paragraph and proceedings are concluded thereon without the court making an order for the cancellation of the resolution;

the registrar shall issue the company with a certificate stating that it is a private company and the company shall become a private company by virtue of the issue of that certificate.

(9) If an old public company delivers to the registrar a statutory declaration in the prescribed form by a director or secretary of the company that the company does not at the time of the declaration satisfy the conditions specified in paragraph (11), the registrar shall issue the company with a certificate stating that it is a private company and the company shall become a private company by virtue of the issue of that certificate.



(10) A certificate issued to a company under paragraph (8) or (9) shall be conclusive evidence that the requirements of that paragraph have been complied with and that the company is a private company.

(11) The conditions referred to in paragraphs (3) (c) and (9) are that, at the time concerned, the nominal value of the company's allotted share capital is not less than the authorised minimum and that in the case of all the shares of the company or all those of its shares which are comprised in a portion of that capital which satisfies that condition—

- (a) each share is paid up at least as to one-quarter of the nominal value of that share and the whole of any premium on it;
- (b) where any of the shares in question or any premium payable on them has been fully or partly paid up by an undertaking given by any person that he or another should do work or perform services for the company or another, the undertaking has been performed or otherwise discharged; and
- (c) where any of the shares in question has been allotted as fully or partly paid up as to its nominal value or any premium payable on it otherwise than in cash and the consideration for the allotment consists of or includes an undertaking (other than one to which sub-paragraph (b) applies) to the company, either—
  - (i) that undertaking has been performed or otherwise discharged; or
  - (ii) there is a contract between the company and any person pursuant to which that undertaking must be performed within five years from that time.

(12) For the purposes of paragraph (8) proceedings on an application under Article 13 (2) are concluded—

- (a) except in a case falling within sub-paragraph (b), when the period mentioned in Article 13 (5) (b) for delivering an office copy of the order to the registrar expires; or
- (b) when the company is notified that the application has been withdrawn.

*Failure by old public company to obtain new classification*

**11.**—(1) If, at any time after the end of the period of fifteen months from the appointed day (in this Order referred to as the “re-registration period”), a company which is an old public company has not delivered to the registrar a declaration under Article 10 (9), the company and any officer of the company who is in default shall be guilty of an offence unless at that time the company—

- (a) has applied to be re-registered under Article 10, and the application has not been refused or withdrawn; or
- (b) has passed a special resolution not to be re-registered under that Article, and the resolution has not been revoked and has not been cancelled under Article 13.

(2) A person guilty of an offence under paragraph (1) shall be liable on summary conviction to a fine not exceeding one-fifth of the statutory maximum or, on conviction after continued contravention, to a default fine not exceeding one-fiftieth of the statutory maximum for every day on which that paragraph is contravened.

*Re-registration of public company as private company*

**12.**—(1) A public company may be re-registered as a private company if—

- (a) a special resolution complying with paragraph (2) that it should be so re-registered is passed and has not been cancelled by the court under Article 13 (6);
- (b) an application for the purpose in the prescribed form and signed by a director or secretary of the company is delivered to the registrar, together with a printed copy of the memorandum and articles of the company as altered by the resolution; and
- (c) the period during which an application for the cancellation of the resolution under Article 13 (2) may be made has expired without any such application having been made; or
- (d) where such an application has been made, the application has been withdrawn or an order has been made under Article 13 (6) confirming the resolution and a copy of that order has been delivered to the registrar.

(2) The resolution must alter the company's memorandum so that it no longer states that the company is to be a public company and must make such other alterations in the company's memorandum and articles as are requisite in the circumstances.

(3) If the registrar is satisfied that a company may be re-registered under paragraph (1), he shall—

- (a) retain the application and other documents delivered to him under that paragraph; and
- (b) issue the company with a certificate of incorporation appropriate to a company that is not a public company.

(4) Upon the issue of a certificate of incorporation under paragraph (3)—

- (a) the company shall by virtue of the issue of that certificate become a private company; and
- (b) the alterations in the memorandum and articles set out in the resolution shall take effect accordingly.

(5) A certificate of incorporation issued to a company under paragraph (3) shall be conclusive evidence—

- (a) that the requirements of this Article in respect of re-registration and of matters precedent and incidental thereto have been complied with; and
- (b) that the company is a private company.

*Special resolutions resulting in company becoming private company*

**13.**—(1) This Article applies to the following special resolutions, namely—

- (a) a special resolution by an old public company not to be re-registered under Article 10 as a public company;
- (b) a special resolution by a public company to be re-registered under Article 12 as a private company.

(2) Where a special resolution to which this Article applies has been passed, an application may be made to the court for the cancellation of that resolution.

(3) An application under paragraph (2) may be made—

(a) by the holders of not less in the aggregate than five per cent. in nominal value of the company's issued share capital or any class thereof;

(b) if the company is not limited by shares, by not less than five per cent. of the company's members; or

(c) by not less than 50 of the company's members;

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

(4) Any such 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 the application by such one or more of their number as they may appoint in writing for the purpose.

(5) If an application is made under paragraph (2), the company—

(a) shall forthwith give notice in the prescribed form of that fact to the registrar; and

(b) where on the hearing of that application an order cancelling or confirming the resolution is made under paragraph (6), shall, within 15 days from the making of that order, or within such longer period as the court may at any time by order direct, deliver an office copy of the order to the registrar.

(6) On the hearing of an application under paragraph (2) the court shall make an order either cancelling or confirming the resolution and—

(a) may make that order on such terms and conditions as it thinks fit, and may, 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

(b) may give such directions and make such orders as it thinks expedient for facilitating or carrying into effect any such arrangement.

(7) An order under this Article may, if the court thinks fit, provide for the purchase by the company of the shares of any members of the company and for the reduction accordingly of the company's capital and may make such alterations in the memorandum and articles of the company as may be required in consequence of that provision.

(8) Where an order under this Article requires the company not to make any, or any specified, alteration in its memorandum or articles, then, notwithstanding anything in the Companies Acts, the company shall not have power without the leave of the court to make any such alteration in breach of that requirement.

(9) Any alteration in the memorandum or articles of the company made by virtue of an order under this Article, other than one made by resolution of the company, shall be of the same effect as if duly made by resolution of the company, and the provisions of the Companies Acts shall apply to the memorandum or articles as so altered accordingly.

(10) A company which fails to comply with paragraph (5) and any officer of the company who is in default shall be liable on summary conviction to a

fine not exceeding one-fifth of the statutory maximum or, on conviction after continued contravention, a default fine not exceeding one-fiftieth of the statutory maximum for each day until the notice or, as the case may be, the copy required to be given or delivered by that paragraph is given or delivered.

*Reduction below the authorised minimum of allotted share capital of public company*

**14.**—(1) 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 69 (1) of the principal Act (registration of order of reduction of capital) unless the court otherwise directs or the company is first re-registered as a private company.

(2) A court making any such order in respect of a company may authorise the company to be re-registered as a private company under Article 12 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.

(3) In its application to a company that applies to be re-registered as a private company in pursuance of an authority given under paragraph (2), Article 12 shall have effect with the following modifications—

- (a) references to the special resolution of the company shall have effect as references to the order of the court under that paragraph;
- (b) Article 12 (1) (a), (c) and (d) and (2) shall not apply; and
- (c) in Article 12 (3), for the words from "If" to "shall" there shall be substituted the words "On receipt of an application for re-registration under this Article made in pursuance of an order of the court under Article 14 (2), the registrar shall".

*Registration of joint stock companies as public companies*

**15.**—(1) A joint stock company (within the meaning of section 333 of the principal Act) applying to be registered in pursuance of Part VIII of that Act as a company limited by shares may, subject to satisfying the conditions specified in Article 7 (5) (a) and (b) (where applicable) and Article 8 (1) (a) to (d), as applied by this Article, and to complying with the requirements of paragraph (4), apply to be so registered as a public company.

(2) The said Articles 7 (5) and 8 shall apply to a joint stock company applying to register under the said Part VIII as they apply to a private company applying to be re-registered under Article 7, but as if any reference to the special resolution mentioned in Article 7 were a reference to the resolution mentioned in paragraph (4) (a).

(3) In the following provisions of this Article an application by a company made in pursuance of the said Part VIII to register as a public company limited by shares is referred to as a relevant application.

(4) A relevant application shall be made in the form prescribed for the purpose and shall be delivered to the registrar together with the following documents (as well as with the documents referred to in section 334 of the principal Act), namely—

- (a) a copy of the resolution that the company be a public company;

- (b) a copy of a written statement by a person, who would be qualified under Article 26 of the 1978 Order for appointment as auditor of the company if it were a company registered under the Companies Acts, that in his opinion a relevant balance sheet shows that at the balance sheet date the amount of the company's net assets was not less than the aggregate of the called-up share capital of the company and its undistributable reserves;
- (c) a copy of the relevant balance sheet, together with a copy of an unqualified report by such a person in relation to that balance sheet;
- (d) a copy of any report prepared under Article 7 (5) (b), as applied by this Article; and
- (e) a statutory declaration in the prescribed form by a director or secretary of the company—
  - (i) that the conditions specified in Article 7 (5) (a) and (b) (where applicable) and Article 8 (1) (a) to (d) have been satisfied; and
  - (ii) that, between the balance sheet date referred to in sub-paragraph (b) and the relevant application, there has been no change in the financial position of the company that has resulted in the amount of the company's net assets becoming less than the aggregate of its called-up share capital and undistributable reserves.

(5) The registrar may accept a declaration under paragraph (4) (e) as sufficient evidence that the conditions referred to in head (i) of that sub-paragraph have been satisfied.

(6) Where on a relevant application the registrar is satisfied that the company may be registered as a public company limited by shares, the certificate of incorporation given by him under section 340 of the principal Act (certificate of registration of existing company) shall state that the company is a public company; and such a statement shall be conclusive evidence that the requirements of this Article have been complied with and that the company is a public company so limited.

(7) In this Article—

“relevant balance sheet” means, in relation to a company, a balance sheet prepared as at a date not more than seven months before the relevant application;

“undistributable reserves” has the same meaning as in Article 42; and

“unqualified report” has the same meaning as in Article 7;

and Article 7 (11) applies to the making in pursuance of this Article of an unqualified report such as is mentioned in that paragraph, as it applies to the making of such a report in pursuance of the said Article 7.

### PART III

#### THE CAPITAL OF A COMPANY

##### *The issue of share capital*

##### *Authority of company required for allotment of certain securities by directors*

**16.—**(1) The directors of a company shall not exercise any power of the company to allot relevant securities, unless the directors are, in accordance with this Article, authorised to do so by—

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

(2) Authority for the purposes of this Article may be given for a particular exercise of that power or for the exercise of that power generally, and may be unconditional or subject to conditions.

(3) Any such authority shall state the maximum amount of relevant securities that may be allotted thereunder and the date on which the authority will expire, which shall be not more than five years from whichever is relevant of the following dates—

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

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

(4) Any such authority (whether or not it has been previously renewed under this paragraph) may be renewed by the company in general meeting for a further period not exceeding five years; but the resolution must 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 thereunder, and must specify the date on which the renewed authority will expire.

(5) The directors may allot relevant securities, notwithstanding that any authority for the purposes of this Article has expired, if the relevant securities are allotted in pursuance of 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.

(6) A resolution of a company to give, vary, revoke or renew such an authority may, notwithstanding that it alters the articles of the company, be an ordinary resolution, but section 137 of the principal Act (registration of copies of certain resolutions and agreements) shall apply to it.

(7) Any director who knowingly and wilfully contravenes, or permits or authorises a contravention of, this Article shall be liable on conviction on indictment to a fine and on summary conviction to a fine not exceeding the statutory maximum.

(8) Nothing in this Article shall affect the validity of any allotment of relevant securities.

(9) This Article does not apply to any allotment of relevant securities by a company, other than a public company registered as such on its original incorporation, if it is made in pursuance of an offer or agreement made before the date on which the earlier of the following events occurs, that is to say, the holding of the first general meeting of the company after its re-registration or registration as a public company and the end of the transitional period; but any resolution to give, vary or revoke an authority for the purposes of this Article shall have effect for those purposes if it is passed at any time after the making of this Order.

(10) In this Article “relevant securities” means, in relation to a company,—

(a) shares in the company other than shares shown in the memorandum to have been taken by the subscribers thereto or shares allotted in pursuance of an employees’ share scheme; and

(b) any right to subscribe for, or to convert any security into, shares in the company other than shares so allotted;

and any reference to the allotment of relevant securities shall include a reference to the grant of such a right but shall not include any reference to the allotment of shares pursuant to such a right.

*Shares and debentures of private company not to be offered to public*

**17.**—(1) A private limited company (other than a company limited by guarantee and not having a share capital) shall be guilty of an offence if it—

(a) offers to the public (whether for cash or otherwise) any shares in or debentures of the company; or

(b) allots, or agrees to allot, (whether for cash or otherwise) 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.

(2) Sections 45 (2) of the principal Act (circumstances in which it is presumed that an allotment or agreement to allot shares or debentures was made with a view to their being offered to the public) and 55 of that Act (construction of references to offering shares or debentures to the public) shall apply for the purposes of this Article as they apply for the purposes of that Act.

(3) A company guilty of an offence under paragraph (1) and any officer of the company who is in default shall be liable on conviction on indictment to a fine and on summary conviction to a fine not exceeding the statutory maximum.

(4) Nothing in this Article shall affect the validity of any allotment or sale of shares or debentures or of any agreement to allot or sell shares or debentures.

(5) This Article shall not apply during the transitional period to an old public company, but after the end of that period shall apply to such a company as if it were a private company such as is mentioned in paragraph (1).

*Prospectus, etc., to state if shares to be allotted where issue not fully subscribed*

**18.**—(1) Without prejudice to section 47 of the principal Act (prohibition of allotment unless minimum subscription received), no allotment shall 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 shall be made by virtue of sub-paragraph (b) unless those conditions are satisfied.

(2) Section 47 (4) (repayment of money paid by applicants) and section 49 (effect of irregular allotment) of the principal Act shall apply where shares are prohibited from being allotted by paragraph (1) as they apply where the conditions mentioned in subsection (1) of the said section 47 are not complied with; and subsection (5) of the said section 47 (prohibition on waiver of compliance with requirements of that section) shall apply to this Article as it applies to that section.

(3) The provisions of this Article shall apply in the case of shares offered as wholly or partly payable otherwise than in cash as they apply in the case of shares offered for subscription; and—

- (a) in paragraph (1), the word “subscribed” shall be construed accordingly; and
- (b) in the said section 47 (4), as it applies by virtue of paragraph (2) to the former case, references to the repayment of money received from applicants for shares shall include references to the return of any other consideration so received (including, if the case so requires, the release of the applicant from any undertaking) or, if it is not reasonably practicable to return the consideration, the payment of money equal to the value of the consideration at the time it was so received, and references to interest shall have effect accordingly.

#### *Pre-emption rights*

##### *Pre-emption rights*

**19.**—(1) Subject to the following provisions of this Article and Articles 20 and 21, a company proposing to allot any equity securities—

- (a) shall not allot any of those securities on any terms to any person unless it has made an offer to each person who holds relevant shares or relevant employee shares to allot to him on the same or more favourable terms a proportion of those securities which is as nearly as practicable equal to the proportion in nominal value held by him of the aggregate of relevant shares and relevant employee shares; and
- (b) shall not allot any of those securities to any person unless the period during which any such offer may be accepted has expired or the company has received notice of the acceptance or refusal of every offer so made.

(2) Paragraph (3) applies to any provision of the memorandum or articles of a company which requires the company, when proposing to allot equity securities consisting of relevant shares of any particular class, not to allot those securities on any terms unless it has complied with the condition that it makes such an offer as is described in paragraph (1) to each person who holds relevant shares or relevant employee shares of that class.

- (3) If, in accordance with a provision to which this paragraph applies—
  - (a) a company makes an offer to allot any securities to such a holder, and
  - (b) he or anyone in whose favour he has renounced his right to their allotment accepts the offer,



paragraph (1) shall not apply to the allotment of those securities and the company may allot them accordingly; but this paragraph is without prejudice to the application of paragraph (1) in any other case.

(4) Paragraph (1) shall not apply in relation to a particular allotment of equity securities if the securities are, or are to be, wholly or partly paid up otherwise than in cash, and securities which a company has offered to allot to a holder of relevant shares or relevant employee shares may be allotted to him or anyone in whose favour he has renounced his right to their allotment without contravening paragraph (1)(b).

(5) Paragraph (1) shall not apply in relation to the allotment of any securities which would apart from a renunciation or assignment of the right to their allotment be held under an employees' share scheme.

(6) An offer which is required by paragraph (1) or by any provision to which paragraph (3) applies to be made to any person shall be made by serving it on him in the manner in which notices are authorised to be given by regulations 133, 134 and 135 of Table A; but where he is the holder of a share warrant or, if the company had adopted (without modification) regulation 136 of Table A, he would not be entitled to receive notices of general meetings, the offer may instead be made by causing the offer, or a notice specifying where a copy of the offer can be obtained or inspected, to be published in the Belfast Gazette.

(7) Any such offer as is mentioned in paragraph (6) must state a period of not less than 21 days during which the offer may be accepted; and the offer shall not be withdrawn before the end of that period.

(8) Paragraphs (6) and (7) shall not invalidate a provision to which paragraph (3) applies by reason that that provision requires or authorises an offer thereunder to be made in contravention of one or both of those paragraphs, but, to the extent that the provision requires or authorises such an offer to be so made, it shall be of no effect.

(9) Paragraph (1), (6) or (7) may, in its application in relation to allotments by a private company of equity securities or to such allotments of a particular description, be excluded by a provision contained in the memorandum or articles of that company; and a requirement or authority contained in the memorandum or articles of a private company shall, if it is inconsistent with any of those paragraphs, have effect as a provision excluding that paragraph, but a provision to which paragraph (3) applies shall not be treated as being inconsistent with paragraph (1).

(10) Where there is a contravention of paragraph (1), (6) or (7) or of a provision to which paragraph (3) applies, the company, and every officer of the company who knowingly authorised or permitted the contravention, shall be jointly and severally liable to compensate any person to whom an offer should have been made under the paragraph or provision contravened for any loss, damage, costs or expenses which that person has sustained or incurred by reason of the contravention; but no proceedings to recover any such loss, damage, costs or expenses shall be commenced after the expiration of two years from the delivery to the registrar of companies of the return of allotments in question or, where equity securities other than shares are granted, from the date of the grant.

(11) In this Article and Articles 20 and 21—

“equity security”, in relation to a company, means a relevant share in the company (other than a share shown in the memorandum to have been taken by a subscriber thereto or a bonus share) or a right to subscribe for, or to convert any securities into, relevant shares in the company, and references to the allotment of equity securities or of equity securities consisting of relevant shares of a particular class shall include references to the grant of a right to subscribe for, or to convert any securities into, relevant shares in the company or, as the case may be, relevant shares of a particular class, but shall not include references to the allotment of any relevant shares pursuant to such a right;

“relevant employee shares”, in relation to a company, means shares of the company which would be relevant shares in the company but for the fact that they are held under an employees’ share scheme; and

“relevant shares”, in relation to a company, means shares in the company other than—

(a) shares which as respects dividends and capital carry a right to participate only up to a specified amount in a distribution; and

(b) shares held, or to be held, under an employees’ share scheme;

and any reference to a class of shares shall be construed as a reference to shares to which the same rights are attached as to voting and as to participation, both as respects dividends and as respects capital, in a distribution.

(12) This Article is without prejudice to any enactment by virtue of which a company is prohibited (whether generally or in specified circumstances) from offering or allotting equity securities to any person; and, where a company cannot by virtue of any such enactment offer or allot equity securities to a holder of relevant shares or relevant employee shares, this Article shall have effect as if the shares held by that holder were not relevant shares or relevant employee shares.

#### *Disapplication of pre-emption rights*

**20.—**(1) Where the directors of a company are generally authorised for the purposes of Article 16, they may be given power by the articles or by a special resolution of the company to allot equity securities pursuant to that authority as if—

(a) Article 19(1) did not apply to the allotment; or

(b) that paragraph applied to the allotment with such modifications as the directors may determine;

and where the directors make an allotment under this paragraph the said Article 19 shall have effect accordingly.

(2) Where the directors of a company are authorised for the purposes of Article 16 (whether generally or otherwise), the company may by special resolution resolve either—

(a) that Article 19(1) shall not apply to a specified allotment of equity securities to be made pursuant to that authority; or

(b) that that paragraph shall apply to the allotment with such modifications as may be specified in the resolution;

and where such a resolution is passed the said Article 19 shall have effect accordingly.

(3) A power conferred by virtue of paragraph (1) or a special resolution under paragraph (2) shall cease to have effect when the authority to which it relates is revoked or would, if not renewed, expire, but if that authority is renewed, the power or, as the case may be, the resolution may also be renewed, for a period not longer than that for which the authority is renewed, by a special resolution of the company.

(4) Notwithstanding that any such power or resolution has expired, the directors may allot equity securities in pursuance of an offer or agreement previously made by the company, if the power or resolution enabled the company to make an offer or agreement which would or might require equity securities to be allotted after it expired.

(5) A special resolution under paragraph (2), or a special resolution to renew such a resolution, shall not be proposed unless it is recommended by the directors and there has been circulated, with the notice of the meeting at which the resolution is proposed, to the members entitled to have that notice a written statement by the directors setting out—

- (a) their reasons for making the recommendation;
- (b) the amount to be paid to the company in respect of the equity securities to be allotted; and
- (c) the directors' justification of that amount.

(6) A person who knowingly or recklessly authorises or permits the inclusion in a statement circulated under paragraph (3) of any matter which is misleading, false or deceptive in a material particular shall be liable—

- (a) on conviction on indictment to imprisonment for a term not exceeding two years or a fine, or both; and
- (b) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum, or both.

*Pre-emption rights: transitional provisions*

**21.**—(1) Articles 19 and 20 shall not apply—

- (a) to any allotment of equity securities made by a company, other than a public company registered as such on its original incorporation, before the date on which the earlier of the following events occurs, that is to say, the holding of the first general meeting of the company after its re-registration or registration as a public company and the end of the transitional period; or
- (b) where paragraph (2) applies, to an allotment of the equity securities which are subject to the requirement mentioned in that paragraph.

(2) This paragraph applies where any company which is re-registered or registered as a public company is or, but for the provisions of this Order, would be subject at the time of re-registration or, as the case may be, registration to a requirement imposed (whether by the company's memorandum or articles or otherwise) before the relevant time by virtue of which it must, when making an allotment of equity securities, make an offer to allot those securities or some of them in a manner which (otherwise than by virtue of its involving a contravention of Article 19 (6) or (7)) is inconsistent with Article 19.

(3) Any requirement which—

- (a) is imposed on a private company before the relevant time otherwise than by the company's memorandum or articles; and
- (b) if contained in the memorandum or articles of the company, would have effect by virtue of Article 19 (9) to the exclusion of any provision of that Article,

shall have effect, so long as the company remains a private company, as if it were contained in the memorandum or articles of the company.

(4) If at the relevant time a company, other than a public company registered as such on its original incorporation, is subject to a requirement such as is mentioned in Article 19 (2) and which was imposed otherwise than by the company's memorandum or articles, the requirement shall be treated for the purposes of that Article as if it were contained in the company's memorandum or articles.

(5) In this Article "the relevant time" means—

- (a) except in a case falling within sub-paragraph (b), the end of the transitional period; and
- (b) in the case of a company which is re-registered or registered as a public company in pursuance of an application made before the end of that period, the time at which the application is made.

#### *Payment for share capital*

##### *Subscription of share capital*

**22.**—(1) Subject to the following provisions of this Part, 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 shall not accept at any time 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—

- (a) shall be 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; and
- (b) shall be liable to pay interest at the appropriate rate on the amount payable under sub-paragraph (a).

(4) Where any person becomes a holder of any shares in respect of which—

- (a) there has been a contravention of this Article; and
- (b) by virtue of that contravention, another is liable to pay any amount under this Article,

that person also shall be liable to pay that amount (jointly and severally with any other person so liable) unless either he is a purchaser for value and, at the time of the purchase, he did not have actual notice of the contravention

or he derived title to the shares (directly or indirectly) from a person who became a holder of them after the contravention and was not so liable.

(5) Paragraph (1) shall not prevent a company from allotting bonus shares in the company to its members or from paying up, with sums available for the purpose, any amounts for the time being unpaid on any of its shares (whether on account of the nominal value of the shares or by way of premium).

(6) References in this Article to a holder, in relation to any shares in a company, include references to 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 the shares executed in his favour.

*Prohibition on allotment of shares at a discount*

**23.**—(1) Subject to paragraph (4) and without prejudice to any right to allot shares at a discount under section 57 of the principal Act which is saved by section 28 of the Interpretation Act (Northern Ireland) 1954, the shares of a company shall not be allotted at a discount.

(2) Where shares are allotted in contravention of paragraph (1), those shares shall be treated as paid up by the payment to the company of the amount of the nominal value of the shares less the amount of the discount, but the allottee shall be liable to pay the company the latter amount and shall be liable to pay interest thereon at the appropriate rate.

(3) Paragraph (4) of Article 22 shall apply for the purposes of this Article as it applies for the purposes of that.

(4) Accordingly, section 57 of the principal Act (which authorises shares to be so issued in defined circumstances) shall cease to have effect, but the repeal of that section shall not affect an application for an order sanctioning the issue of shares at a discount which has been made to the court under that section and has not been disposed of before the appointed day, or an order made on or after that day in pursuance of any such application, and—

- (a) any such application may be proceeded with and any such order, if not made before that day, may be made as if that section had not been repealed; and
- (b) shares may be allotted at a discount in accordance with any such order (whether made before, on or after that day) accordingly.

*Payment for allotted shares*

**24.**—(1) Subject to paragraph (4), a public company shall not allot a share except as paid up at least as to one-quarter of the nominal value of the share and the whole of any premium on it.

(2) Where a public company allots a share in contravention of paragraph (1), the share shall be treated as if one-quarter of its nominal value together with the whole of any premium had been received, but the allottee shall be liable to pay the company the minimum amount which should have been received in respect of the share under that paragraph less the value of any consideration actually applied in payment up (to any extent) of the share and any premium on it, and interest at the appropriate rate on the amount payable under the foregoing provision.

(3) Paragraph (2) shall not apply in relation to the allotment of a bonus share in contravention of paragraph (1) unless the allottee knew or ought to have known the share was so allotted.

(4) Paragraphs (1) to (3) shall not apply to shares allotted in pursuance of an employees' share scheme.

(5) Paragraph (4) of Article 22 shall apply for the purposes of this Article as it applies for the purposes of that.

*Payment of non-cash consideration*

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

(2) Where a public company allots shares in contravention of paragraph (1), the allottee of the shares shall be liable to pay the company 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 and shall be liable to pay interest at the appropriate rate on the amount payable under the foregoing provision.

(3) Where a contract for the allotment of shares does not contravene paragraph (1), any variation of the contract which has the effect that the contract would have contravened that paragraph if the terms of the contract as varied had been its original terms shall be void.

(4) Paragraph (3) shall apply 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 paragraph (1)) an undertaking which is to be performed within five years of the allotment but that undertaking is not performed within the period allowed by the contract for the allotment of the shares, the allottee of the shares in question shall be liable to pay the company at the end of that period an amount equal to the nominal value of the shares, 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, together with interest at the appropriate rate on the amount payable under the foregoing provision.

(6) Paragraph (4) of Article 22 shall apply in relation to a contravention of this Article and to a failure to carry out a term of a contract as mentioned in paragraph (5) as it applies in relation to a contravention of that Article.

(7) Any reference in this Article to a contract for the allotment of shares includes a reference to an ancillary contract relating to payment in respect of those shares.

*Experts' reports on non-cash consideration before allotment of shares*

**26.**—(1) Subject to paragraph (2), a public company shall not allot shares as fully or partly paid up (as to their nominal value or any premium payable on them) otherwise than in cash unless—

- (a) the consideration for the allotment has been valued in accordance with the following provisions of this Article;
- (b) a report with respect to its value has been made to the company by a person appointed by the company in accordance with those provisions during the six months immediately preceding the allotment of the shares; and
- (c) a copy of the report has been sent to the proposed allottee of the shares.

(2) Paragraph (1) shall not apply to the allotment of shares by a company in connection with—

- (a) an offer made by the company to all the holders of the shares in another company to acquire all or some of those shares or to all holders of a particular class of those shares to acquire all or some of the shares of that class; or
- (b) a proposed merger of that company with another company.

(3) In determining for the purposes of paragraph (2) whether an offer is so made by a company (in this paragraph referred to as the “offeror company”), shares held by or by a nominee of the offeror company in the other company or held in the other company by or by a nominee of a company which is the offeror company’s holding company or its subsidiary or a company which is a subsidiary of its holding company shall be disregarded; and for those purposes there is a proposed merger of two companies when one of them proposes to acquire all the assets and liabilities of the other in exchange for the issue of shares in that one to shareholders of the other, with or without any cash payment to those shareholders.

(4) The valuation and report required by paragraph (1) 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 auditor of the company, except that where it appears to him to be reasonable for the valuation of the consideration, or a valuation of part of the consideration, to be made, or to accept such a valuation made, by any person who—

- (a) appears to him to have the requisite knowledge and experience to value the consideration or that part of the consideration; and
- (b) is not an officer or servant of the company or any other body corporate 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 servant;

he may arrange for or accept such a valuation, together with a report which will enable him to make his own report under that paragraph and provide a note in accordance with paragraph (7).

- (5) The independent person’s report under paragraph (1) 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 those 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;

- (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;
  - (ii) in cash.
- (6) Where any consideration is valued under this Article by a person other than the independent person, the latter's report under paragraph (1) shall state that fact and shall 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 that other person, the method used to value it, and state the date of valuation.
- (7) The report of the independent person made under paragraph (1) shall contain or be accompanied by a note by him—
  - (a) in the case of a valuation made by another person, that it appeared to the independent person 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 independent person 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 aggregate of the nominal value and the whole of any such premium as is treated as paid up by the consideration and any such cash.
- (8) Paragraph (9) applies where a public company allots any share in contravention of paragraph (1) and either—
  - (a) the allottee has not received a report under this Article; or
  - (b) there has been some other contravention of this Article and the allottee knew or ought to have known that it amounted to a contravention.
- (9) Where this paragraph applies, the allottee shall be liable to pay the company an amount equal to the nominal value of the shares, 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 consideration, and shall be liable to pay interest at the appropriate rate on the amount payable under the foregoing provision.
- (10) Paragraph (4) of Article 22 shall apply for the purposes of this Article as it applies for the purposes of that.
- (11) Where the consideration 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, the foregoing provisions of this Article shall apply as if references to the consideration accepted by the company included references to the proportion of that consideration which is properly attributable to the payment up of that value and any premium; and



- (a) the independent person shall carry out or arrange for such other valuations as will enable him to determine that proportion; and
  - (b) his report under paragraph (1) shall state what valuations have been made by virtue of 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.
- (12) In this Article—
- (a) any reference to a company, except where it is or is to be construed as a reference to a public company, includes a reference to any body corporate and any body to which letters patent have been issued under the Chartered Companies Act 1837 (a); and
  - (b) any reference to an officer or servant shall not include a reference to an auditor.

*Experts' reports: supplementary*

**27.**—(1) Any person carrying out a valuation or making a report under Article 26 with respect to any consideration proposed to be accepted or given by a company shall be 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 to make the report and provide a note under that Article.

(2) A company to which such a report is made as to the value of any consideration for which, or partly for which, it proposes to allot shares shall deliver a copy of the report to the registrar of companies for registration at the same time that it files the return of the allotments of those shares under section 52 of the principal Act, and subsections (3) and (4) of that section (default) shall apply to a default in complying with this paragraph as they apply to a default in complying with that section.

- (3) Any 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.

(4) Paragraph (3) applies to any statement made (whether orally or in writing) to any person carrying out a valuation or making a report under Article 26, being a statement which conveys or purports to convey any information or explanation which that person requires, or is entitled to require, under paragraph (1).

- (5) A person guilty of an offence under this Article shall be liable—
- (a) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine, or both;
  - (b) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum, or both.

*Experts' reports on non-cash assets acquired from subscribers, etc.*

**28.**—(1) A public company, other than a company re-registered under Article 10, shall not, unless the conditions mentioned in paragraph (3) have been complied with, enter into an agreement with a relevant person for the transfer by him during the initial period of one or more non-cash assets to

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(a) 1837 c. 73.

the company or another for a consideration to be given by the company equal in value at the time of the agreement to at least one-tenth of the nominal value of the company's share capital issued at that time.

(2) In this Article—

(a) in relation to a company formed as a public company, "relevant person" means any subscriber to the memorandum of the company and "initial period" means the period of two years beginning with the date on which the company is issued with a certificate under Article 6 that it is entitled to do business;

(b) in relation to a company re-registered, or registered in accordance with Article 15, as a public company, "relevant person" means any person who was a member of the company on the date of the re-registration or registration and "initial period" means the period of two years beginning with that date;

and in this paragraph the reference to a company re-registered as a public company includes a reference to a private company so re-registered which was a public company before it was a private company.

(3) The conditions referred to in paragraph (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 valued under the following provisions of this Article (without prejudice to any requirement to value any consideration under Article 26);

(b) a report with respect to the consideration to be so received and given has been made to the company in accordance with those provisions during the six 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 relevant person is not then such a member, to that person.

(4) Paragraph (1) shall not apply to the following agreements for the transfer of an asset for a consideration to be given by the company, that is to say—

(a) where it is part of the ordinary business of the company to acquire or arrange for other persons to acquire assets of a particular description, an agreement entered into by the company in the ordinary course of its business for the transfer of an asset of that description to it or such a person, as the case may be; or

(b) an agreement entered into by the company under the supervision of the court, or an officer authorised by the court for the purpose, for the transfer of an asset to the company or to another.

(5) Article 26(4) and (6) shall apply to a valuation and report of any consideration under this Article as those paragraphs apply to a valuation of and report on any consideration under paragraph (1) of that Article.

- (6) The report of the independent person under this Article 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 Article 26 (7) (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.

(7) If a public company enters into an agreement with any relevant person in contravention of paragraph (1) and either he has not received a report under this Article or there has been some other contravention of this Article or Article 26 (4) or (6) which he knew or ought to have known amounted to a contravention, then, subject to paragraph (8)—

- (a) the company shall be entitled to recover from the relevant person any consideration given by the company under the agreement or an amount equivalent to its value at the time of the agreement; and
- (b) the agreement, so far as not carried out, shall be void.

(8) Where a company enters into an agreement in contravention of paragraph (1) and that agreement is or includes an agreement for the allotment of shares in that company, then, whether or not the agreement also contravenes Article 26—

- (a) paragraph (7) shall not apply to the agreement in so far as it is an agreement for the allotment of shares; and
- (b) paragraph (4) of Article 22 and paragraph (9) of Article 26 shall apply in relation to the shares as if they had been allotted in contravention of Article 26.

#### *Provisions supplementary to Article 28*

**29.**—(1) Any person carrying out a valuation or making a report under Article 28 shall be 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 the note required by that Article; and paragraphs (3) and (5) of Article 27 shall apply in relation to any such valuation and report as they apply in relation to a valuation and report under Article 26 (1) with the substitution of a reference to this paragraph for the reference in Article 27 (4) to Article 27 (1).

(2) A company which has passed a resolution under Article 28 with respect to the transfer of an asset shall, within 15 days of the passing of the resolution, deliver to the registrar of companies a copy of the resolution together with the report required by that Article and, if it fails to do so, the company and every officer of the company who is in default shall be liable on summary conviction to a fine not exceeding one-fifth of the statutory maximum or, on conviction after continued contravention, a default fine not exceeding one-fiftieth of the statutory maximum for every day until the resolution is so delivered.

(3) Any reference in Article 28 or this Article to consideration given for the transfer of an asset includes a reference to consideration given partly for its transfer; but—

- (a) the value of any consideration partly so given shall be taken to be the proportion of that consideration properly attributable to its transfer;
- (b) the independent person shall carry out or arrange for such valuations of anything else as will enable him to determine that proportion; and
- (c) his report under that Article shall state what valuation has been made by virtue of this sub-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.

### *Relief*

**30.**—(1) Where any person is liable to a company under Article 22, 25, 26 or 28 in relation to payment in respect of any shares in the company or is liable by virtue of any undertaking given to the company in, or in connection with, payment for any such shares, the person so liable may make an application to the court under this paragraph to be exempted in whole or in part from that liability.

(2) Where the liability mentioned in paragraph (1) arises under any of those Articles in relation to payment in respect of any shares the court may, on an application under that paragraph, exempt the applicant from that liability only—

- (a) if and to the extent that it appears to the court just and equitable to do so having regard to the following, namely—
  - (i) whether the applicant has paid, or is liable to pay, any amount in respect of any other liability arising in relation to those shares under any of those Articles or of any liability arising by virtue of any undertaking given in or in connection with payment for those shares;
  - (ii) whether any person other than the applicant has paid or is likely to pay (whether in pursuance of an order of the court or otherwise) any such amount; and
  - (iii) whether the applicant or any other person has performed, in whole or in part, or is likely so to perform any such undertaking or has done or is likely to do any other thing in payment or part payment in respect of those shares;
- (b) if and to the extent that it appears to the court just and equitable to do so in respect of any interest which he is liable to pay to the company under any of those Articles.

(3) Where the liability mentioned in paragraph (1) arises by virtue of an undertaking given to the company in, or in connection with, payment for any shares in the company, the court may, on an application under that paragraph, exempt the applicant from that liability only if and to the extent that it appears to the court just and equitable to do so having regard to the following, namely—

- (a) whether the applicant has paid or is liable to pay any amount in respect of any liability arising in relation to those shares under Article 22, 25, 26 or 28; and

- (b) whether any person other than the applicant has paid or is likely to pay (whether in pursuance of an order of the court or otherwise) any such amount.
- (4) In determining in pursuance of an application under paragraph (1) whether it should exempt the applicant in whole or in part from any liability, the court shall have regard to the following overriding principles, namely—
- (a) that a company which has allotted shares should receive money or money's worth at least equal in value to the aggregate of the nominal value of those shares and the whole of any premium or, if the case so requires, so much of that aggregate as is treated as paid up; and
  - (b) subject to sub-paragraph (a), that where such a company would, if the court did not grant that exemption, have more than one remedy against a particular person, it should be for the company to decide which remedy it should remain entitled to pursue.
- (5) Where a person brings any proceedings against another (“the contributor”) for a contribution in respect of any liability to a company arising under any of Articles 22 to 26 and 28 and it appears to the court that the contributor is liable to make such a contribution, the court may, if and to the extent that it appears to the court, having regard to the respective culpability in respect of the liability to the company of the contributor and the person bringing the proceedings, that it is just and equitable to do so—
- (a) exempt the contributor in whole or in part from his liability to make such a contribution; or
  - (b) order the contributor to make a larger contribution than, but for this paragraph, he would be liable to make.
- (6) Where a person is liable to a company by virtue of Article 28 (7) (a), the court may, on an application under this paragraph, exempt that person in whole or in part from that liability if and to the extent that it appears to the court just and equitable to do so having regard to any benefit accruing to the company by virtue of anything done by that person towards the carrying out of the agreement mentioned in that paragraph.

*Special provisions as to issue of shares to subscribers*

**31.** Any shares taken by a subscriber to the memorandum of a public company in pursuance of an undertaking of his in the memorandum and any premium on the shares shall be paid up in cash.

*Contravention of Articles 22 to 31*

**32.**—(1) Where a company contravenes any of the provisions of Articles 22 to 26, 28 and 31, the company and any officer of the company who is in default shall be liable on conviction on indictment to a fine and on summary conviction to a fine not exceeding the statutory maximum.

(2) Subject to Article 30, an undertaking given by any person, in or in connection with payment for shares in a company, to do work or perform services or to do any other thing shall, if it is enforceable by the company apart from this Order, be so enforceable notwithstanding that there has been a contravention in relation thereto of Article 22, 25 or 26, and where such an undertaking is given in contravention of Article 28 in respect of the allotment of any shares it shall be so enforceable notwithstanding that contravention.

*Application of Articles 22 to 32 in special cases*

**33.**—(1) Subject to paragraph (2), Articles 22, 24 to 27 and 30 to 32 shall apply—

- (a) to a company which has passed and not revoked a special resolution to be re-registered under Article 7;
- (b) to a company whose directors have passed and not revoked a resolution to be re-registered under Article 10; and
- (c) to a joint stock company (within the meaning of section 333 of the principal Act) which has passed and not revoked a resolution that the company be a public company;

as those Articles apply to a public company.

(2) Articles 22 and 24 to 26 shall not apply to the allotment of shares by a company, other than a public company registered as such on its original incorporation, where the contract for their allotment was entered into—

- (a) except in a case falling within sub-paragraph (b), before the end of the transitional period;
- (b) in the case of a company re-registered or registered as a public company in pursuance of a resolution of any description mentioned in paragraph (1) that is passed before the end of that period, before the date on which that resolution is passed.

*Class rights*

*Variation of rights attached to special classes of shares*

**34.**—(1) This Article shall have effect with respect 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 in the company otherwise than by the memorandum, and the articles of the company do not contain provision with respect to the variation of the rights, those rights may be varied if, but only if—

- (a) the holders of three-quarters in nominal value of the issued shares of that class consent in writing to the variation; or
- (b) an extraordinary resolution passed at a separate general meeting of the holders of that class sanctions the variation;

and any requirement (howsoever imposed) in relation to the variation of those rights is complied with to the extent that it is not comprised in sub-paragraphs (a) and (b).

(3) Where—

- (a) the rights are attached to a class of shares in the company by the memorandum or otherwise;
- (b) the memorandum or articles contain provision for the variation of those rights; and
- (c) the variation of those rights is connected with the giving, variation, revocation or renewal of an authority for the purposes of Article 16 or with a reduction of the company's share capital under section 66 of the principal Act (reduction of share capital),

those rights shall not be varied unless—

- (i) the condition mentioned in paragraph (2) (a) or (b) is satisfied; and

- (ii) any requirement of the memorandum or articles in relation to the variation of rights of that class is complied with to the extent that it is not comprised in the condition in head (i).
- (4) Where the rights are attached to a class of shares in the company by the memorandum or otherwise and—
- (a) where they are so attached by the memorandum, the articles contain provision with respect to their variation which had been included in the articles at the time of the company's original incorporation; or
  - (b) where they are so attached otherwise, the articles contain such provision (whenever first so included);
- and in either case the variation is not connected as mentioned in paragraph (3) (c), those rights may only be varied in accordance with that provision of the articles.
- (5) Where the rights are attached to a class of shares in the company by the memorandum and the memorandum and articles do not contain provision with respect to the variation of the rights, those rights may be varied if all the members of the company agree to the variation.
- (6) The provisions of section 127 (length of notice for calling meetings), section 128 (general provisions as to meetings and votes) and section 134 (circulation of members' resolutions) of the principal Act and the provisions of the articles relating to general meetings shall, so far as applicable, apply in relation to any meeting of shareholders required by this Article or otherwise to take place in connection with the variation of the rights attached to a class of shares, and shall so apply with the necessary modifications and subject to the following provisions, namely—
- (a) the necessary quorum at any such meeting other than an adjourned meeting shall be two persons holding or representing by proxy at least one-third in nominal value of the issued shares of the class in question and at an adjourned meeting one person holding shares of the class in question or his proxy;
  - (b) any holder of shares of the class in question present in person or by proxy may demand a poll.
- (7) Any alteration of a provision contained in the articles of a company for the variation of the rights attached to a class of shares or the insertion of any such provision into a company's articles shall itself be treated as a variation of those rights.
- (8) Section 72 of the principal Act (right of holders of minority of shares of special class to object to variation of rights) shall apply in relation to paragraph (2) as it applies in relation to a provision of the memorandum or articles of a company to the like effect.
- (9) In this Article and, except where the context otherwise requires, in any provision for the variation of the rights attached to a class of shares contained in a company's memorandum or articles references to the variation of those rights shall include references to their abrogation.
- (10) Nothing in paragraphs (2) to (5) shall be construed as derogating from the powers of the court under Article 13 or Article 77 or any of the following sections of the principal Act, that is to say, 5 (alteration of company's objects), 197 (power to compromise with creditors and members)

and 199 (provisions for facilitating reconstruction and amalgamation of companies).

(11) This Article shall not apply in relation to any variation made by a company, other than a public company registered as such on its original incorporation, before the date on which the earlier of the following events occurs, that is to say, the re-registration or registration of the company as a public company and the end of the transitional period.

*Registration of particulars of special rights*

**35.**—(1) Where a company allots shares with rights which are not stated in its memorandum or articles or in any resolution or agreement to which section 137 of the principal Act (registration and copies of certain resolutions and agreements) applies, the company shall, unless the shares are in all respects uniform with shares previously allotted, deliver to the registrar of companies within one month from allotting the shares a statement in the prescribed form containing particulars of those rights.

(2) Shares allotted with such rights shall not be treated for the purposes of paragraph (1) as different from shares previously allotted by reason only of the fact that the former do not carry the same rights to dividends as the latter during the twelve months immediately following the former's allotment.

(3) Where the rights attached to any shares of a company are varied otherwise than by an amendment of the company's memorandum or articles or by resolution or agreement to which the said section 137 applies, the company shall within one month from the date on which the variation is made deliver to the registrar of companies a statement in the prescribed form containing particulars of the variation.

(4) Where a company (otherwise than by any such amendment, resolution or agreement as is mentioned in paragraph (3)) assigns a name or other designation, or a new name or other designation, to any class of its shares it shall within one month from doing so deliver to the registrar of companies a notice in the prescribed form giving particulars thereof.

(5) Where a company has before the appointed day allotted shares with such rights as are mentioned in paragraph (1), the company shall within three months from that day deliver to the registrar of companies a statement in the prescribed form containing particulars of those rights.

(6) If a company fails to comply with this Article, the company and every officer of the company who is in default shall be liable on summary conviction to a fine not exceeding one-fifth of the statutory maximum or, on conviction after continued contravention, a default fine not exceeding one-fiftieth of the statutory maximum for each day until the statement or notice in question is delivered to the registrar of companies.

*Maintenance of capital*

*Obligation to convene extraordinary general meeting in event of serious loss of capital*

**36.**—(1) Subject to paragraph (4), where the net assets of a public company are half or less of the amount of the company's called-up share capital, the directors of the company shall, not later than 28 days from the earliest day on which that fact is known to a director of the company, duly convene an extraordinary general meeting of the company for a date not



later than 56 days from that day for the purpose of considering whether any, and if so what, measures should be taken to deal with the situation.

(2) If there is a failure to convene an extraordinary general meeting of a public company as required by paragraph (1), each of the directors of the company who—

- (a) knowingly and wilfully authorises or permits that failure; or
- (b) after the expiry of the period during which that meeting should have been convened, knowingly and wilfully authorises or permits that failure to continue,

shall be liable on conviction on indictment to a fine and on summary conviction to a fine not exceeding the statutory maximum.

(3) Nothing in this Article shall be taken as authorising the consideration, at a meeting convened in pursuance of paragraph (1), of any matter which could not have been considered at that meeting apart from this Article.

(4) This Article shall not apply where the day mentioned in paragraph (1) is before the appointed day.

*Acquisition of company's shares by the company*

**37.**—(1) Except as provided by paragraph (2), no company limited by shares or limited by guarantee and having a share capital shall acquire its own shares (whether by purchase, subscription or otherwise).

(2) A company limited by shares may acquire any of its own fully paid shares otherwise than for valuable consideration and any company may acquire its own shares in a reduction of capital duly made.

(3) If a company purports to act in contravention of this Article, the company and every officer of the company who is in default shall be liable—

- (a) on conviction on indictment—
  - (i) in the case of a company, to a fine;
  - (ii) in the case of an officer, to imprisonment for a term not exceeding two years or a fine, or both;
- (b) on summary conviction—
  - (i) in the case of a company, to a fine not exceeding the statutory maximum;
  - (ii) in the case of an officer, to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum, or both;

and the purported acquisition shall be void.

(4) For the purposes of this Article and Article 39 (1) (b) a company does not acquire shares—

- (a) by redeeming preference shares in pursuance of its articles;
- (b) by purchasing shares in pursuance of an order of the court under Article 13 or 77 or section 5 (alteration of objects) of the principal Act; or
- (c) by forfeiting shares, or accepting a surrender in lieu, in pursuance of the articles for failure to pay any sum payable in respect of those shares.

*Acquisition of shares in a company by company's nominee*

**38.**—(1) Subject to paragraphs (5) and (6), where shares are issued to a nominee of a company mentioned in Article 37 (1) or are acquired by a nominee of such a company from a third person as partly paid up, then, for all purposes the shares shall be treated as held by the nominee on his own account and the company shall be regarded as having no beneficial interest in them.

(2) Subject to paragraph (6), if a person is called on to pay any amount for the purpose of paying-up, or paying any premium on, any shares in any such company which were issued to him, or which he otherwise acquired, as the nominee of the company and he fails to pay that amount within 21 days from being called on to do so, then—

(a) if the shares were issued to him as a subscriber to the memorandum by virtue of an undertaking of his in the memorandum, the other subscribers to the memorandum; or

(b) if the shares were otherwise issued to or acquired by him, the directors of the company at the time of the issue or acquisition, shall be jointly and severally liable with him to pay that amount.

(3) If in proceedings for the recovery of any such amount from any such subscriber or director under this Article it appears to the court that he is or may be liable to pay that amount, but that he has acted honestly and reasonably and that, having regard to all the circumstances of the case, he ought fairly to be excused from liability, the court may relieve him, either wholly or partly, from his liability on such terms as the court thinks fit.

(4) Where any such subscriber or director has reason to apprehend that a claim will or might be made for the recovery of any such amount from him, he may apply to the court for relief and on the application the court shall have the same power to relieve him as it would have had in proceedings for the recovery of that amount.

(5) Paragraph (1) shall not apply to shares acquired otherwise than by subscription by a nominee of a public company in a case falling within Article 39 (1) (d).

(6) Paragraphs (1) and (2) shall not apply—

(a) to shares acquired by a nominee of a company where the company has no beneficial interest in those shares (disregarding any right which the company itself may have as trustee, whether as personal representative or otherwise, to recover its expenses or be remunerated out of the trust property); or

(b) to shares issued in consequence of an application made before the appointed day or transferred in pursuance of an agreement to acquire them made before that day.

*Treatment of shares held by or on behalf of a public company*

**39.**—(1) Subject to paragraphs (9) and (12), this Article applies to a public company—

(a) where shares in the company are forfeited, or are surrendered to the company in lieu, in pursuance of the articles for failure to pay any sum payable in respect of those shares;

- (b) where shares in the company are acquired by the company and the company has a beneficial interest in those shares;
- (c) where the nominee of the company acquires shares in the company from a third person without financial assistance being given directly or indirectly by the company and the company has a beneficial interest in those shares; or
- (d) where any person acquires shares in the company with financial assistance given to him directly or indirectly by the company for the purpose of or in connection with the acquisition and the company has a beneficial interest in those shares.

In determining for the purposes of sub-paragraphs (b) and (c) whether a company has a beneficial interest in any shares, there shall be disregarded, in any case where the company is a trustee (whether as personal representative or otherwise), any right of the company (as trustee) to recover its expenses or be remunerated out of the trust property.

(2) Unless the shares or any interest of the company in them are previously disposed of, the company must not later than the end of the relevant period from their forfeiture or surrender or, in a case to which paragraph (1) (b), (c) or (d) applies, their acquisition—

- (a) cancel them and diminish the amount of the share capital by the nominal value of the shares; and
- (b) where the effect of cancelling the shares will be that the nominal value of the company's allotted share capital is brought below the authorised minimum, apply for re-registration as a private company, stating the effect of the cancellation;

and the directors may take such steps as are requisite to enable the company to carry out its obligations under this paragraph without complying with sections 66 and 67 of the principal Act (special resolution for, and order confirming reduction of, share capital), including passing a resolution in accordance with paragraph (4).

(3) The company and, in a case falling within paragraph (1) (c) or (d), the company's nominee or, as the case may be, the other shareholder must not exercise any voting rights in respect of the shares and any purported exercise of those rights shall be void.

(4) The resolution authorised by paragraph (2) may alter the company's memorandum so that it no longer states that the company is to be a public company and may make such other alterations in the memorandum as are requisite in the circumstances.

(5) The application for re-registration required by paragraph (2) (b) must be in the prescribed form and signed by a director or secretary of the company and must be delivered to the registrar together with a printed copy of the memorandum and articles of the company as altered by the resolution.

(6) If a public company required to apply to be re-registered as a private company under this Article fails to do so before the end of the relevant period, Article 17 shall apply to it as if it were a private company such as is mentioned in that Article, but, except as aforesaid, the company shall continue to be treated for the purposes of the Companies Acts as a public company until it is so re-registered.

(7) If a company when required to do so by paragraph (2) fails to cancel any shares in accordance with sub-paragraph (a) of that paragraph or to make an application for re-registration in accordance with sub-paragraph (b) of that paragraph the company and every officer of the company who is in default shall be liable on summary conviction to a fine not exceeding one-fifth of the statutory maximum or, on conviction after continued contravention, a default fine not exceeding one-fiftieth of the statutory maximum.

(8) Article 12 (3) shall apply in relation to the re-registration of a company under this Article as it applies to the re-registration of a company under that Article and paragraphs (4) and (5) of that Article shall apply to the re-registration of a company in pursuance of an application under this Article accordingly, but with the substitution in each case of references to this Article for references to that Article.

(9) Where, after shares in a private company—

- (a) are forfeited in pursuance of the articles of the company or are surrendered to the company in lieu of forfeiture or are otherwise acquired by the company;
- (b) are acquired by the nominee of a company in the circumstances mentioned in paragraph (1) (c); or
- (c) are acquired by any person in the circumstances mentioned in paragraph (1) (d);

the company is re-registered as a public company, the foregoing provisions of this Article shall apply to the company as if it had been a public company at the time of the forfeiture, surrender or acquisition and as if for any reference to the relevant period from the forfeiture, surrender or acquisition there were substituted a reference to the relevant period from the re-registration of the company as a public company.

(10) Where a public company or a nominee of a public company acquires shares in the company or an interest in such shares and those shares are or that interest is shown in a balance sheet of the company as an asset, an amount equal to the value of the shares or, as the case may be, the value to the company of its interest in the shares shall be transferred out of profits available for dividend to a reserve fund and shall not be available for distribution.

(11) In this Article “relevant period”, in relation to any shares, means

- (a) in the case of shares forfeited or surrendered to the company in lieu of forfeiture or acquired as mentioned in paragraph (1) (b) or (c), three years;
- (b) in the case of shares acquired as mentioned in paragraph (1) (d), one year.

(12) Notwithstanding anything in Article 10 (2), a reference in this Article to a public company does not include a reference to an old public company; and references in this Article to a private company shall be construed accordingly.

*Charges taken by public companies on own shares*

**40.**—(1) A lien or other charge of a public company on its own shares (whether taken expressly or otherwise), except a charge permitted by paragraph (2), is void.

- (2) The following are permitted charges, that is to say—
- (a) in the case of every description of company, a charge on its own shares (not being fully paid) for any amount payable in respect of the shares;
  - (b) in the case of a company whose ordinary business includes the lending of money or consists of the provision of credit or the bailment of goods under a hire purchase agreement, or both, a charge of the company on its own shares (whether fully paid or not) which arises in connection with a transaction entered into by the company in the ordinary course of its business;
  - (c) in the case of a company (other than a company in relation to which sub-paragraph (d) applies) which is re-registered or is registered under Article 15 as a public company, a charge on its own shares which was in existence immediately before its application for re-registration or, as the case may be, registration;
  - (d) in the case of any company which after the end of the re-registration period remains or remained an old public company and did not before the end of that period apply to be re-registered under Article 10 as a public company, any charge on its own shares which was in existence immediately before the end of that period.

#### PART IV

##### RESTRICTIONS ON DISTRIBUTION OF PROFITS AND ASSETS

###### *Profits available for distribution*

**41.**—(1) A company shall not make a distribution (as defined by Article 47) except out of profits available for the purpose.

(2) For the purposes of this Part, but subject to Article 43 (1), a 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.

(3) A company shall not apply an unrealised profit in paying up debentures or any amounts unpaid on any of its issued shares.

(4) For the purposes of paragraphs (2) and (3) any provision (within the meaning of Schedule 6 to the principal Act), other than one in respect of any diminution in value of a fixed asset appearing on a revaluation of all the fixed assets of the company, shall be treated as a realised loss.

(5) If, on the revaluation of a fixed asset, an unrealised profit is shown to have been made and, on or after the revaluation, a sum is written off or retained for depreciation of that asset over a period, then, an amount equal to the amount by which that sum exceeds the sum which would have been so written off or retained for depreciation of that asset over that period, if that profit had not been made, shall be treated for the purposes of paragraphs (2) and (3) as a realised profit made over that period.

(6) Where there is no record of the original cost of an asset of a company (whether acquired before, on or after the appointed day) or any

such record cannot be obtained without unreasonable expense or delay, then, for the purposes of determining whether the company has made a profit or loss in respect of that asset, the cost of the asset shall be taken to be the value ascribed to it in the earliest available record of its value made on or after its acquisition by the company.

(7) Where the directors of a company are, after making all reasonable enquiries, unable to determine whether a particular profit made before the appointed day is realised or unrealised they may treat the profit as realised, and where after making such enquiries they are unable to determine whether a particular loss so made is realised or unrealised, they may treat the loss as unrealised.

(8) In this Article “fixed asset” includes any other asset which is not a current asset.

#### *Restriction on distribution of assets*

**42.**—(1) Subject to Article 43, 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 aggregate of the company’s 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 aggregate.

(2) For the purposes of this Article the undistributable reserves of a company are—

- (a) the share premium account;
- (b) the capital redemption reserve fund;
- (c) the amount by which the company’s accumulated, unrealised profits, so far as not previously utilised by any capitalisation of a description to which this sub-paragraph applies, 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 enactment, other than one contained in this Part, or by its memorandum or articles.

(3) Paragraph (2) (c) applies to every description of capitalisation except a transfer of any profits of the company to its capital redemption reserve fund on or after the appointed day.

(4) Paragraphs (4) to (7) of Article 41 shall apply for the purposes of this Article as they apply for the purposes of that Article.

(5) A public company shall not include any uncalled share capital as an asset in any accounts relevant for the purposes of this Article.

#### *Other distributions of investment companies*

**43.**—(1) Subject to the following provisions of this Article, 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 aggregate 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 aggregate.

(2) In paragraph (1) “liabilities” includes any provision (within the meaning of Schedule 6 to the principal Act) except to the extent that that provision is taken into account for the purposes of that paragraph in calculating the value of any asset of the company in question, and paragraph (5) of Article 42 shall apply for those purposes as it applies for the purposes of that Article.

(3) In this Part “investment company” means a public company which has given notice in the prescribed form (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 requirements set out in paragraph (4).

(4) The requirements referred to in paragraph (3) are—

- (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 distribution of the company’s capital profits is prohibited by its memorandum or articles of association;
- (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.

(5) An investment company may not make a distribution by virtue of paragraph (1) unless its shares are listed on a recognised stock exchange and, 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 (whether or not any part of those periods falls before the appointed day), it has not—

- (a) distributed any of its capital profits; or
- (b) applied any unrealised profits or any capital profits (realised or unrealised) in paying up debentures or any amounts unpaid on any of its issued shares.

(6) An investment company may not make a distribution by virtue of paragraph (1) unless the company gave the requisite notice—

- (a) before the beginning of the period referred to in paragraph (5); or

- (b) where that period began before the appointed day, as soon as may be reasonably practicable after the appointed day; or
- (c) where the company was incorporated on or after the appointed day, as soon as may be reasonably practicable after the date of its incorporation.

(7) A notice by a company to the registrar under paragraph (3) may be revoked at any time by the company on giving notice in the prescribed form to the registrar that it no longer wishes to be an investment company within the meaning of this Article and, on giving such notice, the company shall cease to be such an investment company.

(8) Section 359 (2) and (3) of the Income and Corporation Taxes Act 1970 (a) and section 93 (6) (b) of the Finance Act 1972 (b) shall have effect for the purposes of paragraph (4) (b) as those provisions have effect for the purposes of subsection (1) (b) of the said section 359.

(9) The Department may by regulations extend the provisions of this Article, with or without modifications, to companies whose principal business consists of investing their funds in securities, land or other assets with the aim of spreading investment risk and giving their members the benefit of the results of the management of the assets.

(10) Regulations made under paragraph (9)—

- (a) may contain such transitional and supplemental provisions as the Department considers necessary; and
- (b) shall not be made unless a draft of the regulations has been laid before and approved by a resolution of the Assembly.

(11) In determining capital and revenue profits and losses for the purposes of this Article an asset which is not a fixed asset or a current asset shall be treated as a fixed asset.

*Realised profits of insurance company with long term business*

**44.**—(1) Where an insurance company carries on long term business, any amount properly transferred to the profit and loss account of the company from a surplus in the fund or funds maintained by it in respect of that business 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 the foregoing, any profit or loss arising in that business shall be left out of account for those purposes.

(2) In paragraph (1)—

- (a) the reference to a surplus in any fund or funds 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; and
- (b) 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 Article—

“actuarial investigation” means an investigation to which section 14 of

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(a) 1970 c. 10.      (b) 1972 c. 41.



the Insurance Companies Act 1974 (a) (periodic actuarial investigation of company with long term business) applies or which is made in pursuance of a requirement imposed by section 34 of that Act (actuarial investigation required by the Secretary of State);

“insurance company” means an insurance company to which Part II of that Act applies;

“long term business” has the same meaning as in that Act.

*The relevant accounts*

**45.**—(1) Subject to the following provisions of this Article, the question whether a distribution may be made by a company without contravening Article 41, 42 or 43 (the relevant Article) and the amount of any distribution which may be so made shall be determined by reference to the relevant items as stated in the relevant accounts, and the relevant Article shall be treated as contravened in the case of a distribution unless the requirements of this Article about those accounts are complied with in the case of that distribution.

(2) The relevant accounts for any company in the case of any particular distribution are—

- (a) except in a case falling within sub-paragraph (b) or (c), the last annual accounts that is to say, the accounts prepared under Article 3 of the 1978 Order which were laid or filed in respect of the last preceding accounting reference period in respect of which accounts so prepared were laid or filed;
- (b) if that distribution would be found to contravene the relevant Article if reference were made only to the last annual accounts, such accounts (interim accounts) as are necessary to enable a proper judgment to be made as to the amounts of any of the relevant items;
- (c) if that distribution is proposed to be declared during the company's first accounting reference period or before any accounts are laid or filed in respect of that period, such accounts (initial accounts) as are necessary as aforesaid.

(3) The following requirements apply where the last annual accounts of a company constitute the only relevant accounts in the case of any distribution, that is to say—

- (a) those accounts must have been properly prepared or have been so prepared subject only to matters which are not material for the purpose of determining, by reference to the relevant items as stated in those accounts, whether that distribution would be in contravention of the relevant Article;
- (b) the auditors of the company must have made a report under Article 33 of the 1978 Order (auditors' report) in respect of those accounts;
- (c) if, by virtue of anything referred to in that report, the report is not an unqualified report, the auditors must also have stated in writing (either at the time the report was made or subsequently) whether, in their opinion, that thing is material for the purpose of determining, by reference to the relevant items as stated in those accounts,

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(a) 1974 c. 49.

whether that distribution would be in contravention of the relevant Article; and

- (d) a copy of any such statement must have been laid before the company in general meeting or delivered to the registrar of companies according as those accounts have been laid or filed.

(4) A statement under paragraph (3) (c) suffices for the purposes of a particular distribution not only if it relates to a distribution which has been proposed but also if it relates to distributions of any description which includes that particular distribution, notwithstanding that at the time of the statement it has not been proposed.

(5) The following requirements apply to interim accounts prepared for a proposed distribution by a public company, that is to say—

- (a) the accounts must have been properly prepared or have been so prepared subject only to matters which are not material for the purpose of determining, by reference to the relevant items as stated in those accounts, whether that distribution would be in contravention of the relevant Article;
- (b) a copy of those accounts must have been delivered to the registrar of companies; and
- (c) if the accounts are in a language other than English and Article 3 (7) (b) of the 1978 Order (translations) does not apply, a translation into English of the accounts which has been certified in the prescribed manner to be a correct translation must also have been delivered to the registrar.

(6) The following requirements apply to initial accounts prepared for a proposed distribution by a public company, that is to say—

- (a) those accounts must have been properly prepared or have been so prepared subject only to matters which are not material for the purpose of determining, by reference to the relevant items as stated in those accounts, whether that distribution would be in contravention of the relevant Article;
- (b) the auditors of the company must have made a report stating whether in their opinion the accounts have been properly prepared;
- (c) if, by virtue of anything referred to in that report, the report is not an unqualified report, the auditors must also have stated in writing whether, in their opinion, that thing is material for the purpose of determining, by reference to the relevant items as stated in those accounts, whether that distribution would be in contravention of the relevant Article;
- (d) a copy of those accounts, of the report made under sub-paragraph (b) and of any such statement must have been delivered to the registrar of companies; and
- (e) if the accounts are, or that report or statement is, in a language other than English and Article 3 (7) (b) of the 1978 Order (translations) does not apply, a translation into English of the accounts, the report or statement, as the case may be, which has been certified in the prescribed manner to be a correct translation, must also have been delivered to the registrar.

(7) For the purpose of determining by reference to particular accounts whether a proposed distribution may be made by a company, this Article shall have effect, in any case where one or more distributions have already been made in pursuance of determinations made by reference to those same accounts, as if the amount of the proposed distribution was increased by the amount of the distributions so made.

(8) In this Article—

“properly prepared” means, in relation to any accounts of a company, that the following conditions are satisfied in relation to those accounts, that is to say—

- (a) in the case of annual accounts, that they have been properly prepared in accordance with the provisions of the Companies Acts;
- (b) in the case of interim or initial accounts, that they comply with the requirements of section 143 of the principal Act (contents and form of accounts) and any balance sheet comprised in those accounts has been signed in accordance with section 149 of that Act (directors to sign balance sheet of company); and
- (c) in either case, without prejudice to the foregoing, that, except where the company is entitled to avail itself, and has availed itself, of any of the provisions of Part III of Schedule 6 to the principal Act (exemptions from requirements as to accounts)—
  - (i) so much of the accounts as consists of a balance sheet gives a true and fair view of the state of the company’s affairs as at the balance sheet date; and
  - (ii) so much of those accounts as consists of a profit and loss account gives a true and fair view of the company’s profit or loss for the period in respect of which the accounts were prepared;

“relevant item” means any of the following, that is to say profits, losses, assets, liabilities, provisions (within the meaning of Schedule 6 to the principal Act), share capital and reserves;

“reserves” includes undistributable reserves within the meaning of Article 42;

“unqualified report”, in relation to any accounts of a company, means a report, without qualification, to the effect that in the opinion of the person making the report the accounts have been properly prepared;

and, for the purposes of this Article, accounts are laid or filed if paragraph (6) or, as the case may be, paragraph (7) (where applicable) of Article 3 of the 1978 Order has been complied with in relation to those accounts.

(9) For the purpose of sub-paragraph (b) of the definition of “properly prepared” in paragraph (8), section 143 of, and Schedule 6 to, the principal Act shall be deemed to have effect in relation to interim and initial accounts with such modifications as are necessary by reason of the fact that the accounts are prepared otherwise than in respect of an accounting reference period.

#### *Consequences of making unlawful distribution*

**46.**—(1) Where a distribution, or part of one, made by a company to one of its members is made in contravention of the foregoing provisions of this Part and, at the time of the distribution, he knows or has reasonable

grounds for believing that it is so made, he shall be liable to repay it or that part, 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) The provisions of this Article are without prejudice to any obligation imposed apart from this Article on a member of a company to repay a distribution unlawfully made to him.

#### *Ancillary provisions*

**47.**—(1) Where immediately before the appointed day a company is authorised by any provision of its articles to apply its unrealised profits in paying up in full or in part unissued shares to be allotted to members of the company as fully or partly paid bonus shares, that provision shall, subject to any subsequent alteration of the articles, continue to be construed as authorising those profits to be so applied after the appointed day.

(2) In this Part “distribution” means every description of distribution of a company’s assets to members of the company, whether in cash or otherwise, except distributions made by way of—

- (a) an issue of shares as fully or partly paid bonus shares;
- (b) the redemption of preference shares out of the proceeds of a fresh issue of shares made for the purposes of the redemption and the payment of any premium on their redemption out of the company’s share premium account;
- (c) the reduction of share capital by extinguishing or reducing the liability of any of the members on any of its 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) In this Part “capitalisation”, in relation to any profits of a company, means any of the following operations, whether carried out before, on or after the appointed day, that is to say, applying the profits in wholly or partly paying up unissued shares in the company to be allotted to members of the company as fully or partly paid bonus shares or transferring the profits to the capital redemption reserve fund.

(4) In this Part references to profits and losses of any description are references respectively to profits and losses of that description made at any time, whether before, on or after the appointed day and, except in relation to an investment company, are references respectively to revenue and capital profits and revenue and capital losses.

(5) The provisions of this Part are without prejudice to any enactment or rule of law or any provision of a company’s memorandum or articles restricting the sums out of which, or the cases in which, a distribution may be made.

(6) The provisions of this Part shall not apply to any distribution made by a company, other than a public company registered as such on its original incorporation, before the date on which the earlier of the following events occurs, that is to say, the re-registration or registration of the company as a public company and the end of the transitional period.

PART V

DUTIES OF DIRECTORS AND CONFLICTS OF INTERESTS

*Duty in relation to employees*

*Directors to have regard to interests of employees*

**48.**—(1) The matters to which the directors of a company are to have regard in the performance of their functions shall include the interests of the company's employees in general as well as the interests of its members.

(2) Accordingly, the duty imposed by paragraph (1) on the directors of a company is owed by them to the company (and the company alone) and is enforceable in the same way as any other fiduciary duty owed to a company by its directors.

*Particular transactions giving rise to a conflict of interest*

*Contracts of employment of directors*

**49.**—(1) Subject to paragraph (6), a company shall not incorporate in any agreement a term to which this Article applies unless the term is first approved by a resolution of the company in general meeting and, in the case of a director of a holding company, by a resolution of that company in general meeting.

(2) This Article applies to any term by which a director's employment with the company of which he is the director or, where he is the director of a holding company, his employment within the group is to continue, or may be continued, otherwise than at the instance of the company (whether under the original agreement or under a new agreement entered into in pursuance of the original agreement), for a period exceeding five years during which the employment—

- (a) cannot be terminated by the company by notice; or
- (b) can be so terminated only in specified circumstances.

(3) In any case where—

- (a) a person is or is to be employed with a company under an agreement which cannot be terminated by the company by notice or can be so terminated only in specified circumstances; and
- (b) more than six months before the expiration of the period for which he is or is to be so employed, the company enters into a further agreement (otherwise than in pursuance of a right conferred by or by virtue of the original agreement on the other party thereto) under which he is to be employed with the company or, where he is a director of a holding company, within the group,

paragraph (2) shall apply as if to the period for which he is to be employed under that further agreement there were added a further period equal to the unexpired period of the original agreement.

(4) A resolution of a company approving a term to which this Article applies shall not be passed at a general meeting of the company unless a written memorandum setting out the proposed agreement incorporating the term is available for inspection, by members of the company both—

- (a) at the registered office of the company for not less than the period of 15 days ending with the date of the meeting; and

(b) at the meeting itself.

(5) A term incorporated in an agreement in contravention of this Article shall to the extent that it contravenes this Article be void; and that agreement and in a case where paragraph (3) applies the original agreement shall be deemed to contain a term entitling the company to terminate it at any time by the giving of reasonable notice.

(6) No approval is required to be given under this Article by any body corporate unless it is a company within the meaning of the principal Act or registered under Part VIII of that Act or if it is, for the purposes of section 144 of that Act, a wholly-owned subsidiary of any body corporate, wherever incorporated.

(7) In this Article—

(a) “employment” includes employment under a contract for services; and

(b) “group”, in relation to a director of a holding company, means the group which consists of that company and its subsidiaries.

*Substantial property transactions involving directors, etc.*

**50.**—(1) A company shall not enter into an arrangement—

(a) whereby a director of the company or its holding company or a person connected with such a director is to acquire one or more non-cash assets of the requisite value from the company; or

(b) whereby the company acquires one or more non-cash assets of the requisite value from such a director or a person so connected;

unless the arrangement is first approved by a resolution of the company in general meeting and, if the director or connected person is a director of its holding company or a person connected with such a director, by a resolution in general meeting of the holding company.

(2) For the purposes of this Article a non-cash asset is of the requisite value if at the time the arrangement in question is entered into its value is not less than £1,000 but, subject to that, exceeds £50,000 or ten per cent. of the amount of the company’s relevant assets, and for those purposes the amount of a company’s relevant assets is—

(a) except in a case falling within sub-paragraph (b), the value of its net assets determined by reference to the accounts prepared and laid under Article 3 of the 1978 Order in respect of the last preceding accounting reference period in respect of which such accounts were so laid;

(b) where no accounts have been prepared and laid under that Article before that time, the amount of its called-up share capital.

(3) An arrangement entered into by a company in contravention of this Article and any transaction entered into in pursuance of the arrangement (whether by the company or any other person) shall be voidable at the instance of the company unless—

(a) restitution of any money or any other asset which is the subject-matter of the arrangement or transaction is no longer possible or the company or the person nominated by it has been indemnified in pursuance of paragraph (4) (b) by any other person for the loss or damage suffered by it; or

- (b) any rights acquired bona fide for value and without actual notice of the contravention by any person who is not a party to the arrangement or transaction would be affected by its avoidance; or
- (c) the arrangement is, within a reasonable period, affirmed by the company in general meeting and, if it is an arrangement for the transfer of an asset to or by a director of its holding company or a person who is connected with such a director, is so affirmed with the approval of the holding company given by a resolution in general meeting.

(4) Without prejudice to any liability imposed otherwise than by this paragraph, but subject to paragraph (5), where an arrangement is entered into with a company by a director of the company or its holding company or a person connected with him in contravention of this Article, that director and the person so connected, and any other director of the company who authorised the arrangement or any transaction entered into in pursuance of such an arrangement, shall (whether or not it has been avoided in pursuance of paragraph (3)) be liable—

- (a) to account to the company for any gain which he had made directly or indirectly by the arrangement or transaction; and
- (b) (jointly and severally with any other person liable under this paragraph) to indemnify the company for any loss or damage resulting from the arrangement or transaction.

(5) Where an arrangement is entered into by a company and a person connected with a director of the company or its holding company in contravention of this Article, that director shall not be liable under paragraph (4) if he shows that he took all reasonable steps to secure the company's compliance with this Article, and, in any case, a person so connected and any such other director as is mentioned in that paragraph shall not be so liable if he shows that, at the time the arrangement was entered into, he did not know the relevant circumstances constituting the contravention.

(6) No approval is required to be given under this Article by any body corporate unless it is a company within the meaning of the principal Act or registered under Part VIII of that Act or, if it is, for the purposes of section 144 of that Act, a wholly-owned subsidiary of any body corporate, wherever incorporated.

*Prohibition of loans, etc., to directors and connected persons*

**51.**—(1) Except as provided by Article 52—

- (a) a company shall not—
  - (i) make a loan to a director of the company or of its holding company;
  - (ii) enter into any guarantee or provide any security in connection with a loan made by any person to such a director; and
- (b) a relevant company shall not—
  - (i) make a quasi-loan to a director of the company or of its holding company;
  - (ii) make a loan or a quasi-loan to a person connected with such a director;

- (iii) enter into a guarantee or provide any security in connection with a loan or quasi-loan made by any other person for such a director or a person so connected.
- (2) Except as provided by that Article, a relevant company shall not—
  - (a) enter into a credit transaction as creditor for such a director or a person so connected;
  - (b) enter into any guarantee or provide any security in connection with a credit transaction made by any other person for such a director or a person so connected.
- (3) A company shall not arrange for the assignment to it or the assumption by it of any rights, obligations or liabilities under a transaction which, if it had been entered into by the company, would have contravened paragraph (1) or (2); but for the purposes of this Part the transaction shall be treated as having been entered into on the date of the arrangement.
- (4) A company shall not take part in any arrangement whereby—
  - (a) another person enters into a transaction which, if it had been entered into by the company, would have contravened paragraph (1), (2) or (3); and
  - (b) that other person, in pursuance of the arrangement, has obtained or is to obtain any benefit from the company or its holding company or a subsidiary of the company or its holding company.

*Exceptions from Article 51*

**52.**—(1) Where a director of a relevant company or of its holding company is associated with a subsidiary of either of those companies, paragraph (1) (b) (ii) and (iii) of Article 51 shall not by reason only of that fact prohibit the relevant company from—

- (a) making a loan or quasi-loan to that subsidiary; or
- (b) entering into a guarantee or providing any security in connection with a loan or quasi-loan made by any person to that subsidiary.

(2) Paragraph (1) (b) of that Article shall not prohibit a relevant company (“the creditor”) from making a quasi-loan to one of its directors or to a director of its holding company if—

- (a) the quasi-loan contains a term requiring the director or a person on his behalf to reimburse the creditor his expenditure within two months of its being incurred; and
- (b) the aggregate of the amount of that quasi-loan and of the amount outstanding under each relevant quasi-loan does not exceed £1,000.

For the purposes of this paragraph, a quasi-loan is relevant if it was made to the director by virtue of this paragraph by the creditor or by its subsidiary or, where the director is a director of the creditor’s holding company, any other subsidiary of that company; and “amount outstanding” has the same meaning as in Article 58 (8).

(3) Paragraph (2) of that Article shall not prohibit a company’s entering into—

- (a) any transaction for any person if the aggregate of the relevant amounts does not exceed £5,000; or



- (b) any transaction for any person if—
  - (i) the company enters into the transaction in the ordinary course of its business; and
  - (ii) the value of the transaction is not greater, and the terms on which it is entered into, are no more favourable in respect of the person for whom the transaction is made than that or those which it is reasonable to expect the company to have offered to or in respect of a person of the same financial standing as that person but unconnected with the company.

(4) Subject to the following provisions of this Article, each of the following is excepted from the prohibitions in Article 51, that is to say—

- (a) a loan, or quasi-loan by a company to its holding company or a company's entering into a guarantee or providing any security in connection with a loan or quasi-loan made by any person to its holding company;
- (b) a company's entering into a credit transaction as creditor for its holding company or entering into a guarantee or providing any security in connection with any credit transaction made by any other person for its holding company;
- (c) a company's doing any thing to provide any of its directors with funds to meet expenditure incurred or to be incurred by him for the purposes of the company or for the purpose of enabling him properly to perform his duties as an officer of the company or a company's doing anything to enable any of its directors to avoid incurring such expenditure;
- (d) a loan or quasi-loan made by a money-lending company to any person or a money-lending company's entering into a guarantee in connection with any other loan or quasi-loan.

(5) The exception specified in paragraph (4) (c) operates only if one of the following conditions is satisfied, that is to say—

- (a) the thing in question is done with prior approval of the company given at a general meeting at which the purpose of the expenditure incurred or to be incurred or which would otherwise be incurred by the director and the amount of the funds to be provided by the company and the extent of the company's liability under any transaction which is or is connected with that thing are disclosed;
- (b) that thing is done on condition that, if the approval of the company is not so given at or before the next following annual general meeting, the loan shall be repaid or any other liability arising under any such transaction discharged within six months from the conclusion of that meeting;

but that exception does not authorise a relevant company to enter into any transaction if the aggregate of the relevant amounts exceeds £10,000.

(6) The exception specified in paragraph (4) (d) operates only if both the following conditions are satisfied, that is to say—

- (a) the loan or quasi-loan in question is made by the company or it enters into the guarantee in the ordinary course of the company's business; and

- (b) the amount of the loan or quasi-loan or the amount guaranteed is not greater, and the terms of the loan, quasi-loan or guarantee are not more favourable, in the case of the person to whom the loan or quasi-loan is made or in respect of whom the guarantee is entered into than that or those which it is reasonable to expect that company to have offered to or in respect of a person of the same financial standing as that person but unconnected with the company;

but that exception does not authorise a relevant company which is not a recognised bank to enter into any transaction if the aggregate of the relevant amounts exceeds £50,000.

In determining for the purposes of this paragraph the aggregate of the relevant amounts, a company which a director does not control shall be deemed not to be connected with him.

(7) The condition specified in paragraph (6) (b) shall not of itself prevent a company from making a loan to one of its directors or a director of its holding company—

- (a) for the purpose of facilitating the purchase, for use as that director's only or main residence, of the whole or part of any dwelling-house together with any land to be occupied and enjoyed therewith;
- (b) for the purpose of improving a dwelling-house or part of a dwelling-house so used or any land occupied and enjoyed therewith;
- (c) in substitution for any loan made by any person and falling within sub-paragraph (a) or (b),

if loans of that description are ordinarily made by the company to its employees and on terms no less favourable than those on which the transaction in question is made, and the aggregate of the relevant amounts does not exceed £50,000.

#### *Relevant amounts*

**53.—**(1) The following provisions of this Article shall have effect for the purpose of defining the amounts relevant for determining whether any transaction or arrangement (a “proposed transaction or arrangement”) falls within the exception provided by paragraph (3) (a) or (4) (c) or (d) of Article 52, and for that purpose “the relevant exception” in paragraph (2) means that exception.

(2) The relevant amounts in relation to a proposed transaction or arrangement are—

- (a) the value of the proposed transaction or arrangement;
- (b) the value of any existing relevant arrangement falling within paragraph (3) or (4) of Article 51 and entered into by virtue of the relevant exception by the company or by a subsidiary of the company or, where the proposed transaction or arrangement is to be made for a director of its holding company or a person connected with such a director, by a subsidiary of its holding company;
- (c) the amount outstanding under any other relevant transaction made by virtue of the relevant exception by the company or by a subsidiary of the company or, where the proposed transaction or arrangement is to be made for a director of its holding company or a person connected with such a director, by a subsidiary of its holding company.

(3) For the purposes of this Article, a transaction is relevant if it was made—

- (a) for the director for whom the proposed transaction or arrangement is to be made or for any person connected with that director; or
- (b) where the proposed transaction or arrangement is to be made for a person connected with a director of a company, for that director or any person connected with him;

and an arrangement is relevant if it relates to a relevant transaction.

(4) For the purposes of this Article, a transaction entered into by a company which is (at the time that transaction was entered into) a subsidiary of the company which is to make the proposed transaction or is a subsidiary of that company's holding company, is not a relevant transaction if at the time of the determination referred to in paragraph (1) it no longer is such a subsidiary.

(5) The amount outstanding under any transaction within paragraph (2) (c) is the value of the transaction less any amount by which that value has been reduced.

*Civil remedies for breach of Article 51*

**54.**—(1) Where a company enters into a transaction or arrangement in contravention of Article 51 the transaction or arrangement shall be voidable at the instance of the company unless—

- (a) restitution of any money or any other asset which is the subject matter of the arrangement or transaction is no longer possible, or the company has been indemnified in pursuance of paragraph (2) (b) for the loss or damage suffered by it; or
- (b) any rights acquired bona fide for value and without actual notice of the contravention by any person other than the person for whom the transaction or arrangement was made would be affected by its avoidance.

(2) Without prejudice to any liability imposed otherwise than by this paragraph but subject to paragraph (3), where an arrangement or transaction is made by a company for a director of the company or its holding company or person connected with such a director in contravention of Article 51, that director and the person so connected and any other director of the company who authorised the transaction or arrangement shall (whether or not it has been avoided in pursuance of paragraph (1)) be liable—

- (a) to account to the company for any gain which he has made directly or indirectly by the arrangement or transaction; and
- (b) (jointly and severally with any other person liable under this paragraph) to indemnify the company for any loss or damage resulting from the arrangement or transaction.

(3) Where an arrangement or transaction is entered into by a company and a person connected with a director of the company or its holding company in contravention of Article 51, that director shall not be liable under paragraph (2) if he shows that he took all reasonable steps to secure the company's compliance with that Article, and, in any case, a person so connected and any such other director as is mentioned in that paragraph shall not be so liable if he shows that, at the time the arrangement or

transaction was entered into, he did not know the relevant circumstances constituting the contravention.

*Criminal penalties for breach of Article 51*

**55.—**(1) A director of a relevant company who authorises or permits the company to enter into a transaction or arrangement knowing or having reasonable cause to believe that the company was thereby contravening Article 51 shall be guilty of an offence.

(2) A relevant company which enters into a transaction or arrangement for one of its directors or for a director of its holding company in contravention of Article 51 shall be guilty of an offence.

(3) A person who procures a relevant company to enter into a transaction or arrangement knowing or having reasonable cause to believe that the company was thereby contravening Article 51 shall be guilty of an offence.

(4) A relevant company shall not be guilty of an offence under paragraph (2) if it shows that, at the time the transaction was entered into, it did not know the relevant circumstances.

(5) A person guilty of an offence under this Article shall be liable—

(a) on conviction on indictment, to a term of imprisonment not exceeding two years or a fine, or both; and

(b) on summary conviction to a term of imprisonment not exceeding six months or a fine not exceeding the statutory maximum, or both.

*Disclosure of transactions involving directors and others*

*Substantial contracts, etc., with directors and others to be disclosed in accounts*

**56.—**(1) Subject to paragraphs (5) and (6) and to Article 60, group accounts prepared by a holding company in accordance with the requirements of Article 3 of the 1978 Order in respect of a financial year (the “relevant period”) ending on or after the appointed day shall contain the particulars specified in Article 57 of—

(a) any transaction or arrangement of a kind described in Article 51 entered into by the company or by a subsidiary of the company for a person who at any time during the relevant period was a director of the company or was connected with such a director;

(b) an agreement by the company or by a subsidiary of the company to enter into any such transaction or arrangement for a person who at any time during the relevant period was a director of the company or was connected with such a director; and

(c) any other transaction or arrangement with the company or with a subsidiary of the company in which a person who at any time during the relevant period was a director of the company had, directly or indirectly, a material interest.

(2) Subject as aforesaid, accounts so prepared by any company other than a holding company in respect of a financial year (the “relevant period”) ending on or after the appointed day shall contain the particulars specified in Article 57 of—

(a) any transaction or arrangement of a kind described in Article 51

entered into by the company for a person who at any time during the relevant period was a director of the company or of its holding company or was connected with such a director;

(b) an agreement by the company to enter into any such transaction or arrangement for a person who at any time during the relevant period was a director of the company or of its holding company or was connected with such a director; and

(c) any other transaction or arrangement with the company in which a person who at any time during the relevant period was a director of the company or of its holding company had, directly or indirectly, a material interest.

(3) Where by virtue of section 144 (2) of the principal Act a company does not produce group accounts in relation to any financial year, paragraph (1) shall have effect in relation to the company and that financial year as if the word “group” were omitted.

(4) For the purposes of paragraphs (1) (c) and (2) (c)—

(a) a transaction or arrangement between a company and a director of the company or of its holding company or a person connected with such a director shall (if it would not otherwise be so treated) be treated as a transaction, arrangement or agreement in which that director is interested; and

(b) an interest in such a transaction or arrangement is not material if in the opinion of the majority of the directors (other than that director) of the company which is preparing the accounts in question it is not material (but without prejudice to the question whether or not such an interest is material in any case where those directors have not considered the matter).

(5) Paragraphs (1) and (2) do not apply, for the purposes of any accounts prepared by any company which is, or is the holding company of, a recognised bank, in relation to a transaction or arrangement of a kind described in Article 51, or an agreement to enter into such a transaction or arrangement, to which that recognised bank is a party.

(6) Paragraphs (1) and (2) do not apply in relation to the following transactions, arrangements and agreements—

(a) a transaction, arrangement or agreement between one company and another in which a director of the first or of its subsidiary or holding company is interested only by virtue of his being a director of the other;

(b) a contract of service between a company and one of its directors or a director of its holding company;

(c) a transaction, arrangement or agreement which was not entered into during the relevant period for the accounts in question or which did not subsist at any time during that period;

(d) a transaction, arrangement or agreement which was made before the appointed day and which does not subsist on or after that day.

(7) Paragraphs (1) and (2) apply whether or not—

(a) the transaction or arrangement was prohibited by Article 51;

- (b) the person for whom it was made was a director of the company or was connected with a director of the company at the time it was made;
- (c) in the case of a transaction or arrangement made by a company which at any time during a relevant period is a subsidiary of another company, it was a subsidiary of that other company at the time the transaction or arrangement was made.

*Particulars required to be included in accounts by Article 56*

**57.**—(1) The particulars of a transaction, arrangement or agreement which are required by Article 56 to be included in the annual accounts prepared by a company are particulars of the principal terms of the transaction, arrangement or agreement and (without prejudice to the generality of the foregoing provision)—

- (a) a statement of the fact either that the transaction, arrangement or agreement was made or subsisted, as the case may be, during the financial year in respect of which those accounts are made up;
- (b) the name of the person for whom it was made, and, where that person is or was connected with a director of the company or of its holding company, the name of that director;
- (c) in any case where paragraph (1) (c) or (2) (c) of Article 56 applies, the name of the director with the material interest and the nature of that interest;
- (d) in the case of a loan or an agreement for a loan or an arrangement within Article 51 (3) or (4) relating to a loan—
  - (i) the amount of the liability of the person to whom the loan was or was agreed to be made, in respect of principal and interest, at the beginning and at the end of that period;
  - (ii) the maximum amount of that liability during that period;
  - (iii) the amount of any interest which, having fallen due, has not been paid; and
  - (iv) the amount of any provision (within the meaning of Schedule 6 to the principal Act) made in respect of any failure or anticipated failure by the borrower to repay the whole or part of the loan or to pay the whole or part of any interest thereon;
- (e) in the case of a guarantee or security or an arrangement within Article 51 (3) relating to a guarantee or security—
  - (i) the amount for which the company (or its subsidiary) was liable under the guarantee or in respect of the security both at the beginning and at the end of the financial year in question;
  - (ii) the maximum amount for which the company (or its subsidiary) may become so liable; and
  - (iii) any amount paid and any liability incurred by the company (or its subsidiary) for the purpose of fulfilling the guarantee or discharging the security (including any loss incurred by reason of the enforcement of the guarantee or security); and
- (f) in the case of any other transaction, arrangement or agreement, the value of the transaction or arrangement, or, as the case may be, the value of the transaction or arrangement to which the agreement relates.

*Particulars of amounts outstanding to be included in accounts*

**58.**—(1) This Article applies in relation to the following classes of transactions, arrangements and agreements—

- (a) loans, guarantees and securities relating to loans, arrangements of a kind described in paragraph (3) or (4) of Article 51 relating to loans and agreements to enter into any of the foregoing transactions and arrangements;
- (b) quasi-loans, guarantees and securities relating to quasi-loans, arrangements of a kind described in the said paragraph (3) or (4) relating to quasi-loans and agreements to enter into any of the foregoing transactions and agreements;
- (c) credit transactions, guarantees and securities relating to credit transactions, arrangements of a kind described in the said paragraph (3) or (4) relating to credit transactions and agreements to enter into any of the foregoing transactions and arrangements.

(2) The group accounts of a holding company and the accounts of any other company prepared in accordance with the requirements of Article 3 of the 1978 Order in respect of a financial year (the “relevant period”) ending on or after the appointed day, shall contain a statement in relation to transactions, arrangements and agreements made by the company and, in the case of a holding company, by a subsidiary of the company for persons who at any time during the relevant period were officers of the company (but not directors) of the aggregate amounts outstanding at the end of the relevant period under transactions, arrangements and agreements within sub-paragraphs (a), (b) and (c) respectively of paragraph (1), and the numbers of officers for whom the transactions, arrangements and agreements falling within each of those sub-paragraphs were made.

(3) Paragraph (2) shall not apply in relation to any transaction, arrangement or agreement made by a recognised bank for any of its officers or for any of the officers of its holding company.

(4) The group accounts of a company which is, or is the holding company of, a recognised bank, and the accounts of any other company which is a recognised bank, prepared in accordance with the requirements of Article 3 of the 1978 Order in respect of a financial year (the “relevant period”) ending on or after the appointed day, shall contain a statement in relation to transactions, arrangements and agreements made by the company preparing the accounts, if it is a recognised bank, and (in the case of a holding company) by any of its subsidiaries which is a recognised bank, for persons who at any time during the relevant period were directors of the company or were connected with a director of the company, of the aggregate amounts outstanding at the end of the relevant period under transactions, arrangements and agreements within sub-paragraphs (a), (b) and (c) respectively of paragraph (1), and the numbers of persons for whom the transactions, arrangements and agreements falling within each of those sub-paragraphs were made.

(5) For the purposes of the application of paragraph (4) in relation to loans and quasi-loans made by a company to persons connected with a person who at any time is a director of the company or of its holding company, a company which a person does not control is not connected with him.

(6) Where by virtue of section 144 (2) of the principal Act a company does not produce group accounts in relation to any financial year, paragraphs (2) and (4) shall have effect in relation to the company and that financial year as if the word “group” were omitted.

(7) Paragraphs (2) and (4) do not apply in relation to a transaction, arrangement or agreement which was made before the appointed day and which does not subsist on or after that day.

(8) For the purposes of this Article, “amount outstanding” means the amount of the outstanding liabilities of the person for whom the transaction, arrangement or agreement in question was made, or, in the case of a guarantee or security, the amount guaranteed or secured.

*Further provisions relating to recognised banks*

**59.**—(1) Subject to Article 60, a company which is, or is the holding company of, a recognised bank shall maintain a register containing a copy of every transaction, arrangement or agreement of which particulars would, but for paragraph (5) of Article 56 be required by paragraph (1) or (2) of that Article to be disclosed in the company’s accounts or group accounts for the current financial year and for each of the preceding ten financial years or, if such a transaction or arrangement is not in writing, a written memorandum setting out its terms.

(2) Subject to Article 60, a company which is, or is the holding company of, a recognised bank shall before its annual general meeting make available, at the registered office of the company for not less than the period of 15 days ending with the date of the meeting, for inspection by members of the company a statement containing the particulars of transactions, arrangements and agreements which the company would, but for paragraph (5) of Article 56, be required by paragraph (1) or (2) of that Article to disclose in its accounts or group accounts for the last complete financial year preceding that meeting, and such a statement shall also be made available for inspection by the members at the annual general meeting.

(3) It shall be the duty of the auditors of the company to examine any such statement before it is made available to the members of the company in accordance with paragraph (2) and to make a report to the members on that statement; and the report shall be annexed to the statement before it is made so available.

(4) A report under paragraph (3) shall state whether in the opinion of the auditors the statement contains the particulars required by paragraph (2) and, where their opinion is that it does not, they shall include in the report, so far as they are reasonably able to do so, a statement giving the required particulars.

(5) Paragraph (2) shall not apply in relation to a recognised bank which is for the purposes of section 144 of the principal Act the wholly-owned subsidiary of a company incorporated in the United Kingdom.

(6) Where a company fails to comply with paragraph (1) or (2), every person who at the time of that failure is a director of the company shall be guilty of an offence and liable on conviction on indictment to a fine and on summary conviction to a fine not exceeding the statutory maximum.



(7) It shall be a defence in proceedings against a person for an offence under paragraph (6) for him to prove that he took all reasonable steps for securing compliance with paragraph (1) or (2), as the case may be.

(8) For the purposes of the application of this Article in relation to loans and quasi-loans made by a company to persons connected with a person who at any time is a director of the company or of its holding company, a company which a person does not control is not connected with him.

*Transactions, etc., excluded from Articles 56 and 59*

**60.**—(1) Paragraphs (1) and (2) of Article 56 do not apply, in relation to the accounts prepared by a company in respect of a relevant period, to transactions of the kind mentioned in paragraph (2) which are made by the company or by a subsidiary of the company for a person who at any time during the relevant period was a director of the company or of its holding company or was connected with such a director, if the aggregate of the values of each transaction, arrangement or agreement so made for that director or any person connected with him, less the amount (if any) by which the liabilities of the person for whom the transaction or arrangement was made has been reduced, did not at any time during the relevant period exceed £5,000.

(2) The said transactions are—

- (a) credit transactions;
- (b) guarantees provided or securities entered into in connection with credit transactions;
- (c) arrangements within paragraph (3) or (4) of Article 51 relating to credit transactions;
- (d) agreements to enter into credit transactions.

(3) Paragraphs (1) (c) and (2) (c) of Article 56 do not apply, in relation to the accounts prepared by a company in respect of a relevant period, to any transaction or arrangement made by the company or by a subsidiary of the company for a person who at any time during the relevant period was a director of the company or of its holding company or was connected with such a director, if the aggregate of the values of each transaction or arrangement within the said paragraph (1) (c) or (2) (c), as the case may be, so made for that director or any person connected with him, less the amount (if any) by which the liabilities of the person for whom the transaction or arrangement was made has been reduced, did not at any time during the relevant period exceed £1,000 or, if more, did not exceed £5,000 or one per cent. of the value of the net assets of the company which is preparing the accounts in question as at the end of the relevant period for those accounts, whichever is the less.

(4) Article 59 does not apply in relation to transactions or arrangements made or subsisting during a relevant period by a company or by a subsidiary of a company for a person who at any time during that period was a director of the company or of its holding company or was connected with such a director, or to any agreement made or subsisting during that period to enter into such a transaction or arrangement, if the aggregate of the values of each transaction or arrangement made for that person and of each agreement for such a transaction or arrangement, less the amount (if any) by which the value of those transactions, arrangements and agreements has been reduced, did not exceed £1,000 at any time during the relevant period.

*Duty of auditors of company in breach of Article 56 or 58*

**61.** If in the case of any group or other accounts of a company the requirements of Article 56 or 58 are not complied with, it shall be the duty of the auditors of the company by whom the accounts are examined to include in their report on the balance sheet of the company, so far as they are reasonably able to do so, a statement giving the required particulars.

*Disclosure by directors of interests in contracts, etc.*

**62.—**(1) Any reference in section 190 of the principal Act (disclosure by a director of a company of his interest in a contract with the company) to a contract shall be construed as including a reference to any transaction or arrangement (whether or not constituting a contract) made or entered into on or after the appointed day.

(2) For the purposes of the said section 190, a transaction or arrangement of a kind described in Article 51 made by a company for a director of the company or a person connected with such a director shall, if it would not otherwise be so treated (and whether or not prohibited by that Article), be treated as a transaction or arrangement in which that director is interested.

*Extension of Article 36 of the 1978 Order*

**63.—**(1) In paragraph (1) of Article 36 of the 1978 Order (disclosure of director's service contract with company) the following sub-paragraph shall be inserted after sub-paragraph (b)—

“(c) in the case of each director who is employed under a contract of service with a subsidiary of the company, a copy of that contract or, if it is not in writing, a written memorandum setting out the terms of that contract;”.

(2) The following paragraph shall be inserted after paragraph (3) of that Article—

“(3A) Paragraph (1) shall not apply in relation to a director's contract of service with the company or with a subsidiary of the company if that contract required him to work wholly or mainly outside the United Kingdom, but the company shall keep a memorandum—

(a) in the case of a contract of service with the company, setting out the name of the director and the provisions of the contract relating to its duration;

(b) in the case of a contract of service with a subsidiary of the company, setting out the name of the director, the name and place of incorporation of the subsidiary and the provisions of the contract relating to its duration,

at the same place as copies and the memorandums are kept by the company in pursuance of paragraph (1).”.

(3) Each reference in paragraphs (4), (5) and (8) of that Article to paragraph (1) shall be construed as including a reference to paragraph (3A) of that Article; the reference in paragraph (8) of that Article to a contract of service with a company shall be construed as including a contract of service with a subsidiary of a company; and in paragraph (9) of that Article, sub-paragraph (a) shall cease to have effect.

### *Supplemental*

#### *Power to increase financial limits under Part V*

**64.**—(1) The Department may by order subject to negative resolution substitute for any sum of money specified in this Part a larger sum specified in the order.

(2) An order under this Article shall not have effect in relation to anything done or not done before the coming into force of the order and, accordingly, proceedings in respect of any liability (whether civil or criminal) incurred before that time may be continued or instituted as if the order had not been made.

#### *Shadow directors*

**65.**—(1) Subject to paragraphs (2) and (5), a person in accordance with whose directions or instructions the directors of a company are accustomed to act (“a shadow director”) shall be treated for the purposes of this Part as a director of the company unless the directors are accustomed so to act by reason only that they do so on advice given by him in a professional capacity.

(2) A shadow director shall not be guilty of an offence under Article 59 (6) by virtue only of paragraph (1).

(3) Section 190 of the principal Act (disclosure by a director of a company of his interests in a contract, transaction or arrangement with the company) shall apply in relation to a shadow director of a company as it applies in relation to a director of a company, except that the shadow director shall declare his interest, not at a meeting of the directors, but by a notice in writing to the directors which is either—

- (a) a specific notice given before the date of the meeting at which, if he had been a director, the declaration would be required by subsection (2) of that section to be made; or
- (b) a notice which under subsection (3) of that section (general notices) falls to be treated as a sufficient declaration of that interest or would fall to be so treated apart from subsection (4) of that section;

and section 139 of that Act (minutes of proceedings of meetings) shall have effect as if the declaration had been made at the meeting in question and had accordingly formed part of the proceedings at that meeting.

(4) A shadow director of a company shall be treated for the purposes of Article 36 of the 1978 Order (directors’ service contracts, etc., to be open to inspection by a company’s members) as a director of the company.

(5) A body corporate shall not be treated as the director of any of its subsidiary companies by reason only of paragraph (1).

#### *Connected persons*

**66.**—(1) For the purposes of this Part, a person is connected with a director of a company if, but only if, he is—

- (a) that director’s spouse, child or step-child; or
- (b) except where the context otherwise requires, a body corporate with which the director is associated; or

- (c) a person acting in his capacity as the trustee (other than as trustee under an employees' share scheme or a pension scheme) of any trust the beneficiaries of which include the director, his spouse or any of his children or step-children or a body corporate with which he is associated or the terms of which confer a power on the trustees that may be exercised for the benefit of the director, his spouse or any of his children or step-children or any such body corporate; or
- (d) a person acting in his capacity as partner of that director or of any person who, by virtue of sub-paragraph (a), (b) or (c) is connected with that director,

unless that person is also a director of the company.

(2) In paragraph (1) a reference to the child or step-child of any person includes a reference to any illegitimate child of that person, but does not include a reference to any person who has attained the age of 18 years.

(3) For the purposes of this Part—

- (a) a director of a company is associated with a body corporate if, but only if, he and the persons connected with him, together, are interested in shares comprised in the equity share capital of that body corporate of a nominal value equal to at least one-fifth of that share capital or are entitled to exercise or control the exercise of more than one-fifth of the voting power at any general meeting of that body; and
- (b) a director of a company shall be deemed to control a body corporate if, but only if—
  - (i) he or a person connected with him is interested in any part of the equity share capital of that body or is entitled to exercise or control the exercise of any part of the voting power at any general meeting of that body; and
  - (ii) that director, the persons connected with him and the other directors of that company, together, are interested in more than one-half of that share capital or are entitled to exercise or control the exercise of more than one-half of that voting power.

For the purposes of this paragraph, a body corporate with which a director is associated and a trustee of a trust the beneficiary of which is or may be such a body corporate shall be regarded as if they were not connected with that director.

(4) The rules set out in Article 38 of the 1978 Order (interest in shares) shall have effect for the purposes of paragraph (3) with the substitution of the words “more than one half” for the words “one third or more” in paragraph (3) (b) of that Article; and in paragraph (3) above—

- (a) “equity share capital” has the same meaning as in section 148 of the principal Act; and
- (b) references to voting power the exercise of which is controlled by a director shall, without prejudice to the other provisions of that paragraph, include references to voting power the exercise of which is controlled by a body corporate controlled by that director.

*Interpretation of Part V*

**67.**—(1) In this Part—

“guarantee” includes indemnity, and cognate expressions shall be construed accordingly;

“money-lending company” means a company the ordinary business of which includes the making of loans or quasi-loans or the giving of guarantees in connection with loans or quasi-loans;

“recognised bank” means a company which is recognised as a bank for the purposes of the Banking Act 1979 (a);

“relevant company” means any company which—

(a) is not a private company; or

(b) is a subsidiary of a company which either is itself not a private company or has another subsidiary which is not a private company; or

(c) has a subsidiary which is not a private company;

“services” means anything other than goods or land.

(2) For the purposes of this Part—

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

(i) on terms that the borrower (or a person on his behalf) will reimburse the creditor; or

(ii) in circumstances giving rise to a liability on the borrower to reimburse the creditor;

(b) any reference to the person to whom a quasi-loan is made is a reference to the borrower; and

(c) the liabilities of a borrower under a quasi-loan include the liabilities of any person who has agreed to reimburse the creditor on behalf of the borrower.

(3) For the purposes of this Part, a credit transaction is a transaction under which one party (“the creditor”),—

(a) supplies any goods or sells any land under a hire-purchase agreement or conditional sale agreement;

(b) leases or hires any land or goods in return for periodical payments;

(c) otherwise disposes of land or supplies goods or services on the understanding that payment (whether in a lump sum or instalments or by way of periodical payments or otherwise) is to be deferred.

(4) For the purposes of this Part, the value of a transaction or arrangement is—

(a) in the case of a loan, the principal of the loan;

(b) in the case of a quasi-loan, the amount, or maximum amount, which the person to whom the quasi-loan is made is liable to reimburse the creditor;

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(a) 1979 c. 37.

- (c) in the case of a transaction or arrangement, other than a loan or quasi-loan or a transaction or arrangement within sub-paragraph (d) or (e), the price which it is reasonable to expect could be obtained for the goods, land or services to which the transaction or arrangement relates if they had been supplied at the time the transaction or arrangement is entered into in the ordinary course of business and on the same terms (apart from price) as they have been supplied or are to be supplied under the transaction or arrangement in question;
- (d) in the case of a guarantee or security, the amount guaranteed or secured;
- (e) in the case of an arrangement to which paragraph (3) or (4) of Article 51 applies, the value of the transaction to which the arrangement relates less any amount by which the liabilities under the arrangement or transaction of the person for whom the transaction was made have been reduced.

(5) For the purposes of paragraph (4), the value of a transaction or arrangement which is not capable of being expressed as a specific sum of money (because the amount of any liability arising under the transaction is unascertainable, or for any other reason) shall, whether or not any liability under the transaction has been reduced, be deemed to exceed £50,000.

(6) For the purposes of this Part, a transaction or arrangement is made for a person if—

- (a) in the case of a loan or quasi-loan, it is made to him;
- (b) in the case of a credit transaction, he is the person to whom goods or services are supplied, or land is sold or otherwise disposed of, under the transaction;
- (c) in the case of a guarantee or security, it is entered into or provided in connection with a loan or quasi-loan made to him or a credit transaction made for him;
- (d) in the case of an arrangement within paragraph (3) or (4) of Article 51, the transaction to which the arrangement relates was made for him; and
- (e) in the case of any other transaction or arrangement for the supply or transfer of goods, land or services (or any interest therein), he is the person to whom the goods, land or services (or the interest) are supplied or transferred.

(7) This Part, except Articles 56, 58 and 59, does not apply to arrangements or transactions entered into before the appointed day but, for the purposes of determining whether an arrangement is one to which Article 51 (3) or (4) applies, the transaction to which the arrangement relates shall, if it was entered into before the appointed day, be deemed to have been entered into after that day.

(8) For the purposes of this Part it is immaterial whether the law which (apart from this Order) governs any arrangement or transaction is the law of the United Kingdom, or of a part of the United Kingdom, or not.

*Consequential repeals and savings*

**68.**—(1) Section 181 of the principal Act (prohibition of loans to directors) and Article 45 (1) (c) of the 1978 Order (particulars in the direc-

tors' report of contracts in which a director has a significant and material interest) shall cease to have effect.

(2) Section 188 of the principal Act (particulars in accounts of loans to officers, etc.) shall, except—

- (a) in relation to accounts prepared in respect of any financial year ending before the appointed day; and
- (b) in relation to accounts prepared in respect of the first financial year ending after the appointed day but only in relation to loans and contracts entered into before the appointed day which do not subsist on or after that day,

cease to have effect.

*Application of Articles 56 to 60 and 64 to 68 to unregistered companies*

**69.** Section 383 of and Schedule 10 to the principal Act (which provide for the application of certain provisions of the Companies Acts to unregistered companies) shall have effect as if Articles 56 to 60 and 64 to 68 were included among the provisions specified in that Schedule which relate to accounts and audit; and the reference in the last entry in column 3 of that Schedule to provisions applying by virtue of the foregoing entries in that Schedule shall be construed accordingly.

## PART VI

### INSIDER DEALING

*Prohibition on stock exchange deals by insiders, etc.*

**70.**—(1) Subject to paragraph (8), an individual who is, or at any time in the preceding six months has been, knowingly connected with a company shall not deal on a recognised stock exchange in securities of that company if he has information which—

- (a) he holds by virtue of being connected with the company;
- (b) it would be reasonable to expect a person so connected and in the position by virtue of which he is so connected not to disclose except for the proper performance of the functions attaching to that position; and
- (c) he knows is unpublished price sensitive information in relation to those securities.

(2) Subject to paragraphs (8) and (10), an individual who is, or at any time in the preceding six months has been, knowingly connected with a company shall not deal on a recognised stock exchange in securities of any other company if he has information which—

- (a) he holds by virtue of being connected with the first company;
- (b) it would be reasonable to expect a person so connected and in the position by virtue of which he is so connected not to disclose except for the proper performance of the functions attaching to that position;
- (c) he knows is unpublished price sensitive information in relation to those securities of that other company; and
- (d) relates to any transaction (actual or contemplated) involving both the first company and that other company or involving one of them and

securities of the other or to the fact that any such transaction is no longer contemplated.

(3) Subject to paragraphs (8) and (10), where—

- (a) any individual has information which he knowingly obtained (directly or indirectly) from another individual who is connected with a particular company, or was at any time in the six months preceding the obtaining of the information so connected and who the former individual knows or has reasonable cause to believe held the information by virtue of being so connected; and
- (b) the former individual knows or has reasonable cause to believe that, because of the latter's connection and position, it would be reasonable to expect him not to disclose the information except for the proper performance of the functions attaching to that position;

then, the former individual—

- (i) shall not himself deal on a recognised stock exchange in securities of that company if he knows that the information is unpublished price sensitive information in relation to those securities; and
- (ii) shall not himself deal on a recognised stock exchange in securities of any other company if he knows that the information is unpublished price sensitive information in relation to those securities and it relates to any transaction (actual or contemplated) involving the first company and the other company or involving the first company and the other company or involving one of them and securities of the other or to the fact that any such transaction is no longer contemplated.

(4) Subject to paragraphs (8) and (10), where an individual is contemplating, or has contemplated, making, whether with or without another person, a take-over offer for a company in a particular capacity, that individual shall not deal on a recognised stock exchange in securities of that company in another capacity if he knows that information that the offer is contemplated or is no longer contemplated is unpublished price sensitive information in relation to those securities.

(5) Subject to paragraphs (8) and (10), where an individual has knowingly obtained (directly or indirectly), from an individual to whom paragraph (4) applies, information that the offer referred to in paragraph (4) is being contemplated or is no longer contemplated, the former individual shall not himself deal on a recognised stock exchange in securities of that company if he knows that the information is unpublished price sensitive information in relation to those securities.

(6) Subject to paragraphs (8) and (10), an individual who is for the time being prohibited by any provision of this Article from dealing on a recognised stock exchange in any securities shall not counsel or procure any other person to deal in those securities, knowing or having reasonable cause to believe that that person would deal in them on a recognised stock exchange.

(7) Subject to paragraphs (8) and (10), an individual who is for the time being prohibited as aforesaid from dealing on a recognised stock exchange in any securities by reason of his having any information, shall not communicate that information to any other person if he knows or has reasonable cause to believe that that or some other person will make use of the



information for the purpose of dealing, or of counselling or procuring any other person to deal, on a recognised stock exchange in those securities.

(8) The provisions of this Article shall not prohibit an individual by reason of his having any information from—

- (a) doing any particular thing otherwise than with a view to the making of a profit or the avoidance of a loss (whether for himself or another person) by the use of that information;
- (b) entering into a transaction in the course of the exercise in good faith of his functions as liquidator, receiver or trustee or assignee in bankruptcy; or
- (c) doing any particular thing if the information—
  - (i) was obtained by him in the course of a business of a jobber in which he was engaged or employed; and
  - (ii) was of a description which it would be reasonable to expect him to obtain in the ordinary course of that business;

and he does that thing in good faith in the course of that business.

(9) In paragraph (8) “jobber” means an individual, partnership or company dealing in securities on a recognised stock exchange and recognised by the Council of the Stock Exchange as carrying on the business of a jobber.

(10) An individual shall not, by reason only of having information relating to any particular transaction, be prohibited—

- (a) by paragraph (2), (3) (ii), (4) or (5) from dealing on a recognised stock exchange in any securities; or
- (b) by paragraph (6) or (7) from doing any other thing in relation to securities which he is prohibited from dealing in by any of the provisions mentioned in sub-paragraph (a);

if he does that thing in order to facilitate the completion or carrying out of the transaction.

(11) Where a trustee or personal representative, or, where a trustee or personal representative is a body corporate, an individual acting on behalf of that trustee or personal representative, who, apart from paragraph (8) (a), would be prohibited by this Article from dealing, or counselling or procuring any other person to deal, in any securities deals in those securities, or counsels or procures any other person to deal in them, he shall be presumed to have acted as mentioned in that sub-paragraph if he acted on the advice of a person who—

- (a) appeared to him to be an appropriate person from whom to seek such advice; and
- (b) did not appear to him to be prohibited by this Article from dealing in those securities.

*Prohibition on abuse of information obtained in official capacity*

**71.**—(1) This Article applies to any information which—

- (a) is held by a Crown servant or former Crown servant by virtue of his position or former position as a Crown servant or is knowingly obtained by an individual (directly or indirectly) from a Crown servant or former Crown servant who he knows or has reasonable cause to believe held the information by virtue of any such position;

- (b) it would be reasonable to expect an individual in the position of the Crown servant or former position of the former Crown servant not to disclose except for the proper performance of the functions attaching to that position; and
- (c) the individual holding it knows is unpublished price sensitive information in relation to securities of a particular company (relevant securities).

(2) This Article applies to a Crown servant or former Crown servant holding information to which this Article applies and to any individual who knowingly obtained any such information (directly or indirectly) from a Crown servant or former Crown servant who that individual knows or has reasonable cause to believe held the information by virtue of his position or former position as a Crown servant.

(3) An individual to whom this Article applies—

- (a) shall not deal on a recognised stock exchange in any relevant securities;
- (b) shall not counsel or procure any other person to deal in any such securities, knowing or having reasonable cause to believe that that other person would deal in them on a recognised stock exchange; and
- (c) shall not communicate to any other person the information held or, as the case may be, obtained by him as mentioned in paragraph (2) if he knows or has reasonable cause to believe that that or some other person will make use of that information for the purpose of dealing, or of counselling or procuring any other person to deal, on a recognised stock exchange in any such securities.

(4) Article 70 (8) and (11) shall apply for the purposes of this Article as they apply for the purposes of that Article.

(5) An individual shall not, by reason only of having information relating to a particular transaction, be prohibited by any provision of this Article from doing anything if he does that thing in order to facilitate the completion or carrying out of the transaction.

*Off-market deals*

**72.**—(1) Subject to Article 73, Articles 70 and 71 shall apply in relation to—

- (a) dealing otherwise than on a recognised stock exchange in the advertised securities of any company—
  - (i) through an off-market dealer who is making a market in those securities, in the knowledge that he is an off-market dealer, that he is making a market in those securities and that the securities are advertised securities; or
  - (ii) as an off-market dealer who is making a market in those securities or as an officer, employee or agent of such a dealer acting in the course of the dealer's business;
- (b) counselling or procuring a person to deal in advertised securities in the knowledge or with reasonable cause to believe that he would deal in them as mentioned in sub-paragraph (a);

(c) communicating any information in the knowledge or with reasonable cause to believe that it would be used for such dealing or for such counselling or procuring,  
as they apply in relation to dealing in securities on a recognised stock exchange and to counselling or procuring or communicating any information in connection with such dealing.

(2) An individual who, by reason of his having information, is for the time being prohibited by any provision of Article 70 or 71 from dealing in any securities shall not—

- (a) counsel or procure any other person to deal in those securities in the knowledge or with reasonable cause to believe that that person would deal in the securities outside Northern Ireland on any stock exchange other than a recognised stock exchange; or
- (b) communicate that information to any other person in the knowledge or with reasonable cause to believe that that or some other person will make use of the information for the purpose of dealing or of counselling or procuring any other person to deal in the securities outside Northern Ireland on any stock exchange other than a recognised stock exchange.

Articles 70 (8) and (11) and 71 (5) shall have effect as if any reference therein to either of those Articles included a reference to this paragraph.

(3) In this Article—

“advertised securities” in relation to a particular occurrence, means listed securities or securities in respect of which, not more than six months before that occurrence, information indicating the prices at which persons have dealt or were willing to deal in those securities has been published for the purpose of facilitating deals in those securities;

“off-market dealer” means a person who—

- (a) holds a licence under section 3 of the Prevention of Fraud (Investments) Act (Northern Ireland) 1940 (a) or section 3 of the Prevention of Fraud (Investments) Act 1958 (b) (principals’ and representatives’ licences for dealers in securities); or
- (b) is a member of a recognised stock exchange or recognised association of dealers in securities within the meaning of either of those Acts; or
- (c) is an exempted dealer within the meaning of either of those Acts.

(4) For the purposes of this Article an off-market dealer shall be taken to deal in advertised securities if he deals in such securities or acts as an intermediary in connection with deals made by other persons in such securities; and references in this Article to such a dealer’s officer, employee or agent dealing in such securities shall be construed accordingly.

(5) For those purposes an individual shall be taken to deal through an off-market dealer if the latter is a party to the transaction, is an agent for either party to the transaction or is acting as an intermediary in connection with the transaction.

#### *International bonds*

**73.**—(1) Article 70 shall not by virtue of Article 72 prohibit an individual from doing anything in relation to any debenture if—

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(a) 1940 c. 9 (N.I.).      (b) 1958 c. 45.

- (a) that thing is done by him in good faith in connection with an international bond issue—
  - (i) not later than three months after the issue date, or,
  - (ii) in a case where the international bond issue is not proceeded with, before the date on which it is decided not to proceed with the issue,
 and he is an issue manager for that issue or is an officer, employee or agent of an issue manager for that issue; or
- (b) he is or was an issue manager for an international bond issue who is making a market in that debenture, or is an officer, employee or agent of such an issue manager, and that thing is done by him in good faith as a person making a market in that debenture or as an officer, employee or agent of such a person;

and in either case the unpublished price sensitive information by virtue of which Article 70 would but for this Article apply in relation to that thing is information which he holds by virtue of his being (or having been) such an issue manager or an officer, employee or agent of such an issue manager, and is information which it would be reasonable to expect him to have obtained as an issue manager, or as such officer, employee or agent.

- (2) In paragraph (1)—

“international bond issue” means an issue of debentures of a company (the “issuing company”)—

- (a) all of which are offered or to be offered by an off-market dealer to persons (whether principals or agents) whose ordinary business includes the buying or selling of debentures, and
- (b) where the debentures are denominated in sterling, not less than 50 per cent. in nominal value of the debentures are so offered to persons who are neither citizens of the United Kingdom and Colonies nor companies incorporated or otherwise formed under the law of any part of the United Kingdom;

“issue date” means the date on which the first of those debentures is issued by the issuing company; and

“issue manager” means

- (a) an off-market dealer acting as an agent of the issuing company for the purposes of an international bond issue; or
- (b) where the issuing company issues or proposes to issue the debentures to an off-market dealer under an arrangement in pursuance of which he is to sell the debentures to other persons, that off-market dealer.

#### *Contravention of Articles 70 and 71*

**74.**—(1) An individual who contravenes the provisions of Article 70 or 71 shall be liable—

- (a) on conviction on indictment to imprisonment for a term not exceeding two years or a fine, or both; and
- (b) on summary conviction to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum, or both.

(2) Proceedings for an offence under this Article shall not be instituted except by the Department or by, or with the consent of, the Director of Public Prosecutions for Northern Ireland.

(3) No transaction shall be void or voidable by reason only that it was entered into in contravention of Article 70 or 71.

*Interpretation of Part VI*

**75.**—(1) For the purposes of this Part an individual is connected with a company if, but only if,—

- (a) he is a director of that company or a related company; or
- (b) he occupies a position as an officer (other than director) or employee of that company or a related company or a position involving a professional or business relationship between himself (or his employer or a company of which he is a director) and the first company or a related company which in either case may reasonably be expected to give him access to information which, in relation to securities of either company, is unpublished price sensitive information, and which it would be reasonable to expect a person in his position not to disclose except for the proper performance of his functions.

(2) Any reference in this Part, to unpublished price sensitive information in relation to any securities of any company is a reference to information which—

- (a) relates to specific matters relating or of concern (directly or indirectly) to that company, that is to say, is not of a general nature relating or of concern to that company; and
- (b) is not generally known to those persons who are accustomed or would be likely to deal in those securities but which would if it were generally known to them be likely materially to affect the price of those securities.

(3) For the purposes of this Part, a person deals in securities if (whether as principal or agent) he buys or sells or agrees to buy or sell any securities; and references in this Part to dealing in securities on a recognised stock exchange shall include references to dealing in securities through an investment exchange.

(4) For the purposes of this Part, an off-market dealer shall be taken to make a market in any securities if in the course of his business as an off-market dealer he holds himself out both to prospective buyers and to prospective sellers of those securities (other than particular buyers or sellers) as willing to deal in them otherwise than on a recognised stock exchange.

(5) In this Part, except where the context otherwise requires—

“company” means any company, whether a company within the meaning of the principal Act or not;

“Crown servant” means an individual who holds office under, or is employed by, the Crown;

“debenture” has the same meaning in relation to companies which were not incorporated under the principal Act as it has in relation to companies which were so incorporated;

- “investment exchange” means an organisation maintaining a system whereby an offer to deal in securities made by a subscriber to the organisation is communicated, without his identity being revealed, to other subscribers to the organisation, and whereby any acceptance of that offer by any of those other subscribers is recorded and confirmed;
- “listed securities”, in relation to a company, means any securities of the company listed on a recognised stock exchange;
- “related company”, in relation to any company, means any body corporate which is that company’s subsidiary or holding company, or a subsidiary of that company’s holding company;
- “securities” means listed securities and, in the case of a company within the meaning of the principal Act or a company registered under Part VIII of that Act or an unregistered company, the following securities (even if they are not listed securities), that is to say, any shares, any debentures or any right to subscribe for, call for or make delivery of a share or debenture;
- “share” has the same meaning in relation to companies which were not incorporated under the principal Act as it has in relation to companies which were so incorporated;
- “take-over offer for a company” means an offer made to all the holders (or all the holders other than the person making the offer and his nominees) of the shares in the company to acquire those shares or a specified proportion of them, or to all the holders (or all the holders other than the person making the offer and his nominees) of a particular class of those shares to acquire the shares of that class or a specified proportion of them; and
- “unregistered company” means any body corporate to which the provisions specified in Schedule 10 to the principal Act apply by virtue of section 383 of that Act (application of provisions to unregistered companies).

## PART VII

### MISCELLANEOUS AND GENERAL

#### *Interests of employees and members*

##### *Power of company to provide for employees on cessation or transfer of business*

**76.**—(1) The powers of a company shall, if they would not otherwise do so, be deemed to include power to make the following provision for the benefit of persons employed or formerly employed by the company or any of its subsidiaries, that is to say, provision in connection with the cessation or the transfer to any person of the whole or part of the undertaking of that company or that subsidiary.

(2) The power conferred by paragraph (1) to make any such provision may be exercised notwithstanding that its exercise is not in the best interests of the company.

(3) The power which a company may exercise by virtue only of paragraph (1) shall only be exercised by the company if sanctioned—

- (a) in a case not falling within sub-paragraph (b) or (c), by an ordinary resolution of the company; or

- (b) if so authorised by the memorandum or articles, a resolution of the directors; or
  - (c) if the memorandum or articles require the exercise of the power to be sanctioned by a resolution of the company of some other description for which more than a simple majority of the members voting is necessary, with the sanction of a resolution of that description;
- and in any case after compliance with any other requirements of the memorandum or articles applicable to its exercise.

(4) On the winding up of a company (whether by the court or a voluntary winding up) the liquidator may, subject in the case of a winding up by the court to section 227 (3) of the principal Act as applied by paragraph (7), make any payment which the company has, before the commencement of the winding up, decided to make under paragraph (3).

(5) The power which a company may exercise by virtue only of paragraph (1) may be exercised by the liquidator after the winding up of the company has commenced if, after the company's liabilities have been fully satisfied and provision has been made for the costs of the winding up, the exercise of that power has been sanctioned by such a resolution of the company as would be required of the company itself by paragraph (3) before that commencement if sub-paragraph (b) of that paragraph were omitted and any other requirement applicable to its exercise by the company has been met.

(6) Any payment which may be made by a company under this Article may—

- (a) in the case of a payment made before the commencement of any winding up of the company, be made out of profits of the company which are available for dividend; and
- (b) in the case of any other payment, be made out of the assets of the company which are available to the members on its winding up.

(7) On a winding up by the court section 227 (3) of the principal Act (powers of the liquidator to be subject to the control of the court on winding up by the court) shall apply to the exercise by the liquidator of his powers under paragraph (4) or (5) as it applies to the exercise of his powers under that section.

(8) Paragraphs (4) and (5) shall have effect notwithstanding anything in any rule of law or in section 272 of the principal Act (property of company after satisfaction of liabilities to be distributed among members).

*Power of court to grant relief against company where members unfairly prejudiced*

**77.**—(1) Any member of a company may apply to the court by petition for an order under this Article on the ground that the affairs of the company are being or have been conducted in a manner which is unfairly prejudicial to the interests of some part of the members (including at least himself) or 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.

(2) If in the case of any company—

- (a) the Department has received a report under section 162 of the principal Act (inspectors' reports) or exercised its powers under

Articles 107 to 113 of the 1978 Order or the Secretary of State has exercised his powers under section 36 (2) to (6) of the Insurance Companies Act 1974 (inspection of company's books and papers); and

- (b) it appears to the Department that the affairs of the company are being or have been conducted in a manner which is unfairly prejudicial to the interests of some part of the members or 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,

the Department may itself (in addition to or instead of presenting a petition for the winding up of the company under section 163 (3) of the principal Act) apply to the court by petition for an order under this Article.

(3) If the court is satisfied that a petition under this Article is well founded it may make such order as it thinks fit for giving relief in respect of the matters complained of.

(4) Without prejudice to the generality of paragraph (3), an order under this Article may—

- (a) regulate the conduct of the company's affairs in the future;
- (b) require the company to refrain from doing or continuing an act complained of by the petitioner or to do an act which 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) 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.

(5) Where an order under this Article requires the company not to make any, or any specified, alteration in the memorandum or articles then, notwithstanding anything in the Companies Acts, the company shall not have power without the leave of the court to make any such alteration in breach of that requirement.

(6) Any alteration in the memorandum or articles of the company made by virtue of an order under this Article shall be of the same effect as if duly made by resolution of the company and the provisions of the Companies Acts shall apply to the memorandum or articles as so altered accordingly.

(7) An office copy of any order under this Article altering, or giving leave to alter, a company's memorandum or articles shall, within 14 days from the making of the order or such longer period as the court may allow, be delivered by the company to the registrar of companies for registration; and if a company makes default in complying with this paragraph, the company and every officer of the company who is in default shall be liable on summary conviction to a fine not exceeding one-fifth of the statutory maximum or, on conviction after continued contravention, a default fine not exceeding one-fiftieth of the statutory maximum for every day until that copy is delivered.



(8) In relation to a petition under this Article, section 317 of the principal Act (winding-up rules) shall apply as it applies in relation to a winding-up petition.

(9) This Article shall 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 it applies to a member of the company, and references to a member or members shall be construed accordingly.

(10) In paragraphs (2) to (9) “company” means any body corporate which is liable to be wound up under the principal Act.

(11) Sections 163 (4) and 201 of the principal Act (which are superseded by this Article) shall cease to have effect except in relation to proceedings on a petition presented before the appointed day.

#### *Miscellaneous*

*Trading under misleading name, etc.*

**78.**—(1) A person who is not a public company or (after the end of the transitional period) is an old public company shall be guilty of an offence if he carries on any trade, profession or business under a name which includes, as its last part, the words “public limited company”.

(2) A public company other than an old public company shall be guilty of an offence if, in circumstances in which the fact that it is a public company is likely to be material to any person, it uses a name which may reasonably be expected to give the impression that it is a private company.

(3) Where, within the re-registration period, an old public company applies to be re-registered under Article 10 as a public company, then—

- (a) during the twelve months following the re-registration, any provision of section 105 (1) (b) or (c) of the principal Act (publication of name of company), and
- (b) during the three years following the re-registration, section 105 (1) (a) of the principal Act or any other statutory provision requiring or authorising the name of the company to be shown on any document or other object,

shall apply as if any reference in that provision to the name of the company were a reference to a name which either is its name or was its name before re-registration.

(4) A person guilty of an offence under paragraph (1) or (2) and, if that person is a company, any officer of the company who is in default shall be liable on summary conviction to a fine not exceeding one-fifth of the statutory maximum or, on conviction after continued contravention, a default fine not exceeding one-fiftieth of the statutory maximum.

*Alternatives of statutory designations*

**79.**—(1) It is hereby declared that a company which by any of the provisions of the Companies Acts is either required or entitled to include in its name, as its last part, any of the words specified in paragraph (3), may, instead of those words, include in its name, as its last part, the abbreviation so specified as an alternative in relation to those words; and any reference in those Acts to the name of a company or to the inclusion of any of those words in the name of a company shall include a reference to the name of the

company including (in place of any of the words so specified) the appropriate alternative, or to the inclusion of the appropriate alternative, as the case may be.

(2) Any provision of those Acts requiring a company not to include any of those words in its name also requires it not to include in its name the abbreviation specified in paragraph (3) as an alternative in relation to these words.

(3) For the purposes of paragraphs (1) and (2)—

(a) the alternative of “limited” is the abbreviation “ltd.”;

(b) the alternative of “public limited company” is the abbreviation “p.l.c.”.

#### *Qualifications of company secretaries*

**80.**—(1) It shall be the duty of the directors of a public company, to take all reasonable steps to secure that the secretary or each joint secretary of the company is a person who appears to them to have the requisite knowledge and experience to discharge the functions of secretary of the company and who—

(a) on the appointed day held the office of secretary or assistant or deputy secretary of the company; or

(b) for at least three years of the five years immediately preceding his appointment as secretary held the office of secretary of a company other than a private company; or

(c) is a member of any of the bodies specified in paragraph (2); or

(d) is a barrister, advocate or solicitor called or admitted in any part of the United Kingdom; or

(e) is a person who, by virtue of his holding or having held any other position or his being a member of any other body, appears to the directors to be capable of discharging those functions.

(2) The bodies referred to in paragraph (1) (c) are:—

(a) the Institute of Chartered Accountants in England and Wales;

(b) the Institute of Chartered Accountants of Scotland;

(c) the Association of Certified Accountants;

(d) the Institute of Chartered Accountants in Ireland;

(e) the Institute of Chartered Secretaries and Administrators;

(f) the Institute of Cost and Management Accountants;

(g) the Chartered Institute of Public Finance and Accountancy.

#### *Increase of penalties and change of mode of trial*

**81.**—(1) Each of the statutory provisions listed in column 1 of Schedule 2 (being provisions under which penalties may be imposed in respect of the offences or other contraventions which are broadly described or the nature of which is indicated in column 2 of that Schedule) shall have effect as if the penalty which may be imposed under that provision for the offence in question on a conviction thereof described in column 4 of that Schedule were the penalty shown in column 4 instead of that shown in column 3 of that Schedule as the penalty which may be imposed on any conviction described in column 3; and any offence punishable under any such provision

shall be triable on indictment where the penalty shown in column 4 may be imposed on conviction on indictment and shall be triable summarily where the penalty so shown may be imposed on summary conviction.

(2) Where any statutory provision to which this paragraph applies imposes liability to a default fine on conviction of an offence after continued contravention, then, if after a person has been summarily convicted of that offence the original contravention is continued, he shall be liable on a second or subsequent summary conviction of that offence to the fine specified in the provision for each day on which the contravention is continued instead of to the penalty which may be imposed on the first conviction of that offence.

(3) Paragraph (2) applies to any statutory provision contained in the Companies Acts and to any statutory provision applying all the provisions of the principal Act or section 388 of that Act or construed as one with that Act.

(4) Article 149 (1) of the 1978 Order (offences punishable with a fine to be triable only summarily) shall cease to have effect.

(5) The provisions of this Article shall not apply to any offence committed before the appointed day; and nothing in this Article shall authorise the bringing of any proceedings in respect of any such offence on or after that day if, but for this Article, the latest time for bringing those proceedings would have been before that day.

*Amendment of section 398 of the principal Act*

**82.** In section 398 (1) of the principal Act (power of Department to alter or add to requirements of Companies Acts relating to balance sheets and accounts) after the words “group accounts” there shall be inserted the words “and a report of the directors of a company which is required by section 151 of this Act to be attached to the company’s balance sheet”.

*Repeal of certain provisions of the principal Act*

**83.** The following provisions of the principal Act shall cease to have effect, that is to say—

- (a) section 48 (prohibition of allotment in certain cases unless statement in lieu of prospectus is delivered to the registrar);
- (b) section 65 (power of company to pay interest out of capital in certain cases);
- (c) section 106 (restrictions on commencement of business);
- (d) section 124 (statutory meeting and statutory report);
- (e) section 172 (restrictions on appointment or advertisement of directors); and
- (f) section 386 and Schedule 11 (penalty for false statements).

*Continued application of provisions of the Protection of Depositors Act (Northern Ireland) 1964*

**84.—**(1) The repeal by the Banking Act 1979 (the “1979 Act”) of the Protection of Depositors Act (Northern Ireland) 1964 (a) (the “1964 Act”) shall not affect, and shall be deemed never to have affected, the application of the following provisions of the 1964 Act to unexempted companies on

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(a) 1964 c. 22 (N.I.).

and after the commencement of Parts I and III of the 1979 Act, that is to say—

- (a) sections 6 to 17; and
- (b) so far as relevant to the operation of those sections, sections 5 and 22 to 27.

(2) In this section “unexempted company” means any company within the meaning of the 1964 Act which is not excepted by section 2 (1) of the 1979 Act from the prohibition on the acceptance of deposits imposed by section 1 of the latter Act.

#### *General*

##### *The authorised minimum*

**85.**—(1) In this Order “the authorised minimum” means £50,000, or such other sum as the Department may by order specify instead.

(2) An order under this Article 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 make an application to be re-registered as a private company;
- (b) make, in connection with any such requirement, provision for any of the matters for which provision is made by any provision in the Companies Acts relating to a 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, including provision as to the consequences (whether in criminal law or otherwise) of a failure to comply with any requirement of the order; and
- (c) contain such supplemental and transitional provision as the Department thinks appropriate.

(3) An order shall not be made under this Article unless a draft of the order has been laid before, and approved by resolution of, the Assembly.

##### *Application of provisions of principal Act for purposes of this Order*

**86.**—(1) Part VII of the principal Act (which relates to companies formed or registered under the former Acts there mentioned) and section 344 of that Act (which relates to companies not formed under that Act but registered under it) shall apply for the purpose of the application of the provisions of this Order to such companies as aforesaid as they apply for the purpose of the application thereto of the provisions of that Act.

(2) Section 376 of the principal Act shall apply in relation to this Order as it applies in relation to that Act.

##### *Minor and consequential amendments and repeals*

**87.**—(1) The statutory provisions specified in Schedule 3 shall have effect subject to the amendments there specified, being minor amendments and amendments consequential on the provisions of this Order.

(2) The statutory provisions mentioned in Schedule 4 (which include certain spent and unnecessary provisions) are hereby repealed to the extent specified in the third column of that Schedule, but the repeal of any

provision specified in the note to that Schedule shall have effect subject to the saving specified in relation to that provision in that note.

(3) Nothing in the repeals made by this Order shall affect the operation of any provision repealed in relation to any offence—

(a) for which a penalty was before the date on which the repeal comes into operation provided by reference to the days during which the offence had continued; and

(b) which is continuing at, but begun before, that date.

(4) Paragraphs 34 and 35 of Schedule 3 (which amend Table A and Table C in Schedule 1 to the principal Act) and any repeal specified in Schedule 4 of anything contained in the said Table A shall not affect any company registered before the paragraph or, as the case may be, repeal comes into operation.

*N. E. Leigh,*  
Clerk of the Privy Council.

SCHEDULES

Article 4(4).

SCHEDULE 1

FORMS OF MEMORANDUM OF ASSOCIATION OF A  
PUBLIC COMPANY

PART I

A PUBLIC COMPANY LIMITED BY SHARES

1. The name of the company is "The Jupiter Steam Ship, public limited company".
2. The company is to be a public company.
3. The registered office of the company will be situated in Northern Ireland.
4. The objects for which the company is established are "the conveyance of passengers and goods in ships or boats between such places as the company may from time to time determine, and the doing of all such things as are incidental or conducive to the attainment of the above object".
5. The liability of the members is limited.
6. The share capital of the company is £50,000 divided into 50,000 shares of £1 each.

We, the several persons whose names and addresses are subscribed are desirous of being formed into a company, in pursuance of this memorandum of association, and we respectively agree to take the number of shares in the capital of the company set opposite our respective names.

<i>Names, Addresses and Descriptions of Subscribers</i>	Number of shares taken by each Subscriber
"1. Thomas Jones, 10 Blank Street, Belfast, merchant	1
2. Andrew Smith, 2 Taff Street, Newry, merchant	1
Total shares taken	<hr style="width: 100%; border: 0.5px solid black;"/> 2"

Dated                      day of                      19

Witness to the above  
signatures  
A. B., 14 Lute Street,  
Belfast.

PART II

A PUBLIC COMPANY LIMITED BY GUARANTEE AND HAVING A SHARE CAPITAL

1. The name of the company is "Eastern Hotel, public limited company".
2. The company is to be a public company.
3. The registered office of the company will be situated in Northern Ireland.
4. The objects for which the company is established are "the facilitating of travelling in Northern Ireland by providing hotels and conveyances by sea and by land for the accommodation of travellers and the doing of all such other things as are incidental or conducive to the attainment of the above object".

5. The liability of the members is limited.

6. Every member of the company undertakes to contribute to the assets of the company in the event of its being wound up while he is a member, or within one year afterwards, for payment of the debts and liabilities of the company, contracted before he ceases to be a member, and the costs, charges and expenses of winding up the same and for the adjustment of the rights of the contributories amongst themselves, such amount as may be required, not exceeding £20.

7. The share capital of the company shall consist of £50,000 divided into 50,000 shares of £1 each.

We, the several persons whose names and addresses are subscribed, are desirous of being formed into a company, in pursuance of this memorandum of association, and we respectively agree to take the number of shares in the capital of the company set opposite our respective names.

<i>Names, Addresses and Descriptions of Subscribers</i>		Number of shares taken by each Subscriber
"1.	Thomas Jones, 10 Blank Street, Belfast, merchant	1
2.	Andrew Smith, 2 Taff Street, Newry, merchant	1
Total shares taken		<hr/> 2" <hr/>

Dated                      day of                      19

Witness to the above  
signatures  
A. B., 14 Lute Street,  
Belfast.

Article 81.

SCHEDULE 2

INCREASE OF PENALTIES AND CHANGE OF MODE OF TRIAL

Statutory Provision (1)	General Description of Offence or Contravention (2)	Old Mode of Trial and Penalty (3)	New Mode of Trial and Penalty (4)
5 (10)	Failing to give the registrar a copy of the memorandum as altered or to give him notice of an application to the court in relation to such an alteration and other documents in connection with the application.	On summary conviction a fine not exceeding £10 for every day during which the default continues.	On summary conviction a fine not exceeding one-fifth of the statutory maximum or, on conviction after continued contravention, a default fine not exceeding one-fiftieth of the statutory maximum.
7 (3)	Failing to give notice to the registrar of an increase in members of an unlimited company or a company limited by guarantee.	On summary conviction a fine not exceeding £5 for every day during which the default continues.	On summary conviction a fine not exceeding one-fifth of the statutory maximum or, on conviction after continued contravention, a default fine not exceeding one-fiftieth of the statutory maximum.
18 (2D)	Company failing to comply with a direction of the Department to change its name.	On summary conviction a fine not exceeding £5 for every day during which the default continues.	On summary conviction a fine not exceeding one-fifth of the statutory maximum or, on conviction after continued contravention, a default fine not exceeding one-fiftieth of the statutory maximum.
19 (8)	Body failing to change its name so as not to include "Chamber of Commerce", on revocation of a licence to include those words.	On summary conviction a fine not exceeding £50 for every day during which the default continues.	(a) On conviction on indictment a fine. (b) On summary conviction a fine not exceeding the statutory maximum or, on conviction after continued contravention, a default fine not exceeding one-tenth of the statutory maximum.



Statutory Provision (1)	General Description of Offence or Contravention (2)	Old Mode of Trial and Penalty (3)	New Mode of Trial and Penalty (4)
24 (2)	Company, on being required to do so by a member, failing to send a copy of the memorandum or articles or of any Act of Parliament which alters them.	On summary conviction a fine not exceeding £1.	On summary conviction a fine not exceeding one-fifth of the statutory maximum.
25 (2)	Issuing copies of a memorandum not in accordance with an alteration.	On summary conviction a fine not exceeding £1 for each copy issued.	On summary conviction a fine not exceeding one-fifth of the statutory maximum for each occasion on which copies are issued after the date of the alteration.
38 (3)	Issuing a form of application for shares in, or debentures of, a company without a prospectus complying with the requirements of section 38.	On summary conviction a fine not exceeding £500.	(a) On conviction on indictment a fine. (b) On summary conviction a fine not exceeding the statutory maximum.
40 (2)	Issuing a prospectus including an expert's statement where the expert has not given his written consent to the issue of the prospectus, or where a statement that the expert has given his consent does not appear in the prospectus.	On summary conviction a fine not exceeding £500.	(a) On conviction on indictment a fine. (b) On summary conviction a fine not exceeding the statutory maximum.
41 (4)	Issuing a prospectus without due delivery of copy to registrar.	On summary conviction a fine not exceeding £5 for every day until due delivery of the copy to the registrar.	On summary conviction a fine not exceeding one-fifth of the statutory maximum or, on conviction after continued contravention, a default fine not exceeding one-fiftieth of the statutory maximum.

Statutory Provision (1)	General Description of Offence or Contravention (2)	Old Mode of Trial and Penalty (3)	New Mode of Trial and Penalty (4)
44 (1)	Authorising the issue of a prospectus including an untrue statement.	(a) On conviction on indictment a term of imprisonment not exceeding 2 years or a fine not exceeding £500, or both. (b) On summary conviction a term of imprisonment not exceeding 6 months or a fine not exceeding the statutory maximum, or both.	(a) On conviction on indictment a term of imprisonment not exceeding 2 years or a fine, or both. (b) On summary conviction a term of imprisonment not exceeding 6 months or a fine not exceeding the statutory maximum, or both.
50 (3)	Allotting shares or debentures before the third day after the issue of a prospectus.	On summary conviction a fine not exceeding £500.	(a) On conviction on indictment a fine. (b) On summary conviction a fine not exceeding the statutory maximum.
51 (3)	Failing to keep money in a separate bank account where received in pursuance of a prospectus stating that stock exchange listing is to be applied for.	On summary conviction a fine not exceeding £500.	(a) On conviction on indictment a fine. (b) On summary conviction a fine not exceeding the statutory maximum.
52 (3)	Failing to deliver return of allotments, or contracts or particulars of allotment, to the registrar.	On summary conviction a fine not exceeding £50 for every day during which the default continues.	(a) On conviction on indictment a fine. (b) On summary conviction a fine not exceeding the statutory maximum or, on conviction after continued contravention, a default fine not exceeding one-tenth of the statutory maximum.
53 (5)	Failing to deliver to the registrar the prescribed form disclosing amount or rate of any share commission.	On summary conviction a fine not exceeding £25.	On summary conviction a fine not exceeding one-fifth of the statutory maximum.

Statutory Provision (1)	General Description of Offence or Contravention (2)	Old Mode of Trial and Penalty (3)	New Mode of Trial and Penalty (4)
54 (3)	Company giving financial assistance for the purchase or subscription of its own shares.	On summary conviction a fine not exceeding £100.	(a) On conviction on indictment a term of imprisonment not exceeding 2 years or a fine, or both. (b) On summary conviction a term of imprisonment not exceeding 6 months or a fine not exceeding the statutory maximum, or both.
62 (2)	Failing to give notice to the registrar of consolidation of share capital, etc.	On summary conviction a fine not exceeding £5 for every day during which the default continues.	On summary conviction a fine not exceeding one-fifth of the statutory maximum or, on conviction after continued contravention, a default fine not exceeding one-fiftieth of the statutory maximum.
63 (3)	Failing to give proper notice to the registrar of an increase of share capital.	On summary conviction a fine not exceeding £5 for every day during which the default continues.	On summary conviction a fine not exceeding one-fifth of the statutory maximum or, on conviction after continued contravention, a default fine not exceeding one-fiftieth of the statutory maximum.
72 (5)	Failing to forward to the registrar a copy of an order of the court made on an application to cancel a resolution to vary shareholders' rights.	On summary conviction a fine not exceeding £5 for every day during which the default continues.	On summary conviction a fine not exceeding one-fifth of the statutory maximum or, on conviction after continued contravention, a default fine not exceeding one-fiftieth of the statutory maximum.

Statutory Provision (1)	General Description of Offence or Contravention (2)	Old Mode of Trial and Penalty (3)	New Mode of Trial and Penalty (4)
78 (2)	Failing to send notice of refusal to register a transfer of shares or debentures.	On summary conviction a fine not exceeding £5 for every day during which the default continues.	On summary conviction a fine not exceeding one-fifth of the statutory maximum or, on conviction after continued contravention, a default fine not exceeding one-fiftieth of the statutory maximum.
80 (2)	Failing within two months of allotment or transfer of any share, debenture or debenture stock to complete and have ready for delivery a share certificate, the debenture or a certificate of debenture stock.	On summary conviction a fine not exceeding £5 for every day during which the default continues.	On summary conviction a fine not exceeding one-fifth of the statutory maximum or, on conviction after continued contravention, a default fine not exceeding one-fiftieth of the statutory maximum.
86 (4)	Refusing to allow inspection, or refusing or failing to provide or forward a copy, of the register of debentures or of a trust deed securing an issue of debentures.	On summary conviction a fine not exceeding £5 and a fine not exceeding £2 for every day during which the refusal or default continues.	On summary conviction a fine not exceeding one-fifth of the statutory maximum or, on conviction after continued contravention, a default fine not exceeding one-fiftieth of the statutory maximum.
94 (3)	Failing to send to the registrar particulars of a registrable charge or of the issue of debentures of a series.	On summary conviction a fine not exceeding £50 for every day during which the default continues.	(a) On conviction on indictment a fine. (b) On summary conviction a fine not exceeding the statutory maximum or, on conviction after continued contravention, a default fine not exceeding one-tenth of the statutory maximum.

Statutory Provision (1)	General Description of Offence or Contravention (2)	Old Mode of Trial and Penalty (3)	New Mode of Trial and Penalty (4)
95 (2)	Failing to send to the registrar particulars and a copy of an existing charge over property acquired by a company.	On summary conviction a fine not exceeding £50 for every day during which the default continues.	(a) On conviction on indictment a fine. (b) On summary conviction a fine not exceeding the statutory maximum or, on conviction after continued contravention, a default fine not exceeding one-tenth of the statutory maximum.
97 (3)	Knowingly and wilfully authorising or permitting delivery of a debenture or a certificate of debenture stock without a copy of a certificate of registration of the charge being endorsed thereon.	On summary conviction a fine not exceeding £100.	On summary conviction a fine not exceeding one-fifth of the statutory maximum.
100 (3)	Failing to give notice to the registrar of the appointment of a receiver or manager or of his ceasing to act.	On summary conviction a fine not exceeding £5 for every day during which the default continues.	On summary conviction a fine not exceeding one-fifth of the statutory maximum or, on conviction after continued contravention, a default fine not exceeding one-fiftieth of the statutory maximum.
102 (2)	Omitting an entry required to be made in the register of charges.	On summary conviction a fine not exceeding £50.	(a) On conviction on indictment a fine. (b) On summary conviction a fine not exceeding the statutory maximum.
103 (2)	Refusing to allow inspection by creditors or members of registrable instruments of charge or of the register of charges.	On summary conviction a fine not exceeding £5 and a fine not exceeding £2 for every day during which the refusal continues.	On summary conviction a fine not exceeding one-fifth of the statutory maximum or, on conviction after continued contravention, a default fine not exceeding one-fiftieth of the statutory maximum.

Statutory Provision (1)	General Description of Offence or Contravention (2)	Old Mode of Trial and Penalty (3)	New Mode of Trial and Penalty (4)
105 (2)	Failing to paint or affix a company's name or keep it painted or affixed in the specified manner.	On summary conviction— (a) in the case of a failure to paint, or affix a company's name, a fine not exceeding £5; (b) in the case of a failure to keep it painted or affixed, a fine not exceeding £5 for every day during which the default continues.	On summary conviction, a fine not exceeding one-fifth of the statutory maximum or, in the case of a failure to keep a company's name painted or affixed, on conviction after continued contravention, a default fine not exceeding one-fiftieth of the statutory maximum.
105 (3)	Failing to have the name of a company in legible characters on its seal or certain documents.	On summary conviction a fine not exceeding £50.	On summary conviction a fine not exceeding one-fifth of the statutory maximum.
105 (4)	An officer of a company using or authorising the use of a seal not engraved as required by section 105 or issuing or authorising the issue of certain documents in which the name of the company is not mentioned as required by that section.	On summary conviction a fine not exceeding £50.	On summary conviction a fine not exceeding one-fifth of the statutory maximum.
107 (7)	Failing to keep a register of members or failing to give notice to the registrar of where the register is kept.	On summary conviction a fine not exceeding £5 for every day during which the default continues.	On summary conviction a fine not exceeding one-fifth of the statutory maximum or, on conviction after continued contravention, a default fine not exceeding one-fiftieth of the statutory maximum.

Statutory Provision (1)	General Description of Offence or Contravention (2)	Old Mode of Trial and Penalty (3)	New Mode of Trial and Penalty (4)
108 (4)	In respect of a company with more than 50 members, failing to keep an index of the names of the members.	On summary conviction a fine not exceeding £5 for every day during which the default continues.	On summary conviction a fine not exceeding one-fifth of the statutory maximum or, on conviction after continued contravention, a default fine not exceeding one-fiftieth of the statutory maximum.
110 (3)	Refusing inspection of the register or index of members or not sending a copy of the register when required to do so.	On summary conviction a fine not exceeding £2 and a fine not exceeding £2 for every day during which the refusal or default continues.	On summary conviction a fine not exceeding one-fifth of the statutory maximum.
119 (3)	Company having a share capital failing to make an annual return to the registrar.	On summary conviction a fine not exceeding £5 for every day during which the default continues.	On summary conviction a fine not exceeding one-fifth of the statutory maximum or, on conviction after continued contravention, a default fine not exceeding one-fiftieth of the statutory maximum.
120 (4)	Company not having a share capital failing to make an annual return to the registrar.	On summary conviction a fine not exceeding £5 for every day during which the default continues.	On summary conviction a fine not exceeding one-fifth of the statutory maximum or, on conviction after continued contravention, a default fine not exceeding one-fiftieth of the statutory maximum.
121 (2)	Failing to complete an annual return or to forward it to the registrar forthwith.	On summary conviction a fine not exceeding £5 for every day during which the default continues.	On summary conviction a fine not exceeding one-fifth of the statutory maximum or, on conviction after continued contravention, a default fine not exceeding one-fiftieth of the statutory maximum.

Statutory Provision (1)	General Description of Offence or Contravention (2)	Old Mode of Trial and Penalty (3)	New Mode of Trial and Penalty (4)
125 (6)	Failing to hold an annual general meeting in accordance with subsection (1), to comply with directions about such a meeting in accordance with subsection (3) or to forward a copy of a resolution to treat a general meeting as the annual general meeting to the registrar in accordance with subsection (5).	On summary conviction— (a) in the case of a failure to hold a meeting in accordance with subsection (1) or to comply with directions under subsection (3), a fine not exceeding £50; (b) in the case of a failure to forward a copy of such a resolution in accordance with subsection (5) a fine not exceeding £2 for every day during which the default continues.	(a) In the case of a failure to hold a meeting in accordance with subsection (1) or to comply with directions under subsection (3) (i) on conviction on indictment a fine; (ii) on summary conviction a fine not exceeding the statutory maximum. (b) In the case of a failure to forward a copy of a resolution in accordance with subsection (5), on summary conviction a fine not exceeding one-fifth of the statutory maximum or, on conviction after continued contravention, a default fine not exceeding one-fiftieth of the statutory maximum.
130 (3)	Failing to state in a notice calling a meeting of a company that a member entitled to attend and vote may appoint a proxy.	On summary conviction a fine not exceeding £50.	On summary conviction a fine not exceeding one-fifth of the statutory maximum.
130 (6)	Officer of a company knowingly and wilfully authorising or permitting invitations to appoint proxies to be issued to some only of the members of the company.	On summary conviction a fine not exceeding £100.	On summary conviction a fine not exceeding one-fifth of the statutory maximum.
134 (8)	Failing to comply with the provisions of section 134 (circulation of members' resolutions, etc.).	On summary conviction a fine not exceeding £500.	(a) On conviction on indictment a fine. (b) On summary conviction a fine not exceeding the statutory maximum.



Statutory Provision (1)	General Description of Offence or Contravention (2)	Old Mode of Trial and Penalty (3)	New Mode of Trial and Penalty (4)
137 (6)	Failing to send to the registrar a copy of a resolution or agreement to which section 137 applies.	On summary conviction a fine not exceeding £2 for every day during which the default continues.	On summary conviction a fine not exceeding one-fifth of the statutory maximum or, on conviction after continued contravention, a default fine not exceeding one-fiftieth of the statutory maximum.
137 (7)	Failing to include a copy of a resolution or agreement to which section 137 applies in every copy of the articles issued, or failing to forward a copy to a member on request.	On summary conviction a fine not exceeding £1 for each copy in respect of which default is made.	On summary conviction a fine not exceeding one-fifth of the statutory maximum for each occasion on which copies are issued or, as the case may be, requested.
139 (4)	Failing to keep minutes of general meetings of the company, meetings of directors or meetings of managers.	On summary conviction a fine not exceeding £5 for every day during which the default continues.	On summary conviction a fine not exceeding one-fifth of the statutory maximum or, on conviction after continued contravention, a default fine not exceeding one-fiftieth of the statutory maximum.
140 (3)	Refusing to allow inspection of the book containing the minutes of any general meeting or to supply a copy of any such minute requested by a member.	On summary conviction a fine not exceeding £2 and a fine not exceeding £2 for every day during which the refusal or default continues.	On summary conviction a fine not exceeding one-fifth of the statutory maximum.
143 (6)	Balance sheet or profit and loss account of a company not complying with requirements of Companies Acts.	(a) On conviction on indictment a fine. (b) On summary conviction a fine not exceeding £400.	(a) On conviction on indictment a fine. (b) On summary conviction a fine not exceeding the statutory maximum.

Statutory Provision (1)	General Description of Offence or Contravention (2)	Old Mode of Trial and Penalty (3)	New Mode of Trial and Penalty (4)
144 (4)	Group accounts not complying with requirements of sections 145 or 146.	(a) On conviction on indictment a fine. (b) On summary conviction a fine not exceeding £400.	(a) On conviction on indictment a fine. (b) On summary conviction a fine not exceeding the statutory maximum.
149 (3)	Laying a balance sheet before the company or delivering it to the registrar or issuing, circulating or publishing it, without its having been signed in accordance with section 149, etc.	On summary conviction a fine not exceeding £50.	On summary conviction a fine not exceeding one-fifth of the statutory maximum.
150 (3)	Issuing, circulating or publishing a balance sheet without the required accounts or report being annexed to it.	On summary conviction a fine not exceeding £50.	On summary conviction a fine not exceeding one-fifth of the statutory maximum.
152 (7)	Failing to send company members and other persons a copy of a balance sheet, together with other documents, at least 21 days before a general meeting in accordance with subsection (1), or to comply with a demand for such documents made under subsection (3).	On summary conviction— (a) in the case of a failure to comply with subsection (1), a fine not exceeding £20; (b) in the case of a failure to comply with such a demand, a fine not exceeding £5 for every day during which the default continues.	(a) In the case of a failure to comply with subsection (1)— (i) on conviction on indictment a fine; (ii) on summary conviction, a fine not exceeding the statutory maximum. (b) In the case of a failure to comply with a demand under subsection (3), on summary conviction, a fine not exceeding one-fifth of the statutory maximum or, on conviction after continued contravention, a default fine not exceeding one-fiftieth of the statutory maximum.

Statutory Provision (1)	General Description of Offence or Contravention (2)	Old Mode of Trial and Penalty (3)	New Mode of Trial and Penalty (4)
165B (3)	Failing to give information, when required to do so, about interests in shares, etc., or giving false information.	On summary conviction a term of imprisonment not exceeding six months or a fine not exceeding £500, or both.	(a) On conviction on indictment a term of imprisonment not exceeding 2 years or a fine, or both. (b) On summary conviction a term of imprisonment not exceeding 6 months or a fine not exceeding the statutory maximum, or both.
165C (5)	Exercising a right to dispose of, or vote in respect of, shares subject to restrictions imposed by section 165C or failing to give notice in respect of shares subject to such restrictions.	On summary conviction a term of imprisonment not exceeding six months or a fine not exceeding £500, or both.	(a) On conviction on indictment a fine. (b) On summary conviction a fine not exceeding the statutory maximum.
165C (6)	Issuing shares in contravention of a restriction imposed by section 165C.	On summary conviction a fine not exceeding £500.	(a) On conviction on indictment a fine. (b) On summary conviction a fine not exceeding the statutory maximum.
173 (5)	Acting as a director without holding qualification shares required by the articles.	On summary conviction a fine not exceeding £5 for every day between the expiration of the period within which the shares should have been obtained, or the director ceased to be qualified, and the last day on which it is proved that he acted as a director.	On summary conviction a fine not exceeding one-fifth of the statutory maximum or, on conviction after continued contravention, a default fine not exceeding one-fiftieth of the statutory maximum for every day until the last day on which it is proved that he acted as a director.

Statutory Provision (1)	General Description of Offence or Contravention (2)	Old Mode of Trial and Penalty (3)	New Mode of Trial and Penalty (4)
177 (3)	Failure of a person appointed or proposed to be appointed a director of a public company after retiring age to give notice of his age in accordance with section (1); and acting as a director under an appointment which is invalid or has been terminated by reason of age.	On summary conviction a fine not exceeding £5 for every day during which the contravention continues.	On summary conviction a fine not exceeding one-fifth of the statutory maximum or, on conviction after continued contravention, a default fine not exceeding one-fiftieth of the statutory maximum.
184 (2)	Failing to take reasonable steps to ensure that particulars of a proposed payment for loss of office are included in, or sent with, any offer made for the shares of the company to which section 184 applies or to include the particulars in or send them with a specified notice.	On summary conviction a fine not exceeding £25.	On summary conviction a fine not exceeding one-fifth of the statutory maximum.
189 (4)	Failing to disclose to a company matters required to be disclosed for the purposes of provisions in connection with directors' salaries, pensions, etc., and with loans to officers.	On summary conviction a fine not exceeding £50.	On summary conviction a fine not exceeding one-fifth of the statutory maximum.
190 (5)	Director failing to disclose interest in contract.	On summary conviction a fine not exceeding £100.	(a) On conviction on indictment a fine. (b) On summary conviction a fine not exceeding the statutory maximum.
191 (10)	Refusing to allow inspection of the register of directors and secretaries to any member of the company or failing to comply with the requirements of section 191 as to the register.	On summary conviction a fine not exceeding £5 for every day during which the refusal or default continues.	On summary conviction a fine not exceeding one-fifth of the statutory maximum or, on conviction after continued contravention, a default fine not exceeding one-fiftieth of the statutory maximum.

Statutory Provision (1)	General Description of Offence or Contravention (2)	Old Mode of Trial and Penalty (3)	New Mode of Trial and Penalty (4)
192 (4)	Failing to state particulars of every director in all trade catalogues, trade circulars, etc.	On summary conviction a fine not exceeding £5.	On summary conviction a fine not exceeding one-fifth of the statutory maximum.
193 (3)	Failing to state that liability of directors and managers will be unlimited or to notify proposed directors and managers of that fact.	On summary conviction a fine not exceeding £100.	(a) On conviction on indictment a fine. (b) On summary conviction a fine not exceeding the statutory maximum.
197 (4)	Failing to annex to every copy of the memorandum of a company a copy of every order sanctioning a compromise or arrangement with creditors or members.	On summary conviction a fine not exceeding £1 for each copy in respect of which default is made.	On summary conviction a fine not exceeding one-fifth of the statutory maximum.
198 (4)	Failing to comply with requirements as to the information to be provided for a meeting of creditors or members.	On summary conviction a fine not exceeding £500.	(a) On conviction on indictment a fine. (b) On summary conviction a fine not exceeding the statutory maximum.
198 (6)	Director or trustee for debenture holders failing to give notice to the company of matters necessary for the purposes of section 198.	On summary conviction a fine not exceeding £50.	On summary conviction a fine not exceeding one-fifth of the statutory maximum.
199 (3)	Failing to deliver to the registrar an office copy of an order made under section 199 (reconstruction and amalgamation of companies).	On summary conviction a fine not exceeding £5 for every day during which the default continues.	On summary conviction a fine not exceeding one-fifth of the statutory maximum or, on conviction after continued contravention, a default fine not exceeding one-fiftieth of the statutory maximum.

Statutory Provision (1)	General Description of Offence or Contravention (2)	Old Mode of Trial and Penalty (3)	New Mode of Trial and Penalty (4)
245 (3)	Failure of liquidator to send registrar copy of order to dissolve a company.	On summary conviction a fine not exceeding £5 for every day during which the liquidator is in default.	On summary conviction a fine not exceeding one-fifth of the statutory maximum or, on conviction after continued contravention, a default fine not exceeding one-fiftieth of the statutory maximum.
249 (2)	Failing to give notice in the Belfast Gazette of a resolution to wind up voluntarily.	On summary conviction a fine not exceeding £5 for every day during which the default continues.	On summary conviction a fine not exceeding one-fifth of the statutory maximum or, on conviction after continued contravention, a default fine not exceeding one-fiftieth of the statutory maximum.
253 (3)	Director making a declaration of solvency without having reasonable grounds for the opinion that a company will be able to pay its debts.	On conviction on indictment, a term of imprisonment not exceeding six months or a fine not exceeding £500, or both.	(a) On conviction on indictment a term of imprisonment not exceeding 2 years or a fine, or both. (b) On summary conviction a term of imprisonment not exceeding 6 months or a fine not exceeding the statutory maximum, or both.
258 (2)	Liquidator failing to summon a meeting of creditors in case of insolvency (members' voluntary winding up).	On summary conviction a fine not exceeding £50.	On summary conviction a fine not exceeding one-fifth of the statutory maximum.
259 (2)	Liquidator failing to summon a general meeting of the company at end of each year (members' voluntary winding up).	On summary conviction a fine not exceeding £10.	On summary conviction a fine not exceeding one-fifth of the statutory maximum.

Statutory Provision (1)	General Description of Offence or Contravention (2)	Old Mode of Trial and Penalty (3)	New Mode of Trial and Penalty (4)
260 (3)	Liquidator failing to send to the registrar a copy of the account of a winding up and a return of the final general meeting (members' voluntary winding up).	On summary conviction a fine not exceeding £5 for every day during which the default continues.	On summary conviction a fine not exceeding one-fifth of the statutory maximum or, on conviction after continued contravention, a default fine not exceeding one-fiftieth of the statutory maximum.
260 (6)	Failing to deliver to the registrar an office copy of an order deferring the date of dissolution following a members' voluntary winding up.	On summary conviction a fine not exceeding £5 for every day during which the default continues.	On summary conviction a fine not exceeding one-fifth of the statutory maximum or, on conviction after continued contravention, a default fine not exceeding one-fiftieth of the statutory maximum.
260 (7)	Liquidator failing to call the final general meeting of the company (members' voluntary winding up).	On summary conviction a fine not exceeding £50.	On summary conviction a fine not exceeding one-fifth of the statutory maximum.
263 (6)	Default by a company, its directors, etc., in relation to the summoning or advertisement of a meeting of creditors (creditors' voluntary winding up).	On summary conviction a fine not exceeding £100.	(a) On conviction on indictment a fine. (b) On summary conviction a fine not exceeding the statutory maximum.
269 (2)	Liquidator failing to summon a general meeting of the company and a meeting of creditors at end of each year (creditors' voluntary winding up).	On summary conviction a fine not exceeding £10.	On summary conviction a fine not exceeding one-fifth of the statutory maximum.
270 (3)	Liquidator failing to send to the registrar a copy of the account of a winding up and a return of the final general meeting and the final meeting of creditors (creditors' voluntary winding up).	On summary conviction a fine not exceeding £5 for every day during which the default continues.	On summary conviction a fine not exceeding one-fifth of the statutory maximum or, on conviction after continued contravention, a default fine not exceeding one-fiftieth of the statutory maximum.

Statutory Provision (1)	General Description of Offence or Contravention (2)	Old Mode of Trial and Penalty (3)	New Mode of Trial and Penalty (4)
270 (6)	Failing to deliver to the registrar an office copy of an order deferring the date of dissolution following a creditors' voluntary winding up.	On summary conviction a fine not exceeding £5 for every day during which the default continues.	On summary conviction a fine not exceeding one-fifth of the statutory maximum or, on conviction after continued contravention, a default fine not exceeding one-fiftieth of the statutory maximum.
270 (7)	Liquidator failing to call the final general meeting of the company or the final meeting of creditors (creditors' voluntary winding up).	On summary conviction a fine not exceeding £50.	On summary conviction a fine not exceeding one-fifth of the statutory maximum.
275 (2)	Liquidator failing to publish notice of his appointment in the Belfast Gazette or to deliver notice of appointment to registrar.	On summary conviction a fine not exceeding £5 for every day during which the default continues.	On summary conviction a fine not exceeding one-fifth of the statutory maximum or, on conviction after continued contravention, a default fine not exceeding one-fiftieth of the statutory maximum.
294 (1)	Failure of officer of a company in liquidation or subsequently wound up to disclose or deliver property of, or documents or information relating to, the company to the liquidator, fraudulent conduct by any such officer in relation to the property or affairs of such a company, and other offences by such officers.	In the case of an offence— (a) under paragraph (o) (pledging, pawning or disposing of unpaid-for property of such a company in year before, or during winding up)— (i) on conviction on indictment a term of imprisonment not exceeding 5 years or a fine, or both; (ii) on summary conviction, a term of imprisonment not exceeding 12 months or a fine not exceeding £200;	(a) On conviction on indictment a term of imprisonment not exceeding 7 years or a fine, or both. (b) On summary conviction a term of imprisonment not exceeding 6 months or a fine not exceeding the statutory maximum, or both.



Statutory Provision (1)	General Description of Offence or Contravention (2)	Old Mode of Trial and Penalty (3)	New Mode of Trial and Penalty (4)
294(1) cont'd		<p>(b) under any other paragraph—</p> <p>(i) on conviction on indictment, a term of imprisonment not exceeding 2 years or a fine, or both;</p> <p>(ii) on summary conviction, a term of imprisonment not exceeding 12 months or a fine not exceeding £200.</p>	
295	<p>Officer or contributory of a company being wound up destroying, mutilating, altering or falsifying books, etc., with intent to defraud.</p>	<p>On conviction on indictment a term of imprisonment not exceeding 2 years or a fine, or both.</p>	<p>(a) On conviction on indictment a term of imprisonment not exceeding 7 years or a fine, or both.</p> <p>(b) On summary conviction a term of imprisonment not exceeding 6 months or a fine not exceeding the statutory maximum, or both.</p>
296	<p>Officer of a company subsequently wound up making or causing to be made a gift or transfer of the company's property or concealing or removing any part of the company's property with intent to defraud creditors.</p>	<p>(a) On conviction on indictment a term of imprisonment not exceeding 2 years or a fine, or both.</p> <p>(b) On summary conviction a term of imprisonment not exceeding 12 months or a fine not exceeding £200.</p>	<p>(a) On conviction on indictment a term of imprisonment not exceeding 2 years or a fine, or both.</p> <p>(b) On summary conviction a term of imprisonment not exceeding 6 months, or a fine not exceeding the statutory maximum, or both.</p>

Statutory Provision (1)	General Description of Offence or Contravention (2)	Old Mode of Trial and Penalty (3)	New Mode of Trial and Penalty (4)
298 (3)	Being a party to the carrying on of a company's business where it is carried on with intent to defraud creditors or for any fraudulent purpose.	On conviction on indictment a term of imprisonment not exceeding 2 years, or a fine not exceeding £500, or both.	(a) On conviction on indictment a term of imprisonment not exceeding 7 years or a fine, or both. (b) On summary conviction a term of imprisonment not exceeding 6 months or a fine not exceeding the statutory maximum, or both.
301	Body corporate acting as a liquidator.	On summary conviction a fine not exceeding £100.	(a) On conviction on indictment a fine. (b) On summary conviction a fine not exceeding the statutory maximum.
302	Giving or agreeing or offering to give a corrupt inducement affecting the appointment of a liquidator.	On summary conviction a fine not exceeding £100.	(a) On conviction on indictment a fine. (b) On summary conviction a fine not exceeding the statutory maximum.
304 (2)	Failing to state on certain documents that a company is being wound up.	On summary conviction a fine not exceeding £20.	On summary conviction a fine not exceeding one-fifth of the statutory maximum.
306 (4)	Acting in contravention of any winding-up rules or any direction thereunder made or given for the purpose of preserving books and papers of a company which has been wound up.	On summary conviction a fine not exceeding £100.	On summary conviction a fine not exceeding one-fifth of the statutory maximum.
307 (2)	Liquidator failing to send to the registrar a statement as to the position of a liquidation which is not concluded within one year of its commencement.	On summary conviction a fine not exceeding £50 for every day during which the default continues.	On summary conviction a fine not exceeding one-fifth of the statutory maximum or, on conviction after continued contravention, a default fine not exceeding one-fiftieth of the statutory maximum.

Statutory Provision (1)	General Description of Offence or Contravention (2)	Old Mode of Trial and Penalty (3)	New Mode of Trial and Penalty (4)
315 (2)	Failing to deliver to the registrar a copy of an order declaring the dissolution of a company void.	On summary conviction a fine not exceeding £5 for every day during which the default continues.	On summary conviction a fine not exceeding one-fifth of the statutory maximum or, on conviction after continued contravention, a default fine not exceeding one-fiftieth of the statutory maximum.
318	Body corporate acting as a receiver.	On summary conviction a fine not exceeding £100.	(a) On conviction on indictment a fine. (b) On summary conviction a fine not exceeding the statutory maximum.
321 (2)	Not stating on company documents that a receiver or manager has been appointed.	On summary conviction a fine not exceeding £20.	On summary conviction a fine not exceeding one-fifth of the statutory maximum.
323 (7)	Receiver making default in complying with provisions as to information where receiver or manager appointed.	On summary conviction a fine not exceeding £5 for every day during which the default continues.	On summary conviction a fine not exceeding one-fifth of the statutory maximum or, on conviction after continued contravention, a default fine not exceeding one-fiftieth of the statutory maximum.
324 (5)	Default in relation to provisions as to statement to be submitted to receiver.	On summary conviction a fine not exceeding £10 for every day during which the default continues.	On summary conviction a fine not exceeding one-fifth of the statutory maximum or, on conviction after continued contravention, a default fine not exceeding one-fiftieth of the statutory maximum.

Statutory Provision (1)	General Description of Offence or Contravention (2)	Old Mode of Trial and Penalty (3)	New Mode of Trial and Penalty (4)
325 (2)	Receiver or manager not delivering accounts to registrar.	On summary conviction a fine not exceeding £5 for every day during which the default continues.	On summary conviction a fine not exceeding one-fifth of the statutory maximum or, on conviction after continued contravention, a default fine not exceeding one-fiftieth of the statutory maximum.
363	Failure of a Part X company having a place of business in Northern Ireland to comply with sections 356 to 362 (documents to be delivered and information to be given to the registrar and other requirements as to the giving of information by such a company).	(a) For an offence which is not a continuing offence, on summary conviction a fine not exceeding £50. (b) For an offence which is a continuing offence, on summary conviction a fine not exceeding £5 for every day during which the default continues.	(a) For an offence which is not a continuing offence, on summary conviction a fine not exceeding one-fifth of the statutory maximum. (b) For an offence which is a continuing offence, on summary conviction a fine not exceeding one-fifth of the statutory maximum or, on conviction after continued contravention, a default fine not exceeding one-fiftieth of the statutory maximum.
369	Being responsible for the issue, circulation or distribution of a prospectus or form of application for shares or debentures of a Part X company in contravention of sections 365 to 368 (contents, issue and registration of prospectuses).	On summary conviction a fine not exceeding £500.	(a) On conviction on indictment a fine. (b) On summary conviction a fine not exceeding the statutory maximum.
374 (6)	A person untruthfully stating himself in writing to be a member or creditor of a company for the purpose of inspecting or obtaining documents of a company where a receiver or manager has been appointed.	On summary conviction a fine not exceeding £50.	On summary conviction a fine not exceeding one-fifth of the statutory maximum.

Statutory Provision (1)	General Description of Offence or Contravention (2)	Old Mode of Trial and Penalty (3)	New Mode of Trial and Penalty (4)
381 (4)	Insurance and certain other companies not publishing periodical statement.	On summary conviction a fine not exceeding £5 for every day during which the default continues.	On summary conviction a fine not exceeding one-fifth of the statutory maximum or, on conviction after continued contravention, a default fine not exceeding one-fiftieth of the statutory maximum.
384 (2)	Not taking adequate precautions against falsification, etc., of company records where these are not kept in bound books.	On summary conviction a fine not exceeding £50 and a fine not exceeding £5 for every day during which the default continues.	On summary conviction a fine not exceeding one-fifth of the statutory maximum or, on conviction after continued contravention, a default fine not exceeding one-fiftieth of the statutory maximum.
387	Improperly using the word "limited" in the name or title of a business.	On summary conviction a fine not exceeding £5 for every day on which the name or title is used.	On summary conviction a fine not exceeding one-fifth of the statutory maximum or, on conviction after continued contravention, a default fine not exceeding one-fiftieth of the statutory maximum.
6 (1)	<p style="text-align: center;">COMPANIES (NORTHERN IRELAND) ORDER 1978</p> Directors failing to comply with the requirements of Article 3 (6) or (7) to lay annual accounts before the general meeting or to deliver such accounts, if necessary with a translation into English, to the registrar.	On summary conviction a fine not exceeding the aggregate of £400 and £40 for each day which falls— (a) after the end of the period allowed for laying and delivering accounts, and (b) before the earliest day by which all the requirements of Article 3 (6) or 3 (7) (as the case may be) have been complied with.	On summary conviction a fine not exceeding the statutory maximum or, on conviction after continued contravention, a default fine not exceeding one-tenth of the statutory maximum.

Statutory Provision (1)	General Description of Offence or Contravention (2)	Old Mode of Trial and Penalty (3)	New Mode of Trial and Penalty (4)
13 (1)	Part X company failing to comply with the requirements of Article 11 (2) to deliver annual accounts, if necessary with a translation into English.	On summary conviction a fine not exceeding the aggregate of £400 and £40 for each day which falls— (a) after the end of the period allowed for delivering accounts; and (b) before the earliest day by which all the requirements of Article 11 (2) have been complied with.	(a) On conviction on indictment a fine. (b) On summary conviction a fine not exceeding the statutory maximum or, on conviction after continued contravention, a default fine not exceeding one-tenth of the statutory maximum.
14 (6)	Failure by company, where taking advantage of exemption from requirements in relation to statements in its accounts as to its subsidiaries, to annex required particulars to annual return.	On summary conviction a fine not exceeding £5 for every day during which the default continues.	On summary conviction a fine not exceeding one-fifth of the statutory maximum or, on conviction after continued contravention, a default fine not exceeding one-fiftieth of the statutory maximum.
15 (6)	Failure by company, where taking advantage of exemption from requirements in relation to statements in its accounts as to the companies whose shares it holds, to annex required particulars to the annual return.	On summary conviction a fine not exceeding £5 for every day during which the default continues.	On summary conviction a fine not exceeding one-fifth of the statutory maximum or, on conviction after continued contravention, a default fine not exceeding one-fiftieth of the statutory maximum.
23 (2)	Director of a company failing to take steps to secure compliance with the requirements of Article 23 (statements annexed to accounts to include corresponding amounts for the preceding year).	On summary conviction a term of imprisonment not exceeding 6 months or a fine not exceeding £200.	(a) On conviction on indictment a fine. (b) On summary conviction a fine not exceeding the statutory maximum.

Statutory Provision (1)	General Description of Offence or Contravention (2)	Old Mode of Trial and Penalty (3)	New Mode of Trial and Penalty (4)
26 (10)	Acting as auditor when disqualified from doing so or failing to give notice of vacating office of auditor.	(a) On conviction on indictment a fine. (b) On summary conviction a fine not exceeding £40 for every day during which the contravention continues.	(a) On conviction on indictment a fine exceeding the statutory maximum or, on conviction after continued contravention, a default fine not exceeding one-tenth of the statutory maximum. On summary conviction a fine not exceeding one-fifth of the statutory maximum or, on conviction after continued contravention, a default fine not exceeding one-fiftieth of the statutory maximum.
27 (7)	Failing to notify the Department that no auditor has been appointed or re-appointed, or failing to notify the registrar that auditor has been removed.	On summary conviction a fine not exceeding £5 for every day during which the default continues.	(a) On conviction on indictment a fine. (b) On summary conviction a fine not exceeding the statutory maximum or, on conviction after continued contravention, a default fine not exceeding one-tenth of the statutory maximum.
29 (7)	Failing to comply with the requirements as to the giving of notices in connection with the resignation of an auditor.	(a) On conviction on indictment a fine. (b) On summary conviction a fine not exceeding £40 for every day during which the default continues.	(a) On conviction on indictment a fine. (b) On summary conviction a fine not exceeding the statutory maximum or, on conviction after continued contravention, a default fine not exceeding one-tenth of the statutory maximum.
31 (3)	Failure of subsidiary to give its holding company, and failure of holding company to obtain from its subsidiary, information needed for purposes of audit.	On summary conviction a fine not exceeding £200.	On summary conviction a fine not exceeding one-fifth of the statutory maximum.
35 (1)	Director dealing in options to buy or sell listed shares or debentures.	(a) On conviction on indictment a term of imprisonment not exceeding 2 years or a fine, or both. (b) On summary conviction a term of imprisonment not exceeding 6 months or a fine not exceeding £200, or both.	(a) On conviction on indictment a term of imprisonment not exceeding 2 years or a fine, or both. (b) On summary conviction a term of imprisonment not exceeding 6 months or a fine not exceeding the statutory maximum, or both.

Statutory Provision (1)	General Description of Offence or Contravention (2)	Old Mode of Trial and Penalty (3)	New Mode of Trial and Penalty (4)
36 (5)	<p>Company—</p> <p>(a) failing to keep copy or memorandum of directors' service contracts in accordance with paragraph (1);</p> <p>or</p> <p>(b) refusing to allow inspection of copies of such memorandums in accordance with paragraph (4).</p>	<p>On summary conviction a fine not exceeding £500 and a fine not exceeding £5 for every day during which the default or refusal continues.</p>	<p>On summary conviction a fine not exceeding one-fifth of the statutory maximum, or, on conviction after continued contravention, a default fine not exceeding one-fiftieth of the statutory maximum.</p>
36 (6)	<p>Company failing to send notice to the registrar of place where copies and memorandums of directors' service contracts are kept.</p>	<p>On summary conviction a fine not exceeding £5 for every day during which the default continues.</p>	<p>On summary conviction a fine not exceeding one-fifth of the statutory maximum or, on conviction after continued contravention, a default fine not exceeding one-fiftieth of the statutory maximum.</p>
37 (9)	<p>Director failing to notify a company of interests in shares or debentures in the company or associated companies, or making a false statement when purporting so to notify the company.</p>	<p>(a) On conviction on indictment a term of imprisonment not exceeding 2 years or a fine, or both.</p> <p>(b) On summary conviction a term of imprisonment not exceeding 6 months or a fine not exceeding £200, or both.</p>	<p>(a) On conviction on indictment a term of imprisonment not exceeding 2 years or a fine, or both.</p> <p>(b) On summary conviction a term of imprisonment not exceeding 6 months or a fine not exceeding the statutory maximum, or both.</p>
39 (14)	<p>Failing to produce register of directors' interests and keep it accessible at annual general meeting.</p>	<p>On summary conviction a fine not exceeding £50.</p>	<p>On summary conviction a fine not exceeding one-fifth of the statutory maximum.</p>



Statutory Provision (1)	General Description of Offence or Contravention (2)	Old Mode of Trial and Penalty (3)	New Mode of Trial and Penalty (4)
39 (15)	Failing for 14 days to send registrar notice of the place where the register of directors' interests is kept.	On summary conviction a fine not exceeding £5 for every day during which the default continues.	On summary conviction a fine not exceeding one-fifth of the statutory maximum or, on conviction after continued contravention, a default fine not exceeding one-fiftieth of the statutory maximum.
39 (16)	Company— (a) failing to comply with any of paragraphs (1) to (4), (which relate to the keeping of a register of directors with interests in securities of companies and the recording of information about those interests); (b) refusing to allow the register to be inspected in accordance with paragraph (8); (c) failing to keep an index of the register in accordance with paragraph (10); or (d) failing to send copies of the register to members in accordance with paragraph (12).	On summary conviction a fine not exceeding £500 and a fine not exceeding £5 for every day during which the default or refusal continues.	On summary conviction, a fine not exceeding one-fifth of the statutory maximum or on conviction after continued contravention, a default fine not exceeding one-fiftieth of the statutory maximum.
41 (4)	Director failing to notify the company that certain members of his family have, or have exercised, options to buy shares or debentures, and making a false statement when purporting so to notify the company.	(a) On conviction on indictment a term of imprisonment not exceeding 2 years or a fine, or both. (b) On summary conviction a term of imprisonment not exceeding 3 months or a fine not exceeding £200, or both.	(a) On conviction on indictment a term of imprisonment not exceeding 2 years or a fine, or both. (b) On summary conviction a term of imprisonment not exceeding 6 months or a fine not exceeding the statutory maximum, or both.

Statutory Provision (1)	General Description of Offence or Contravention (2)	Old Mode of Trial and Penalty (3)	New Mode of Trial and Penalty (4)
42 (3)	Failing to notify recognised stock exchange of acquisition, etc., of company's securities by a director.	On summary conviction a fine not exceeding £500 and a fine not exceeding £5 for every day during which the default continues.	On summary conviction a fine not exceeding one-fifth of the statutory maximum or, on conviction after continued contravention, a default fine not exceeding one-fiftieth of the statutory maximum.
52 (1)	Failure to comply with requirements of section 151 (1) of principal Act or of Articles 45 to 51 as to directors' report.	(a) On conviction on indictment a fine. (b) On summary conviction a fine not exceeding £400.	(a) On conviction on indictment a fine. (b) On summary conviction a fine not exceeding the statutory maximum.
66 (5)	Failing to comply with the requirements of Article 66 as to a statement of affairs to be submitted to the Official Assignee.	On summary conviction a fine not exceeding £10 for every day during which the default continues.	(a) On conviction on indictment a fine. (b) On summary conviction a fine not exceeding the statutory maximum or, on conviction after continued contravention, a default fine not exceeding one-tenth of the statutory maximum.
107 (4)	Failing to comply with a direction of the Department to produce books or papers or provide an explanation or make a statement.	On summary conviction a term of imprisonment not exceeding 3 months or a fine not exceeding £200, or both.	(a) On conviction on indictment a fine. (b) On summary conviction a fine not exceeding the statutory maximum.
108 (4)	Obstructing the exercise of a right of entry or search or a right to take possession of books or papers.	On summary conviction a term of imprisonment not exceeding 3 months or a fine not exceeding £200, or both.	(a) On conviction on indictment a fine. (b) On summary conviction a fine not exceeding the statutory maximum.

Statutory Provision (1)	General Description of Offence or Contravention (2)	Old Mode of Trial and Penalty (3)	New Mode of Trial and Penalty (4)
109 (2)	Wrongful disclosure of information obtained by the exercise of the powers as to the production of documents, entry and search conferred by the Order or the Insurance Companies Act 1974.	<p>(a) On conviction on indictment a term of imprisonment not exceeding 2 years or a fine, or both.</p> <p>(b) On summary conviction a term of imprisonment not exceeding 6 months or a fine not exceeding £200, or both.</p>	<p>(a) On conviction on indictment a term of imprisonment not exceeding 2 years or a fine, or both.</p> <p>(b) On summary conviction a term of imprisonment not exceeding 6 months or a fine not exceeding the statutory maximum, or both.</p>
110 (3)	Destroying, mutilating, falsifying, etc., a document affecting or relating to a company, insurance company or other body in contravention of paragraph (1) or fraudulently parting with, altering or making an omission in such a document in contravention of paragraph (2) or being privy to the parting with the document or to its alteration or to the making of such an omission.	<p>(a) On conviction on indictment, a term of imprisonment not exceeding 2 years or a fine, or both.</p> <p>(b) On summary conviction a term of imprisonment not exceeding 3 months or a fine not exceeding £200, or both.</p>	<p>(a) On conviction on indictment, a term of imprisonment not exceeding 7 years or a fine, or both.</p> <p>(b) On summary conviction, a term of imprisonment not exceeding 6 months or a fine not exceeding the statutory maximum, or both.</p>
111 (2)	Making a false statement or explanation in purported compliance with a requirement to make a statement or provide an explanation.	<p>(a) On conviction on indictment a term of imprisonment not exceeding 2 years or a fine, or both.</p> <p>(b) On summary conviction a term of imprisonment not exceeding 3 months or a fine not exceeding £200, or both.</p>	<p>(a) On conviction on indictment a term of imprisonment not exceeding 2 years or a fine, or both.</p> <p>(b) On summary conviction a term of imprisonment not exceeding 6 months or a fine not exceeding the statutory maximum, or both.</p>

Statutory Provision (1)	General Description of Offence or Contravention (2)	Old Mode of Trial and Penalty (3)	New Mode of Trial and Penalty (4)
114 (7)	Failing to notify the company of acquisition, changes in amounts of, and disposal of shares in the company, or making a false statement when purporting so to notify the company.	<p>(a) On conviction on indictment a term of imprisonment not exceeding 2 years or a fine, or both.</p> <p>(b) On summary conviction a term of imprisonment not exceeding 6 months or a fine not exceeding the statutory maximum, or both.</p>	<p>(a) On conviction on indictment a term of imprisonment not exceeding 2 years or a fine, or both.</p> <p>(b) On summary conviction a term of imprisonment not exceeding 6 months or a fine not exceeding the statutory maximum, or both.</p>
117 (12)	Contravention of provisions for securing that information about acquisitions, changes of amounts and disposals of shares in a company are recorded and made available by the company.	<p>On summary conviction a fine not exceeding £500 and a fine not exceeding £5 for every day during which the contravention continues.</p>	<p>On summary conviction a fine not exceeding one-fifth of the statutory maximum or, on conviction after continued contravention, a default fine not exceeding one-fiftieth of the statutory maximum.</p>
121 (7)	A Part X company carrying on business under its corporate name in contravention of a direction by the Department.	<p>(a) On conviction on indictment a fine.</p> <p>(b) On summary conviction a fine not exceeding £40 for every day during which the contravention continues.</p>	<p>(a) On conviction on indictment a fine.</p> <p>(b) On summary conviction a fine not exceeding the statutory maximum or, on conviction after continued contravention, a default fine not exceeding one-tenth of the statutory maximum.</p>
124 (2)	Failing to send to the registrar, a printed copy of a statutory provision which alters a company's memorandum or articles, or a printed copy of the memorandum or articles as altered by any document.	<p>On summary conviction a fine not exceeding £5 for every day during which the default continues.</p>	<p>On summary conviction a fine not exceeding one-fifth of the statutory maximum or, on conviction after continued contravention, a default fine not exceeding one-fiftieth of the statutory maximum.</p>

Statutory Provision (1)	General Description of Offence or Contravention (2)	Old Mode of Trial and Penalty (3)	New Mode of Trial and Penalty (4)
128 (2)	Failing to mention required particulars in business letters and order forms.	On summary conviction a fine not exceeding £50.	On summary conviction a fine not exceeding one-fifth of the statutory maximum.
131 (4)	Not having a registered office or failing to notify the registrar of a change in its situation.	On summary conviction a fine not exceeding £5 for every day during which the default continues.	On summary conviction a fine not exceeding one-fifth of the statutory maximum or, on conviction after continued contravention, a default fine not exceeding one-fiftieth of the statutory maximum.

## MINOR AND CONSEQUENTIAL AMENDMENTS

## GENERAL

1. In the Companies Acts (Northern Ireland) 1960 and 1978, a reference to a company registered under any specified enactment shall continue to have effect as a reference to a company registered under that enactment, notwithstanding that it has subsequently been re-registered under this Order.

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2. In sections 1 (1), 4 and 10, for the words “this Act” wherever occurring, there shall be substituted the words “the Companies Acts”.

3. Paragraph (a) of section 2 (1) (memorandum) shall have effect in relation to a public company as if the words from “with” to the end were omitted.

4. In section 5 (alteration of objects), after subsection (6) there shall be inserted the following subsections—

“(6A) An order under this section may, if the court thinks fit, provide for the purchase by the company of the shares of any members of the company and for the reduction accordingly of the company’s capital and may make such alterations in the memorandum and articles of the company as may be required in consequence of that provision.

(6B) Where an order under this section requires the company not to make any, or any specified, alteration in its memorandum or articles, then, notwithstanding anything in the Companies Acts the company shall not have power without the leave of the court to make any such alteration in breach of that requirement.

(6C) Any alteration in the memorandum or articles of a company made by virtue of an order under this section, other than one made by resolution of the company, shall be of the same effect as if duly made by resolution of the company, and the provisions of the Companies Acts shall apply to the memorandum or articles as so altered accordingly.”.

5. No licence under section 19 (power to dispense with “limited”) shall be granted in respect of a public company or an association about to be formed into a public company or have effect in respect of such a company.

6. In section 23 (alteration of memorandum)—

(a) in subsection (1) for the words “two hundred and one” there shall be substituted the words “Article 77 of the Companies (Northern Ireland) Order 1981”; and

(b) in subsection (4) for “(4), (5), (6)” there shall be substituted the words “to (6C)”.

7. For section 31 (members liable for debts where business carried on with less than minimum number of members) there shall be substituted the following section—

“Liability for debts where business carried on without minimum number of members.

31. If a company carries on business without having at least two members and does so for more than six months, a person who, for the whole or any part of the period that it so carries on business after those six months,—

(a) is a member of the company, and

(b) knows that it is carrying on business with only one member, shall be liable (jointly and severally with the company) for the payment of the debts of the company contracted during the period or, as the case may be, that part of it.”

8. In section 49 (2) (effect of irregular allotment) for the word “sections” there shall be substituted the word “section”.

9. In section 53 (1) (c) (ii) (disclosure of amount and rate of any commission where shares not offered to public), for the words from “disclosed”, in the first place where it occurs, to “delivered” there shall be substituted the words “disclosed in a statement in the prescribed form signed by every director of the company, or by his agent authorised in writing, and delivered”.

10. In section 54 (prohibition on company providing financial assistance for purchase of own shares, etc.)—

(a) the following paragraph shall be substituted for paragraph (b) of subsection (2)—

“(b) the provision by a company in accordance with an employee share scheme (within the meaning of the Companies (Northern Ireland) Order 1981) of money for the purchase of, or subscription for, fully-paid shares in the company or its holding company by the trustees of the scheme;”;

(b) after subsection (2) there shall be inserted the following subsections—

“(2A) Subsection (2) shall authorise a public company to give financial assistance to any person only if the company’s net assets are not thereby reduced or, to the extent that those assets are thereby reduced, if the financial assistance is provided out of profits which are available for dividend.

(2B) In this section, “net assets” in relation to any company, means the aggregate of that company’s assets less the aggregate of its liabilities; and “liabilities” include any provision (within the meaning of Schedule 6) except to the extent that that provision is taken into account in calculating the value of any asset to the company.”.

11. In section 55 (construction of references to offering shares or debentures to the public) after subsection (2) there shall be added the following subsections—

“(3) For the purposes of this section an offer of shares in or debentures of a private company or an invitation to subscribe for such shares or debentures shall, if it is of any of the following descriptions—

- (a) an offer or invitation made to any member of the relevant class;
- (b) an offer or invitation to subscribe for shares or debentures to be held under an employees’ share scheme;
- (c) an offer or invitation falling within paragraph (a) or (b) and made on terms which permit the person to whom the offer or invitation is made to renounce his right to the allotment of shares or issue of debentures, but only in favour of a member of a relevant class, or, where there is an employees’ share scheme, of a person entitled to hold shares or debentures under the scheme;

be regarded, unless the contrary is proved, as being a domestic concern of the person or persons making and receiving the offer or invitation.

(4) In this section—

“employees’ share scheme” has the same meaning as in the Companies (Northern Ireland) Order 1981;

“family” means, in relation to a person, that person’s husband or wife, widow or widower and children (including step-children) and their descendants and any trustee (acting in his capacity as such) of a trust the principal beneficiary of which is that person or any of those relatives; and

“member of a relevant class” means an existing member of the company making the offer or invitation, or an existing employee of that company, or a member of the family of such a member or employee, or an existing debenture holder.”.

12. In section 56 (2) (application of share premium account in paying up bonus shares, etc.) for the word “issued” there shall be substituted the word “allotted”.

13. In section 58 (1) (power to issue redeemable preference shares) in paragraph (c), for the words “the profits of the company” there shall be substituted the words “profits of the company which would otherwise be available for dividend”.

14. In section 58 (5) (application of capital redemption reserve in paying up bonus shares) for the word “issued” there shall be substituted the word “allotted”.

15. In section 71 (penalty for concealing name of creditor, etc.) for the words “a misdemeanour” there shall be substituted the words “an offence and liable—

(a) on conviction on indictment, to a fine;

(b) on summary conviction, to a fine not exceeding the statutory maximum (within the meaning of the Companies (Northern Ireland) Order 1981).”.

16. In section 93 (8) (particulars to be sent to registrar of each issue of debentures of a series) for the words from “where more than one issue is made” to the end there shall be substituted the words “there shall be sent to the registrar for entry in the register particulars in the prescribed form of the date and amount of each issue of debentures of the series, but any omission to do this shall not affect the validity of any of those debentures.”.

17. In section 128 (c) (quorum for meetings), for the words from the beginning to “three members” there shall be substituted the words “two members”.

18. In section 137 (5) (resolutions to be forwarded to the registrar) after paragraph (f) there shall be inserted the following paragraph:—

“(g) resolutions of the directors of a company passed by virtue of Article 10 (3) (a) or 39 (2) of the Companies (Northern Ireland) Order 1981.”.

19. In section 144 (4) (group accounts not complying with requirements of section 145 or 146) after “146” there shall be inserted the words “and with the other requirements of the Companies Acts as to other matters to be stated in group accounts”.

20. In section 159 (circumstances in which the Department may appoint inspectors to investigate affairs of company)—

(a) at the beginning there shall be inserted the word “(1)”;

(b) for paragraph (b) (i) there shall be substituted the following sub-paragraph:—

“(i) that its 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 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 it was formed for any fraudulent or unlawful purpose; or”;

(c) at the end there shall be added the following subsection—

“(2) The power conferred by subsection (1) (b) shall be exercisable with respect to a body corporate notwithstanding that it is in course of being voluntarily wound up; and the reference in sub-paragraph (i) of that paragraph to the members of a company shall have effect as if it included a reference to any person who is not a member but to whom shares in the company have been transferred or transmitted by operation of law.”.

21. In section 174 (1) (appointment of directors to be voted on individually), for the words “a company other than a private company” there shall be substituted the words “a public company”.

22. In section 176 (9) (companies to which provisions as to retirement of directors under age limit apply), for the words from “if it is not” to “rank as a private company” there shall be substituted the words “if it is a public company or, being a private company, it is a subsidiary of a public company or of a body corporate registered under the law relating to companies for the time being in force in Great Britain as a public company”.

23. In section 187 (1) (particulars in accounts of directors’ salaries, etc.), for the words “laid before it in general meeting” there shall be substituted the words “prepared under Article 3 of the Companies (Northern Ireland) Order 1978”.

24. In section 190 (notice of director’s interest in contracts) for subsection (3) there shall be substituted the following subsection—



“(3) Subject to subsection (4) for the purposes of this section a general notice given to the directors of a company by a director to the effect that—

- (a) he is a member of a specified company or firm and is to be regarded as interested in any contract which may, after the date of the notice be made with that company or firm; or
- (b) he is to be regarded as interested in any contract which may after the date of the notice be made with a specified person who is connected with him (within the meaning of Article 66 of the Companies (Northern Ireland) Order 1981)

shall be deemed to be a sufficient declaration of interest in relation to any such contract.”.

25. In section 196 (b) (exclusion of prohibition on indemnifying officers of company against liabilities) after the words “three hundred and ninety-four” there shall be inserted the words “or Article 38 of the Companies (Northern Ireland) Order 1981”.

26. In section 210 (grounds for winding up), for paragraph (b) there shall be substituted the following paragraphs—

- “(b) being a public company which was registered as such on its original incorporation, the company has not been issued with a certificate under Article 6 of the Companies (Northern Ireland) Order 1981 and more than a year has expired since it was so registered;
- (bb) after the end of the transitional period, within the meaning of that Order, the company is an old public company within the meaning of that Order;”.

27. In section 212 (1) (persons who may apply for winding up), for paragraph (b) there shall be substituted the following paragraph—

- “(b) if the ground of the petition is that in section 210 (b) or (bb) a winding-up petition may be presented by the Department; and”.

28. In section 332 (companies capable of being registered under Part VIII), in subsection (1) (a) and (b) for the word “seven” there shall be substituted the word “two”, and at the end of that section there shall be added the following subsection—

“(10) Before a company is registered in pursuance of this section, it shall deliver to the registrar—

- (a) a statement that the registered office of the company is to be situated in Northern Ireland; and
- (b) a statement specifying the intended situation of the company’s registered office after registration.”.

29. In section 334 (c) (statement of particulars to be delivered to registrar in connection with registration of a joint stock company), sub-paragraph (iii) shall have effect in relation to a company which is intended to be registered as a public company as if the words from “with” to the end were omitted.

30. Section 340 (certificate of registration of companies registered under Part VIII) shall be renumbered as subsection (1) of that section, and after that subsection there shall be added the following subsection—

- “(2) A certificate given under this section in respect of a company shall be conclusive evidence that the requirements of this Part in respect of registration and of matters precedent and incidental thereto have been complied with.”.

31. In section 344 (effect of registration under Part VIII)—

- (a) in subsection (2) after the words “amount of the guarantee” there shall be inserted the words “and including the statement under section 332 (10) (a) and any statement under section 334 (c)”;
- (b) in subsection (6) for the words from “this Act” to “and one” there shall be substituted the words “the Companies Acts (apart from those of Article 77 (5) of the Companies (Northern Ireland) Order 1981)”.

32. In section 398 (2) (power to alter Tables and forms), after paragraph (b) there shall be inserted the words “and

(c) alter the forms set out in Schedule 1 to the Companies (Northern Ireland) Order 1981;”.

33. In section 399 (1) (interpretation), in the definition of “articles”, for the words “special resolution” there shall be substituted the words “a resolution of the company”.

34.—(1) In Schedule 1, Part I of Table A (regulations for the management of a company limited by shares not being a private company) shall be amended in accordance with the following sub-paragraphs and shall apply in relation to private companies limited by shares as it applies in relation to public companies so limited, and accordingly Part II of that Table shall cease to have effect.

(2) In regulation 55 (quorums), for the words from “three” onwards there shall be substituted the words “two members present in person or by proxy shall be a quorum”.

(3) In regulation 60 (b) (number of members who may demand a poll) for the word “three” there shall be substituted the word “two”.

(4) After regulation 75 there shall be inserted the following regulation—

“75A. Subject to the provisions of the Companies Acts, a resolution in writing signed by all the members for the time being entitled to receive notice of and to attend and vote at general meetings (or being corporations by their duly authorised representatives) shall be as valid and effective as if the same had been passed at a general meeting of the company duly convened and held.”.

(5) In regulation 81 (borrowing powers), after the words “thereof and” there shall be inserted the words, “subject to Article 16 of the Companies (Northern Ireland) Order 1981,”.

(6) In regulation 82 (powers and duties of the directors) for the word “Act”, wherever occurring, there shall be substituted the words “Companies Acts”.

(7) For regulation 118 there shall be substituted the following regulation—

“118. No dividend or interim dividend shall be paid otherwise than in accordance with the provisions of Part IV of the Companies (Northern Ireland) Order 1981 which apply to the company.”

(8) In regulation 130 (power to apply reserve funds in paying up bonus shares) for the word “issued” there shall be substituted the word “allotted”.

(9) The following regulation is added after regulation 130—

“130A. The company in general meeting may on the recommendation of the directors resolve that it is desirable to capitalise any part of the amount for the time being standing to the credit of any of the company’s reserve accounts or to the credit of the profit and loss account which is not available for distribution by applying such sum in paying up in full unissued shares to be allotted as fully paid bonus shares to those members of the company who would have been entitled to that sum if it were distributed by way of dividend (and in the same proportions), and the directors shall give effect to such resolution.”.

(10) In regulation 131 (duties of directors on resolutions under regulation 130) for the words from the beginning to “is passed” there shall be substituted the words “Whenever a resolution is passed in pursuance of regulation 130 or 130A”.

35. In Articles 10 and 15 (b) of Table C in Schedule 1 (quorum and minimum number of members who may demand a poll at a meeting of a company limited by guarantee), for the word “three” there shall be substituted the word “two”.

36. In Part II of Schedule 5, in the form of the annual return, in the penultimate Note following the Particulars of Directors and Secretaries (which relates to the entries in respect of the directors of a public company or a private company which is a subsidiary of a public company), for the words from “which is not a private company” to “rank as a private company” there shall be substituted the words “which is a public company or, being a private company, is a subsidiary of a public

company or of a body corporate registered under the law relating to companies for the time being in force in Great Britain as a public company.”

37.—(1) Schedule 6, and accordingly that Schedule as set out in Schedule 2 to the Companies (Northern Ireland) Order 1978, shall be amended as follows.

(2) In paragraph 11 (miscellaneous requirements as to balance sheet), after sub-paragraph (2) there shall be inserted the following sub-paragraphs—

“(2A) Where shares in a public company, other than an old public company within the meaning of the Companies (Northern Ireland) Order 1981 are acquired by the company by forfeiture or surrender in lieu of forfeiture or in pursuance of Article 37 (2) of that Order or are acquired by another person in circumstances where sub-paragraph (c) or (d) of Article 39 (1) of that Order applies or are made subject to a lien or charge taken (whether expressly or otherwise) by the company and permitted by Article 40 (2) (a), (c) and (d) of that Order —

- (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 the financial 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 the financial 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;
- (f) where any of the shares have been disposed of by the company or the person who acquired them in such circumstances for money or money’s worth, the amount or value of the consideration in each case.

(2B) Any distribution made by an investment company within the meaning of Part IV of the Companies (Northern Ireland) Order 1981 which reduces the amount of its net assets to less than the aggregate of its called-up share capital and undistributable reserves.

In this sub-paragraph ‘net assets’ and ‘called-up share capital’ have the same meanings as in the Companies (Northern Ireland) Order 1981 and ‘undistributable reserves’ has the same meaning as in Article 42 of that Order.”

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38.—(1) In Articles 14 (1), 15 (1) and (2), 16 (1), 18 (1), 19 (1) and 20 (1) (statements and particulars to be included in company’s accounts), for the words “laid before it in general meeting” there shall be substituted the words “prepared under Article 3 of the Companies (Northern Ireland) Order 1978”.

(2) In Article 14 (5) (b) and 15 (5) (b) for the words “its accounts” there shall be substituted the words “copies of its accounts”.

(3) In Article 33 (3) (a) (auditors’ report) after the words “Companies Acts and” there shall be inserted the words “without prejudice to the foregoing.”

39. No public company may apply under Article 118 (limited companies may be re-registered as unlimited) to be re-registered under the principal Act as an unlimited company.

40. In Article 119 (unlimited companies may be re-registered as limited), for paragraph (2) there shall be substituted the following paragraph—

“(2) The said requirement is that the resolution must state whether the company is to be limited by shares or by guarantee and—

- (a) if it is to be limited by shares, must state what the share capital is to be and provide for the making of such alterations in the memorandum as are necessary to bring it, both in substance and in form, into conformity with the requirements of the principal Act with respect to the memorandum of a company so limited, and such alterations in the articles as are requisite in the circumstances;
- (b) if it is to be limited by guarantee, must provide for the making of such alterations in its memorandum and articles as are necessary to bring them, both in substance and in form, into conformity with the requirements of the principal Act with respect to the memorandum and articles of a company so limited.”.

41. In Article 123 (1) (documents of which notice must be published by the registrar in the Gazette) after paragraph (d) there shall be inserted the following paragraphs—

- “(da) any statutory declaration delivered in pursuance of Article 6 (2) of the Companies (Northern Ireland) Order 1981;
- (db) any report as to the value of a non-cash asset under Article 26 or 28 of the Companies (Northern Ireland) Order 1981;
- (dc) any copy of a resolution of a public company which gives, varies, revokes or renews an authority for the purposes of Article 16 of the Companies (Northern Ireland) Order 1981;
- (dd) any copy of a special resolution of a public company passed under Article 20 (1), (2) or (3) of the Companies (Northern Ireland) Order 1981;
- (de) any statement or notice delivered by a public company under Article 35 of the Companies (Northern Ireland) Order 1981;
- (df) a copy of any resolution or agreement to which section 137 of the principal Act applies and which—
  - (i) states the rights attached to any shares in a public company, other than shares which are, in all respects, uniform (for the purposes of Article 35 (1) of the Companies (Northern Ireland) Order 1981) with shares previously allotted;
  - (ii) varies rights attached to any shares in a public company; or
  - (iii) assigns a name or other designation, or a new name or other designation, to any class of shares in a public company;
- (dg) any return of allotments of a public company;
- (dh) any notification of the redemption of preference shares under section 62 of the principal Act by a public company;”.

42. In Article 128 (1) (particulars to be mentioned in a company’s letters and order forms) for the word “and” at the end of paragraph (b) there shall be substituted the following paragraph:—

- “(bb) in the case of an investment company within the meaning of Part IV of the Companies (Northern Ireland) Order 1981 the fact that it is such an investment company; and”.

43. In Schedule 4 (prescribed forms), in the entry relating to section 93 (8) of the principal Act, for the words “in both places” there shall be substituted the words “in the first place”.

## REPEALS

Chapter	Short Title	Extent of Repeal
1960 c. 22.	The Companies Act (Northern Ireland) 1960.	<p>In section 1 (1), the words from “any seven” to “private company”.</p> <p>In section 5 (6), the words from “so, however” to the end.</p> <p>In section 10, in subsection (1) the words “or add to” and in subsection (2) the words “or addition”.</p> <p>In section 13 (2), the words “and having perpetual succession and a common seal”.</p> <p>Section 15.</p> <p>Sections 28 to 30.</p> <p>Section 42.</p> <p>In section 47, subsection (3) and in subsection (6) the words “except subsection (3)”.</p> <p>Section 48.</p> <p>In section 49 (1), the words “or section forty-eight” and the words from “within one month after the holding” to “of the statutory meeting” (in the second place where they occur).</p> <p>In section 55 (2), paragraph (b) and the word “and” preceding it.</p> <p>Section 57.</p> <p>Section 65.</p> <p>Section 106.</p> <p>Sections 123 and 124.</p> <p>In section 159, the words from “and the power of the Department” to the end.</p> <p>Section 163 (4).</p> <p>Section 172.</p> <p>In section 173 (1), the words from “Without” to “seventy-two”.</p> <p>Section 181.</p> <p>Section 188.</p> <p>In section 189, in subsection (1) the words from “and of” to the end, and in subsection (3), paragraph (a) and in paragraph (b) the words “and section one hundred and eighty-eight”.</p> <p>Section 201.</p> <p>In section 210 (d), the words “in the case of a private company” and the words from “or” to “seven”.</p> <p>Section 212 in subsection (1), in paragraph (a) (i) the words “in the case of a private company” and the words “or, in the case of any other company, below seven”; and subsection (2).</p>

Chapter	Short Title	Extent of Repeal
1960 c. 22.	The Companies Act (Northern Ireland) 1960. ( <i>cont'd</i> ).	<p>Section 213 (2).  Section 386.  Section 388 (1).  In section 398 (2) (b), the words “or add to”.</p> <p>In section 399 (1), the definitions of “private company”, “statutory meeting” and “statutory report”.</p> <p>In Schedule 1, in Part I of Table A—</p> <p>(a) in regulation 4, the words “(unless otherwise provided by the terms of issue of the shares of that class)” and the second sentence;</p> <p>(b) in regulation 11, the words from “and the company” to “to the company”;</p> <p>(c) regulations 45 and 46;</p> <p>(d) in regulation 56, the words from “and if” onwards;</p> <p>and Part II of Table A; and in Table C, in Article 11, the words from “and if” onwards.</p> <p>Schedule 2.  Schedule 4.</p> <p>In Schedule 5, the forms of the certificate to be given by a director and the secretary of every private company and the further certificate to be given as aforesaid if the number of members of the company exceeds fifty.</p> <p>In Schedule 10, in column 2 the words “386” and “and Schedule 11 to”.</p> <p>Schedule 11.</p>
S.I. 1978/1042 (N.I. 12).	The Companies (Northern Ireland) Order 1978.	<p>Article 33 (8) (b).  Article 36 (9) (a).  Article 45 (1) (c).  Article 57 (6).  Article 60.  Article 64.  Article 100.  Article 103 (2).</p> <p>In Article 118, in paragraphs (2) (b) and (3) (d) the words “and additions thereto” and in paragraph (4) (b) the words “and additions” and “or added to”.</p> <p>Article 131 (6).  Article 149 (1).</p> <p>In Schedule 4, the entries relating to sections 15 (2) and 172 (1) (a) of the principal Act.</p>

Chapter	Short Title	Extent of Repeal
S.I. 1978/ 1042 (N.I. 12).	The Companies (Northern Ireland) Order 1978 ( <i>cont'd</i> ).	In Schedule 6, the entries relating to section 15 (2) of, and Regulation 7 in Part II of Table A in Schedule 1 to, and Schedule 11 to, the principal Act.
S.I. 1979/ 1714 (N.I. 19).	The Perjury (Northern Ireland) Order 1979.	Paragraph 3 of Schedule 1.

NOTE:

- (a) the repeal by this Schedule of section 57 of the principal Act shall have effect subject to the saving in Article 23 (4);
- (b) the repeal by this Schedule of sections 163 and 201 of the principal Act shall have effect subject to the saving in Article 77 (11);
- (c) the repeal by this Schedule of section 188 of the principal Act shall have effect subject to the saving in Article 68 (2);
- (d) the repeals made by this Schedule in Table A in Schedule 1 to the principal Act are subject to the saving in Article 87 (4);
- (e) the repeal by this Schedule of Article 149 (1) of the Companies (Northern Ireland) Order 1978 shall have effect subject to the saving in Article 81 (5).

## EXPLANATORY NOTE

*(This Note is not part of the Order.)*

This Order—

- (a) provides a fresh classification of companies and deals with the registration and re-registration of companies (Part II);
- (b) sets out requirements as to the issue of, and payment for, share capital, the maintenance of share capital, the rights of shareholders on the issue of further shares and the variation of class rights (Part III);
- (c) lays down rules regulating distributions to members of the company (Part IV);
- (d) makes provision concerning the duties of directors and transactions giving rise to a conflict of interests (Part V);
- (e) prohibits insider dealing (Part VI); and
- (f) otherwise amends the law relating to companies.

The Order makes provision corresponding to that made for Great Britain by the Companies Act 1980.





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STATUTORY INSTRUMENTS

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**1981 No. 838 (N.I. 19)**

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