

*Reconversion of stock into shares*

**620 Reconversion of stock into shares**

- (1) A limited company that has converted paid-up shares into stock (before the repeal by this Act of the power to do so) may reconvert that stock into paid-up shares of any nominal value.
- (2) A company may exercise the power conferred by this section only if its members have passed an ordinary resolution authorising it to do so.
- (3) A resolution under subsection (2) may authorise a company to exercise the power conferred by this section –
  - (a) on more than one occasion;
  - (b) at a specified time or in specified circumstances.

**621 Notice to registrar of reconversion of stock into shares**

- (1) If a company exercises a power conferred by section 620 (reconversion of stock into shares) it must within one month after doing so give notice to the registrar, specifying the stock affected.
- (2) The notice must be accompanied by a statement of capital.
- (3) The statement of capital must state with respect to the company’s share capital immediately following the exercise of the power –
  - (a) the total number of shares of the company,
  - (b) the aggregate nominal value of those shares,
  - (c) for each class of shares –
    - (i) prescribed particulars of the rights attached to the shares,
    - (ii) the total number of shares of that class, and
    - (iii) the aggregate nominal value of shares of that class, and
  - (d) the amount paid up and the amount (if any) unpaid on each share (whether on account of the nominal value of the share or by way of premium).
- (4) If default is made in complying with this section, an offence is committed by –
  - (a) the company, and
  - (b) every officer of the company who is in default.
- (5) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.

*Redenomination of share capital*

**622 Redenomination of share capital**

- (1) A limited company having a share capital may by resolution redenominate its share capital or any class of its share capital.  
“Redenominate” means convert shares from having a fixed nominal value in one currency to having a fixed nominal value in another currency.

- (2) The conversion must be made at an appropriate spot rate of exchange specified in the resolution.
- (3) The rate must be either –
  - (a) a rate prevailing on a day specified in the resolution, or
  - (b) a rate determined by taking the average of rates prevailing on each consecutive day of a period specified in the resolution.The day or period specified for the purposes of paragraph (a) or (b) must be within the period of 28 days ending on the day before the resolution is passed.
- (4) A resolution under this section may specify conditions which must be met before the redenomination takes effect.
- (5) Redenomination in accordance with a resolution under this section takes effect –
  - (a) on the day on which the resolution is passed, or
  - (b) on such later day as may be determined in accordance with the resolution.
- (6) A resolution under this section lapses if the redenomination for which it provides has not taken effect at the end of the period of 28 days beginning on the date on which it is passed.
- (7) A company’s articles may prohibit or restrict the exercise of the power conferred by this section.
- (8) Chapter 3 of Part 3 (resolutions affecting a company’s constitution) applies to a resolution under this section.

### **623 Calculation of new nominal values**

For each class of share the new nominal value of each share is calculated as follows:

*Step One*

Take the aggregate of the old nominal values of all the shares of that class.

*Step Two*

Translate that amount into the new currency at the rate of exchange specified in the resolution.

*Step Three*

Divide that amount by the number of shares in the class.

### **624 Effect of redenomination**

- (1) The redenomination of shares does not affect any rights or obligations of members under the company’s constitution, or any restrictions affecting members under the company’s constitution.  
In particular, it does not affect entitlement to dividends (including entitlement to dividends in a particular currency), voting rights or any liability in respect of amounts unpaid on shares.
- (2) For this purpose the company’s constitution includes the terms on which any shares of the company are allotted or held.
- (3) Subject to subsection (1), references to the old nominal value of the shares in any agreement or statement, or in any deed, instrument or document, shall

(unless the context otherwise requires) be read after the resolution takes effect as references to the new nominal value of the shares.

### **625 Notice to registrar of redenomination**

- (1) If a limited company having a share capital redenominates any of its share capital, it must within one month after doing so give notice to the registrar, specifying the shares redenominated.
- (2) The notice must –
  - (a) state the date on which the resolution was passed, and
  - (b) be accompanied by a statement of capital.
- (3) The statement of capital must state with respect to the company's share capital as redenominated by the resolution –
  - (a) the total number of shares of the company,
  - (b) the aggregate nominal value of those shares,
  - (c) for each class of shares –
    - (i) prescribed particulars of the rights attached to the shares,
    - (ii) the total number of shares of that class, and
    - (iii) the aggregate nominal value of shares of that class, and
  - (d) the amount paid up and the amount (if any) unpaid on each share (whether on account of the nominal value of the share or by way of premium).
- (4) If default is made in complying with this section, an offence is committed by –
  - (a) the company, and
  - (b) every officer of the company who is in default.
- (5) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.

### **626 Reduction of capital in connection with redenomination**

- (1) A limited company that passes a resolution redenominating some or all of its shares may, for the purpose of adjusting the nominal values of the redenominated shares to obtain values that are, in the opinion of the company, more suitable, reduce its share capital under this section.
- (2) A reduction of capital under this section requires a special resolution of the company.
- (3) Any such resolution must be passed within three months of the resolution effecting the redenomination.
- (4) The amount by which a company's share capital is reduced under this section must not exceed 10% of the nominal value of the company's allotted share capital immediately after the reduction.
- (5) A reduction of capital under this section does not extinguish or reduce any liability in respect of share capital not paid up.
- (6) Nothing in Chapter 10 applies to a reduction of capital under this section.

**627 Notice to registrar of reduction of capital in connection with redenomination**

- (1) A company that passes a resolution under section 626 (reduction of capital in connection with redenomination) must within 15 days after the resolution is passed give notice to the registrar stating –
- (a) the date of the resolution, and
  - (b) the date of the resolution under section 622 in connection with which it was passed.

This is in addition to the copies of the resolutions themselves that are required to be delivered to the registrar under Chapter 3 of Part 3.

- (2) The notice must be accompanied by a statement of capital.
- (3) The statement of capital must state with respect to the company's share capital as reduced by the resolution –
- (a) the total number of shares of the company,
  - (b) the aggregate nominal value of those shares,
  - (c) for each class of shares –
    - (i) prescribed particulars of the rights attached to the shares,
    - (ii) the total number of shares of that class, and
    - (iii) the aggregate nominal value of shares of that class, and
  - (d) the amount paid up and the amount (if any) unpaid on each share (whether on account of the nominal value of the share or by way of premium).
- (4) The registrar must register the notice and the statement on receipt.
- (5) The reduction of capital is not effective until those documents are registered.
- (6) The company must also deliver to the registrar, within 15 days after the resolution is passed, a statement by the directors confirming that the reduction in share capital is in accordance with section 626(4) (reduction of capital not to exceed 10% of nominal value of allotted shares immediately after reduction).
- (7) If default is made in complying with this section, an offence is committed by –
- (a) the company, and
  - (b) every officer of the company who is in default.
- (8) A person guilty of an offence under this section is liable –
- (a) on conviction on indictment to a fine, and
  - (b) on summary conviction to a fine not exceeding the statutory maximum.

**628 Redenomination reserve**

- (1) The amount by which a company's share capital is reduced under section 626 (reduction of capital in connection with redenomination) must be transferred to a reserve, called "the redenomination reserve".
- (2) The redenomination reserve may be applied by the company in paying up shares to be allotted to members as fully paid bonus shares.
- (3) Subject to that, the provisions of the Companies Acts relating to the reduction of a company's share capital apply as if the redenomination reserve were paid-up share capital of the company.

## CHAPTER 9

### CLASSES OF SHARE AND CLASS RIGHTS

#### *Introductory*

#### **629 Classes of shares**

- (1) For the purposes of the Companies Acts shares are of one class if the rights attached to them are in all respects uniform.
- (2) For this purpose the rights attached to shares are not regarded as different from those attached to other shares by reason only that they do not carry the same rights to dividends in the twelve months immediately following their allotment.

#### *Variation of class rights*

#### **630 Variation of class rights: companies having a share capital**

- (1) This section is concerned with the variation of the rights attached to a class of shares in a company having a share capital.
- (2) Rights attached to a class of a company's shares may only be varied –
  - (a) in accordance with provision in the company's articles for the variation of those rights, or
  - (b) where the company's articles contain no such provision, if the holders of shares of that class consent to the variation in accordance with this section.
- (3) This is without prejudice to any other restrictions on the variation of the rights.
- (4) The consent required for the purposes of this section on the part of the holders of a class of a company's shares is –
  - (a) consent in writing from the holders of at least three-quarters in nominal value of the issued shares of that class (excluding any shares held as treasury shares), or
  - (b) a special resolution passed at a separate general meeting of the holders of that class sanctioning the variation.
- (5) Any amendment of a provision contained in a company's articles for the variation of the rights attached to a class of shares, or the insertion of any such provision into the articles, is itself to be treated as a variation of those rights.
- (6) In this section, and (except where the context otherwise requires) in any provision in a company's articles for the variation of the rights attached to a class of shares, references to the variation of those rights include references to their abrogation.

#### **631 Variation of class rights: companies without a share capital**

- (1) This section is concerned with the variation of the rights of a class of members of a company where the company does not have a share capital.
- (2) Rights of a class of members may only be varied –

- (a) in accordance with provision in the company's articles for the variation of those rights, or
  - (b) where the company's articles contain no such provision, if the members of that class consent to the variation in accordance with this section.
- (3) This is without prejudice to any other restrictions on the variation of the rights.
- (4) The consent required for the purposes of this section on the part of the members of a class is –
- (a) consent in writing from at least three-quarters of the members of the class, or
  - (b) a special resolution passed at a separate general meeting of the members of that class sanctioning the variation.
- (5) Any amendment of a provision contained in a company's articles for the variation of the rights of a class of members, or the insertion of any such provision into the articles, is itself to be treated as a variation of those rights.
- (6) In this section, and (except where the context otherwise requires) in any provision in a company's articles for the variation of the rights of a class of members, references to the variation of those rights include references to their abrogation.

**632 Variation of class rights: saving for court's powers under other provisions**

Nothing in section 630 or 631 (variation of class rights) affects the power of the court under –

- section 98 (application to cancel resolution for public company to be re-registered as private),
- Part 26 (arrangements and reconstructions), or
- Part 30 (protection of members against unfair prejudice).

**633 Right to object to variation: companies having a share capital**

- (1) This section applies where the rights attached to any class of shares in a company are varied under section 630 (variation of class rights: companies having a share capital).
- (2) The holders of not less in the aggregate than 15% of the issued shares of the class in question (being persons who did not consent to or vote in favour of the resolution for the variation) may apply to the court to have the variation cancelled.  
For this purpose any of the company's share capital held as treasury shares is disregarded.
- (3) If such an application is made, the variation has no effect unless and until it is confirmed by the court.
- (4) Application to the court –
- (a) must be made within 21 days after the date on which the consent was given or the resolution was passed (as the case may be), and
  - (b) may be made on behalf of the shareholders entitled to make the application by such one or more of their number as they may appoint in writing for the purpose.

- (5) The court, after hearing the applicant and any other persons who apply to the court to be heard and appear to the court to be interested in the application, may, if satisfied having regard to all the circumstances of the case that the variation would unfairly prejudice the shareholders of the class represented by the applicant, disallow the variation, and shall if not so satisfied confirm it.  
The decision of the court on any such application is final.
- (6) References in this section to the variation of the rights of holders of a class of shares include references to their abrogation.

**634 Right to object to variation: companies without a share capital**

- (1) This section applies where the rights of any class of members of a company are varied under section 631 (variation of class rights: companies without a share capital).
- (2) Members amounting to not less than 15% of the members of the class in question (being persons who did not consent to or vote in favour of the resolution for the variation) may apply to the court to have the variation cancelled.
- (3) If such an application is made, the variation has no effect unless and until it is confirmed by the court.
- (4) Application to the court must be made within 21 days after the date on which the consent was given or the resolution was passed (as the case may be) and may be made on behalf of the members entitled to make the application by such one or more of their number as they may appoint in writing for the purpose.
- (5) The court, after hearing the applicant and any other persons who apply to the court to be heard and appear to the court to be interested in the application, may, if satisfied having regard to all the circumstances of the case that the variation would unfairly prejudice the members of the class represented by the applicant, disallow the variation, and shall if not so satisfied confirm it.  
The decision of the court on any such application is final.
- (6) References in this section to the variation of the rights of a class of members include references to their abrogation.

**635 Copy of court order to be forwarded to the registrar**

- (1) The company must within 15 days after the making of an order by the court on an application under section 633 or 634 (objection to variation of class rights) forward a copy of the order to the registrar.
- (2) If default is made in complying with this section an offence is committed by—
  - (a) the company, and
  - (b) every officer of the company who is in default.
- (3) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.

*Matters to be notified to the registrar*

**636 Notice of name or other designation of class of shares**

- (1) Where a company assigns a name or other designation, or a new name or other designation, to any class or description of its shares, it must within one month from doing so deliver to the registrar a notice giving particulars of the name or designation so assigned.
- (2) If default is made in complying with this section, an offence is committed by –
  - (a) the company, and
  - (b) every officer of the company who is in default.
- (3) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.

**637 Notice of particulars of variation of rights attached to shares**

- (1) Where the rights attached to any shares of a company are varied, the company must within one month from the date on which the variation is made deliver to the registrar a notice giving particulars of the variation.
- (2) If default is made in complying with this section, an offence is committed by –
  - (a) the company, and
  - (b) every officer of the company who is in default.
- (3) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.

**638 Notice of new class of members**

- (1) If a company not having a share capital creates a new class of members, the company must within one month from the date on which the new class is created deliver to the registrar a notice containing particulars of the rights attached to that class.
- (2) If default is made in complying with this section, an offence is committed by –
  - (a) the company, and
  - (b) every officer of the company who is in default.
- (3) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.

**639 Notice of name or other designation of class of members**

- (1) Where a company not having a share capital assigns a name or other designation, or a new name or other designation, to any class of its members, it must within one month from doing so deliver to the registrar a notice giving particulars of the name or designation so assigned.



- (2) If default is made in complying with this section, an offence is committed by –
  - (a) the company, and
  - (b) every officer of the company who is in default.
- (3) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.

#### **640 Notice of particulars of variation of class rights**

- (1) If the rights of any class of members of a company not having a share capital are varied, the company must within one month from the date on which the variation is made deliver to the registrar a notice containing particulars of the variation.
- (2) If default is made in complying with this section, an offence is committed by –
  - (a) the company, and
  - (b) every officer of the company who is in default.
- (3) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.

### **CHAPTER 10**

#### **REDUCTION OF SHARE CAPITAL**

##### *Introductory*

#### **641 Circumstances in which a company may reduce its share capital**

- (1) A limited company having a share capital may reduce its share capital –
  - (a) in the case of a private company limited by shares, by special resolution supported by a solvency statement (see sections 642 to 644);
  - (b) in any case, by special resolution confirmed by the court (see sections 645 to 651).
- (2) A company may not reduce its capital under subsection (1)(a) if as a result of the reduction there would no longer be any member of the company holding shares other than redeemable shares.
- (3) Subject to that, a company may reduce its share capital under this section in any way.
- (4) In particular, a company may –
  - (a) extinguish or reduce the liability on any of its shares in respect of share capital not paid up, or
  - (b) either with or without extinguishing or reducing liability on any of its shares –
    - (i) cancel any paid-up share capital that is lost or unrepresented by available assets, or

- (ii) repay any paid-up share capital in excess of the company’s wants.
- (5) A special resolution under this section may not provide for a reduction of share capital to take effect later than the date on which the resolution has effect in accordance with this Chapter.
- (6) This Chapter (apart from subsection (5) above) has effect subject to any provision of the company’s articles restricting or prohibiting the reduction of the company’s share capital.

*Private companies: reduction of capital supported by solvency statement*

#### **642 Reduction of capital supported by solvency statement**

- (1) A resolution for reducing share capital of a private company limited by shares is supported by a solvency statement if—
  - (a) the directors of the company make a statement of the solvency of the company in accordance with section 643 (a “solvency statement”) not more than 15 days before the date on which the resolution is passed, and
  - (b) the resolution and solvency statement are registered in accordance with section 644.
- (2) Where the resolution is proposed as a written resolution, a copy of the solvency statement must be sent or submitted to every eligible member at or before the time at which the proposed resolution is sent or submitted to him.
- (3) Where the resolution is proposed at a general meeting, a copy of the solvency statement must be made available for inspection by members of the company throughout that meeting.
- (4) The validity of a resolution is not affected by a failure to comply with subsection (2) or (3).

#### **643 Solvency statement**

- (1) A solvency statement is a statement that each of the directors—
  - (a) has formed the opinion, as regards the company’s situation at the date of the statement, that there is no ground on which the company could then be found to be unable to pay (or otherwise discharge) its debts; and
  - (b) has also formed the opinion—
    - (i) if it is intended to commence the winding up of the company within twelve months of that date, that the company will be able to pay (or otherwise discharge) its debts in full within twelve months of the commencement of the winding up; or
    - (ii) in any other case, that the company will be able to pay (or otherwise discharge) its debts as they fall due during the year immediately following that date.
- (2) In forming those opinions, the directors must take into account all of the company’s liabilities (including any contingent or prospective liabilities).
- (3) The solvency statement must be in the prescribed form and must state—

- (a) the date on which it is made, and
  - (b) the name of each director of the company.
- (4) If the directors make a solvency statement without having reasonable grounds for the opinions expressed in it, and the statement is delivered to the registrar, an offence is committed by every director who is in default.
- (5) A person guilty of an offence under subsection (4) is liable—
- (a) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine (or both);
  - (b) on summary conviction—
    - (i) in England and Wales, to imprisonment for a term not exceeding twelve months or to a fine not exceeding the statutory maximum (or both);
    - (ii) in Scotland or Northern Ireland, to imprisonment for a term not exceeding six months, or to a fine not exceeding the statutory maximum (or both).

#### **644 Registration of resolution and supporting documents**

- (1) Within 15 days after the resolution for reducing share capital is passed the company must deliver to the registrar—
- (a) a copy of the solvency statement, and
  - (b) a statement of capital.
- This is in addition to the copy of the resolution itself that is required to be delivered to the registrar under Chapter 3 of Part 3.
- (2) The statement of capital must state with respect to the company's share capital as reduced by the resolution—
- (a) the total number of shares of the company,
  - (b) the aggregate nominal value of those shares,
  - (c) for each class of shares—
    - (i) prescribed particulars of the rights attached to the shares,
    - (ii) the total number of shares of that class, and
    - (iii) the aggregate nominal value of shares of that class, and
  - (d) the amount paid up and the amount (if any) unpaid on each share (whether on account of the nominal value of the share or by way of premium).
- (3) The registrar must register the documents delivered to him under subsection (1) on receipt.
- (4) The resolution does not take effect until those documents are registered.
- (5) The company must also deliver to the registrar, within 15 days after the resolution is passed, a statement by the directors confirming that the solvency statement was—
- (a) made not more than 15 days before the date on which the resolution was passed, and
  - (b) provided to members in accordance with section 642(2) or (3).
- (6) The validity of a resolution is not affected by—

- (a) a failure to deliver the documents required to be delivered to the registrar under subsection (1) within the time specified in that subsection, or
  - (b) a failure to comply with subsection (5).
- (7) If the company delivers to the registrar a solvency statement that was not provided to members in accordance with section 642(2) or (3), an offence is committed by every officer of the company who is in default.
- (8) If default is made in complying with this section, an offence is committed by –
- (a) the company, and
  - (b) every officer of the company who is in default.
- (9) A person guilty of an offence under subsection (7) or (8) is liable –
- (a) on conviction on indictment, to a fine;
  - (b) on summary conviction, to a fine not exceeding the statutory maximum.

*Reduction of capital confirmed by the court*

**645 Application to court for order of confirmation**

- (1) Where a company has passed a resolution for reducing share capital, it may apply to the court for an order confirming the reduction.
- (2) If the proposed reduction of capital involves either –
  - (a) diminution of liability in respect of unpaid share capital, or
  - (b) the payment to a shareholder of any paid-up share capital,section 646 (creditors entitled to object to reduction) applies unless the court directs otherwise.
- (3) The court may, if having regard to any special circumstances of the case it thinks proper to do so, direct that section 646 is not to apply as regards any class or classes of creditors.
- (4) The court may direct that section 646 is to apply in any other case.

**646 Creditors entitled to object to reduction**

- (1) Where this section applies (see section 645(2) and (4)), every creditor of the company who at the date fixed by the court is entitled to any debt or claim that, if that date were the commencement of the winding up of the company would be admissible in proof against the company, is entitled to object to the reduction of capital.
- (2) The court shall settle a list of creditors entitled to object.
- (3) For that purpose the court –
  - (a) shall ascertain, as far as possible without requiring an application from any creditor, the names of those creditors and the nature and amount of their debts or claims, and
  - (b) may publish notices fixing a day or days within which creditors not entered on the list are to claim to be so entered or are to be excluded from the right of objecting to the reduction of capital.

- (4) If a creditor entered on the list whose debt or claim is not discharged or has not determined does not consent to the reduction, the court may, if it thinks fit, dispense with the consent of that creditor on the company securing payment of his debt or claim.
- (5) For this purpose the debt or claim must be secured by appropriating (as the court may direct) the following amount –
  - (a) if the company admits the full amount of the debt or claim or, though not admitting it, is willing to provide for it, the full amount of the debt or claim;
  - (b) if the company does not admit, and is not willing to provide for, the full amount of the debt or claim, or if the amount is contingent or not ascertained, an amount fixed by the court after the like enquiry and adjudication as if the company were being wound up by the court.

#### **647 Offences in connection with list of creditors**

- (1) If an officer of the company –
  - (a) intentionally or recklessly –
    - (i) conceals the name of a creditor entitled to object to the reduction of capital, or
    - (ii) misrepresents the nature or amount of the debt or claim of a creditor, or
  - (b) is knowingly concerned in any such concealment or misrepresentation, he commits an offence.
- (2) A person guilty of an offence under this section is liable –
  - (a) on conviction on indictment, to a fine;
  - (b) on summary conviction, to a fine not exceeding the statutory maximum.

#### **648 Court order confirming reduction**

- (1) The court may make an order confirming the reduction of capital on such terms and conditions as it thinks fit.
- (2) The court must not confirm the reduction unless it is satisfied, with respect to every creditor of the company who is entitled to object to the reduction of capital that either –
  - (a) his consent to the reduction has been obtained, or
  - (b) his debt or claim has been discharged, or has determined or has been secured.
- (3) Where the court confirms the reduction, it may order the company to publish (as the court directs) the reasons for reduction of capital, or such other information in regard to it as the court thinks expedient with a view to giving proper information to the public, and (if the court thinks fit) the causes that led to the reduction.
- (4) The court may, if for any special reason it thinks proper to do so, make an order directing that the company must, during such period (commencing on or at any time after the date of the order) as is specified in the order, add to its name as its last words the words “and reduced”.

If such an order is made, those words are, until the end of the period specified in the order, deemed to be part of the company's name.

#### **649 Registration of order and statement of capital**

- (1) The registrar, on production of an order of the court confirming the reduction of a company's share capital and the delivery of a copy of the order and of a statement of capital (approved by the court), shall register the order and statement.  
This is subject to section 650 (public company reducing capital below authorised minimum).
- (2) The statement of capital must state with respect to the company's share capital as altered by the order –
  - (a) the total number of shares of the company,
  - (b) the aggregate nominal value of those shares,
  - (c) for each class of shares –
    - (i) prescribed particulars of the rights attached to the shares,
    - (ii) the total number of shares of that class, and
    - (iii) the aggregate nominal value of shares of that class, and
  - (d) the amount paid up and the amount (if any) unpaid on each share (whether on account of the nominal value of the share or by way of premium).
- (3) The resolution for reducing share capital, as confirmed by the court's order, takes effect –
  - (a) in the case of a reduction of share capital that forms part of a compromise or arrangement sanctioned by the court under Part 26 (arrangements and reconstructions) –
    - (i) on delivery of the order and statement of capital to the registrar, or
    - (ii) if the court so orders, on the registration of the order and statement of capital;
  - (b) in any other case, on the registration of the order and statement of capital.
- (4) Notice of the registration of the order and statement of capital must be published in such manner as the court may direct.
- (5) The registrar must certify the registration of the order and statement of capital.
- (6) The certificate –
  - (a) must be signed by the registrar or authenticated by the registrar's official seal, and
  - (b) is conclusive evidence –
    - (i) that the requirements of this Act with respect to the reduction of share capital have been complied with, and
    - (ii) that the company's share capital is as stated in the statement of capital.

*Public company reducing capital below authorised minimum*

**650 Public company reducing capital below authorised minimum**

- (1) This section applies where the court makes an order confirming a reduction of a public company’s capital that has the effect of bringing the nominal value of its allotted share capital below the authorised minimum.
- (2) The registrar must not register the order unless either –
  - (a) the court so directs, or
  - (b) the company is first re-registered as a private company.
- (3) Section 651 provides an expedited procedure for re-registration in these circumstances.

**651 Expedited procedure for re-registration as a private company**

- (1) The court may authorise the company to be re-registered as a private company without its having passed the special resolution required by section 97.
- (2) If it does so, the court must specify in the order the changes to the company’s name and articles to be made in connection with the re-registration.
- (3) The company may then be re-registered as a private company if an application to that effect is delivered to the registrar together with –
  - (a) a copy of the court’s order, and
  - (b) notice of the company’s name, and a copy of the company’s articles, as altered by the court’s order.
- (4) On receipt of such an application the registrar must issue a certificate of incorporation altered to meet the circumstances of the case.
- (5) The certificate must state that it is issued on re-registration and the date on which it is issued.
- (6) On the issue of the certificate –
  - (a) the company by virtue of the issue of the certificate becomes a private company, and
  - (b) the changes in the company’s name and articles take effect.
- (7) The certificate is conclusive evidence that the requirements of this Act as to re-registration have been complied with.

*Effect of reduction of capital*

**652 Liability of members following reduction of capital**

- (1) Where a company’s share capital is reduced a member of the company (past or present) is not liable in respect of any share to any call or contribution exceeding in amount the difference (if any) between –
  - (a) the nominal amount of the share as notified to the registrar in the statement of capital delivered under section 644 or 649, and
  - (b) the amount paid on the share or the reduced amount (if any) which is deemed to have been paid on it, as the case may be.
- (2) This is subject to section 653 (liability to creditor in case of omission from list).

- (3) Nothing in this section affects the rights of the contributories among themselves.

**653 Liability to creditor in case of omission from list of creditors**

- (1) This section applies where, in the case of a reduction of capital confirmed by the court –
- (a) a creditor entitled to object to the reduction of share capital is by reason of his ignorance –
    - (i) of the proceedings for reduction of share capital, or
    - (ii) of their nature and effect with respect to his debt or claim, not entered on the list of creditors, and
  - (b) after the reduction of capital the company is unable to pay the amount of his debt or claim.
- (2) Every person who was a member of the company at the date on which the resolution for reducing capital took effect under section 649(3) is liable to contribute for the payment of the debt or claim an amount not exceeding that which he would have been liable to contribute if the company had commenced to be wound up on the day before that date.
- (3) If the company is wound up, the court on the application of the creditor in question, and proof of ignorance as mentioned in subsection (1)(a), may if it thinks fit –
- (a) settle accordingly a list of persons liable to contribute under this section, and
  - (b) make and enforce calls and orders on them as if they were ordinary contributories in a winding up.
- (4) The reference in subsection (1)(b) to a company being unable to pay the amount of a debt or claim has the same meaning as in section 123 of the Insolvency Act 1986 (c. 45) or Article 103 of the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)).

## CHAPTER 11

### MISCELLANEOUS AND SUPPLEMENTARY PROVISIONS

**654 Treatment of reserve arising from reduction of capital**

- (1) A reserve arising from the reduction of a company's share capital is not distributable, subject to any provision made by order under this section.
- (2) The Secretary of State may by order specify cases in which –
  - (a) the prohibition in subsection (1) does not apply, and
  - (b) the reserve is to be treated for the purposes of Part 23 (distributions) as a realised profit.
- (3) An order under this section is subject to affirmative resolution procedure.

**655 Shares no bar to damages against company**

A person is not debarred from obtaining damages or other compensation from a company by reason only of his holding or having held shares in the company



or any right to apply or subscribe for shares or to be included in the company’s register of members in respect of shares.

**656 Public companies: duty of directors to call meeting on serious loss of capital**

- (1) Where the net assets of a public company are half or less of its called-up share capital, the directors must call a general meeting of the company to consider whether any, and if so what, steps should be taken to deal with the situation.
- (2) They must do so not later than 28 days from the earliest day on which that fact is known to a director of the company.
- (3) The meeting must be convened for a date not later than 56 days from that day.
- (4) If there is a failure to convene a meeting as required by this section, each of the directors of the company who –
  - (a) knowingly authorises or permits the failure, or
  - (b) after the period during which the meeting should have been convened, knowingly authorises or permits the failure to continue,commits an offence.
- (5) A person guilty of an offence under this section is liable –
  - (a) on conviction on indictment, to a fine;
  - (b) on summary conviction, to a fine not exceeding the statutory maximum.
- (6) Nothing in this section authorises the consideration at a meeting convened in pursuance of subsection (1) of any matter that could not have been considered at that meeting apart from this section.

**657 General power to make further provision by regulations**

- (1) The Secretary of State may by regulations modify the following provisions of this Part –
  - sections 552 and 553 (prohibited commissions, discounts and allowances),
  - Chapter 5 (payment for shares),
  - Chapter 6 (public companies: independent valuation of non-cash consideration),
  - Chapter 7 (share premiums),
  - sections 622 to 628 (redenomination of share capital),
  - Chapter 10 (reduction of capital), and
  - section 656 (public companies: duty of directors to call meeting on serious loss of capital).
- (2) The regulations may –
  - (a) amend or repeal any of those provisions, or
  - (b) make such other provision as appears to the Secretary of State appropriate in place of any of those provisions.
- (3) Regulations under this section may make consequential amendments or repeals in other provisions of this Act, or in other enactments.
- (4) Regulations under this section are subject to affirmative resolution procedure.

## PART 18

### ACQUISITION BY LIMITED COMPANY OF ITS OWN SHARES

#### CHAPTER 1

##### GENERAL PROVISIONS

###### *Introductory*

### **658 General rule against limited company acquiring its own shares**

- (1) A limited company must not acquire its own shares, whether by purchase, subscription or otherwise, except in accordance with the provisions of this Part.
- (2) If a company purports to act in contravention of this section—
  - (a) an offence is committed by—
    - (i) the company, and
    - (ii) every officer of the company who is in default, and
  - (b) the purported acquisition is void.
- (3) A person guilty of an offence under this section is liable—
  - (a) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine (or both);
  - (b) on summary conviction—
    - (i) in England and Wales, to imprisonment for a term not exceeding twelve months or a fine not exceeding the statutory maximum (or both);
    - (ii) in Scotland or Northern Ireland, to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum (or both).

### **659 Exceptions to general rule**

- (1) A limited company may acquire any of its own fully paid shares otherwise than for valuable consideration.
- (2) Section 658 does not prohibit—
  - (a) the acquisition of shares in a reduction of capital duly made;
  - (b) the purchase of shares in pursuance of an order of the court under—
    - (i) section 98 (application to court to cancel resolution for re-registration as a private company),
    - (ii) section 721(6) (powers of court on objection to redemption or purchase of shares out of capital),
    - (iii) section 759 (remedial order in case of breach of prohibition of public offers by private company), or
    - (iv) Part 30 (protection of members against unfair prejudice);
  - (c) the forfeiture of shares, or the acceptance of shares surrendered in lieu, in pursuance of the company's articles, for failure to pay any sum payable in respect of the shares.

*Shares held by company's nominee*

**660 Treatment of shares held by nominee**

- (1) This section applies where shares in a limited company –
  - (a) are taken by a subscriber to the memorandum as nominee of the company,
  - (b) are issued to a nominee of the company, or
  - (c) are acquired by a nominee of the company, partly paid up, from a third person.
- (2) For all purposes –
  - (a) the shares are to be treated as held by the nominee on his own account, and
  - (b) the company is to be regarded as having no beneficial interest in them.
- (3) This section does not apply –
  - (a) to shares acquired otherwise than by subscription by a nominee of a public company, where –
    - (i) a 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
    - (ii) the company has a beneficial interest in the shares;
  - (b) to shares acquired by a nominee of the company when the company has no beneficial interest in the shares.

**661 Liability of others where nominee fails to make payment in respect of shares**

- (1) This section applies where shares in a limited company –
  - (a) are taken by a subscriber to the memorandum as nominee of the company,
  - (b) are issued to a nominee of the company, or
  - (c) are acquired by a nominee of the company, partly paid up, from a third person.
- (2) If the nominee, having been called on to pay any amount for the purposes of paying up, or paying any premium on, the shares, fails to pay that amount within 21 days from being called on to do so, then –
  - (a) in the case of shares that he agreed to take as subscriber to the memorandum, the other subscribers to the memorandum, and
  - (b) in any other case, the directors of the company when the shares were issued to or acquired by him,are jointly and severally liable with him to pay that amount.
- (3) If in proceedings for the recovery of an amount under subsection (2) it appears to the court that the subscriber or director –
  - (a) has acted honestly and reasonably, and
  - (b) having regard to all the circumstances of the case, ought fairly to be relieved from liability,the court may relieve him, either wholly or in part, from his liability on such terms as the court thinks fit.

- (4) If a subscriber to a company's memorandum or a director of a company has reason to apprehend that a claim will or might be made for the recovery of any such amount from him –
  - (a) he may apply to the court for relief, and
  - (b) the court has the same power to relieve him as it would have had in proceedings for recovery of that amount.
- (5) This section does not apply to shares acquired by a nominee of the company when the company has no beneficial interest in the shares.

*Shares held by or for public company*

**662 Duty to cancel shares in public company held by or for the company**

- (1) This section applies in the case of a public company –
  - (a) where shares in the company are forfeited, or surrendered to the company in lieu of forfeiture, in pursuance of the articles, for failure to pay any sum payable in respect of the shares;
  - (b) where shares in the company are surrendered to the company in pursuance of section 102C(1)(b) of the Building Societies Act 1986 (c. 53);
  - (c) where shares in the company are acquired by it (otherwise than in accordance with this Part or Part 30 (protection of members against unfair prejudice)) and the company has a beneficial interest in the shares;
  - (d) where a nominee of the company acquires shares in the company from a third party without financial assistance being given directly or indirectly by the company and the company has a beneficial interest in the shares; or
  - (e) where a 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 the shares.
- (2) Unless the shares or any interest of the company in them are previously disposed of, the company must –
  - (a) cancel the shares and diminish the amount of the company's share capital by the nominal value of the shares cancelled, and
  - (b) where the effect is 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.
- (3) It must do so no later than –
  - (a) in a case within subsection (1)(a) or (b), three years from the date of the forfeiture or surrender;
  - (b) in a case within subsection (1)(c) or (d), three years from the date of the acquisition;
  - (c) in a case within subsection (1)(e), one year from the date of the acquisition.
- (4) The directors of the company may take any steps necessary to enable the company to comply with this section, and may do so without complying with the provisions of Chapter 10 of Part 17 (reduction of capital).

See also section 664 (re-registration as private company in consequence of cancellation).

- (5) Neither the company nor, in a case within subsection (1)(d) or (e), the nominee or other shareholder may exercise any voting rights in respect of the shares.
- (6) Any purported exercise of those rights is void.

### **663 Notice of cancellation of shares**

- (1) Where a company cancels shares in order to comply with section 662, it must within one month after the shares are cancelled give notice to the registrar, specifying the shares cancelled.
- (2) The notice must be accompanied by a statement of capital.
- (3) The statement of capital must state with respect to the company's share capital immediately following the cancellation –
  - (a) the total number of shares of the company,
  - (b) the aggregate nominal value of those shares,
  - (c) for each class of shares –
    - (i) prescribed particulars of the rights attached to the shares,
    - (ii) the total number of shares of that class, and
    - (iii) the aggregate nominal value of shares of that class, and
  - (d) the amount paid up and the amount (if any) unpaid on each share (whether on account of the nominal value of the share or by way of premium).
- (4) If default is made in complying with this section, an offence is committed by –
  - (a) the company, and
  - (b) every officer of the company who is in default.
- (5) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.

### **664 Re-registration as private company in consequence of cancellation**

- (1) Where a company is obliged to re-register as a private company to comply with section 662, the directors may resolve that the company should be so re-registered.  
Chapter 3 of Part 3 (resolutions affecting a company's constitution) applies to any such resolution.
- (2) The resolution may make such changes –
  - (a) in the company's name, and
  - (b) in the company's articles,as are necessary in connection with its becoming a private company.
- (3) The application for re-registration must contain a statement of the company's proposed name on re-registration.
- (4) The application must be accompanied by –

- (a) a copy of the resolution (unless a copy has already been forwarded under Chapter 3 of Part 3),
  - (b) a copy of the company's articles as amended by the resolution, and
  - (c) a statement of compliance.
- (5) The statement of compliance required is a statement that the requirements of this section as to re-registration as a private company have been complied with.
- (6) The registrar may accept the statement of compliance as sufficient evidence that the company is entitled to be re-registered as a private company.

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

- (1) If on an application under section 664 the registrar is satisfied that the company is entitled to be re-registered as a private company, the company shall be re-registered accordingly.
- (2) The registrar must issue a certificate of incorporation altered to meet the circumstances of the case.
- (3) The certificate must state that it is issued on re-registration and the date on which it is issued.
- (4) On the issue of the certificate—
- (a) the company by virtue of the issue of the certificate becomes a private company, and
  - (b) the changes in the company's name and articles take effect.
- (5) The certificate is conclusive evidence that the requirements of this Act as to re-registration have been complied with.

**666 Effect of failure to re-register**

- (1) If a public company that is required by section 662 to apply to be re-registered as a private company fails to do so before the end of the period specified in subsection (3) of that section, Chapter 1 of Part 20 (prohibition of public offers by private company) applies to it as if it were a private company.
- (2) Subject to that, the company continues to be treated as a public company until it is so re-registered.

**667 Offence in case of failure to cancel shares or re-register**

- (1) This section applies where a company, when required to do by section 662—
- (a) fails to cancel any shares, or
  - (b) fails to make an application for re-registration as a private company, within the time specified in subsection (3) of that section.
- (2) An offence is committed by—
- (a) the company, and
  - (b) every officer of the company who is in default.
- (3) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for

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

**668 Application of provisions to company re-registering as public company**

- (1) This section applies where, after shares in a private company –
  - (a) are forfeited in pursuance of the company's articles or are surrendered to the company in lieu of forfeiture,
  - (b) are acquired by the company (otherwise than by any of the methods permitted by this Part or Part 30 (protection of members against unfair prejudice)), the company having a beneficial interest in the shares,
  - (c) are acquired by a nominee of the company from a third party without financial assistance being given directly or indirectly by the company, the company having a beneficial interest in the shares, or
  - (d) are acquired by a person with financial assistance given to him, directly or indirectly, by the company for the purpose of or in connection with the acquisition, the company having a beneficial interest in the shares,the company is re-registered as a public company.
- (2) In that case the provisions of sections 662 to 667 apply to the company as if it had been a public company at the time of the forfeiture, surrender or acquisition, subject to the following modification.
- (3) The modification is that the period specified in section 662(3)(a), (b) or (c) (period for complying with obligations under that section) runs from the date of the re-registration of the company as a public company.

**669 Transfer to reserve on acquisition of shares by public company or nominee**

- (1) Where –
  - (a) a public company, or a nominee of a public company, acquires shares in the company, and
  - (b) those shares are shown in a balance sheet of the company as an asset, an amount equal to the value of the shares must be transferred out of profits available for dividend to a reserve fund and is not then available for distribution.
- (2) Subsection (1) applies to an interest in shares as it applies to shares. As it so applies the reference to the value of the shares shall be read as a reference to the value to the company of its interest in the shares.

*Charges of public company on own shares*

**670 Public companies: general rule against lien or charge on own shares**

- (1) A lien or other charge of a public company on its own shares (whether taken expressly or otherwise) is void, except as permitted by this section.
- (2) In the case of any description of company, a charge is permitted if the shares are not fully paid up and the charge is for an amount payable in respect of the shares.
- (3) In the case of a company whose ordinary business –
  - (a) includes the lending of money, or

- (b) consists of the provision of credit or the bailment (in Scotland, hiring) of goods under a hire-purchase agreement, or both, a charge is permitted (whether the shares are fully paid or not) if it arises in connection with a transaction entered into by the company in the ordinary course of that business.
- (4) In the case of a company that has been re-registered as a public company, a charge is permitted if it was in existence immediately before the application for re-registration.

*Supplementary provisions*

**671 Interests to be disregarded in determining whether company has beneficial interest**

In determining for the purposes of this Chapter whether a company has a beneficial interest in shares, there shall be disregarded any such interest as is mentioned in—

- section 672 (residual interest under pension scheme or employees' share scheme),
- section 673 (employer's charges and other rights of recovery), or
- section 674 (rights as personal representative or trustee).

**672 Residual interest under pension scheme or employees' share scheme**

- (1) Where the shares are held on trust for the purposes of a pension scheme or employees' share scheme, there shall be disregarded any residual interest of the company that has not vested in possession.
- (2) A "residual interest" means a right of the company to receive any of the trust property in the event of—
- (a) all the liabilities arising under the scheme having been satisfied or provided for, or
  - (b) the company ceasing to participate in the scheme, or
  - (c) the trust property at any time exceeding what is necessary for satisfying the liabilities arising or expected to arise under the scheme.
- (3) In subsection (2)—
- (a) the reference to a right includes a right dependent on the exercise of a discretion vested by the scheme in the trustee or another person, and
  - (b) the reference to liabilities arising under a scheme includes liabilities that have resulted, or may result, from the exercise of any such discretion.
- (4) For the purposes of this section a residual interest vests in possession—
- (a) in a case within subsection (2)(a), on the occurrence of the event mentioned there (whether or not the amount of the property receivable pursuant to the right is ascertained);
  - (b) in a case within subsection (2)(b) or (c), when the company becomes entitled to require the trustee to transfer to it any of the property receivable pursuant to that right.
- (5) Where by virtue of this section shares are exempt from section 660 or 661 (shares held by company's nominee) at the time they are taken, issued or



acquired but the residual interest in question vests in possession before they are disposed of or fully paid up, those sections apply to the shares as if they had been taken, issued or acquired on the date on which that interest vests in possession.

- (6) Where by virtue of this section shares are exempt from sections 662 to 668 (shares held by or for public company) at the time they are acquired but the residual interest in question vests in possession before they are disposed of, those sections apply to the shares as if they had been acquired on the date on which the interest vests in possession.

### **673 Employer’s charges and other rights of recovery**

- (1) Where the shares are held on trust for the purposes of a pension scheme there shall be disregarded –
- (a) any charge or lien on, or set-off against, any benefit or other right or interest under the scheme for the purpose of enabling the employer or former employer of a member of the scheme to obtain the discharge of a monetary obligation due to him from the member;
  - (b) any right to receive from the trustee of the scheme, or as trustee of the scheme to retain, an amount that can be recovered or retained –
    - (i) under section 61 of the Pension Schemes Act 1993 (c. 48), or otherwise, as reimbursement or partial reimbursement for any contributions equivalent premium paid in connection with the scheme under Part 3 of that Act, or
    - (ii) under section 57 of the Pension Schemes (Northern Ireland) Act 1993 (c. 49), or otherwise, as reimbursement or partial reimbursement for any contributions equivalent premium paid in connection with the scheme under Part 3 of that Act.
- (2) Where the shares are held on trust for the purposes of an employees’ share scheme, there shall be disregarded any charge or lien on, or set-off against, any benefit or other right or interest under the scheme for the purpose of enabling the employer or former employer of a member of the scheme to obtain the discharge of a monetary obligation due to him from the member.

### **674 Rights as personal representative or trustee**

Where the company is a personal representative or trustee, there shall be disregarded any rights that the company has in that capacity including, in particular –

- (a) any right to recover its expenses or be remunerated out of the estate or trust property, and
- (b) any right to be indemnified out of that property for any liability incurred by reason of any act or omission of the company in the performance of its duties as personal representative or trustee.

### **675 Meaning of “pension scheme”**

- (1) In this Chapter “pension scheme” means a scheme for the provision of benefits consisting of or including relevant benefits for or in respect of employees or former employees.
- (2) In subsection (1) “relevant benefits” means any pension, lump sum, gratuity or other like benefit given or to be given on retirement or on death or in

anticipation of retirement or, in connection with past service, after retirement or death.

## **676 Application of provisions to directors**

For the purposes of this Chapter references to “employer” and “employee”, in the context of a pension scheme or employees’ share scheme, shall be read as if a director of a company were employed by it.

## **CHAPTER 2**

### FINANCIAL ASSISTANCE FOR PURCHASE OF OWN SHARES

#### *Introductory*

## **677 Meaning of “financial assistance”**

- (1) In this Chapter “financial assistance” means—
  - (a) financial assistance given by way of gift,
  - (b) financial assistance given—
    - (i) by way of guarantee, security or indemnity (other than an indemnity in respect of the indemnifier’s own neglect or default), or
    - (ii) by way of release or waiver,
  - (c) financial assistance given—
    - (i) by way of a loan or any other agreement under which any of the obligations of the person giving the assistance are to be fulfilled at a time when in accordance with the agreement any obligation of another party to the agreement remains unfulfilled, or
    - (ii) by way of the novation of, or the assignment (in Scotland, assignation) of rights arising under, a loan or such other agreement, or
  - (d) any other financial assistance given by a company where—
    - (i) the net assets of the company are reduced to a material extent by the giving of the assistance, or
    - (ii) the company has no net assets.
- (2) “Net assets” here means the aggregate amount of the company’s assets less the aggregate amount of its liabilities.
- (3) For this purpose a company’s liabilities include—
  - (a) where the company draws up Companies Act individual accounts, any provision of a kind specified for the purposes of this subsection by regulations under section 396, and
  - (b) where the company draws up IAS individual accounts, any provision made in those accounts.

*Circumstances in which financial assistance prohibited*

**678 Assistance for acquisition of shares in public company**

- (1) Where a person is acquiring or proposing to acquire shares in a public company, it is not lawful for that company, or a company that is a subsidiary of that company, to give financial assistance directly or indirectly for the purpose of the acquisition before or at the same time as the acquisition takes place.
- (2) Subsection (1) does not prohibit a company from giving financial assistance for the acquisition of shares in it or its holding company if—
  - (a) the company’s principal purpose in giving the assistance is not to give it for the purpose of any such acquisition, or
  - (b) the giving of the assistance for that purpose is only an incidental part of some larger purpose of the company,and the assistance is given in good faith in the interests of the company.
- (3) Where—
  - (a) a person has acquired shares in a company, and
  - (b) a liability has been incurred (by that or another person) for the purpose of the acquisition,it is not lawful for that company, or a company that is a subsidiary of that company, to give financial assistance directly or indirectly for the purpose of reducing or discharging the liability if, at the time the assistance is given, the company in which the shares were acquired is a public company.
- (4) Subsection (3) does not prohibit a company from giving financial assistance if—
  - (a) the company’s principal purpose in giving the assistance is not to reduce or discharge any liability incurred by a person for the purpose of the acquisition of shares in the company or its holding company, or
  - (b) the reduction or discharge of any such liability is only an incidental part of some larger purpose of the company,and the assistance is given in good faith in the interests of the company.
- (5) This section has effect subject to sections 681 and 682 (unconditional and conditional exceptions to prohibition).

**679 Assistance by public company for acquisition of shares in its private holding company**

- (1) Where a person is acquiring or proposing to acquire shares in a private company, it is not lawful for a public company that is a subsidiary of that company to give financial assistance directly or indirectly for the purpose of the acquisition before or at the same time as the acquisition takes place.
- (2) Subsection (1) does not prohibit a company from giving financial assistance for the acquisition of shares in its holding company if—
  - (a) the company’s principal purpose in giving the assistance is not to give it for the purpose of any such acquisition, or
  - (b) the giving of the assistance for that purpose is only an incidental part of some larger purpose of the company,and the assistance is given in good faith in the interests of the company.

- (3) Where—
- (a) a person has acquired shares in a private company, and
  - (b) a liability has been incurred (by that or another person) for the purpose of the acquisition,
- it is not lawful for a public company that is a subsidiary of that company to give financial assistance directly or indirectly for the purpose of reducing or discharging the liability.
- (4) Subsection (3) does not prohibit a company from giving financial assistance if—
- (a) the company’s principal purpose in giving the assistance is not to reduce or discharge any liability incurred by a person for the purpose of the acquisition of shares in its holding company, or
  - (b) the reduction or discharge of any such liability is only an incidental part of some larger purpose of the company,
- and the assistance is given in good faith in the interests of the company.
- (5) This section has effect subject to sections 681 and 682 (unconditional and conditional exceptions to prohibition).

### **680 Prohibited financial assistance an offence**

- (1) If a company contravenes section 678(1) or (3) or section 679(1) or (3) (prohibited financial assistance) an offence is committed by—
- (a) the company, and
  - (b) every officer of the company who is in default.
- (2) A person guilty of an offence under this section is liable—
- (a) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine (or both);
  - (b) on summary conviction—
    - (i) in England and Wales, to imprisonment for a term not exceeding twelve months or to a fine not exceeding the statutory maximum (or both);
    - (ii) in Scotland or Northern Ireland, to imprisonment for a term not exceeding six months, or to a fine not exceeding the statutory maximum (or both).

#### *Exceptions from prohibition*

### **681 Unconditional exceptions**

- (1) Neither section 678 nor section 679 prohibits a transaction to which this section applies.
- (2) Those transactions are—
- (a) a distribution of the company’s assets by way of—
    - (i) dividend lawfully made, or
    - (ii) distribution in the course of a company’s winding up;
  - (b) an allotment of bonus shares;
  - (c) a reduction of capital under Chapter 10 of Part 17;
  - (d) a redemption of shares under Chapter 3 or a purchase of shares under Chapter 4 of this Part;

- (e) anything done in pursuance of an order of the court under Part 26 (order sanctioning compromise or arrangement with members or creditors);
- (f) anything done under an arrangement made in pursuance of section 110 of the Insolvency Act 1986 (c. 45) or Article 96 of the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)) (liquidator in winding up accepting shares as consideration for sale of company's property);
- (g) anything done under an arrangement made between a company and its creditors that is binding on the creditors by virtue of Part 1 of the Insolvency Act 1986 or Part 2 of the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)).

## 682 Conditional exceptions

- (1) Neither section 678 nor section 679 prohibits a transaction to which this section applies –
  - (a) if the company giving the assistance is a private company, or
  - (b) if the company giving the assistance is a public company and –
    - (i) the company has net assets that are not reduced by the giving of the assistance, or
    - (ii) to the extent that those assets are so reduced, the assistance is provided out of distributable profits.
- (2) The transactions to which this section applies are –
  - (a) where the lending of money is part of the ordinary business of the company, the lending of money in the ordinary course of the company's business;
  - (b) the provision by the company, in good faith in the interests of the company or its holding company, of financial assistance for the purposes of an employees' share scheme;
  - (c) the provision of financial assistance by the company for the purposes of or in connection with anything done by the company (or another company in the same group) for the purpose of enabling or facilitating transactions in shares in the first-mentioned company or its holding company between, and involving the acquisition of beneficial ownership of those shares by –
    - (i) bona fide employees or former employees of that company (or another company in the same group), or
    - (ii) spouses or civil partners, widows, widowers or surviving civil partners, or minor children or step-children of any such employees or former employees;
  - (d) the making by the company of loans to persons (other than directors) employed in good faith by the company with a view to enabling those persons to acquire fully paid shares in the company or its holding company to be held by them by way of beneficial ownership.
- (3) The references in this section to “net assets” are to the amount by which the aggregate of the company's assets exceeds the aggregate of its liabilities.
- (4) For this purpose –
  - (a) the amount of both assets and liabilities shall be taken to be as stated in the company's accounting records immediately before the financial assistance is given, and

- (b) “liabilities” includes any amount retained as reasonably necessary for the purpose of providing for a liability the nature of which is clearly defined and that is either likely to be incurred or certain to be incurred but uncertain as to amount or as to the date on which it will arise.
- (5) For the purposes of subsection (2)(c) a company is in the same group as another company if it is a holding company or subsidiary of that company or a subsidiary of a holding company of that company.

*Supplementary*

**683 Definitions for this Chapter**

- (1) In this Chapter –
- “distributable profits”, in relation to the giving of any financial assistance –
- (a) means those profits out of which the company could lawfully make a distribution equal in value to that assistance, and
- (b) includes, in a case where the financial assistance consists of or includes, or is treated as arising in consequence of, the sale, transfer or other disposition of a non-cash asset, any profit that, if the company were to make a distribution of that character would be available for that purpose (see section 846); and
- “distribution” has the same meaning as in Part 23 (distributions) (see section 829).
- (2) In this Chapter –
- (a) a reference to a person incurring a liability includes his changing his financial position by making an agreement or arrangement (whether enforceable or unenforceable, and whether made on his own account or with any other person) or by any other means, and
- (b) a reference to a company giving financial assistance for the purposes of reducing or discharging a liability incurred by a person for the purpose of the acquisition of shares includes its giving such assistance for the purpose of wholly or partly restoring his financial position to what it was before the acquisition took place.

**CHAPTER 3**

REDEEMABLE SHARES

**684 Power of limited company to issue redeemable shares**

- (1) A limited company having a share capital may issue shares that are to be redeemed or are liable to be redeemed at the option of the company or the shareholder (“redeemable shares”), subject to the following provisions.
- (2) The articles of a private limited company may exclude or restrict the issue of redeemable shares.
- (3) A public limited company may only issue redeemable shares if it is authorised to do so by its articles.

- (4) No redeemable shares may be issued at a time when there are no issued shares of the company that are not redeemable.

#### **685 Terms and manner of redemption**

- (1) The directors of a limited company may determine the terms, conditions and manner of redemption of shares if they are authorised to do so—
  - (a) by the company’s articles, or
  - (b) by a resolution of the company.
- (2) A resolution under subsection (1)(b) may be an ordinary resolution, even though it amends the company’s articles.
- (3) Where the directors are authorised under subsection (1) to determine the terms, conditions and manner of redemption of shares—
  - (a) they must do so before the shares are allotted, and
  - (b) any obligation of the company to state in a statement of capital the rights attached to the shares extends to the terms, conditions and manner of redemption.
- (4) Where the directors are not so authorised, the terms, conditions and manner of redemption of any redeemable shares must be stated in the company’s articles.

#### **686 Payment for redeemable shares**

- (1) Redeemable shares in a limited company may not be redeemed unless they are fully paid.
- (2) The terms of redemption of shares in a limited company may provide that the amount payable on redemption may, by agreement between the company and the holder of the shares, be paid on a date later than the redemption date.
- (3) Unless redeemed in accordance with a provision authorised by subsection (2), the shares must be paid for on redemption.

#### **687 Financing of redemption**

- (1) A private limited company may redeem redeemable shares out of capital in accordance with Chapter 5.
- (2) Subject to that, redeemable shares in a limited company may only be redeemed out of—
  - (a) distributable profits of the company, or
  - (b) the proceeds of a fresh issue of shares made for the purposes of the redemption.
- (3) Any premium payable on redemption of shares in a limited company must be paid out of distributable profits of the company, subject to the following provision.
- (4) If the redeemable shares were issued at a premium, any premium payable on their redemption may be paid out of the proceeds of a fresh issue of shares made for the purposes of the redemption, up to an amount equal to—
  - (a) the aggregate of the premiums received by the company on the issue of the shares redeemed, or

- (b) the current amount of the company's share premium account (including any sum transferred to that account in respect of premiums on the new shares),  
whichever is the less.
- (5) The amount of the company's share premium account is reduced by a sum corresponding (or by sums in the aggregate corresponding) to the amount of any payment made under subsection (4).
- (6) This section is subject to section 735(4) (terms of redemption enforceable in a winding up).

#### **688 Redeemed shares treated as cancelled**

Where shares in a limited company are redeemed –

- (a) the shares are treated as cancelled, and
- (b) the amount of the company's issued share capital is diminished accordingly by the nominal value of the shares redeemed.

#### **689 Notice to registrar of redemption**

- (1) If a limited company redeems any redeemable shares it must within one month after doing so give notice to the registrar, specifying the shares redeemed.
- (2) The notice must be accompanied by a statement of capital.
- (3) The statement of capital must state with respect to the company's share capital immediately following the redemption –
  - (a) the total number of shares of the company,
  - (b) the aggregate nominal value of those shares,
  - (c) for each class of shares –
    - (i) prescribed particulars of the rights attached to the shares,
    - (ii) the total number of shares of that class, and
    - (iii) the aggregate nominal value of shares of that class, and
  - (d) the amount paid up and the amount (if any) unpaid on each share (whether on account of the nominal value of the share or by way of premium).
- (4) If default is made in complying with this section, an offence is committed by –
  - (a) the company, and
  - (b) every officer of the company who is in default.
- (5) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.



## CHAPTER 4

### PURCHASE OF OWN SHARES

#### *General provisions*

#### **690 Power of limited company to purchase own shares**

- (1) A limited company having a share capital may purchase its own shares (including any redeemable shares), subject to—
  - (a) the following provisions of this Chapter, and
  - (b) any restriction or prohibition in the company's articles.
- (2) A limited company may not purchase its own shares if as a result of the purchase there would no longer be any issued shares of the company other than redeemable shares or shares held as treasury shares.

#### **691 Payment for purchase of own shares**

- (1) A limited company may not purchase its own shares unless they are fully paid.
- (2) Where a limited company purchases its own shares, the shares must be paid for on purchase.

#### **692 Financing of purchase of own shares**

- (1) A private limited company may purchase its own shares out of capital in accordance with Chapter 5.
- (2) Subject to that—
  - (a) a limited company may only purchase its own shares out of—
    - (i) distributable profits of the company, or
    - (ii) the proceeds of a fresh issue of shares made for the purpose of financing the purchase, and
  - (b) any premium payable on the purchase by a limited company of its own shares must be paid out of distributable profits of the company, subject to subsection (3).
- (3) If the shares to be purchased were issued at a premium, any premium payable on their purchase by the company may be paid out of the proceeds of a fresh issue of shares made for the purpose of financing the purchase, up to an amount equal to—
  - (a) the aggregate of the premiums received by the company on the issue of the shares purchased, or
  - (b) the current amount of the company's share premium account (including any sum transferred to that account in respect of premiums on the new shares),whichever is the less.
- (4) The amount of the company's share premium account is reduced by a sum corresponding (or by sums in the aggregate corresponding) to the amount of any payment made under subsection (3).
- (5) This section has effect subject to section 735(4) (terms of purchase enforceable in a winding up).

*Authority for purchase of own shares*

**693 Authority for purchase of own shares**

- (1) A limited company may only purchase its own shares –
  - (a) by an off-market purchase, in pursuance of a contract approved in advance in accordance with section 694;
  - (b) by a market purchase, authorised in accordance with section 701.
- (2) A purchase is “off-market” if the shares either –
  - (a) are purchased otherwise than on a recognised investment exchange, or
  - (b) are purchased on a recognised investment exchange but are not subject to a marketing arrangement on the exchange.
- (3) For this purpose a company’s shares are subject to a marketing arrangement on a recognised investment exchange if –
  - (a) they are listed under Part 6 of the Financial Services and Markets Act 2000 (c. 8), or
  - (b) the company has been afforded facilities for dealings in the shares to take place on the exchange –
    - (i) without prior permission for individual transactions from the authority governing that investment exchange, and
    - (ii) without limit as to the time during which those facilities are to be available.
- (4) A purchase is a “market purchase” if it is made on a recognised investment exchange and is not an off-market purchase by virtue of subsection (2)(b).
- (5) In this section “recognised investment exchange” means a recognised investment exchange (within the meaning of Part 18 of the Financial Services and Markets Act 2000) other than an overseas exchange (within the meaning of that Part).

*Authority for off-market purchase*

**694 Authority for off-market purchase**

- (1) A company may only make an off-market purchase of its own shares in pursuance of a contract approved prior to the purchase in accordance with this section.
- (2) Either –
  - (a) the terms of the contract must be authorised by a special resolution of the company before the contract is entered into, or
  - (b) the contract must provide that no shares may be purchased in pursuance of the contract until its terms have been authorised by a special resolution of the company.
- (3) The contract may be a contract, entered into by the company and relating to shares in the company, that does not amount to a contract to purchase the shares but under which the company may (subject to any conditions) become entitled or obliged to purchase the shares.
- (4) The authority conferred by a resolution under this section may be varied, revoked or from time to time renewed by a special resolution of the company.

- (5) In the case of a public company a resolution conferring, varying or renewing authority must specify a date on which the authority is to expire, which must not be later than 18 months after the date on which the resolution is passed.
- (6) A resolution conferring, varying, revoking or renewing authority under this section is subject to—
  - section 695 (exercise of voting rights), and
  - section 696 (disclosure of details of contract).

**695 Resolution authorising off-market purchase: exercise of voting rights**

- (1) This section applies to a resolution to confer, vary, revoke or renew authority for the purposes of section 694 (authority for off-market purchase of own shares).
- (2) Where the resolution is proposed as a written resolution, a member who holds shares to which the resolution relates is not an eligible member.
- (3) Where the resolution is proposed at a meeting of the company, it is not effective if—
  - (a) any member of the company holding shares to which the resolution relates exercises the voting rights carried by any of those shares in voting on the resolution, and
  - (b) the resolution would not have been passed if he had not done so.
- (4) For this purpose—
  - (a) a member who holds shares to which the resolution relates is regarded as exercising the voting rights carried by those shares not only if he votes in respect of them on a poll on the question whether the resolution shall be passed, but also if he votes on the resolution otherwise than on a poll;
  - (b) any member of the company may demand a poll on that question;
  - (c) a vote and a demand for a poll by a person as proxy for a member are the same respectively as a vote and a demand by the member.

**696 Resolution authorising off-market purchase: disclosure of details of contract**

- (1) This section applies in relation to a resolution to confer, vary, revoke or renew authority for the purposes of section 694 (authority for off-market purchase of own shares).
- (2) A copy of the contract (if it is in writing) or a memorandum setting out its terms (if it is not) must be made available to members—
  - (a) in the case of a written resolution, by being sent or submitted to every eligible member at or before the time at which the proposed resolution is sent or submitted to him;
  - (b) in the case of a resolution at a meeting, by being made available for inspection by members of the company both—
    - (i) at the company's registered office for not less than 15 days ending with the date of the meeting, and
    - (ii) at the meeting itself.
- (3) A memorandum of contract terms so made available must include the names of the members holding shares to which the contract relates.

- (4) A copy of the contract so made available must have annexed to it a written memorandum specifying such of those names as do not appear in the contract itself.
- (5) The resolution is not validly passed if the requirements of this section are not complied with

**697 Variation of contract for off-market purchase**

- (1) A company may only agree to a variation of a contract authorised under section 694 (authority for off-market purchase) if the variation is approved in advance in accordance with this section.
- (2) The terms of the variation must be authorised by a special resolution of the company before it is agreed to.
- (3) That authority may be varied, revoked or from time to time renewed by a special resolution of the company.
- (4) In the case of a public company a resolution conferring, varying or renewing authority must specify a date on which the authority is to expire, which must not be later than 18 months after the date on which the resolution is passed.
- (5) A resolution conferring, varying, revoking or renewing authority under this section is subject to –
  - section 698 (exercise of voting rights), and
  - section 699 (disclosure of details of variation).

**698 Resolution authorising variation: exercise of voting rights**

- (1) This section applies to a resolution to confer, vary, revoke or renew authority for the purposes of section 697 (variation of contract for off-market purchase of own shares).
- (2) Where the resolution is proposed as a written resolution, a member who holds shares to which the resolution relates is not an eligible member.
- (3) Where the resolution is proposed at a meeting of the company, it is not effective if –
  - (a) any member of the company holding shares to which the resolution relates exercises the voting rights carried by any of those shares in voting on the resolution, and
  - (b) the resolution would not have been passed if he had not done so.
- (4) For this purpose –
  - (a) a member who holds shares to which the resolution relates is regarded as exercising the voting rights carried by those shares not only if he votes in respect of them on a poll on the question whether the resolution shall be passed, but also if he votes on the resolution otherwise than on a poll;
  - (b) any member of the company may demand a poll on that question;
  - (c) a vote and a demand for a poll by a person as proxy for a member are the same respectively as a vote and a demand by the member.

**699 Resolution authorising variation: disclosure of details of variation**

- (1) This section applies in relation to a resolution under section 697 (variation of contract for off-market purchase of own shares).
- (2) A copy of the proposed variation (if it is in writing) or a written memorandum giving details of the proposed variation (if it is not) must be made available to members –
  - (a) in the case of a written resolution, by being sent or submitted to every eligible member at or before the time at which the proposed resolution is sent or submitted to him;
  - (b) in the case of a resolution at a meeting, by being made available for inspection by members of the company both –
    - (i) at the company's registered office for not less than 15 days ending with the date of the meeting, and
    - (ii) at the meeting itself.
- (3) There must also be made available as mentioned in subsection (2) a copy of the original contract or, as the case may be, a memorandum of its terms, together with any variations previously made.
- (4) A memorandum of the proposed variation so made available must include the names of the members holding shares to which the variation relates.
- (5) A copy of the proposed variation so made available must have annexed to it a written memorandum specifying such of those names as do not appear in the variation itself.
- (6) The resolution is not validly passed if the requirements of this section are not complied with.

**700 Release of company's rights under contract for off-market purchase**

- (1) An agreement by a company to release its rights under a contract approved under section 694 (authorisation of off-market purchase) is void unless the terms of the release agreement are approved in advance in accordance with this section.
- (2) The terms of the proposed agreement must be authorised by a special resolution of the company before the agreement is entered into.
- (3) That authority may be varied, revoked or from time to time renewed by a special resolution of the company.
- (4) In the case of a public company a resolution conferring, varying or renewing authority must specify a date on which the authority is to expire, which must not be later than 18 months after the date on which the resolution is passed.
- (5) The provisions of –
  - section 698 (exercise of voting rights), and
  - section 699 (disclosure of details of variation),apply to a resolution authorising a proposed release agreement as they apply to a resolution authorising a proposed variation.

*Authority for market purchase*

**701 Authority for market purchase**

- (1) A company may only make a market purchase of its own shares if the purchase has first been authorised by a resolution of the company.
- (2) That authority –
  - (a) may be general or limited to the purchase of shares of a particular class or description, and
  - (b) may be unconditional or subject to conditions.
- (3) The authority must –
  - (a) specify the maximum number of shares authorised to be acquired, and
  - (b) determine both the maximum and minimum prices that may be paid for the shares.
- (4) The authority may be varied, revoked or from time to time renewed by a resolution of the company.
- (5) A resolution conferring, varying or renewing authority must specify a date on which it is to expire, which must not be later than 18 months after the date on which the resolution is passed.
- (6) A company may make a purchase of its own shares after the expiry of the time limit specified if –
  - (a) the contract of purchase was concluded before the authority expired, and
  - (b) the terms of the authority permitted the company to make a contract of purchase that would or might be executed wholly or partly after its expiration.
- (7) A resolution to confer or vary authority under this section may determine either or both the maximum and minimum price for purchase by –
  - (a) specifying a particular sum, or
  - (b) providing a basis or formula for calculating the amount of the price (but without reference to any person’s discretion or opinion).
- (8) Chapter 3 of Part 3 (resolutions affecting a company’s constitution) applies to a resolution under this section.

*Supplementary provisions*

**702 Copy of contract or memorandum to be available for inspection**

- (1) This section applies where a company has entered into –
  - (a) a contract approved under section 694 (authorisation of contract for off-market purchase), or
  - (b) a contract for a purchase authorised under section 701 (authorisation of market purchase).
- (2) The company must keep available for inspection –
  - (a) a copy of the contract, or
  - (b) if the contract is not in writing, a written memorandum setting out its terms.

- (3) The copy or memorandum must be kept available for inspection from the conclusion of the contract until the end of the period of ten years beginning with—
  - (a) the date on which the purchase of all the shares in pursuance of the contract is completed, or
  - (b) the date on which the contract otherwise determines.
- (4) The copy or memorandum must be kept available for inspection—
  - (a) at the company’s registered office, or
  - (b) at a place specified in regulations under section 1136.
- (5) The company must give notice to the registrar—
  - (a) of the place at which the copy or memorandum is kept available for inspection, and
  - (b) of any change in that place,unless it has at all times been kept at the company’s registered office.
- (6) Every copy or memorandum required to be kept under this section must be kept open to inspection without charge—
  - (a) by any member of the company, and
  - (b) in the case of a public company, by any other person.
- (7) The provisions of this section apply to a variation of a contract as they apply to the original contract.

### **703 Enforcement of right to inspect copy or memorandum**

- (1) If default is made in complying with section 702(2), (3) or (4) or default is made for 14 days in complying with section 702(5), or an inspection required under section 702(6) is refused, an offence is committed by—
  - (a) the company, and
  - (b) every officer of the company who is in default.
- (2) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.
- (3) In the case of refusal of an inspection required under section 702(6) the court may by order compel an immediate inspection.

### **704 No assignment of company’s right to purchase own shares**

The rights of a company under a contract authorised under—

- (a) section 694 (authority for off-market purchase), or
- (b) section 701 (authority for market purchase)

are not capable of being assigned.

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

- (1) A payment made by a company in consideration of—
  - (a) acquiring any right with respect to the purchase of its own shares in pursuance of a contingent purchase contract approved under section 694 (authorisation of off-market purchase),

- (b) the variation of any contract approved under that section, or
- (c) the release of any of the company's obligations with respect to the purchase of any of its own shares under a contract –
  - (i) approved under section 694, or
  - (ii) authorised under section 701 (authorisation of market purchase),

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

- (2) If this requirement is not met in relation to a contract, then –
  - (a) in a case within subsection (1)(a), no purchase by the company of its own shares in pursuance of that contract may be made under this Chapter;
  - (b) in a case within subsection (1)(b), no such purchase following the variation may be made under this Chapter;
  - (c) in a case within subsection (1)(c), the purported release is void.

#### **706 Treatment of shares purchased**

Where a limited company makes a purchase of its own shares in accordance with this Chapter, then –

- (a) if section 724 (treasury shares) applies, the shares may be held and dealt with in accordance with Chapter 6;
- (b) if that section does not apply –
  - (i) the shares are treated as cancelled, and
  - (ii) the amount of the company's issued share capital is diminished accordingly by the nominal value of the shares cancelled.

#### **707 Return to registrar of purchase of own shares**

- (1) Where a company purchases shares under this Chapter, it must deliver a return to the registrar within the period of 28 days beginning with the date on which the shares are delivered to it.
- (2) The return must distinguish –
  - (a) shares in relation to which section 724 (treasury shares) applies and shares in relation to which that section does not apply, and
  - (b) shares in relation to which that section applies –
    - (i) that are cancelled forthwith (under section 729 (cancellation of treasury shares)), and
    - (ii) that are not so cancelled.
- (3) The return must state, with respect to shares of each class purchased –
  - (a) the number and nominal value of the shares, and
  - (b) the date on which they were delivered to the company.
- (4) In the case of a public company the return must also state –
  - (a) the aggregate amount paid by the company for the shares, and
  - (b) the maximum and minimum prices paid in respect of shares of each class purchased.
- (5) Particulars of shares delivered to the company on different dates and under different contracts may be included in a single return.



In such a case the amount required to be stated under subsection (4)(a) is the aggregate amount paid by the company for all the shares to which the return relates.

- (6) If default is made in complying with this section an offence is committed by every officer of the company who is in default.
- (7) A person guilty of an offence under this section is liable—
  - (a) on conviction on indictment, to a fine;
  - (b) on summary conviction to a fine not exceeding the statutory maximum and, for continued contravention, a daily default fine not exceeding one-tenth of the statutory maximum.

#### **708 Notice to registrar of cancellation of shares**

- (1) If on the purchase by a company of any of its own shares in accordance with this Part—
  - (a) section 724 (treasury shares) does not apply (so that the shares are treated as cancelled), or
  - (b) that section applies but the shares are cancelled forthwith (under section 729 (cancellation of treasury shares)),the company must give notice of cancellation to the registrar, within the period of 28 days beginning with the date on which the shares are delivered to it, specifying the shares cancelled.
- (2) The notice must be accompanied by a statement of capital.
- (3) The statement of capital must state with respect to the company's share capital immediately following the cancellation—
  - (a) the total number of shares of the company,
  - (b) the aggregate nominal value of those shares,
  - (c) for each class of shares—
    - (i) prescribed particulars of the rights attached to the shares,
    - (ii) the total number of shares of that class, and
    - (iii) the aggregate nominal value of shares of that class, and
  - (d) the amount paid up and the amount (if any) unpaid on each share (whether on account of the nominal value of the share or by way of premium).
- (4) If default is made in complying with this section, an offence is committed by—
  - (a) the company, and
  - (b) every officer of the company who is in default.
- (5) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.

## CHAPTER 5

### REDEMPTION OR PURCHASE BY PRIVATE COMPANY OUT OF CAPITAL

#### *Introductory*

#### **709 Power of private limited company to redeem or purchase own shares out of capital**

- (1) A private limited company may in accordance with this Chapter, but subject to any restriction or prohibition in the company's articles, make a payment in respect of the redemption or purchase of its own shares otherwise than out of distributable profits or the proceeds of a fresh issue of shares.
- (2) References below in this Chapter to payment out of capital are to any payment so made, whether or not it would be regarded apart from this section as a payment out of capital.

#### *The permissible capital payment*

#### **710 The permissible capital payment**

- (1) The payment that may, in accordance with this Chapter, be made by a company out of capital in respect of the redemption or purchase of its own shares is such amount as, after applying for that purpose—
  - (a) any available profits of the company, and
  - (b) the proceeds of any fresh issue of shares made for the purposes of the redemption or purchase,
 is required to meet the price of redemption or purchase.
- (2) That is referred to below in this Chapter as “the permissible capital payment” for the shares.

#### **711 Available profits**

- (1) For the purposes of this Chapter the available profits of the company, in relation to the redemption or purchase of any shares, are the profits of the company that are available for distribution (within the meaning of Part 23).
- (2) But the question whether a company has any profits so available, and the amount of any such profits, shall be determined in accordance with section 712 instead of in accordance with sections 836 to 842 in that Part.

#### **712 Determination of available profits**

- (1) The available profits of the company are determined as follows.
- (2) First, determine the profits of the company by reference to the following items as stated in the relevant accounts—
  - (a) profits, losses, assets and liabilities,
  - (b) provisions of the following kinds—
    - (i) where the relevant accounts are Companies Act accounts, provisions of a kind specified for the purposes of this subsection by regulations under section 396;

- (ii) where the relevant accounts are IAS accounts, provisions of any kind;
  - (c) share capital and reserves (including undistributable reserves).
- (3) Second, reduce the amount so determined by the amount of –
  - (a) any distribution lawfully made by the company, and
  - (b) any other relevant payment lawfully made by the company out of distributable profits,after the date of the relevant accounts and before the end of the relevant period.
- (4) For this purpose “other relevant payment lawfully made” includes –
  - (a) financial assistance lawfully given out of distributable profits in accordance with Chapter 2,
  - (b) payments lawfully made out of distributable profits in respect of the purchase by the company of any shares in the company, and
  - (c) payments of any description specified in section 705 (payments other than purchase price to be made out of distributable profits) lawfully made by the company.
- (5) The resulting figure is the amount of available profits.
- (6) For the purposes of this section “the relevant accounts” are any accounts that –
  - (a) are prepared as at a date within the relevant period, and
  - (b) are such as to enable a reasonable judgment to be made as to the amounts of the items mentioned in subsection (2).
- (7) In this section “the relevant period” means the period of three months ending with the date on which the directors’ statement is made in accordance with section 714.

*Requirements for payment out of capital*

**713 Requirements for payment out of capital**

- (1) A payment out of capital by a private company for the redemption or purchase of its own shares is not lawful unless the requirements of the following sections are met –
  - section 714 (directors’ statement and auditor’s report);
  - section 716 (approval by special resolution);
  - section 719 (public notice of proposed payment);
  - section 720 (directors’ statement and auditor’s report to be available for inspection).
- (2) This is subject to any order of the court under section 721 (power of court to extend period for compliance on application by persons objecting to payment).

**714 Directors’ statement and auditor’s report**

- (1) The company’s directors must make a statement in accordance with this section.
- (2) The statement must specify the amount of the permissible capital payment for the shares in question.

- (3) It must state that, having made full inquiry into the affairs and prospects of the company, the directors have formed the opinion –
- (a) as regards its initial situation immediately following the date on which the payment out of capital is proposed to be made, that there will be no grounds on which the company could then be found unable to pay its debts, and
  - (b) as regards its prospects for the year immediately following that date, that having regard to –
    - (i) their intentions with respect to the management of the company’s business during that year, and
    - (ii) the amount and character of the financial resources that will in their view be available to the company during that year,
 the company will be able to continue to carry on business as a going concern (and will accordingly be able to pay its debts as they fall due) throughout that year.
- (4) In forming their opinion for the purposes of subsection (3)(a), the directors must take into account all of the company’s liabilities (including any contingent or prospective liabilities).
- (5) The directors’ statement must be in the prescribed form and must contain such information with respect to the nature of the company’s business as may be prescribed.
- (6) It must in addition have annexed to it a report addressed to the directors by the company’s auditor stating that –
- (a) he has inquired into the company’s state of affairs,
  - (b) the amount specified in the statement as the permissible capital payment for the shares in question is in his view properly determined in accordance with sections 710 to 712, and
  - (c) he is not aware of anything to indicate that the opinion expressed by the directors in their statement as to any of the matters mentioned in subsection (3) above is unreasonable in all the circumstances.

#### **715 Directors’ statement: offence if no reasonable grounds for opinion**

- (1) If the directors make a statement under section 714 without having reasonable grounds for the opinion expressed in it, an offence is committed by every director who is in default.
- (2) A person guilty of an offence under this section is liable –
- (a) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine (or both);
  - (b) on summary conviction –
    - (i) in England and Wales, to imprisonment for a term not exceeding twelve months or a fine not exceeding the statutory maximum (or both);
    - (ii) in Scotland or Northern Ireland, to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum (or both).

**716 Payment to be approved by special resolution**

- (1) The payment out of capital must be approved by a special resolution of the company.
- (2) The resolution must be passed on, or within the week immediately following, the date on which the directors make the statement required by section 714.
- (3) A resolution under this section is subject to—
  - section 717 (exercise of voting rights), and
  - section 718 (disclosure of directors' statement and auditors' report).

**717 Resolution authorising payment: exercise of voting rights**

- (1) This section applies to a resolution under section 716 (authority for payment out of capital for redemption or purchase of own shares).
- (2) Where the resolution is proposed as a written resolution, a member who holds shares to which the resolution relates is not an eligible member.
- (3) Where the resolution is proposed at a meeting of the company, it is not effective if—
  - (a) any member of the company holding shares to which the resolution relates exercises the voting rights carried by any of those shares in voting on the resolution, and
  - (b) the resolution would not have been passed if he had not done so.
- (4) For this purpose—
  - (a) a member who holds shares to which the resolution relates is regarded as exercising the voting rights carried by those shares not only if he votes in respect of them on a poll on the question whether the resolution shall be passed, but also if he votes on the resolution otherwise than on a poll;
  - (b) any member of the company may demand a poll on that question;
  - (c) a vote and a demand for a poll by a person as proxy for a member are the same respectively as a vote and a demand by the member.

**718 Resolution authorising payment: disclosure of directors' statement and auditor's report**

- (1) This section applies to a resolution under section 716 (resolution authorising payment out of capital for redemption or purchase of own shares).
- (2) A copy of the directors' statement and auditor's report under section 714 must be made available to members—
  - (a) in the case of a written resolution, by being sent or submitted to every eligible member at or before the time at which the proposed resolution is sent or submitted to him;
  - (b) in the case of a resolution at a meeting, by being made available for inspection by members of the company at the meeting.
- (3) The resolution is ineffective if this requirement is not complied with.

### **719 Public notice of proposed payment**

- (1) Within the week immediately following the date of the resolution under section 716 the company must cause to be published in the Gazette a notice—
  - (a) stating that the company has approved a payment out of capital for the purpose of acquiring its own shares by redemption or purchase or both (as the case may be),
  - (b) specifying—
    - (i) the amount of the permissible capital payment for the shares in question, and
    - (ii) the date of the resolution,
  - (c) stating where the directors' statement and auditor's report required by section 714 are available for inspection, and
  - (d) stating that any creditor of the company may at any time within the five weeks immediately following the date of the resolution apply to the court under section 721 for an order preventing the payment.
- (2) Within the week immediately following the date of the resolution the company must also either—
  - (a) cause a notice to the same effect as that required by subsection (1) to be published in an appropriate national newspaper, or
  - (b) give notice in writing to that effect to each of its creditors.
- (3) "An appropriate national newspaper" means a newspaper circulating throughout the part of the United Kingdom in which the company is registered.
- (4) Not later than the day on which the company—
  - (a) first publishes the notice required by subsection (1), or
  - (b) if earlier, first publishes or gives the notice required by subsection (2),the company must deliver to the registrar a copy of the directors' statement and auditor's report required by section 714.

### **720 Directors' statement and auditor's report to be available for inspection**

- (1) The directors' statement and auditor's report must be kept available for inspection throughout the period—
  - (a) beginning with the day on which the company—
    - (i) first publishes the notice required by section 719(1), or
    - (ii) if earlier, first publishes or gives the notice required by section 719(2), and
  - (b) ending five weeks after the date of the resolution for payment out of capital.
- (2) They must be kept available for inspection—
  - (a) at the company's registered office, or
  - (b) at a place specified in regulations under section 1136.
- (3) The company must give notice to the registrar—
  - (a) of the place at which the statement and report are kept available for inspection, and
  - (b) of any change in that place,unless they have at all times been kept at the company's registered office.

- (4) They must be open to the inspection of any member or creditor of the company without charge.
- (5) If default is made for 14 days in complying with subsection (3), or an inspection under subsection (4) is refused, an offence is committed by –
  - (a) the company, and
  - (b) every officer of the company who is in default.
- (6) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.
- (7) In the case of a refusal of an inspection required by subsection (4), the court may by order compel an immediate inspection.

*Objection to payment by members or creditors*

**721 Application to court to cancel resolution**

- (1) Where a private company passes a special resolution approving a payment out of capital for the redemption or purchase of any of its shares –
  - (a) any member of the company (other than one who consented to or voted in favour of the resolution), and
  - (b) any creditor of the company,may apply to the court for the cancellation of the resolution.
- (2) The application –
  - (a) must be made within five weeks after the passing of the resolution, and
  - (b) may be made on behalf of the persons entitled to make it by such one or more of their number as they may appoint in writing for the purpose.
- (3) On an application under this section the court may if it thinks fit –
  - (a) adjourn the proceedings in order that an arrangement may be made to the satisfaction of the court –
    - (i) for the purchase of the interests of dissentient members, or
    - (ii) for the protection of dissentient creditors, and
  - (b) give such directions and make such orders as it thinks expedient for facilitating or carrying into effect any such arrangement.
- (4) Subject to that, the court must make an order either cancelling or confirming the resolution, and may do so on such terms and conditions as it thinks fit.
- (5) If the court confirms the resolution, it may by order alter or extend any date or period of time specified –
  - (a) in the resolution, or
  - (b) in any provision of this Chapter applying to the redemption or purchase to which the resolution relates.
- (6) The court's order may, if the court thinks fit –
  - (a) provide for the purchase by the company of the shares of any of its members and for the reduction accordingly of the company's capital, and
  - (b) make any alteration in the company's articles that may be required in consequence of that provision.

- (7) The court's order may, if the court thinks fit, require the company not to make any, or any specified, amendments of its articles without the leave of the court.

## **722 Notice to registrar of court application or order**

- (1) On making an application under section 721 (application to court to cancel resolution) the applicants, or the person making the application on their behalf, must immediately give notice to the registrar.  
This is without prejudice to any provision of rules of court as to service of notice of the application.
- (2) On being served with notice of any such application, the company must immediately give notice to the registrar.
- (3) Within 15 days of the making of the court's order on the application, or such longer period as the court may at any time direct, the company must deliver to the registrar a copy of the order.
- (4) If a company fails to comply with subsection (2) or (3) an offence is committed by –
- (a) the company, and
  - (b) every officer of the company who is in default.
- (5) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.

### *Supplementary provisions*

## **723 When payment out of capital to be made**

- (1) The payment out of capital must be made –
- (a) no earlier than five weeks after the date on which the resolution under section 716 is passed, and
  - (b) no more than seven weeks after that date.
- (2) This is subject to any exercise of the court's powers under section 721(5) (power to alter or extend time where resolution confirmed after objection).

## **CHAPTER 6**

### TREASURY SHARES

## **724 Treasury shares**

- (1) This section applies where –
- (a) a limited company makes a purchase of its own shares in accordance with Chapter 4,
  - (b) the purchase is made out of distributable profits, and
  - (c) the shares are qualifying shares.
- (2) For this purpose “qualifying shares” means shares that –



- (a) are included in the official list in accordance with the provisions of Part 6 of the Financial Services and Markets Act 2000 (c. 8),
- (b) are traded on the market known as the Alternative Investment Market established under the rules of London Stock Exchange plc,
- (c) are officially listed in an EEA State, or
- (d) are traded on a regulated market.

In paragraph (a) “the official list” has the meaning given in section 103(1) of the Financial Services and Markets Act 2000.

- (3) Where this section applies the company may –
  - (a) hold the shares (or any of them), or
  - (b) deal with any of them, at any time, in accordance with section 727 or 729.
- (4) Where shares are held by the company, the company must be entered in its register of members as the member holding the shares.
- (5) In the Companies Acts references to a company holding shares as treasury shares are to the company holding shares that –
  - (a) were (or are treated as having been) purchased by it in circumstances in which this section applies, and
  - (b) have been held by the company continuously since they were so purchased (or treated as purchased).

#### **725 Treasury shares: maximum holdings**

- (1) Where a company has shares of only one class, the aggregate nominal value of shares held as treasury shares must not at any time exceed 10% of the nominal value of the issued share capital of the company at that time.
- (2) Where the share capital of a company is divided into shares of different classes, the aggregate nominal value of the shares of any class held as treasury shares must not at any time exceed 10% of the nominal value of the issued share capital of the shares of that class at that time.
- (3) If subsection (1) or (2) is contravened by a company, the company must dispose of or cancel the excess shares, in accordance with section 727 or 729, before the end of the period of twelve months beginning with the date on which that contravention occurs.

The “excess shares” means such number of the shares held by the company as treasury shares at the time in question as resulted in the limit being exceeded.
- (4) Where a company purchases qualifying shares out of distributable profits in accordance with section 724, a contravention by the company of subsection (1) or (2) above does not render the acquisition void under section 658 (general rule against limited company acquiring its own shares).

#### **726 Treasury shares: exercise of rights**

- (1) This section applies where shares are held by a company as treasury shares.
- (2) The company must not exercise any right in respect of the treasury shares, and any purported exercise of such a right is void.

This applies, in particular, to any right to attend or vote at meetings.

- (3) No dividend may be paid, and no other distribution (whether in cash or otherwise) of the company's assets (including any distribution of assets to members on a winding up) may be made to the company, in respect of the treasury shares.
- (4) Nothing in this section prevents –
  - (a) an allotment of shares as fully paid bonus shares in respect of the treasury shares, or
  - (b) the payment of any amount payable on the redemption of the treasury shares (if they are redeemable shares).
- (5) Shares allotted as fully paid bonus shares in respect of the treasury shares are treated as if purchased by the company, at the time they were allotted, in circumstances in which section 724(1) (treasury shares) applied.

#### **727 Treasury shares: disposal**

- (1) Where shares are held as treasury shares, the company may at any time –
  - (a) sell the shares (or any of them) for a cash consideration, or
  - (b) transfer the shares (or any of them) for the purposes of or pursuant to an employees' share scheme.
- (2) In subsection (1)(a) "cash consideration" means –
  - (a) cash received by the company, or
  - (b) a cheque received by the company in good faith that the directors have no reason for suspecting will not be paid, or
  - (c) a release of a liability of the company for a liquidated sum, or
  - (d) an undertaking to pay cash to the company on or before a date not more than 90 days after the date on which the company agrees to sell the shares, or
  - (e) payment by any other means giving rise to a present or future entitlement (of the company or a person acting on the company's behalf) to a payment, or credit equivalent to payment, in cash.

For this purpose "cash" includes foreign currency.

- (3) The Secretary of State may by order provide that particular means of payment specified in the order are to be regarded as falling within subsection (2)(e).
- (4) If the company receives a notice under section 979 (takeover offers: right of offeror to buy out minority shareholders) that a person desires to acquire shares held by the company as treasury shares, the company must not sell or transfer the shares to which the notice relates except to that person.
- (5) An order under this section is subject to negative resolution procedure.

#### **728 Treasury shares: notice of disposal**

- (1) Where shares held by a company as treasury shares –
  - (a) are sold, or
  - (b) are transferred for the purposes of an employees' share scheme,
 the company must deliver a return to the registrar not later than 28 days after the shares are disposed of.
- (2) The return must state with respect to shares of each class disposed of –
  - (a) the number and nominal value of the shares, and

- (b) the date on which they were disposed of.
- (3) Particulars of shares disposed of on different dates may be included in a single return.
- (4) If default is made in complying with this section an offence is committed by every officer of the company who is in default.
- (5) A person guilty of an offence under this section is liable –
  - (a) on conviction on indictment, to a fine;
  - (b) on summary conviction, to a fine not exceeding the statutory maximum and, for continued contravention, a daily default fine not exceeding one-tenth of the statutory maximum.

### **729 Treasury shares: cancellation**

- (1) Where shares are held as treasury shares, the company may at any time cancel the shares (or any of them).
- (2) If shares held as treasury shares cease to be qualifying shares, the company must forthwith cancel the shares.
- (3) For this purpose shares are not to be regarded as ceasing to be qualifying shares by virtue only of –
  - (a) the suspension of their listing in accordance with the applicable rules in the EEA State in which the shares are officially listed, or
  - (b) the suspension of their trading in accordance with –
    - (i) in the case of shares traded on the market known as the Alternative Investment Market, the rules of London Stock Exchange plc, and
    - (ii) in any other case, the rules of the regulated market on which they are traded.
- (4) If company cancels shares held as treasury shares, the amount of the company's share capital is reduced accordingly by the nominal amount of the shares cancelled.
- (5) The directors may take any steps required to enable the company to cancel its shares under this section without complying with the provisions of Chapter 10 of Part 17 (reduction of share capital).

### **730 Treasury shares: notice of cancellation**

- (1) Where shares held by a company as treasury shares are cancelled, the company must deliver a return to the registrar not later than 28 days after the shares are cancelled.

This does not apply to shares that are cancelled forthwith on their acquisition by the company (see section 708).
- (2) The return must state with respect to shares of each class cancelled –
  - (a) the number and nominal value of the shares, and
  - (b) the date on which they were cancelled.
- (3) Particulars of shares cancelled on different dates may be included in a single return.
- (4) The notice must be accompanied by a statement of capital.

- (5) The statement of capital must state with respect to the company's share capital immediately following the cancellation –
- (a) the total number of shares of the company,
  - (b) the aggregate nominal value of those shares,
  - (c) for each class of shares –
    - (i) prescribed particulars of the rights attached to the shares,
    - (ii) the total number of shares of that class, and
    - (iii) the aggregate nominal value of shares of that class, and
  - (d) the amount paid up and the amount (if any) unpaid on each share (whether on account of the nominal value of the share or by way of premium).
- (6) If default is made in complying with this section, an offence is committed by –
- (a) the company, and
  - (b) every officer of the company who is in default.
- (7) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.

### **731 Treasury shares: treatment of proceeds of sale**

- (1) Where shares held as treasury shares are sold, the proceeds of sale must be dealt with in accordance with this section.
- (2) If the proceeds of sale are equal to or less than the purchase price paid by the company for the shares, the proceeds are treated for the purposes of Part 23 (distributions) as a realised profit of the company.
- (3) If the proceeds of sale exceed the purchase price paid by the company –
- (a) an amount equal to the purchase price paid is treated as a realised profit of the company for the purposes of that Part, and
  - (b) the excess must be transferred to the company's share premium account.
- (4) For the purposes of this section –
- (a) the purchase price paid by the company must be determined by the application of a weighted average price method, and
  - (b) if the shares were allotted to the company as fully paid bonus shares, the purchase price paid for them is treated as nil.

### **732 Treasury shares: offences**

- (1) If a company contravenes any of the provisions of this Chapter (except section 730 (notice of cancellation)), an offence is committed by –
- (a) the company, and
  - (b) every officer of the company who is in default.
- (2) A person guilty of an offence under this section is liable –
- (a) on conviction on indictment, to a fine;
  - (b) on summary conviction to a fine not exceeding the statutory maximum.

## CHAPTER 7

### SUPPLEMENTARY PROVISIONS

#### **733 The capital redemption reserve**

- (1) In the following circumstances a company must transfer amounts to a reserve, called the “capital redemption reserve”.
- (2) Where under this Part shares of a limited company are redeemed or purchased wholly out of the company’s profits, the amount by which the company’s issued share capital is diminished in accordance with—
  - (a) section 688(b) (on the cancellation of shares redeemed), or
  - (b) section 706(b)(ii) (on the cancellation of shares purchased),must be transferred to the capital redemption reserve.
- (3) If—
  - (a) the shares are redeemed or purchased wholly or partly out of the proceeds of a fresh issue, and
  - (b) the aggregate amount of the proceeds is less than the aggregate nominal value of the shares redeemed or purchased,the amount of the difference must be transferred to the capital redemption reserve.

This does not apply in the case of a private company if, in addition to the proceeds of the fresh issue, the company applies a payment out of capital under Chapter 5 in making the redemption or purchase.
- (4) The amount by which a company’s share capital is diminished in accordance with section 729(4) (on the cancellation of shares held as treasury shares) must be transferred to the capital redemption reserve.
- (5) The company may use the capital redemption reserve to pay up new shares to be allotted to members as fully paid bonus shares.
- (6) Subject to that, the provisions of the Companies Acts relating to the reduction of a company’s share capital apply as if the capital redemption reserve were part of its paid up share capital.

#### **734 Accounting consequences of payment out of capital**

- (1) This section applies where a payment out of capital is made in accordance with Chapter 5 (redemption or purchase of own shares by private company out of capital).
- (2) If the permissible capital payment is less than the nominal amount of the shares redeemed or purchased, the amount of the difference must be transferred to the company’s capital redemption reserve.
- (3) If the permissible capital payment is greater than the nominal amount of the shares redeemed or purchased—
  - (a) the amount of any capital redemption reserve, share premium account or fully paid share capital of the company, and
  - (b) any amount representing unrealised profits of the company for the time being standing to the credit of any revaluation reserve maintained by the company,

may be reduced by a sum not exceeding (or by sums not in total exceeding) the amount by which the permissible capital payment exceeds the nominal amount of the shares.

- (4) Where the proceeds of a fresh issue are applied by the company in making a redemption or purchase of its own shares in addition to a payment out of capital under this Chapter, the references in subsections (2) and (3) to the permissible capital payment are to be read as referring to the aggregate of that payment and those proceeds.

### **735 Effect of company's failure to redeem or purchase**

- (1) This section applies where a company –
- (a) issues shares on terms that they are or are liable to be redeemed, or
  - (b) agrees to purchase any of its shares.
- (2) The company is not liable in damages in respect of any failure on its part to redeem or purchase any of the shares.  
 This is without prejudice to any right of the holder of the shares other than his right to sue the company for damages in respect of its failure.
- (3) The court shall not grant an order for specific performance of the terms of redemption or purchase if the company shows that it is unable to meet the costs of redeeming or purchasing the shares in question out of distributable profits.
- (4) If the company is wound up and at the commencement of the winding up any of the shares have not been redeemed or purchased, the terms of redemption or purchase may be enforced against the company.  
 When shares are redeemed or purchased under this subsection, they are treated as cancelled.
- (5) Subsection (4) does not apply if –
- (a) the terms provided for the redemption or purchase to take place at a date later than that of the commencement of the winding up, or
  - (b) during the period –
    - (i) beginning with the date on which the redemption or purchase was to have taken place, and
    - (ii) ending with the commencement of the winding up,
 the company could not at any time have lawfully made a distribution equal in value to the price at which the shares were to have been redeemed or purchased.
- (6) There shall be paid in priority to any amount that the company is liable under subsection (4) to pay in respect of any shares –
- (a) all other debts and liabilities of the company (other than any due to members in their character as such), and
  - (b) if other shares carry rights (whether as to capital or as to income) that are preferred to the rights as to capital attaching to the first-mentioned shares, any amount due in satisfaction of those preferred rights.

Subject to that, any such amount shall be paid in priority to any amounts due to members in satisfaction of their rights (whether as to capital or income) as members.

**736 Meaning of “distributable profits”**

In this Part (except in Chapter 2 (financial assistance): see section 683) “distributable profits”, in relation to the making of any payment by a company, means profits out of which the company could lawfully make a distribution (within the meaning given by section 830) equal in value to the payment.

**737 General power to make further provision by regulations**

- (1) The Secretary of State may by regulations modify the provisions of this Part.
- (2) The regulations may –
  - (a) amend or repeal any of the provisions of this Part, or
  - (b) make such other provision as appears to the Secretary of State appropriate in place of any of the provisions of this Part.
- (3) Regulations under this section may make consequential amendments or repeals in other provisions of this Act, or in other enactments.
- (4) Regulations under this section are subject to affirmative resolution procedure.

**PART 19**

**DEBENTURES**

*General provisions*

**738 Meaning of “debenture”**

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

**739 Perpetual debentures**

- (1) A condition contained in debentures, or in a deed for securing debentures, is not invalid by reason only that the debentures are made –
  - (a) irredeemable, or
  - (b) redeemable only –
    - (i) on the happening of a contingency (however remote), or
    - (ii) on the expiration of a period (however long),any rule of equity to the contrary notwithstanding.
- (2) Subsection (1) applies to debentures whenever issued and to deeds whenever executed.

**740 Enforcement of contract to subscribe for debentures**

A contract with a company to take up and pay for debentures of the company may be enforced by an order for specific performance.

**741 Registration of allotment of debentures**

- (1) A company must register an allotment of debentures as soon as practicable and in any event within two months after the date of the allotment.
- (2) If a company fails to comply with this section, an offence is committed by –
  - (a) the company, and
  - (b) every officer of the company who is in default.
- (3) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.
- (4) For the duties of the company as to the issue of the debentures, or certificates of debenture stock, see Part 21 (certification and transfer of securities)

**742 Debentures to bearer (Scotland)**

Notwithstanding anything in the statute of the Scots Parliament of 1696, chapter 25, debentures to bearer issued in Scotland are valid and binding according to their terms.

*Register of debenture holders***743 Register of debenture holders**

- (1) Any register of debenture holders of a company that is kept by the company must be kept available for inspection –
  - (a) at the company's registered office, or
  - (b) at a place specified in regulations under section 1136.
- (2) A company must give notice to the registrar of the place where any such register is kept available for inspection and of any change in that place.
- (3) No such notice is required if the register has, at all times since it came into existence, been kept available for inspection at the company's registered office.
- (4) If a company makes default for 14 days in complying with subsection (2), an offence is committed by –
  - (a) the company, and
  - (b) every officer of the company who is in default.
- (5) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.
- (6) References in this section to a register of debenture holders include a duplicate –
  - (a) of a register of debenture holders that is kept outside the United Kingdom, or
  - (b) of any part of such a register.



**744 Register of debenture holders: right to inspect and require copy**

- (1) Every register of debenture holders of a company must, except when duly closed, be open to the inspection –
  - (a) of the registered holder of any such debentures, or any holder of shares in the company, without charge, and
  - (b) of any other person on payment of such fee as may be prescribed.
- (2) Any person may require a copy of the register, or any part of it, on payment of such fee as may be prescribed.
- (3) A person seeking to exercise either of the rights conferred by this section must make a request to the company to that effect.
- (4) The request must contain the following information –
  - (a) in the case of an individual, his name and address;
  - (b) in the case of an organisation, the name and address of an individual responsible for making the request on behalf of the organisation;
  - (c) the purpose for which the information is to be used; and
  - (d) whether the information will be disclosed to any other person, and if so –
    - (i) where that person is an individual, his name and address,
    - (ii) where that person is an organisation, the name and address of an individual responsible for receiving the information on its behalf, and
    - (iii) the purpose for which the information is to be used by that person.
- (5) For the purposes of this section a register is “duly closed” if it is closed in accordance with provision contained –
  - (a) in the articles or in the debentures,
  - (b) in the case of debenture stock in the stock certificates, or
  - (c) in the trust deed or other document securing the debentures or debenture stock.

The total period for which a register is closed in any year must not exceed 30 days.

- (6) References in this section to a register of debenture holders include a duplicate –
  - (a) of a register of debenture holders that is kept outside the United Kingdom, or
  - (b) of any part of such a register.

**745 Register of debenture holders: response to request for inspection or copy**

- (1) Where a company receives a request under section 744 (register of debenture holders: right to inspect and require copy), it must within five working days either –
  - (a) comply with the request, or
  - (b) apply to the court.
- (2) If it applies to the court it must notify the person making the request.
- (3) If on an application under this section the court is satisfied that the inspection or copy is not sought for a proper purpose –

- (a) it shall direct the company not to comply with the request, and
  - (b) it may further order that the company's costs (in Scotland, expenses) on the application be paid in whole or in part by the person who made the request, even if he is not a party to the application.
- (4) If the court makes such a direction and it appears to the court that the company is or may be subject to other requests made for a similar purpose (whether made by the same person or different persons), it may direct that the company is not to comply with any such request.  
The order must contain such provision as appears to the court appropriate to identify the requests to which it applies.
- (5) If on an application under this section the court does not direct the company not to comply with the request, the company must comply with the request immediately upon the court giving its decision or, as the case may be, the proceedings being discontinued.

**746 Register of debenture holders: refusal of inspection or default in providing copy**

- (1) If an inspection required under section 744 (register of debenture holders: right to inspect and require copy) is refused or default is made in providing a copy required under that section, otherwise than in accordance with an order of the court, an offence is committed by –
- (a) the company, and
  - (b) every officer of the company who is in default.
- (2) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.
- (3) In the case of any such refusal or default the court may by order compel an immediate inspection or, as the case may be, direct that the copy required be sent to the person requesting it.

**747 Register of debenture holders: offences in connection with request for or disclosure of information**

- (1) It is an offence for a person knowingly or recklessly to make in a request under section 744 (register of debenture holders: right to inspect and require copy) a statement that is misleading, false or deceptive in a material particular.
- (2) It is an offence for a person in possession of information obtained by exercise of either of the rights conferred by that section –
- (a) to do anything that results in the information being disclosed to another person, or
  - (b) to fail to do anything with the result that the information is disclosed to another person,
- knowing, or having reason to suspect, that person may use the information for a purpose that is not a proper purpose.
- (3) A person guilty of an offence under this section is liable –
- (a) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine (or both);

- (b) on summary conviction –
  - (i) in England and Wales, to imprisonment for a term not exceeding twelve months or to a fine not exceeding the statutory maximum (or both);
  - (ii) in Scotland or Northern Ireland, to imprisonment for a term not exceeding six months, or to a fine not exceeding the statutory maximum (or both).

#### **748 Time limit for claims arising from entry in register**

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

#### *Supplementary provisions*

#### **749 Right of debenture holder to copy of deed**

- (1) Any holder of debentures of a company is entitled, on request and on payment of such fee as may be prescribed, to be provided with a copy of any trust deed for securing the debentures.
- (2) If default is made in complying with this section, an offence is committed by every officer of the company who is in default.
- (3) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.
- (4) In the case of any such default the court may direct that the copy required be sent to the person requiring it.

#### **750 Liability of trustees of debentures**

- (1) Any provision contained in –
  - (a) a trust deed for securing an issue of debentures, or
  - (b) any contract with the holders of debentures secured by a trust deed,is void in so far as it would have the effect of exempting a trustee of the deed from, or indemnifying him against, liability for breach of trust where he fails to show the degree of care and diligence required of him as trustee, having regard to the provisions of the trust deed conferring on him any powers, authorities or discretions.
- (2) Subsection (1) does not invalidate –
  - (a) a release otherwise validly given in respect of anything done or omitted to be done by a trustee before the giving of the release;

- (b) any provision enabling such a release to be given –
  - (i) on being agreed to by a majority of not less than 75% in value of the debenture holders present and voting in person or, where proxies are permitted, by proxy at a meeting summoned for the purpose, and
  - (ii) either with respect to specific acts or omissions or on the trustee dying or ceasing to act.
- (3) This section is subject to section 751 (saving for certain older provisions).

### **751 Liability of trustees of debentures: saving for certain older provisions**

- (1) Section 750 (liability of trustees of debentures) does not operate –
  - (a) to invalidate any provision in force on the relevant date so long as any person –
    - (i) then entitled to the benefit of the provision, or
    - (ii) afterwards given the benefit of the provision under subsection (3) below,
 remains a trustee of the deed in question, or
  - (b) to deprive any person of any exemption or right to be indemnified in respect of anything done or omitted to be done by him while any such provision was in force.
- (2) The relevant date for this purpose is –
  - (a) 1st July 1948 in a case where section 192 of the Companies Act 1985 (c. 6) applied immediately before the commencement of this section;
  - (b) 1st July 1961 in a case where Article 201 of the Companies (Northern Ireland) Order 1986 (S.I. 1986/1032 (N.I. 6)) then applied.
- (3) While any trustee of a trust deed remains entitled to the benefit of a provision saved by subsection (1) above the benefit of that provision may be given either –
  - (a) to all trustees of the deed, present and future, or
  - (b) to any named trustees or proposed trustees of it,
 by a resolution passed by a majority of not less than 75% in value of the debenture holders present in person or, where proxies are permitted, by proxy at a meeting summoned for the purpose.
- (4) A meeting for that purpose must be summoned in accordance with the provisions of the deed or, if the deed makes no provision for summoning meetings, in a manner approved by the court.

### **752 Power to re-issue redeemed debentures**

- (1) Where a company has redeemed debentures previously issued, then unless –
  - (a) provision to the contrary (express or implied) is contained in the company's articles or in any contract made by the company, or
  - (b) the company has, by passing a resolution to that effect or by some other act, manifested its intention that the debentures shall be cancelled,
 the company may re-issue the debentures, either by re-issuing the same debentures or by issuing new debentures in their place.  
 This subsection is deemed always to have had effect.

- (2) On a re-issue of redeemed debentures the person entitled to the debentures has (and is deemed always to have had) the same priorities as if the debentures had never been redeemed.
- (3) The re-issue of a debenture or the issue of another debenture in its place under this section is treated as the issue of a new debenture for the purposes of stamp duty.  
It is not so treated for the purposes of any provision limiting the amount or number of debentures to be issued.
- (4) A person lending money on the security of a debenture re-issued under this section which appears to be duly stamped may give the debenture in evidence in any proceedings for enforcing his security without payment of the stamp duty or any penalty in respect of it, unless he had notice (or, but for his negligence, might have discovered) that the debenture was not duly stamped. In that case the company is liable to pay the proper stamp duty and penalty.

### **753 Deposit of debentures to secure advances**

Where a company has deposited any of its debentures to secure advances from time to time on current account or otherwise, the debentures are not treated as redeemed by reason only of the company's account having ceased to be in debit while the debentures remained so deposited.

### **754 Priorities where debentures secured by floating charge**

- (1) This section applies where debentures of a company registered in England and Wales or Northern Ireland are secured by a charge that, as created, was a floating charge.
- (2) If possession is taken, by or on behalf of the holders of the debentures, of any property comprised in or subject to the charge, and the company is not at that time in the course of being wound up, the company's preferential debts shall be paid out of assets coming to the hands of the persons taking possession in priority to any claims for principal or interest in respect of the debentures.
- (3) "Preferential debts" means the categories of debts listed in Schedule 6 to the Insolvency Act 1986 (c. 45) or Schedule 4 to the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)).  
For the purposes of those Schedules "the relevant date" is the date of possession being taken as mentioned in subsection (2).
- (4) Payments under this section shall be recouped, as far as may be, out of the assets of the company available for payment of general creditors.

## PART 20

### PRIVATE AND PUBLIC COMPANIES

#### CHAPTER 1

##### PROHIBITION OF PUBLIC OFFERS BY PRIVATE COMPANIES

#### **755 Prohibition of public offers by private company**

- (1) A private company limited by shares or limited by guarantee and having a share capital must not—
  - (a) offer to the public any securities of the company, or
  - (b) allot or agree to allot any securities of the company with a view to their being offered to the public.
- (2) Unless the contrary is proved, an allotment or agreement to allot securities is presumed to be made with a view to their being offered to the public if an offer of the securities (or any of them) to the public is made—
  - (a) within six months after the allotment or agreement to allot, or
  - (b) before the receipt by the company of the whole of the consideration to be received by it in respect of the securities.
- (3) A company does not contravene this section if—
  - (a) it acts in good faith in pursuance of arrangements under which it is to re-register as a public company before the securities are allotted, or
  - (b) as part of the terms of the offer it undertakes to re-register as a public company within a specified period, and that undertaking is complied with.
- (4) The specified period for the purposes of subsection (3)(b) must be a period ending not later than six months after the day on which the offer is made (or, in the case of an offer made on different days, first made).
- (5) In this Chapter “securities” means shares or debentures.

#### **756 Meaning of “offer to the public”**

- (1) This section explains what is meant in this Chapter by an offer of securities to the public.
- (2) An offer to the public includes an offer to any section of the public, however selected.
- (3) An offer is not regarded as an offer to the public if it can properly be regarded, in all the circumstances, as—
  - (a) not being calculated to result, directly or indirectly, in securities of the company becoming available to persons other than those receiving the offer, or
  - (b) otherwise being a private concern of the person receiving it and the person making it.
- (4) An offer is to be regarded (unless the contrary is proved) as being a private concern of the person receiving it and the person making it if—
  - (a) it is made to a person already connected with the company and, where it is made on terms allowing that person to renounce his rights, the

- rights may only be renounced in favour of another person already connected with the company; or
- (b) it is an offer to subscribe for securities to be held under an employees' share scheme and, where it is made on terms allowing that person to renounce his rights, the rights may only be renounced in favour of—
- (i) another person entitled to hold securities under the scheme, or
  - (ii) a person already connected with the company.
- (5) For the purposes of this section “person already connected with the company” means—
- (a) an existing member or employee of the company,
  - (b) a member of the family of a person who is or was a member or employee of the company,
  - (c) the widow or widower, or surviving civil partner, of a person who was a member or employee of the company,
  - (d) an existing debenture holder of the company, or
  - (e) a trustee (acting in his capacity as such) of a trust of which the principal beneficiary is a person within any of paragraphs (a) to (d).
- (6) For the purposes of subsection (5)(b) the members of a person's family are the person's spouse or civil partner and children (including step-children) and their descendants.

#### **757 Enforcement of prohibition: order restraining proposed contravention**

- (1) If it appears to the court—
- (a) on an application under this section, or
  - (b) in proceedings under Part 30 (protection of members against unfair prejudice),
- that a company is proposing to act in contravention of section 755 (prohibition of public offers by private companies), the court shall make an order under this section.
- (2) An order under this section is an order restraining the company from contravening that section.
- (3) An application for an order under this section may be made by—
- (a) a member or creditor of the company, or
  - (b) the Secretary of State.

#### **758 Enforcement of prohibition: orders available to the court after contravention**

- (1) This section applies if it appears to the court—
- (a) on an application under this section, or
  - (b) in proceedings under Part 30 (protection of members against unfair prejudice),
- that a company has acted in contravention of section 755 (prohibition of public offers by private companies).
- (2) The court must make an order requiring the company to re-register as a public company unless it appears to the court—
- (a) that the company does not meet the requirements for re-registration as a public company, and

- (b) that it is impractical or undesirable to require it to take steps to do so.
- (3) If it does not make an order for re-registration, the court may make either or both of the following—
  - (a) a remedial order (see section 759), or
  - (b) an order for the compulsory winding up of the company.
- (4) An application under this section may be made by—
  - (a) a member of the company who—
    - (i) was a member at the time the offer was made (or, if the offer was made over a period, at any time during that period), or
    - (ii) became a member as a result of the offer,
  - (b) a creditor of the company who was a creditor at the time the offer was made (or, if the offer was made over a period, at any time during that period), or
  - (c) the Secretary of State.

#### **759 Enforcement of prohibition: remedial order**

- (1) A “remedial order” is an order for the purpose of putting a person affected by anything done in contravention of section 755 (prohibition of public offers by private company) in the position he would have been in if it had not been done.
- (2) The following provisions are without prejudice to the generality of the power to make such an order.
- (3) Where a private company has—
  - (a) allotted securities pursuant to an offer to the public, or
  - (b) allotted or agreed to allot securities with a view to their being offered to the public,
 a remedial order may require any person knowingly concerned in the contravention of section 755 to offer to purchase any of those securities at such price and on such other terms as the court thinks fit.
- (4) A remedial order may be made—
  - (a) against any person knowingly concerned in the contravention, whether or not an officer of the company;
  - (b) notwithstanding anything in the company’s constitution (which includes, for this purpose, the terms on which any securities of the company are allotted or held);
  - (c) whether or not the holder of the securities subject to the order is the person to whom the company allotted or agreed to allot them.
- (5) Where a remedial order is made against the company itself, the court may provide for the reduction of the company’s capital accordingly.

#### **760 Validity of allotment etc not affected**

Nothing in this Chapter affects the validity of any allotment or sale of securities or of any agreement to allot or sell securities.



## CHAPTER 2

### MINIMUM SHARE CAPITAL REQUIREMENT FOR PUBLIC COMPANIES

#### **761 Public company: requirement as to minimum share capital**

- (1) A company that is a public company (otherwise than by virtue of re-registration as a public company) must not do business or exercise any borrowing powers unless the registrar has issued it with a certificate under this section (a “trading certificate”).
- (2) The registrar shall issue a trading certificate if, on an application made in accordance with section 762, he is satisfied that the nominal value of the company’s allotted share capital is not less than the authorised minimum.
- (3) For this purpose a share allotted in pursuance of an employees’ share scheme shall not be taken into account unless paid up as to –
  - (a) at least one-quarter of the nominal value of the share, and
  - (b) the whole of any premium on the share.
- (4) A trading certificate has effect from the date on which it is issued and is conclusive evidence that the company is entitled to do business and exercise any borrowing powers.

#### **762 Procedure for obtaining certificate**

- (1) An application for a certificate under section 761 must –
  - (a) state that the nominal value of the company’s allotted share capital is not less than the authorised minimum,
  - (b) specify the amount, or estimated amount, of the company’s preliminary expenses,
  - (c) specify 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, and
  - (d) be accompanied by a statement of compliance.
- (2) The statement of compliance is a statement that the company meets the requirements for the issue of a certificate under section 761.
- (3) The registrar may accept the statement of compliance as sufficient evidence of the matters stated in it.

#### **763 The authorised minimum**

- (1) “The authorised minimum”, in relation to the nominal value of a public company’s allotted share capital is –
  - (a) £50,000, or
  - (b) the prescribed euro equivalent.
- (2) The Secretary of State may by order prescribe the amount in euros that is for the time being to be treated as equivalent to the sterling amount of the authorised minimum.
- (3) This power may be exercised from time to time as appears to the Secretary of State to be appropriate.

- (4) The amount prescribed shall be determined by applying an appropriate spot rate of exchange to the sterling amount and rounding to the nearest 100 euros.
- (5) An order under this section is subject to negative resolution procedure.
- (6) This section has effect subject to any exercise of the power conferred by section 764 (power to alter authorised minimum).

#### **764 Power to alter authorised minimum**

- (1) The Secretary of State may by order –
  - (a) alter the sterling amount of the authorised minimum, and
  - (b) make a corresponding alteration of the prescribed euro equivalent.
- (2) The amount of the prescribed euro equivalent shall be determined by applying an appropriate spot rate of exchange to the sterling amount and rounding to the nearest 100 euros.
- (3) An order under this section that increases the authorised minimum may –
  - (a) require a public company having an allotted share capital of which the nominal value is less than the amount specified in the order to –
    - (i) increase that value to not less than that amount, or
    - (ii) re-register as a private company;
  - (b) make provision in connection with any such requirement for any of the matters for which provision is made by this Act relating to –
    - (i) a company’s registration, re-registration or change of name,
    - (ii) payment for shares comprised in a company’s share capital, and
    - (iii) offers to the public of shares in or debentures of a company, including provision as to the consequences (in criminal law or otherwise) of a failure to comply with any requirement of the order;
  - (c) provide for any provision of the order to come into force on different days for different purposes.
- (4) An order under this section is subject to affirmative resolution procedure.

#### **765 Authorised minimum: application of initial requirement**

- (1) The initial requirement for a public company to have allotted share capital of a nominal value not less than the authorised minimum, that is –
  - (a) the requirement in section 761(2) for the issue of a trading certificate, or
  - (b) the requirement in section 91(1)(a) for re-registration as a public company,must be met either by reference to allotted share capital denominated in sterling or by reference to allotted share capital denominated in euros (but not partly in one and partly in the other).
- (2) Whether the requirement is met is determined in the first case by reference to the sterling amount and in the second case by reference to the prescribed euro equivalent.
- (3) No account is to be taken of any allotted share capital of the company denominated in a currency other than sterling or, as the case may be, euros.

- (4) If the company could meet the requirement either by reference to share capital denominated in sterling or by reference to share capital denominated in euros, it must elect in its application for a trading certificate or, as the case may be, for re-registration as a public company which is to be the currency by reference to which the matter is determined.

**766 Authorised minimum: application where shares denominated in different currencies etc**

- (1) The Secretary of State may make provision by regulations as to the application of the authorised minimum in relation to a public company that –
  - (a) has shares denominated in more than one currency,
  - (b) redenominates the whole or part of its allotted share capital, or
  - (c) allots new shares.
- (2) The regulations may make provision as to the currencies, exchange rates and dates by reference to which it is to be determined whether the nominal value of the company's allotted share capital is less than the authorised minimum.
- (3) The regulations may provide that where –
  - (a) a company has redenominated the whole or part of its allotted share capital, and
  - (b) the effect of the redenomination is that the nominal value of the company's allotted share capital is less than the authorised minimum,the company must re-register as a private company.
- (4) Regulations under subsection (3) may make provision corresponding to any provision made by sections 664 to 667 (re-registration as private company in consequence of cancellation of shares).
- (5) Any regulations under this section have effect subject to section 765 (authorised minimum: application of initial requirement).
- (6) Regulations under this section are subject to negative resolution procedure.

**767 Consequences of doing business etc without a trading certificate**

- (1) If a company does business or exercises any borrowing powers in contravention of section 761, an offence is committed by –
  - (a) the company, and
  - (b) every officer of the company who is in default.
- (2) A person guilty of an offence under subsection (1) is liable –
  - (a) on conviction on indictment, to a fine;
  - (b) on summary conviction, to a fine not exceeding the statutory maximum.
- (3) A contravention of section 761 does not affect the validity of a transaction entered into by the company, but if a company –
  - (a) enters into a transaction in contravention of that section, and
  - (b) fails to comply with its obligations in connection with the transaction within 21 days from being called on to do so,the directors of the company are jointly and severally liable to indemnify any other party to the transaction in respect of any loss or damage suffered by him by reason of the company's failure to comply with its obligations.

- (4) The directors who are so liable are those who were directors at the time the company entered into the transaction.

## PART 21

### CERTIFICATION AND TRANSFER OF SECURITIES

#### CHAPTER 1

##### CERTIFICATION AND TRANSFER OF SECURITIES: GENERAL

###### *Share certificates*

#### 768 Share certificate to be evidence of title

- (1) In the case of a company registered in England and Wales or Northern Ireland, a certificate under the common seal of the company specifying any shares held by a member is prima facie evidence of his title to the shares.
- (2) In the case of a company registered in Scotland –
- (a) a certificate under the common seal of the company specifying any shares held by a member, or
  - (b) a certificate specifying any shares held by a member and subscribed by the company in accordance with the Requirements of Writing (Scotland) Act 1995 (c. 7),
- is sufficient evidence, unless the contrary is shown, of his title to the shares.

###### *Issue of certificates etc on allotment*

#### 769 Duty of company as to issue of certificates etc on allotment

- (1) A company must, within two months after the allotment of any of its shares, debentures or debenture stock, complete and have ready for delivery –
- (a) the certificates of the shares allotted,
  - (b) the debentures allotted, or
  - (c) the certificates of the debenture stock allotted.
- (2) Subsection (1) does not apply –
- (a) if the conditions of issue of the shares, debentures or debenture stock provide otherwise,
  - (b) in the case of allotment to a financial institution (see section 778), or
  - (c) in the case of an allotment of shares if, following the allotment, the company has issued a share warrant in respect of the shares (see section 779).
- (3) If default is made in complying with subsection (1) an offence is committed by every officer of the company who is in default.
- (4) A person guilty of an offence under subsection (3) is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.

*Transfer of securities*

**770 Registration of transfer**

- (1) A company may not register a transfer of shares in or debentures of the company unless –
  - (a) a proper instrument of transfer has been delivered to it, or
  - (b) the transfer –
    - (i) is an exempt transfer within the Stock Transfer Act 1982 (c. 41), or
    - (ii) is in accordance with regulations under Chapter 2 of this Part.
- (2) Subsection (1) does not affect any power of the company to register as shareholder or debenture holder a person to whom the right to any shares in or debentures of the company has been transmitted by operation of law.

**771 Procedure on transfer being lodged**

- (1) When a transfer of shares in or debentures of a company has been lodged with the company, the company must either –
  - (a) register the transfer, or
  - (b) give the transferee notice of refusal to register the transfer, together with its reasons for the refusal,as soon as practicable and in any event within two months after the date on which the transfer is lodged with it.
- (2) If the company refuses to register the transfer, it must provide the transferee with such further information about the reasons for the refusal as the transferee may reasonably request.  
This does not include copies of minutes of meetings of directors.
- (3) If a company fails to comply with this section, an offence is committed by –
  - (a) the company, and
  - (b) every officer of the company who is in default.
- (4) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.
- (5) This section does not apply –
  - (a) in relation to a transfer of shares if the company has issued a share warrant in respect of the shares (see section 779);
  - (b) in relation to the transmission of shares or debentures by operation of law.

**772 Transfer of shares on application of transferor**

On the application of the transferor of any share or interest in a company, the company shall enter in its register of members the name of the transferee in the same manner and subject to the same conditions as if the application for the entry were made by the transferee.

**773 Execution of share transfer by personal representative**

An instrument of transfer of the share or other interest of a deceased member of a company –

- (a) may be made by his personal representative although the personal representative is not himself a member of the company, and
- (b) is as effective as if the personal representative had been such a member at the time of the execution of the instrument.

**774 Evidence of grant of probate etc**

The production to a company of any document that is by law sufficient evidence of the grant of –

- (a) probate of the will of a deceased person,
- (b) letters of administration of the estate of a deceased person, or
- (c) confirmation as executor of a deceased person,

shall be accepted by the company as sufficient evidence of the grant.

**775 Certification of instrument of transfer**

- (1) The certification by a company of an instrument of transfer of any shares in, or debentures of, the company is to be taken as a representation by the company to any person acting on the faith of the certification that there have been produced to the company such documents as on their face show a prima facie title to the shares or debentures in the transferor named in the instrument.
- (2) The certification is not to be taken as a representation that the transferor has any title to the shares or debentures.
- (3) Where a person acts on the faith of a false certification by a company made negligently, the company is under the same liability to him as if the certification had been made fraudulently.
- (4) For the purposes of this section –
  - (a) an instrument of transfer is certificated if it bears the words “certificate lodged” (or words to the like effect);
  - (b) the certification of an instrument of transfer is made by a company if –
    - (i) the person issuing the instrument is a person authorised to issue certificated instruments of transfer on the company’s behalf, and
    - (ii) the certification is signed by a person authorised to certificate transfers on the company’s behalf or by an officer or employee either of the company or of a body corporate so authorised;
  - (c) a certification is treated as signed by a person if –
    - (i) it purports to be authenticated by his signature or initials (whether handwritten or not), and
    - (ii) it is not shown that the signature or initials was or were placed there neither by himself nor by a person authorised to use the signature or initials for the purpose of certifying transfers on the company’s behalf.

*Issue of certificates etc on transfer*

**776 Duty of company as to issue of certificates etc on transfer**

- (1) A company must, within two months after the date on which a transfer of any of its shares, debentures or debenture stock is lodged with the company, complete and have ready for delivery –
  - (a) the certificates of the shares transferred,
  - (b) the debentures transferred, or
  - (c) the certificates of the debenture stock transferred.
- (2) For this purpose a “transfer” means –
  - (a) a transfer duly stamped and otherwise valid, or
  - (b) an exempt transfer within the Stock Transfer Act 1982 (c. 41),but does not include a transfer that the company is for any reason entitled to refuse to register and does not register.
- (3) Subsection (1) does not apply –
  - (a) if the conditions of issue of the shares, debentures or debenture stock provide otherwise,
  - (b) in the case of a transfer to a financial institution (see section 778), or
  - (c) in the case of a transfer of shares if, following the transfer, the company has issued a share warrant in respect of the shares (see section 779).
- (4) Subsection (1) has effect subject to section 777 (cases where the Stock Transfer Act 1982 applies).
- (5) If default is made in complying with subsection (1) an offence is committed by every officer of the company who is in default.
- (6) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.

**777 Issue of certificates etc: cases within the Stock Transfer Act 1982**

- (1) Section 776(1) (duty of company as to issue of certificates etc on transfer) does not apply in the case of a transfer to a person where, by virtue of regulations under section 3 of the Stock Transfer Act 1982, he is not entitled to a certificate or other document of or evidencing title in respect of the securities transferred.
- (2) But if in such a case the transferee –
  - (a) subsequently becomes entitled to such a certificate or other document by virtue of any provision of those regulations, and
  - (b) gives notice in writing of that fact to the company,section 776 (duty to company as to issue of certificates etc) has effect as if the reference in subsection (1) of that section to the date of the lodging of the transfer were a reference to the date of the notice.

*Issue of certificates etc on allotment or transfer to financial institution*

**778 Issue of certificates etc: allotment or transfer to financial institution**

- (1) A company –
- (a) of which shares or debentures are allotted to a financial institution,
  - (b) of which debenture stock is allotted to a financial institution, or
  - (c) with which a transfer for transferring shares, debentures or debenture stock to a financial institution is lodged,
- is not required in consequence of that allotment or transfer to comply with section 769(1) or 776(1) (duty of company as to issue of certificates etc).
- (2) A “financial institution” means –
- (a) a recognised clearing house acting in relation to a recognised investment exchange, or
  - (b) a nominee of –
    - (i) a recognised clearing house acting in that way, or
    - (ii) a recognised investment exchange,
 designated for the purposes of this section in the rules of the recognised investment exchange in question.
- (3) Expressions used in subsection (2) have the same meaning as in Part 18 of the Financial Services and Markets Act 2000 (c. 8).

*Share warrants*

**779 Issue and effect of share warrant to bearer**

- (1) A company limited by shares may, if so authorised by its articles, issue with respect to any fully paid shares a warrant (a “share warrant”) stating that the bearer of the warrant is entitled to the shares specified in it.
- (2) A share warrant issued under the company’s common seal or (in the case of a company registered in Scotland) subscribed in accordance with the Requirements of Writing (Scotland) Act 1995 (c. 7) entitles the bearer to the shares specified in it and the shares may be transferred by delivery of the warrant.
- (3) A company that issues a share warrant may, if so authorised by its articles, provide (by coupons or otherwise) for the payment of the future dividends on the shares included in the warrant.

**780 Duty of company as to issue of certificates on surrender of share warrant**

- (1) A company must, within two months of the surrender of a share warrant for cancellation, complete and have ready for delivery the certificates of the shares specified in the warrant.
- (2) Subsection (1) does not apply if the company’s articles provide otherwise.
- (3) If default is made in complying with subsection (1) an offence is committed by every officer of the company who is in default.
- (4) A person guilty of an offence under subsection (3) is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for



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

### **781 Offences in connection with share warrants (Scotland)**

- (1) If in Scotland a person –
  - (a) with intent to defraud, forges or alters, or offers, utters, disposes of, or puts off, knowing the same to be forged or altered, any share warrant or coupon, or any document purporting to be a share warrant or coupon issued in pursuance of this Act, or
  - (b) by means of any such forged or altered share warrant, coupon or document –
    - (i) demands or endeavours to obtain or receive any share or interest in a company under this Act, or
    - (ii) demands or endeavours to receive any dividend or money payment in respect of any such share or interest,knowing the warrant, coupon or document to be forged or altered, he commits an offence.
- (2) If in Scotland a person without lawful authority or excuse (of which proof lies on him) –
  - (a) engraves or makes on any plate, wood, stone, or other material, any share warrant or coupon purporting to be –
    - (i) a share warrant or coupon issued or made by any particular company in pursuance of this Act, or
    - (ii) a blank share warrant or coupon so issued or made, or
    - (iii) a part of such a share warrant or coupon, or
  - (b) uses any such plate, wood, stone, or other material, for the making or printing of any such share warrant or coupon, or of any such blank share warrant or coupon or of any part of such a share warrant or coupon, or
  - (c) knowingly has in his custody or possession any such plate, wood, stone, or other material, he commits an offence.
- (3) A person guilty of an offence under subsection (1) is liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding level 5 on the standard scale (or both).
- (4) A person guilty of an offence under subsection (2) is liable –
  - (a) on conviction on indictment, to imprisonment for a term not exceeding seven years or a fine (or both);
  - (b) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum (or both).

#### *Supplementary provisions*

### **782 Issue of certificates etc: court order to make good default**

- (1) If a company on which a notice has been served requiring it to make good any default in complying with –
  - (a) section 769(1) (duty of company as to issue of certificates etc on allotment),

- (b) section 776(1) (duty of company as to issue of certificates etc on transfer), or
- (c) section 780(1) (duty of company as to issue of certificates etc on surrender of share warrant),

fails to make good the default within ten days after service of the notice, the person entitled to have the certificates or the debentures delivered to him may apply to the court.

- (2) The court may on such an application make an order directing the company and any officer of it to make good the default within such time as may be specified in the order.
- (3) The order may provide that all costs (in Scotland, expenses) of and incidental to the application are to be borne by the company or by an officer of it responsible for the default.

## CHAPTER 2

### EVIDENCING AND TRANSFER OF TITLE TO SECURITIES WITHOUT WRITTEN INSTRUMENT

#### *Introductory*

#### **783 Scope of this Chapter**

In this Chapter –

- (a) “securities” means shares, debentures, debenture stock, loan stock, bonds, units of a collective investment scheme within the meaning of the Financial Services and Markets Act 2000 (c. 8) and other securities of any description;
- (b) references to title to securities include any legal or equitable interest in securities;
- (c) references to a transfer of title include a transfer by way of security;
- (d) references to transfer without a written instrument include, in relation to bearer securities, transfer without delivery.

#### **784 Power to make regulations**

- (1) The power to make regulations under this Chapter is exercisable by the Treasury and the Secretary of State, either jointly or concurrently.
- (2) References in this Chapter to the authority having power to make regulations shall accordingly be read as references to both or either of them, as the case may require.
- (3) Regulations under this Chapter are subject to affirmative resolution procedure.

#### *Powers exercisable*

#### **785 Provision enabling procedures for evidencing and transferring title**

- (1) Provision may be made by regulations for enabling title to securities to be evidenced and transferred without a written instrument.
- (2) The regulations may make provision –

- (a) for procedures for recording and transferring title to securities, and
  - (b) for the regulation of those procedures and the persons responsible for or involved in their operation.
- (3) The regulations must contain such safeguards as appear to the authority making the regulations appropriate for the protection of investors and for ensuring that competition is not restricted, distorted or prevented.
- (4) The regulations may, for the purpose of enabling or facilitating the operation of the procedures provided for by the regulations, make provision with respect to the rights and obligations of persons in relation to securities dealt with under the procedures.
- (5) The regulations may include provision for the purpose of giving effect to –
  - (a) the transmission of title to securities by operation of law;
  - (b) any restriction on the transfer of title to securities arising by virtue of the provisions of any enactment or instrument, court order or agreement;
  - (c) any power conferred by any such provision on a person to deal with securities on behalf of the person entitled.
- (6) The regulations may make provision with respect to the persons responsible for the operation of the procedures provided for by the regulations –
  - (a) as to the consequences of their insolvency or incapacity, or
  - (b) as to the transfer from them to other persons of their functions in relation to those procedures.

#### **786 Provision enabling or requiring arrangements to be adopted**

- (1) Regulations under this Chapter may make provision –
  - (a) enabling the members of a company or of any designated class of companies to adopt, by ordinary resolution, arrangements under which title to securities is required to be evidenced or transferred (or both) without a written instrument; or
  - (b) requiring companies, or any designated class of companies, to adopt such arrangements.
- (2) The regulations may make such provision –
  - (a) in respect of all securities issued by a company, or
  - (b) in respect of all securities of a specified description.
- (3) The arrangements provided for by regulations making such provision as is mentioned in subsection (1) –
  - (a) must not be such that a person who but for the arrangements would be entitled to have his name entered in the company’s register of members ceases to be so entitled, and
  - (b) must be such that a person who but for the arrangements would be entitled to exercise any rights in respect of the securities continues to be able effectively to control the exercise of those rights.
- (4) The regulations may –
  - (a) prohibit the issue of any certificate by the company in respect of the issue or transfer of securities,

- (b) require the provision by the company to holders of securities of statements (at specified intervals or on specified occasions) of the securities held in their name, and
  - (c) make provision as to the matters of which any such certificate or statement is, or is not, evidence.
- (5) In this section –
- (a) references to a designated class of companies are to a class designated in the regulations or by order under section 787; and
  - (b) “specified” means specified in the regulations.

**787 Provision enabling or requiring arrangements to be adopted: order-making powers**

- (1) The authority having power to make regulations under this Chapter may by order –
- (a) designate classes of companies for the purposes of section 786 (provision enabling or requiring arrangements to be adopted);
  - (b) provide that, in relation to securities of a specified description –
    - (i) in a designated class of companies, or
    - (ii) in a specified company or class of companies,
 specified provisions of regulations made under this Chapter by virtue of that section either do not apply or apply subject to specified modifications.
- (2) In subsection (1) “specified” means specified in the order.
- (3) An order under this section is subject to negative resolution procedure.

*Supplementary*

**788 Provision that may be included in regulations**

Regulations under this Chapter may –

- (a) modify or exclude any provision of any enactment or instrument, or any rule of law;
- (b) apply, with such modifications as may be appropriate, the provisions of any enactment or instrument (including provisions creating criminal offences);
- (c) require the payment of fees, or enable persons to require the payment of fees, of such amounts as may be specified in the regulations or determined in accordance with them;
- (d) empower the authority making the regulations to delegate to any person willing and able to discharge them any functions of the authority under the regulations.

**789 Duty to consult**

Before making –

- (a) regulations under this Chapter, or
- (b) any order under section 787,

the authority having power to make regulations under this Chapter must carry out such consultation as appears to it to be appropriate.

**790 Resolutions to be forwarded to registrar**

Chapter 3 of Part 3 (resolutions affecting a company's constitution) applies to a resolution passed by virtue of regulations under this Chapter.

**PART 22**

## INFORMATION ABOUT INTERESTS IN A COMPANY'S SHARES

*Introductory***791 Companies to which this Part applies**

This Part applies only to public companies.

**792 Shares to which this Part applies**

- (1) References in this Part to a company's shares are to the company's issued shares of a class carrying rights to vote in all circumstances at general meetings of the company (including any shares held as treasury shares).
- (2) The temporary suspension of voting rights in respect of any shares does not affect the application of this Part in relation to interests in those or any other shares.

*Notice requiring information about interests in shares***793 Notice by company requiring information about interests in its shares**

- (1) A public company may give notice under this section to any person whom the company knows or has reasonable cause to believe –
  - (a) to be interested in the company's shares, or
  - (b) to have been so interested at any time during the three years immediately preceding the date on which the notice is issued.
- (2) The notice may require the person –
  - (a) to confirm that fact or (as the case may be) to state whether or not it is the case, and
  - (b) if he holds, or has during that time held, any such interest, to give such further information as may be required in accordance with the following provisions of this section.
- (3) The notice may require the person to whom it is addressed to give particulars of his own present or past interest in the company's shares (held by him at any time during the three year period mentioned in subsection (1)(b)).
- (4) The notice may require the person to whom it is addressed, where –
  - (a) his interest is a present interest and another interest in the shares subsists, or
  - (b) another interest in the shares subsisted during that three year period at a time when his interest subsisted,
 to give, so far as lies within his knowledge, such particulars with respect to that other interest as may be required by the notice.

- (5) The particulars referred to in subsections (3) and (4) include –
  - (a) the identity of persons interested in the shares in question, and
  - (b) whether persons interested in the same shares are or were parties to –
    - (i) an agreement to which section 824 applies (certain share acquisition agreements), or
    - (ii) an agreement or arrangement relating to the exercise of any rights conferred by the holding of the shares.
- (6) The notice may require the person to whom it is addressed, where his interest is a past interest, to give (so far as lies within his knowledge) particulars of the identity of the person who held that interest immediately upon his ceasing to hold it.
- (7) The information required by the notice must be given within such reasonable time as may be specified in the notice.

#### **794 Notice requiring information: order imposing restrictions on shares**

- (1) Where –
  - (a) a notice under section 793 (notice requiring information about interests in company's shares) is served by a company on a person who is or was interested in shares in the company, and
  - (b) that person fails to give the company the information required by the notice within the time specified in it,

the company may apply to the court for an order directing that the shares in question be subject to restrictions.  
For the effect of such an order see section 797.
- (2) If the court is satisfied that such an order may unfairly affect the rights of third parties in respect of the shares, the court may, for the purpose of protecting those rights and subject to such terms as it thinks fit, direct that such acts by such persons or descriptions of persons and for such purposes as may be set out in the order shall not constitute a breach of the restrictions.
- (3) On an application under this section the court may make an interim order. Any such order may be made unconditionally or on such terms as the court thinks fit.
- (4) Sections 798 to 802 make further provision about orders under this section.

#### **795 Notice requiring information: offences**

- (1) A person who –
  - (a) fails to comply with a notice under section 793 (notice requiring information about interests in company's shares), or
  - (b) in purported compliance with such a notice –
    - (i) makes a statement that he knows to be false in a material particular, or
    - (ii) recklessly makes a statement that is false in a material particular,

commits an offence.
- (2) A person does not commit an offence under subsection (1)(a) if he proves that the requirement to give information was frivolous or vexatious.

- (3) A person guilty of an offence under this section is liable –
- (a) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine (or both);
  - (b) on summary conviction –
    - (i) in England and Wales, to imprisonment for a term not exceeding twelve months or to a fine not exceeding the statutory maximum (or both);
    - (ii) in Scotland or Northern Ireland, to imprisonment for a term not exceeding six months, or to a fine not exceeding the statutory maximum (or both).

#### **796 Notice requiring information: persons exempted from obligation to comply**

- (1) A person is not obliged to comply with a notice under section 793 (notice requiring information about interests in company's shares) if he is for the time being exempted by the Secretary of State from the operation of that section.
- (2) The Secretary of State must not grant any such exemption unless –
- (a) he has consulted the Governor of the Bank of England, and
  - (b) he (the Secretary of State) is satisfied that, having regard to any undertaking given by the person in question with respect to any interest held or to be held by him in any shares, there are special reasons why that person should not be subject to the obligations imposed by that section.

#### *Orders imposing restrictions on shares*

#### **797 Consequences of order imposing restrictions**

- (1) The effect of an order under section 794 that shares are subject to restrictions is as follows –
- (a) any transfer of the shares is void;
  - (b) no voting rights are exercisable in respect of the shares;
  - (c) no further shares may be issued in right of the shares or in pursuance of an offer made to their holder;
  - (d) except in a liquidation, no payment may be made of sums due from the company on the shares, whether in respect of capital or otherwise.
- (2) Where shares are subject to the restriction in subsection (1)(a), an agreement to transfer the shares is void.  
This does not apply to an agreement to transfer the shares on the making of an order under section 800 made by virtue of subsection (3)(b) (removal of restrictions in case of court-approved transfer).
- (3) Where shares are subject to the restriction in subsection (1)(c) or (d), an agreement to transfer any right to be issued with other shares in right of those shares, or to receive any payment on them (otherwise than in a liquidation), is void.  
This does not apply to an agreement to transfer any such right on the making of an order under section 800 made by virtue of subsection (3)(b) (removal of restrictions in case of court-approved transfer).
- (4) The provisions of this section are subject –

- (a) to any directions under section 794(2) or section 799(3) (directions for protection of third parties), and
- (b) in the case of an interim order under section 794(3), to the terms of the order.

### **798 Penalty for attempted evasion of restrictions**

- (1) This section applies where shares are subject to restrictions by virtue of an order under section 794.
- (2) A person commits an offence if he –
  - (a) exercises or purports to exercise any right –
    - (i) to dispose of shares that to his knowledge, are for the time being subject to restrictions, or
    - (ii) to dispose of any right to be issued with any such shares, or
  - (b) votes in respect of any such shares (whether as holder or proxy), or appoints a proxy to vote in respect of them, or
  - (c) being the holder of any such shares, fails to notify of their being subject to those restrictions a person whom he does not know to be aware of that fact but does know to be entitled (apart from the restrictions) to vote in respect of those shares whether as holder or as proxy, or
  - (d) being the holder of any such shares, or being entitled to a right to be issued with other shares in right of them, or to receive any payment on them (otherwise than in a liquidation), enters into an agreement which is void under section 797(2) or (3).
- (3) If shares in a company are issued in contravention of the restrictions, an offence is committed by –
  - (a) the company, and
  - (b) every officer of the company who is in default.
- (4) A person guilty of an offence under this section is liable –
  - (a) on conviction on indictment, to a fine;
  - (b) on summary conviction, to a fine not exceeding the statutory maximum.
- (5) The provisions of this section are subject –
  - (a) to any directions under –
    - section 794(2) (directions for protection of third parties), or
    - section 799 or 800 (relaxation or removal of restrictions), and
  - (b) in the case of an interim order under section 794(3), to the terms of the order.

### **799 Relaxation of restrictions**

- (1) An application may be made to the court on the ground that an order directing that shares shall be subject to restrictions unfairly affects the rights of third parties in respect of the shares.
- (2) An application for an order under this section may be made by the company or by any person aggrieved.
- (3) If the court is satisfied that the application is well-founded, it may, for the purpose of protecting the rights of third parties in respect of the shares, and



subject to such terms as it thinks fit, direct that such acts by such persons or descriptions of persons and for such purposes as may be set out in the order do not constitute a breach of the restrictions.

### **800 Removal of restrictions**

- (1) An application may be made to the court for an order directing that the shares shall cease to be subject to restrictions.
- (2) An application for an order under this section may be made by the company or by any person aggrieved.
- (3) The court must not make an order under this section unless—
  - (a) it is satisfied that the relevant facts about the shares have been disclosed to the company and no unfair advantage has accrued to any person as a result of the earlier failure to make that disclosure, or
  - (b) the shares are to be transferred for valuable consideration and the court approves the transfer.
- (4) An order under this section made by virtue of subsection (3)(b) may continue, in whole or in part, the restrictions mentioned in section 797(1)(c) and (d) (restrictions on issue of further shares or making of payments) so far as they relate to a right acquired or offer made before the transfer.
- (5) Where any restrictions continue in force under subsection (4)—
  - (a) an application may be made under this section for an order directing that the shares shall cease to be subject to those restrictions, and
  - (b) subsection (3) does not apply in relation to the making of such an order.

### **801 Order for sale of shares**

- (1) The court may order that the shares subject to restrictions be sold, subject to the court's approval as to the sale.
- (2) An application for an order under subsection (1) may only be made by the company.
- (3) Where the court has made an order under this section, it may make such further order relating to the sale or transfer of the shares as it thinks fit.
- (4) An application for an order under subsection (3) may be made—
  - (a) by the company,
  - (b) by the person appointed by or in pursuance of the order to effect the sale, or
  - (c) by any person interested in the shares.
- (5) On making an order under subsection (1) or (3) the court may order that the applicant's costs (in Scotland, expenses) be paid out of the proceeds of sale.

### **802 Application of proceeds of sale under court order**

- (1) Where shares are sold in pursuance of an order of the court under section 801, the proceeds of the sale, less the costs of the sale, must be paid into court for the benefit of the persons who are beneficially interested in the shares.

- (2) A person who is beneficially interested in the shares may apply to the court for the whole or part of those proceeds to be paid to him.
- (3) On such an application the court shall order the payment to the applicant of—
  - (a) the whole of the proceeds of sale together with any interest on them, or
  - (b) if another person had a beneficial interest in the shares at the time of their sale, such proportion of the proceeds and interest as the value of the applicant's interest in the shares bears to the total value of the shares.

This is subject to the following qualification.

- (4) If the court has ordered under section 801(5) that the costs (in Scotland, expenses) of an applicant under that section are to be paid out of the proceeds of sale, the applicant is entitled to payment of his costs (or expenses) out of those proceeds before any person interested in the shares receives any part of those proceeds.

*Power of members to require company to act*

**803 Power of members to require company to act**

- (1) The members of a company may require it to exercise its powers under section 793 (notice requiring information about interests in shares).
- (2) A company is required to do so once it has received requests (to the same effect) from members of the company holding at least 10% of such of the paid-up capital of the company as carries a right to vote at general meetings of the company (excluding any voting rights attached to any shares in the company held as treasury shares).
- (3) A request—
  - (a) may be in hard copy form or in electronic form,
  - (b) must—
    - (i) state that the company is requested to exercise its powers under section 793,
    - (ii) specify the manner in which the company is requested to act, and
    - (iii) give reasonable grounds for requiring the company to exercise those powers in the manner specified, and
  - (c) must be authenticated by the person or persons making it.

**804 Duty of company to comply with requirement**

- (1) A company that is required under section 803 to exercise its powers under section 793 (notice requiring information about interests in company's shares) must exercise those powers in the manner specified in the requests.
- (2) If default is made in complying with subsection (1) an offence is committed by every officer of the company who is in default.
- (3) A person guilty of an offence under this section is liable—
  - (a) on conviction on indictment, to a fine;
  - (b) on summary conviction, to a fine not exceeding the statutory maximum.

### 805 Report to members on outcome of investigation

- (1) On the conclusion of an investigation carried out by a company in pursuance of a requirement under section 803 the company must cause a report of the information received in pursuance of the investigation to be prepared.  
The report must be made available for inspection within a reasonable period (not more than 15 days) after the conclusion of the investigation.
- (2) Where—
  - (a) a company undertakes an investigation in pursuance of a requirement under section 803, and
  - (b) the investigation is not concluded within three months after the date on which the company became subject to the requirement,the company must cause to be prepared in respect of that period, and in respect of each succeeding period of three months ending before the conclusion of the investigation, an interim report of the information received during that period in pursuance of the investigation.
- (3) Each such report must be made available for inspection within a reasonable period (not more than 15 days) after the end of the period to which it relates.
- (4) The reports must be retained by the company for at least six years from the date on which they are first made available for inspection and must be kept available for inspection during that time—
  - (a) at the company's registered office, or
  - (b) at a place specified in regulations under section 1136.
- (5) The company must give notice to the registrar—
  - (a) of the place at which the reports are kept available for inspection, and
  - (b) of any change in that place,unless they have at all times been kept at the company's registered office.
- (6) The company must within three days of making any report prepared under this section available for inspection, notify the members who made the requests under section 803 where the report is so available.
- (7) For the purposes of this section an investigation carried out by a company in pursuance of a requirement under section 803 is concluded when—
  - (a) the company has made all such inquiries as are necessary or expedient for the purposes of the requirement, and
  - (b) in the case of each such inquiry—
    - (i) a response has been received by the company, or
    - (ii) the time allowed for a response has elapsed.

### 806 Report to members: offences

- (1) If default is made for 14 days in complying with section 805(5) (notice to registrar of place at which reports made available for inspection) an offence is committed by—
  - (a) the company, and
  - (b) every officer of the company who is in default.
- (2) A person guilty of an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for

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

- (3) If default is made in complying with any other provision of section 805 (report to members on outcome of investigation), an offence is committed by every officer of the company who is in default.
- (4) A person guilty of an offence under subsection (3) is liable—
  - (a) on conviction on indictment, to a fine;
  - (b) on summary conviction, to a fine not exceeding the statutory maximum.

### **807 Right to inspect and request copy of reports**

- (1) Any report prepared under section 805 must be open to inspection by any person without charge.
- (2) Any person is entitled, on request and on payment of such fee as may be prescribed, to be provided with a copy of any such report or any part of it. The copy must be provided within ten days after the request is received by the company.
- (3) If an inspection required under subsection (1) is refused, or default is made in complying with subsection (2), an offence is committed by—
  - (a) the company, and
  - (b) every officer of the company who is in default.
- (4) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.
- (5) In the case of any such refusal or default the court may by order compel an immediate inspection or, as the case may be, direct that the copy required be sent to the person requiring it.

#### *Register of interests disclosed*

### **808 Register of interests disclosed**

- (1) The company must keep a register of information received by it in pursuance of a requirement imposed under section 793 (notice requiring information about interests in company's shares).
- (2) A company which receives any such information must, within three days of the receipt, enter in the register—
  - (a) the fact that the requirement was imposed and the date on which it was imposed, and
  - (b) the information received in pursuance of the requirement.
- (3) The information must be entered against the name of the present holder of the shares in question or, if there is no present holder or the present holder is not known, against the name of the person holding the interest.
- (4) The register must be made up so that the entries against the names entered in it appear in chronological order.

- (5) If default is made in complying with this section an offence is committed by –
  - (a) the company, and
  - (b) every officer of the company who is in default.
- (6) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.
- (7) The company is not by virtue of anything done for the purposes of this section affected with notice of, or put upon inquiry as to, the rights of any person in relation to any shares.

### **809 Register to be kept available for inspection**

- (1) The register kept under section 808 (register of interests disclosed) must be kept available for inspection –
  - (a) at the company's registered office, or
  - (b) at a place specified in regulations under section 1136.
- (2) A company must give notice to the registrar of companies of the place where the register is kept available for inspection and of any change in that place.
- (3) No such notice is required if the register has at all times been kept available for inspection at the company's registered office.
- (4) If default is made in complying with subsection (1), or a company makes default for 14 days in complying with subsection (2), an offence is committed by –
  - (a) the company, and
  - (b) every officer of the company who is in default.
- (5) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.

### **810 Associated index**

- (1) Unless the register kept under section 808 (register of interests disclosed) is kept in such a form as itself to constitute an index, the company must keep an index of the names entered in it.
- (2) The company must make any necessary entry or alteration in the index within ten days after the date on which any entry or alteration is made in the register.
- (3) The index must contain, in respect of each name, a sufficient indication to enable the information entered against it to be readily found.
- (4) The index must be at all times kept available for inspection at the same place as the register.
- (5) If default is made in complying with this section, an offence is committed by –
  - (a) the company, and
  - (b) every officer of the company who is in default.

- (6) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.

### **811 Rights to inspect and require copy of entries**

- (1) The register required to be kept under section 808 (register of interests disclosed), and any associated index, must be open to inspection by any person without charge.
- (2) Any person is entitled, on request and on payment of such fee as may be prescribed, to be provided with a copy of any entry in the register.
- (3) A person seeking to exercise either of the rights conferred by this section must make a request to the company to that effect.
- (4) The request must contain the following information –
  - (a) in the case of an individual, his name and address;
  - (b) in the case of an organisation, the name and address of an individual responsible for making the request on behalf of the organisation;
  - (c) the purpose for which the information is to be used; and
  - (d) whether the information will be disclosed to any other person, and if so –
    - (i) where that person is an individual, his name and address,
    - (ii) where that person is an organisation, the name and address of an individual responsible for receiving the information on its behalf, and
    - (iii) the purpose for which the information is to be used by that person.

### **812 Court supervision of purpose for which rights may be exercised**

- (1) Where a company receives a request under section 811 (register of interests disclosed: right to inspect and require copy), it must –
  - (a) comply with the request if it is satisfied that it is made for a proper purpose, and
  - (b) refuse the request if it is not so satisfied.
- (2) If the company refuses the request, it must inform the person making the request, stating the reason why it is not satisfied.
- (3) A person whose request is refused may apply to the court.
- (4) If an application is made to the court –
  - (a) the person who made the request must notify the company, and
  - (b) the company must use its best endeavours to notify any persons whose details would be disclosed if the company were required to comply with the request.
- (5) If the court is not satisfied that the inspection or copy is sought for a proper purpose, it shall direct the company not to comply with the request.
- (6) If the court makes such a direction and it appears to the court that the company is or may be subject to other requests made for a similar purpose (whether

made by the same person or different persons), it may direct that the company is not to comply with any such request.

The order must contain such provision as appears to the court appropriate to identify the requests to which it applies.

- (7) If the court does not direct the company not to comply with the request, the company must comply with the request immediately upon the court giving its decision or, as the case may be, the proceedings being discontinued.

**813 Register of interests disclosed: refusal of inspection or default in providing copy**

- (1) If an inspection required under section 811 (register of interests disclosed: right to inspect and require copy) is refused or default is made in providing a copy required under that section, otherwise than in accordance with an order of the court, an offence is committed by –
  - (a) the company, and
  - (b) every officer of the company who is in default.
- (2) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.
- (3) In the case of any such refusal or default the court may by order compel an immediate inspection or, as the case may be, direct that the copy required be sent to the person requesting it.

**814 Register of interests disclosed: offences in connection with request for or disclosure of information**

- (1) It is an offence for a person knowingly or recklessly to make in a request under section 811 (register of interests disclosed: right to inspect or require copy) a statement that is misleading, false or deceptive in a material particular.
- (2) It is an offence for a person in possession of information obtained by exercise of either of the rights conferred by that section –
  - (a) to do anything that results in the information being disclosed to another person, or
  - (b) to fail to do anything with the result that the information is disclosed to another person,knowing, or having reason to suspect, that person may use the information for a purpose that is not a proper purpose.
- (3) A person guilty of an offence under this section is liable –
  - (a) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine (or both);
  - (b) on summary conviction –
    - (i) in England and Wales, to imprisonment for a term not exceeding twelve months or to a fine not exceeding the statutory maximum (or both);
    - (ii) in Scotland or Northern Ireland, to imprisonment for a term not exceeding six months, or to a fine not exceeding the statutory maximum (or both).

**815 Entries not to be removed from register**

- (1) Entries in the register kept under section 808 (register of interests disclosed) must not be deleted except in accordance with –
  - section 816 (old entries), or
  - section 817 (incorrect entry relating to third party).
- (2) If an entry is deleted in contravention of subsection (1), the company must restore it as soon as reasonably practicable.
- (3) If default is made in complying with subsection (1) or (2), an offence is committed by –
  - (a) the company, and
  - (b) every officer of the company who is in default.
- (4) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention of subsection (2), a daily default fine not exceeding one-tenth of level 3 on the standard scale.

**816 Removal of entries from register: old entries**

A company may remove an entry from the register kept under section 808 (register of interests disclosed) if more than six years have elapsed since the entry was made.

**817 Removal of entries from register: incorrect entry relating to third party**

- (1) This section applies where in pursuance of an obligation imposed by a notice under section 793 (notice requiring information about interests in company's shares) a person gives to a company the name and address of another person as being interested in shares in the company.
- (2) That other person may apply to the company for the removal of the entry from the register.
- (3) If the company is satisfied that the information in pursuance of which the entry was made is incorrect, it shall remove the entry.
- (4) If an application under subsection (3) is refused, the applicant may apply to the court for an order directing the company to remove the entry in question from the register.  
The court may make such an order if it thinks fit.

**818 Adjustment of entry relating to share acquisition agreement**

- (1) If a person who is identified in the register kept by a company under section 808 (register of interests disclosed) as being a party to an agreement to which section 824 applies (certain share acquisition agreements) ceases to be a party to the agreement, he may apply to the company for the inclusion of that information in the register.
- (2) If the company is satisfied that he has ceased to be a party to the agreement, it shall record that information (if not already recorded) in every place where his name appears in the register as a party to the agreement.



- (3) If an application under this section is refused (otherwise than on the ground that the information has already been recorded), the applicant may apply to the court for an order directing the company to include the information in question in the register.

The court may make such an order if it thinks fit.

### **819 Duty of company ceasing to be public company**

- (1) If a company ceases to be a public company, it must continue to keep any register kept under section 808 (register of interests disclosed), and any associated index, until the end of the period of six years after it ceased to be such a company.
- (2) If default is made in complying with this section, an offence is committed by –
- (a) the company, and
  - (b) every officer of the company who is in default.
- (3) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.

#### *Meaning of interest in shares*

### **820 Interest in shares: general**

- (1) This section applies to determine for the purposes of this Part whether a person has an interest in shares.
- (2) In this Part –
- (a) a reference to an interest in shares includes an interest of any kind whatsoever in the shares, and
  - (b) any restraints or restrictions to which the exercise of any right attached to the interest is or may be subject shall be disregarded.
- (3) Where an interest in shares is comprised in property held on trust, every beneficiary of the trust is treated as having an interest in the shares.
- (4) A person is treated as having an interest in shares if –
- (a) he enters into a contract to acquire them, or
  - (b) not being the registered holder, he is entitled –
    - (i) to exercise any right conferred by the holding of the shares, or
    - (ii) to control the exercise of any such right.
- (5) For the purposes of subsection (4)(b) a person is entitled to exercise or control the exercise of a right conferred by the holding of shares if he –
- (a) has a right (whether subject to conditions or not) the exercise of which would make him so entitled, or
  - (b) is under an obligation (whether subject to conditions or not) the fulfilment of which would make him so entitled.
- (6) A person is treated as having an interest in shares if –
- (a) he has a right to call for delivery of the shares to himself or to his order, or

- (b) he has a right to acquire an interest in shares or is under an obligation to take an interest in shares.

This applies whether the right or obligation is conditional or absolute.

- (7) Persons having a joint interest are treated as each having that interest.
- (8) It is immaterial that shares in which a person has an interest are unidentifiable.

### **821 Interest in shares: right to subscribe for shares**

- (1) Section 793 (notice by company requiring information about interests in its shares) applies in relation to a person who has, or previously had, or is or was entitled to acquire, a right to subscribe for shares in the company as it applies in relation to a person who is or was interested in shares in that company.
- (2) References in that section to an interest in shares shall be read accordingly.

### **822 Interest in shares: family interests**

- (1) For the purposes of this Part a person is taken to be interested in shares in which—
  - (a) his spouse or civil partner, or
  - (b) any infant child or step-child of his,is interested.
- (2) In relation to Scotland “infant” means a person under the age of 18 years.

### **823 Interest in shares: corporate interests**

- (1) For the purposes of this Part a person is taken to be interested in shares if a body corporate is interested in them and—
  - (a) the body or its directors are accustomed to act in accordance with his directions or instructions, or
  - (b) he is entitled to exercise or control the exercise of one-third or more of the voting power at general meetings of the body.
- (2) For the purposes of this section a person is treated as entitled to exercise or control the exercise of voting power if—
  - (a) another body corporate is entitled to exercise or control the exercise of that voting power, and
  - (b) he is entitled to exercise or control the exercise of one-third or more of the voting power at general meetings of that body corporate.
- (3) For the purposes of this section a person is treated as entitled to exercise or control the exercise of voting power if—
  - (a) he has a right (whether or not subject to conditions) the exercise of which would make him so entitled, or
  - (b) he is under an obligation (whether or not subject to conditions) the fulfilment of which would make him so entitled.

### **824 Interest in shares: agreement to acquire interests in a particular company**

- (1) For the purposes of this Part an interest in shares may arise from an agreement between two or more persons that includes provision for the acquisition by any

one or more of them of interests in shares of a particular public company (the “target company” for that agreement).

- (2) This section applies to such an agreement if –
- (a) the agreement includes provision imposing obligations or restrictions on any one or more of the parties to it with respect to their use, retention or disposal of their interests in the shares of the target company acquired in pursuance of the agreement (whether or not together with any other interests of theirs in the company's shares to which the agreement relates), and
  - (b) an interest in the target company's shares is in fact acquired by any of the parties in pursuance of the agreement.
- (3) The reference in subsection (2) to the use of interests in shares in the target company is to the exercise of any rights or of any control or influence arising from those interests (including the right to enter into an agreement for the exercise, or for control of the exercise, of any of those rights by another person).
- (4) Once an interest in shares in the target company has been acquired in pursuance of the agreement, this section continues to apply to the agreement so long as the agreement continues to include provisions of any description mentioned in subsection (2).

This applies irrespective of –

- (a) whether or not any further acquisitions of interests in the company's shares take place in pursuance of the agreement;
- (b) any change in the persons who are for the time being parties to it;
- (c) any variation of the agreement.

References in this subsection to the agreement include any agreement having effect (whether directly or indirectly) in substitution for the original agreement.

- (5) In this section –
- (a) “agreement” includes any agreement or arrangement, and
  - (b) references to provisions of an agreement include –
    - (i) undertakings, expectations or understandings operative under an arrangement, and
    - (ii) any provision whether express or implied and whether absolute or not.

References elsewhere in this Part to an agreement to which this section applies have a corresponding meaning.

- (6) This section does not apply –
- (a) to an agreement that is not legally binding unless it involves mutuality in the undertakings, expectations or understandings of the parties to it; or
  - (b) to an agreement to underwrite or sub-underwrite an offer of shares in a company, provided the agreement is confined to that purpose and any matters incidental to it.

## **825 Extent of obligation in case of share acquisition agreement**

- (1) For the purposes of this Part each party to an agreement to which section 824 applies is treated as interested in all shares in the target company in which any other party to the agreement is interested apart from the agreement (whether

or not the interest of the other party was acquired, or includes any interest that was acquired, in pursuance of the agreement).

- (2) For those purposes an interest of a party to such an agreement in shares in the target company is an interest apart from the agreement if he is interested in those shares otherwise than by virtue of the application of section 824 (and this section) in relation to the agreement.
- (3) Accordingly, any such interest of the person (apart from the agreement) includes for those purposes any interest treated as his under section 822 or 823 (family or corporate interests) or by the application of section 824 (and this section) in relation to any other agreement with respect to shares in the target company to which he is a party.
- (4) A notification with respect to his interest in shares in the target company made to the company under this Part by a person who is for the time being a party to an agreement to which section 824 applies must—
  - (a) state that the person making the notification is a party to such an agreement,
  - (b) include the names and (so far as known to him) the addresses of the other parties to the agreement, identifying them as such, and
  - (c) state whether or not any of the shares to which the notification relates are shares in which he is interested by virtue of section 824 (and this section) and, if so, the number of those shares.

#### *Other supplementary provisions*

### **826 Information protected from wider disclosure**

- (1) Information in respect of which a company is for the time being entitled to any exemption conferred by regulations under section 409(3) (information about related undertakings to be given in notes to accounts: exemption where disclosure harmful to company's business)—
  - (a) must not be included in a report under section 805 (report to members on outcome of investigation), and
  - (b) must not be made available under section 811 (right to inspect and request copy of entries).
- (2) Where any such information is omitted from a report under section 805, that fact must be stated in the report.

### **827 Reckoning of periods for fulfilling obligations**

Where the period allowed by any provision of this Part for fulfilling an obligation is expressed as a number of days, any day that is not a working day shall be disregarded in reckoning that period.

### **828 Power to make further provision by regulations**

- (1) The Secretary of State may by regulations amend—
  - (a) the definition of shares to which this Part applies (section 792),
  - (b) the provisions as to notice by a company requiring information about interests in its shares (section 793), and

- (c) the provisions as to what is taken to be an interest in shares (sections 820 and 821).
- (2) The regulations may amend, repeal or replace those provisions and make such other consequential amendments or repeals of provisions of this Part as appear to the Secretary of State to be appropriate.
- (3) Regulations under this section are subject to affirmative resolution procedure.

## PART 23

### DISTRIBUTIONS

#### CHAPTER 1

##### RESTRICTIONS ON WHEN DISTRIBUTIONS MAY BE MADE

###### *Introductory*

### **829 Meaning of “distribution”**

- (1) In this Part “distribution” means every description of distribution of a company's assets to its members, whether in cash or otherwise, subject to the following exceptions.
- (2) The following are not distributions for the purposes of this Part—
  - (a) an issue of shares as fully or partly paid bonus shares;
  - (b) the reduction of share capital—
    - (i) by extinguishing or reducing the liability of any of the members on any of the company's shares in respect of share capital not paid up, or
    - (ii) by repaying paid-up share capital;
  - (c) the redemption or purchase of any of the company's own shares out of capital (including the proceeds of any fresh issue of shares) or out of unrealised profits in accordance with Chapter 3, 4 or 5 of Part 18;
  - (d) a distribution of assets to members of the company on its winding up.

###### *General rules*

### **830 Distributions to be made only out of profits available for the purpose**

- (1) A company may only make a distribution out of profits available for the purpose.
- (2) 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) Subsection (2) has effect subject to sections 832 and 835 (investment companies etc: distributions out of accumulated revenue profits).

**831 Net asset restriction on distributions by public companies**

- (1) A public company may only make a distribution –
  - (a) if the amount of its net assets is not less than the aggregate of its called-up share capital and 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 this purpose a company’s “net assets” means the aggregate of the company’s assets less the aggregate of its liabilities.
- (3) “Liabilities” here includes –
  - (a) where the relevant accounts are Companies Act accounts, provisions of a kind specified for the purposes of this subsection by regulations under section 396;
  - (b) where the relevant accounts are IAS accounts, provisions of any kind.
- (4) A company’s undistributable reserves are –
  - (a) its share premium account;
  - (b) its capital redemption reserve;
  - (c) the amount by which its accumulated, unrealised profits (so far as not previously utilised by capitalisation) exceed its accumulated, unrealised losses (so far as not previously written off in a reduction or reorganisation of capital duly made);
  - (d) any other reserve that the company is prohibited from distributing –
    - (i) by any enactment (other than one contained in this Part), or
    - (ii) by its articles.

The reference in paragraph (c) to capitalisation does not include a transfer of profits of the company to its capital redemption reserve.

- (5) A public company must not include any uncalled share capital as an asset in any accounts relevant for purposes of this section.
- (6) Subsection (1) has effect subject to sections 832 and 835 (investment companies etc: distributions out of accumulated revenue profits).

*Distributions by investment companies***832 Distributions by investment companies out of accumulated revenue profits**

- (1) An investment company may make a distribution out of its accumulated, realised revenue profits if the following conditions are met.
- (2) It may make such a distribution only if, and to the extent that, its accumulated, realised revenue profits, so far as not previously utilised by a distribution or capitalisation, exceed its accumulated revenue losses (whether realised or unrealised), so far as not previously written off in a reduction or reorganisation of capital duly made.
- (3) It may make such a distribution only –
  - (a) if the amount of its assets is at least equal to one and a half times the aggregate of its liabilities to creditors, 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.

- (4) For this purpose a company's liabilities to creditors include—
- (a) in the case of Companies Act accounts, provisions of a kind specified for the purposes of this subsection by regulations under section 396;
  - (b) in the case of IAS accounts, provisions for liabilities to creditors.
- (5) The following conditions must also be met—
- (a) the company's shares must be listed on a recognised UK investment exchange;
  - (b) during the relevant period it must not have—
    - (i) distributed any capital profits otherwise than by way of the redemption or purchase of any of the company's own shares in accordance with Chapter 3 or 4 of Part 18, or
    - (ii) applied any unrealised profits or any capital profits (realised or unrealised) in paying up debentures or amounts unpaid on its issued shares;
  - (c) it must have given notice to the registrar under section 833(1) (notice of intention to carry on business as an investment company)—
    - (i) before the beginning of the relevant period, or
    - (ii) as soon as reasonably practicable after the date of its incorporation.
- (6) For the purposes of this section—
- (a) “recognised UK investment exchange” means a recognised investment exchange within the meaning of Part 18 of the Financial Services and Markets Act 2000 (c. 8), other than an overseas investment exchange within the meaning of that Part; and
  - (b) the “relevant period” is the period beginning with—
    - (i) the first day of the accounting reference period immediately preceding that in which the proposed distribution is to be made, or
    - (ii) where the distribution is to be made in the company's first accounting reference period, the first day of that period,
 and ending with the date of the distribution.
- (7) The company must not include any uncalled share capital as an asset in any accounts relevant for purposes of this section.

### 833 Meaning of “investment company”

- (1) In this Part an “investment company” means a public company that—
- (a) has given notice (which has not been revoked) to the registrar of its intention to carry on business as an investment company, and
  - (b) since the date of that notice has complied with the following requirements.
- (2) Those requirements 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 the condition in section 834 is met as regards holdings in other companies;

- (c) that distribution of the company's capital profits is prohibited by its articles;
  - (d) that the company has not retained, otherwise than in compliance with this Part, in respect of any accounting reference period more than 15% of the income it derives from securities.
- (3) Subsection (2)(c) does not require an investment company to be prohibited by its articles from redeeming or purchasing its own shares in accordance with Chapter 3 or 4 of Part 18 out of its capital profits.
  - (4) Notice to the registrar under this section may be revoked at any time by the company on giving notice to the registrar that it no longer wishes to be an investment company within the meaning of this section.
  - (5) On giving such a notice, the company ceases to be such a company.

### **834 Investment company: condition as to holdings in other companies**

- (1) The condition referred to in section 833(2)(b) (requirements to be complied with by investment company) is that none of the company's holdings in companies (other than those that are for the time being investment companies) represents more than 15% by value of the company's investments.
- (2) For this purpose –
  - (a) holdings in companies that –
    - (i) are members of a group (whether or not including the investing company), and
    - (ii) are not for the time being investment companies, are treated as holdings in a single company; and
  - (b) where the investing company is a member of a group, money owed to it by another member of the group –
    - (i) is treated as a security of the latter held by the investing company, and
    - (ii) is accordingly treated as, or as part of, the holding of the investing company in the company owing the money.
- (3) The condition does not apply –
  - (a) to a holding in a company acquired before 6th April 1965 that on that date represented not more than 25% by value of the investing company's investments, or
  - (b) to a holding in a company that, when it was acquired, represented not more than 15% by value of the investing company's investments, so long as no addition is made to the holding.
- (4) For the purposes of subsection (3) –
  - (a) "holding" means the shares or securities (whether or one class or more than one class) held in any one company;
  - (b) an addition is made to a holding whenever the investing company acquires shares or securities of that one company, otherwise than by being allotted shares or securities without becoming liable to give any consideration, and if an addition is made to a holding that holding is acquired when the addition or latest addition is made to the holding; and
  - (c) where in connection with a scheme of reconstruction a company issues shares or securities to persons holding shares or securities in a second



company in respect of and in proportion to (or as nearly as may be in proportion to) their holdings in the second company, without those persons becoming liable to give any consideration, a holding of the shares or securities in the second company and a corresponding holding of the shares or securities so issued shall be regarded as the same holding.

- (5) In this section –
- “company” and “shares” shall be construed in accordance with sections 99 and 288 of the Taxation of Chargeable Gains Act 1992 (c. 12);
  - “group” means a company and all companies that are its 51% subsidiaries (within the meaning of section 838 of the Income and Corporation Taxes Act 1988 (c. 1)); and
  - “scheme of reconstruction” has the same meaning as in section 136 of the Taxation of Chargeable Gains Act 1992.

### **835 Power to extend provisions relating to investment companies**

- (1) The Secretary of State may by regulations extend the provisions of sections 832 to 834 (distributions by investment companies out of accumulated profits), with or without modifications, to other 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.
- (2) Regulations under this section are subject to affirmative resolution procedure.

## **CHAPTER 2**

### JUSTIFICATION OF DISTRIBUTION BY REFERENCE TO ACCOUNTS

#### *Justification of distribution by reference to accounts*

### **836 Justification of distribution by reference to relevant accounts**

- (1) Whether a distribution may be made by a company without contravening this Part is determined by reference to the following items as stated in the relevant accounts –
  - (a) profits, losses, assets and liabilities;
  - (b) provisions of the following kinds –
    - (i) where the relevant accounts are Companies Act accounts, provisions of a kind specified for the purposes of this subsection by regulations under section 396;
    - (ii) where the relevant accounts are IAS accounts, provisions of any kind;
  - (c) share capital and reserves (including undistributable reserves).
- (2) The relevant accounts are the company’s last annual accounts, except that –
  - (a) where the distribution would be found to contravene this Part by reference to the company’s last annual accounts, it may be justified by reference to interim accounts, and
  - (b) where the distribution is proposed to be declared during the company’s first accounting reference period, or before any accounts

have been circulated in respect of that period, it may be justified by reference to initial accounts.

- (3) The requirements of –
  - section 837 (as regards the company's last annual accounts),
  - section 838 (as regards interim accounts), and
  - section 839 (as regards initial accounts),
 must be complied with, as and where applicable.
- (4) If any applicable requirement of those sections is not complied with, the accounts may not be relied on for the purposes of this Part and the distribution is accordingly treated as contravening this Part.

*Requirements applicable in relation to relevant accounts*

**837 Requirements where last annual accounts used**

- (1) The company's last annual accounts means the company's individual accounts –
  - (a) that were last circulated to members in accordance with section 423 (duty to circulate copies of annual accounts and reports), or
  - (b) if in accordance with section 426 the company provided a summary financial statement instead, that formed the basis of that statement.
- (2) The accounts must have been properly prepared in accordance with this Act, or have been so prepared subject only to matters that are not material for determining (by reference to the items mentioned in section 836(1)) whether the distribution would contravene this Part.
- (3) Unless the company is exempt from audit and the directors take advantage of that exemption, the auditor must have made his report on the accounts.
- (4) If that report was qualified –
  - (a) the auditor must have stated in writing (either at the time of his report or subsequently) whether in his opinion the matters in respect of which his report is qualified are material for determining whether a distribution would contravene this Part, and
  - (b) a copy of that statement must –
    - (i) in the case of a private company, have been circulated to members in accordance with section 423, or
    - (ii) in the case of a public company, have been laid before the company in general meeting.
- (5) An auditor's statement is sufficient for the purposes of a distribution if it relates to distributions of a description that includes the distribution in question, even if at the time of the statement it had not been proposed.

**838 Requirements where interim accounts used**

- (1) Interim accounts must be accounts that enable a reasonable judgment to be made as to the amounts of the items mentioned in section 836(1).
- (2) Where interim accounts are prepared for a proposed distribution by a public company, the following requirements apply.

- (3) The accounts must have been properly prepared, or have been so prepared subject to matters that are not material for determining (by reference to the items mentioned in section 836(1)) whether the distribution would contravene this Part.
- (4) “Properly prepared” means prepared in accordance with sections 395 to 397 (requirements for company individual accounts), applying those requirements with such modifications as are necessary because the accounts are prepared otherwise than in respect of an accounting reference period.
- (5) The balance sheet comprised in the accounts must have been signed in accordance with section 414.
- (6) A copy of the accounts must have been delivered to the registrar.  
Any requirement of Part 35 of this Act as to the delivery of a certified translation into English of any document forming part of the accounts must also have been met.

### 839 Requirements where initial accounts used

- (1) Initial accounts must be accounts that enable a reasonable judgment to be made as to the amounts of the items mentioned in section 836(1).
- (2) Where initial accounts are prepared for a proposed distribution by a public company, the following requirements apply.
- (3) The accounts must have been properly prepared, or have been so prepared subject to matters that are not material for determining (by reference to the items mentioned in section 836(1)) whether the distribution would contravene this Part.
- (4) “Properly prepared” means prepared in accordance with sections 395 to 397 (requirements for company individual accounts), applying those requirements with such modifications as are necessary because the accounts are prepared otherwise than in respect of an accounting reference period.
- (5) The company’s auditor must have made a report stating whether, in his opinion, the accounts have been properly prepared.
- (6) If that report was qualified –
  - (a) the auditor must have stated in writing (either at the time of his report or subsequently) whether in his opinion the matters in respect of which his report is qualified are material for determining whether a distribution would contravene this Part, and
  - (b) a copy of that statement must –
    - (i) in the case of a private company, have been circulated to members in accordance with section 423, or
    - (ii) in the case of a public company, have been laid before the company in general meeting.
- (7) A copy of the accounts, of the auditor’s report and of any auditor’s statement must have been delivered to the registrar.  
Any requirement of Part 35 of this Act as to the delivery of a certified translation into English of any of those documents must also have been met.

*Application of provisions to successive distributions etc***840 Successive distributions etc by reference to the same accounts**

- (1) In determining whether a proposed distribution may be made by a company in a case where—
  - (a) one or more previous distributions have been made in pursuance of a determination made by reference to the same relevant accounts, or
  - (b) relevant financial assistance has been given, or other relevant payments have been made, since those accounts were prepared,the provisions of this Part apply as if the amount of the proposed distribution was increased by the amount of the previous distributions, financial assistance and other payments.
- (2) The financial assistance and other payments that are relevant for this purpose are—
  - (a) financial assistance lawfully given by the company out of its distributable profits;
  - (b) financial assistance given by the company in contravention of section 678 or 679 (prohibited financial assistance) in a case where the giving of that assistance reduces the company’s net assets or increases its net liabilities;
  - (c) payments made by the company in respect of the purchase by it of shares in the company, except a payment lawfully made otherwise than out of distributable profits;
  - (d) payments of any description specified in section 705 (payments apart from purchase price of shares to be made out of distributable profits).
- (3) In this section “financial assistance” has the same meaning as in Chapter 2 of Part 18 (see section 677).
- (4) For the purpose of applying subsection (2)(b) in relation to any financial assistance—
  - (a) “net assets” means the amount by which the aggregate amount of the company’s assets exceeds the aggregate amount of its liabilities, and
  - (b) “net liabilities” means the amount by which the aggregate amount of the company’s liabilities exceeds the aggregate amount of its assets,taking the amount of the assets and liabilities to be as stated in the company’s accounting records immediately before the financial assistance is given.
- (5) For this purpose a company’s liabilities include any amount retained as reasonably necessary for the purposes of providing for any liability—
  - (a) the nature of which is clearly defined, and
  - (b) which is either likely to be incurred or certain to be incurred but uncertain as to amount or as to the date on which it will arise.