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## STATUTORY INSTRUMENTS

# 1986 No. 1032

## The Companies (Northern Ireland) Order 1986 (revoked)

**F1** Order repealed (prosp.) by [Companies Act 2006 \(c. 46\), ss. 1284\(2\), 1295, 1300\(2\), Sch. 16](#) and the repeal being partly in force, as to which see individual Articles (with savings (with adaptations) by Companies Act 2006 (Commencement No. 6, Saving and Commencement Nos. 3 and 5 (Amendment)) Order 2008 (S.I. 2008/674), arts. 2(3), {4}, Sch. 2) and subject to amendments (6.4.2008) by [Companies Act 2006 \(Consequential Amendments etc\) Order 2008 \(S.I. 2008/948\), arts. 2\(2\), 3\(1\)\(b\)\(2\), Sch. 1 paras. 135, 147, 148 {Sch. 2 Note 1}](#) (with arts. 6, 11, 12) and subject to amendments (6.4.2008) by [S.R. 2008/133, {regs. 2, 3}](#)

### PART I

#### INTRODUCTORY AND INTERPRETATION

##### *Title and commencement*

1.—(1) This Order may be cited as the Companies (Northern Ireland) Order 1986.

(2) <sup>F1</sup> . . . this Order comes into operation on the expiration of three months from the day on which it is made.

**F1** 1990 NI 5

##### *General interpretation*

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

*Para. (2) rep. by 1990 NI 10*

(3) <sup>F2</sup> In this Order—

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

“agent” does not include a person's counsel acting as such;

“annual return” means the return to be made by a company under Article 371 or 372 (as the case may be);

“articles” and “articles of association” mean, in relation to a company, its articles of association, as originally framed or as altered by resolution, including (so far as applicable to the company) regulations contained in or annexed to any statutory provision relating to companies passed or made before this Order, as altered by or under any such statutory provision;

*Definition rep. by 1990 NI 5*

<sup>F3</sup> . . . . .

“bank holiday” means a day which is a bank holiday in Northern Ireland under the Banking and Financial Dealings Act 1971;

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*Definition rep. by SI 2001/3649*

“books and papers” and “books or papers” include accounts, deeds, writings and documents;

[<sup>F4</sup>“communication” means the same as in the Electronic Communications Act (Northern Ireland) 2001;]

“the Companies Orders” means this Order, the [<sup>F5</sup> insider dealing legislation] and the consequential Provisions Order;

“company limited by guarantee” and “company limited by shares” have the meaning assigned to them respectively by Article 12(2);

“the Consequential Provisions Order” means the Companies Consolidation (Consequential Provisions) (Northern Ireland) Order 1986;

“contributory” has the meaning assigned to it by Article 473;

“the court,” in relation to a company, means the court having jurisdiction to wind up the company;

<sup>F6</sup> .....

“the Department” means the Department of Economic Development;

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

<sup>F7</sup> .....

[<sup>F4</sup>“electronic communication” means the same as in the Electronic Communications Act (Northern Ireland) 2001;]

“equity share capital” means, in relation to a company, its issued share capital excluding any part of that capital which, neither as respects dividends nor as respects capital, carries any right to participate beyond a specified amount in distribution;

“expert” has the meaning given by Article 72;

“former Companies Acts” means the Joint Stock Companies Acts, the Companies Act 1862, the Companies (Consolidation) Act 1908, the Companies Act (Northern Ireland) 1932 and the Companies Acts (Northern Ireland) 1960 to 1983;

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

[<sup>F5</sup>“the insider dealing legislation” means Part V of the Criminal Justice Act 1993 (insider dealing);]

<sup>F8</sup> .....

“the Insolvency Account” means the account kept by the Department under [<sup>F9</sup> Article 358 of the Insolvency Order];

*Definition rep. by SI 2001/3649*

“joint stock company” has the meaning given by Article 632;

“the Joint Stock Companies Acts” means the Joint Stock Companies Act 1856, the Joint Stock Banking Companies Act 1856, 1857, the Joint Stock Banking Companies Act 1857 and the Act to enable Joint Stock Banking Companies to be formed on the principle of limited liability, or any one or more of those Acts (as the case may require), but does not include the Joint Stock Companies Act 1844;

“memorandum”, in relation to a company, means its memorandum of association, as originally framed or as altered in pursuance of any statutory provision;

“number”, in relation to shares, includes amount, where the context admits of the reference to shares being construed to include stock;

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“officer” in relation to a body corporate, includes a director or secretary;  
“the Official Assignee” means the officer appointed under Article 488 and, for the purposes of this Order, includes an Assistant Official Assignee;  
“the Order of 1978” means the Companies (Northern Ireland) Order 1978;  
“the Order of 1981” means the Companies (Northern Ireland) Order 1981;  
“the Order of 1982” means the Companies (Northern Ireland) Order 1982;  
“the Order of 1983” means the Companies (Beneficial Interests) (Northern Ireland) Order 1983;  
“Part XXIII company” has the meaning given by Article 640;  
“place of business” includes a share transfer or share registration office;

<sup>F10</sup>

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

[<sup>F11</sup>“prospectus issued generally” means a prospectus issued to persons who are not existing members of the company or holders of its debentures;]

*Definition rep. by 1987 c. 22*

*Definition rep. by 1986 c. 60*

[<sup>F12</sup>regulated activity has the meaning given in section 22 of the Financial Services and Markets Act 2000;]

“the registrar” means the registrar of companies appointed under Article 653, and, for the purposes of this Order, includes an assistant registrar;

“a resolution for reducing share capital” has the meaning assigned to it by Article 145(3);

*Definition rep. by 1989 NI 19*

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

“statutory provision” has the meaning assigned to it by section 1(f) of the Interpretation Act (Northern Ireland) 1954;

“undischarged bankrupt” includes—

- (a) a bankrupt who has not obtained the certificate of conformity mentioned in section 56 of the Bankruptcy (Ireland) Amendment Act 1872;
- (b) a bankrupt who has not been discharged from his bankruptcy by an absolute order of discharge under Article 28 or 30 of the Bankruptcy Amendment (Northern Ireland) Order 1980<sup>F9</sup> or Article 254 of the Insolvency Order], or by virtue of the expiration of the period or the satisfaction of any requirement specified in a suspended or conditional order of discharge under<sup>F9</sup> any] of those Articles, or by virtue of Article 29(2) or (4) (automatic discharge) of that Order<sup>F9</sup> of 1980 or of Article 253 (duration of discharge) of the Insolvency Order];
- (c) a person who is an undischarged bankrupt under the law of England or Scotland;

<sup>F13</sup>

“unlimited company” has the meaning assigned to it by Article 12(2)(c).

(4) For the purposes of section 42 of the Northern Ireland Constitution Act 1973 (validity of Acts of Parliament of Northern Ireland), provisions of this Order which re-enact provisions of an Act of the Parliament of Northern Ireland are deemed to be provisions of such an Act.

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- F2** mod. by SR 2004/307
- F3** Art. 2: definition of "authorised minimum" repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 2 (with arts. 7, 12)
- F4** SR 2003/3
- F5** 1993 c.36
- F6** Art. 2: definition of "debenture" repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 2 (with arts. 7, 12)
- F7** Art. 2: definition of "EEA State" repealed (6.4.2007) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), **Sch. 16**; S.I. 2007/1093, **art. 5**, Sch. 2 Pt. 2 (with arts. 8, 11(1), Sch. 6 para. 1)
- F8** Art. 2: definition of "insurance market activity" repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 2 (with arts. 7, 12)
- F9** 1989 NI 19
- F10** Art. 2: definition of "prescribed" repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 2 (with arts. 7, 12)
- F11** Art. 2: definition of "prospectus issued generally" repealed (29.4.1988 for certain purposes, otherwise prosp.) by Financial Services Act 1986 (c. 60), s. 212(3), **Sch. 17 Pt. II**; S.I. 1988/740, **art. 2**, **Sch.** (N.B. 1986 c. 60 repealed (1.12.2001) by S.I. 2001/3649, **arts. 1, 3(1)(c)** (with art. 292))
- F12** SI 2001/3649
- F13** Art. 2: definition of "undistributable reserves" repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 2 (with arts. 7, 12)

**{*prosp. insertion of 2nd art. 2A by 1990 NI10*}**

**2A**<sup>F14F15F16F17F18F19</sup>

- F14** Art. 2A (new) prosp. insertion by 1990 NI10
- F15** SI 2001/3649 amending art. 2A which was inserted prosp. by 1990 NI 10
- F16** SR 2003/3 amending art. 2A which was inserted prosp. by 1990 NI 10
- F17** SR 2004/263 amending Art. 2A which was inserted prosp. by 1990 NI 10
- F18** SR 2004/496 5 amendments to be made amending Art. 2A which was inserted prosp. by 1990 NI 10
- F19** mod. by SR 2004/307

**[<sup>F20</sup>*Relationship of this Order to Insolvency Order*]**

**2A.**—(1<sup>F21</sup> In this Order “the Insolvency Order” means the Insolvency (Northern Ireland) Order 1989.

(2) In Articles 383(1)(b), 418(5)(a),<sup>F22</sup> . . . 453(2), 625, 626, 627 and 676 and paragraph 6(1) of Schedule 20 the words “this Order” are to be read as including Parts II to VII and Articles 359 to 362 of the Insolvency Order<sup>F23</sup> and the Company Directors Disqualification (Northern Ireland) Order 2002]

(3) In Articles<sup>F24</sup> 653(4) and (5)], 655(1),<sup>F25</sup> 656B],<sup>F22</sup> 656A(1),] 657(1)(a) and (3),<sup>F22</sup> 658(1) and (3),<sup>F22</sup> 659A], 662(1), 677 and 680(3) references to the Companies Orders include Parts II to VII and Articles 359 to 362 of the Insolvency Order<sup>F23</sup> and the Company Directors Disqualification (Northern Ireland) Order 2002].]

- F20** 1989 NI 19
- F21** mod. by SR 2004/307
- F22** 1990 NI 10

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**F23** 2002 NI 4  
**F24** 1996 NI 11  
**F25** SR 2003/3

### **[<sup>F26</sup>Relationship of this Order to Parts IV and V of the Financial Services Act 1986**

**2B.** In Articles [<sup>F27</sup> 653(4) and (5)], 655(1), 656(1), 656A(1), 657(1)(a) and (3), 658(1) and (3), 659A and 662(1) references to the Companies Orders include [<sup>F28</sup> Part 6 of the Financial Services and Markets Act 2000].]

**F26** 1990 NI 10, art. 61(6)  
**F27** 1996 NI 11  
**F28** SI 2001/3649

### **“Company”, etc.**

**3.—(1)** In this Order—

- (a) “company” means a company formed and registered under this Order, or an existing company;
  - (b) “existing company” means a company formed and registered, or deemed to have been registered, in Northern Ireland under the former Companies Acts;
- (2) “Public company” and “private company” have the meanings given by Article 12.

### **[<sup>F29</sup>“Subsidiary”, “holding company” and “wholly-owned subsidiary”**

**4.—(1)** <sup>F30</sup> A company is a “subsidiary” of another company, its “holding company”, if that other company—

- (a) holds a majority of the voting rights in it, or
  - (b) is a member of it and has the right to appoint or remove a majority of its board of directors, or
  - (c) is a member of it and controls alone, pursuant to an agreement with other shareholders or members, a majority of the voting rights in it,
- or if it is a subsidiary of a company which is itself a subsidiary of that other company.

<sup>F30</sup>(2) <sup>F30</sup> A company is a “wholly-owned subsidiary” of another company if it has no members except that other and that other's wholly-owned subsidiaries or persons acting on behalf of that other or its wholly-owned subsidiaries.

(3) In this Article “company” includes any body corporate.]

**F29** 1990 NI 10, art. 62(1)  
**F30** mod. by SR 2004/307

### **[<sup>F31</sup>Provisions supplementing Article 4**

**4A.—(1)** The provisions of this Article explain expressions used in Article 4 and otherwise supplement that Article.

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<sup>F32</sup>(2) In Article 4(1)(a) and (c) the references to the voting rights in a company are to the rights conferred on shareholders in respect of their shares or, in the case of a company not having a share capital, on members, to vote at general meetings of the company on all, or substantially all, matters.

<sup>F32</sup>(3) In Article 4(1)(b) the reference to the right to appoint or remove a majority of the board of directors is to the right to appoint or remove directors holding a majority of the voting rights at meetings of the board on all, or substantially all, matters; and for the purposes of that provision—

- (a) a company shall be treated as having the right to appoint to a directorship if—
  - (i) a person's appointment to it follows necessarily from his appointment as director of the company, or
  - (ii) the directorship is held by the company itself; and
- (b) a right to appoint or remove which is exercisable only with the consent or concurrence of another person shall be left out of account unless no other person has a right to appoint or, as the case may be, remove in relation to that directorship.

(4) Rights which are exercisable only in certain circumstances shall be taken into account only—

- (a) when the circumstances have arisen, and for so long as they continue to obtain, or
- (b) when the circumstances are within the control of the person having the rights;

and rights which are normally exercisable but are temporarily incapable of exercise shall continue to be taken into account.

(5) Rights held by a person in a fiduciary capacity shall be treated as not held by him.

(6) Rights held by a person as nominee for another shall be treated as held by the other; and rights shall be regarded as held as nominee for another if they are exercisable only on his instructions or with his consent or concurrence.

(7) <sup>F32</sup> Rights attached to shares held by way of security shall be treated as held by the person providing the security—

- (a) where apart from the right to exercise them for the purpose of preserving the value of the security, or of realising it, the rights are exercisable only in accordance with his instructions;
- (b) where the shares are held in connection with the granting of loans as part of normal business activities and apart from the right to exercise them for the purpose of preserving the value of the security, or of realising it, the rights are exercisable only in his interests.

(8) <sup>F32</sup> Rights shall be treated as held by a company if they are held by any of its subsidiaries; and nothing in paragraph (6) or (7) shall be construed as requiring rights held by a company to be treated as held by any of its subsidiaries.

(9) <sup>F32</sup> For the purposes of paragraph (7) rights shall be treated as being exercisable in accordance with the instructions or in the interests of a company if they are exercisable in accordance with the instructions of or, as the case may be, in the interests of—

- (a) any subsidiary or holding company of that company, or
- (b) any subsidiary of a holding company of that company.

(10) <sup>F32</sup> The voting rights in a company shall be reduced by any rights held by the company itself.

(11) References in any provision of paragraphs (5) to (10) to rights held by a person include rights falling to be treated as held by him by virtue of any other provision of those paragraphs but not rights which by virtue of any such provision are to be treated as not held by him.

(12) <sup>F32</sup> In this Article “company” includes any body corporate.]

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**F32** mod. by SR 2004/307

### *<sup>F33</sup>Power to amend Articles 4 and 4A*

**4B.**—(1) The Department may by regulations amend Articles 4 and 4A so as to alter the meaning of the expressions “holding company”, “subsidiary” or “wholly-owned subsidiary”.

(2) Any amendment made by regulations under this Article does not apply for the purposes of statutory provisions outside the Companies Orders unless the regulations so provide.

(3) So much of section 29(1) of the Interpretation Act (Northern Ireland) 1954 (effect of repeal and re-enactment) as relates to statutory documents shall not apply in relation to any repeal and re-enactment effected by regulations made under this Article.]

**F33** 1990 NI 10, art. 62(3)

### *“Called-up share capital”*

**5.**—(1) In this Order, “called-up share capital”, in relation to a company, means so much of its share capital as equals the aggregate amount of the calls made on its shares (whether or not those calls have been paid), together with any share capital paid up without being called and any share capital to be paid on a specified future date under its articles, the terms of allotment of the relevant shares or any other arrangements for payment of those shares.

(2) “Uncalled share capital” is to be construed accordingly.

### *“Allotment” and “paid up”*

**6.**—(1) In relation to an allotment of shares in a company, the shares are to be taken for the purposes of this Order to be allotted when a person acquires the unconditional right to be included in the company's register of members in respect of those shares.

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

(3) In relation to the allotment or payment up of any shares in a company, references in this Order (except Articles 99 to 104) to consideration other than cash and to the payment up of shares and premiums on shares otherwise than in cash include the payment of, or any undertaking to pay, cash to any person other than the company.

(4) For the purpose of determining whether a share is or is to be allotted for cash, or paid up in cash, “cash” includes foreign currency.

### *“Non-cash asset”*

**7** <sup>F34</sup>.—(1) In this Order “non-cash asset” means any property or interest in property other than cash; and for this purpose “cash” includes foreign currency.

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

**F34** mod. by SR 2004/307

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**“Body corporate” and “corporation”**

**8**<sup>F35</sup>. References in this Order to a body corporate or to a corporation do not include a corporation sole, but include a company incorporated elsewhere than in Northern Ireland.

Such references to a body corporate do not include a Scottish firm.

**F35** mod. by SR 2004/307

**“Director” and “shadow director”**

**9.**<sup>F36</sup> .....

**F36** Art. 9 repealed (1.10.2007) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), Sch. 16; S.I. 2007/2194, arts. 1(3)(a), 8, Sch. 2 Pt. 2 (with art. 12)

**[<sup>F37</sup>Expressions used in connection with accounts**

**10**<sup>F38</sup>.—(1) In this Order the following expressions have the same meaning as in [<sup>F39</sup>Part 15 of the Companies Act 2006 (accounts and reports)]—

- “annual accounts”,
- “accounting reference date” and “accounting reference period”,
- “balance sheet” and “balance sheet date”,
- [<sup>F40</sup>“Companies Order accounts”]
- [<sup>F40</sup>“Companies Order individual accounts”]
- “current assets”,
- “financial year”, in relation to a company,
- “fixed assets”,
- [<sup>F40</sup>“IAS accounts”]
- [<sup>F40</sup>“IAS individual accounts”]
- “parent company” and “parent undertaking”,
- “profit and loss account”, and
- “subsidiary undertaking”.

(2) References in this Order to “realised profits” and “realised losses”, in relation to a company's accounts, shall be construed in accordance with [<sup>F41</sup>section 853(4) and (5) of the Companies Act 2006].

(3) <sup>F42</sup>.....]

**F37** 1990 NI 5, art. 25

**F38** mod. by SR 2004/307

**F39** Words in art. 10(1) substituted (6.4.2008) by Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2008/948), arts. 2(2), 3(1)(b), Sch. 1 para. 112(a) (with arts. 6, 11, 12)

**F40** SR 2004/496

**F41** Words in art. 10(2) substituted (6.4.2008) by Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2008/948), arts. 2(2), 3(1)(b), Sch. 1 para. 112(b) (with arts. 6, 11, 12)



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**F42** Art. 10(3) repealed (6.4.2008) by Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2008/948), arts. 2(2), 3(1)(b)(2), Sch. 1 para. 112(c), **Sch. 2** (with arts. 6, 11, 12)

### Meaning of “offer to the public”

**10A.** <sup>F43</sup> .....

**F43** Arts. 10A-10C repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 2 (with arts. 7, 12)

### Meaning of “banking company”

**10B** <sup>F44</sup> .....

**F44** Arts. 10A-10C repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 2 (with arts. 7, 12)

### Meaning of “insurance company” and “authorised insurance company”

**10C** <sup>F45</sup> .....

**F45** Arts. 10A-10C repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 2 (with arts. 7, 12)

### “Employees' share scheme”

**11.** For the purposes of this Order, an employees' share scheme is a scheme for encouraging or facilitating the holding of shares or debentures in a company by or for the benefit of—

- (a) the bona fide employees or former employees of the company, the company's subsidiary or holding company or a subsidiary of the company's holding company, or
- (b) the<sup>F46</sup> spouses, civil partners, surviving spouses, surviving civil partners] or children, step-children or adopted children under the age of 18 of such employees or former employees.

**F46** 2004 c.33

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## PART II

### FORMATION AND REGISTRATION OF COMPANIES; JURIDICAL STATUS AND MEMBERSHIP

#### CHAPTER I

#### COMPANY FORMATION

##### *Memorandum of association*

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

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

(2) A company so formed may be either—

- (a) a company having the liability of its members limited by the memorandum to the amount, if any, unpaid on the shares respectively held by them (“a company limited by shares”);
- (b) a company having the liability of its members limited by the memorandum to such amount as the members may respectively thereby undertake to contribute to the assets of the company in the event of its being wound up (“a company limited by guarantee”); or
- (c) a company not having any limit on the liability of its members (“an unlimited company”).

(3) A “public company” is a company limited by shares or limited by guarantee and having a share capital, being a company—

- (a) the memorandum of which states that it is to be a public company, and
- (b) in relation to which the provisions of this Order or the former Companies Acts as to the registration or re-registration of a company as a public company have been complied with on or after 1st July 1983;

and a “private company” is a company that is not a public company.

[<sup>F47</sup>(3A) Notwithstanding paragraph (1), one person may, for a lawful purpose, by subscribing his name to a memorandum of association and otherwise complying with the requirements of this Order in respect of registration, form an incorporated company being a private company limited by shares or by guarantee.]

(4) With effect from 1st July 1983, a company cannot be formed as, or become, a company limited by guarantee with a share capital.

**F47** SR 1992/405

##### ***Requirements with respect to memorandum***

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

- (a) the name of the company;
- (b) that the registered office of the company is to be situated in Northern Ireland;
- (c) the objects of the company.

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

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

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

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

(5) [<sup>F48</sup>Subject to paragraph (5A), the memorandum] must be signed by each subscriber in the presence of at least one witness, who must attest the signature.

[<sup>F48</sup>(5A) Where the memorandum is delivered to the registrar otherwise than in legible form and is authenticated by each subscriber in such manner as is directed by the registrar, the requirements in paragraph (5) for signature in the presence of at least one witness and for attestation of the signature do not apply.]

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

**F48** SR 2003/3

### **Forms of memorandum**

**14.** Subject to the provisions of Articles 12 and 13, the form of the memorandum of association of—

- (a) a public company, being a company limited by shares,
- (b) a public company, being a company limited by guarantee and having a share capital,
- (c) a private company limited by shares,
- (d) a private company limited by guarantee and not having a share capital,
- (e) a private company limited by guarantee and having a share capital, and
- (f) an unlimited company having a share capital,

shall be as prescribed respectively for such companies by regulations, made by the Department, or as near to that form as circumstances admit.

### **[<sup>F49</sup>Statement of company's objects: general commercial company**

**14A.** Where the company's memorandum states that the object of the company is to carry on business as a general commercial company—

- (a) the object of the company is to carry on any trade or business whatsoever, and
- (b) the company has power to do all such things as are incidental or conducive to the carrying on of any trade or business by it.]

**F49** 1990 NI 10

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## [<sup>F50</sup>Resolution to alter objects

**15.—(1)** A company may by special resolution alter its memorandum with respect to the statement of the company's objects.

(2) If an application is made under Article 16, an alteration does not have effect except in so far as it is confirmed by the court.]

**F50** 1990 NI 10, 46(2)

### *Procedure for objecting to alteration*

**16.—(1)** Where a company's memorandum has been altered by special resolution under Article 15, application may be made to the court for the alteration to be cancelled.

(2) Such an application may be made—

- (a) by the holders of not less in the aggregate than 15 per cent. in nominal value of the company's issued share capital or any class of it or, if the company is not limited by shares, not less than 15 per cent. of the company's members; or
- (b) by the holders of not less than 15 per cent. of the company's debentures entitling the holders to object to an alteration of its objects;

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

(3) The application must be made within 21 days after the date on which the resolution altering the company's objects was passed, and may be made on behalf of the persons entitled to make the application by such one or more of their number as they may appoint in writing for the purpose.

(4) The court may on such an application make an order confirming the alteration either wholly or in part and on such terms and conditions as it thinks fit, and may—

- (a) if it thinks fit, adjourn the proceedings in order that an arrangement may be made to its satisfaction for the purchase of the interests of dissentient members, and
- (b) give such directions and make such orders as it thinks expedient for facilitating or carrying into effect any such arrangement.

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

(6) If the court's order requires the company not to make any, or any specified, alteration in its memorandum or articles, the company does not then have power without the leave of the court to make any such alteration in breach of that requirement.

(7) An alteration in the memorandum or articles of a company made by virtue of an order under this Article, other than one made by resolution of the company, is of the same effect as if duly made by resolution; and this Order applies accordingly to the memorandum or articles as so altered.

[<sup>F51</sup>(7A) For the purposes of paragraph (2)(a), any of the company's issued share capital held as treasury shares must be disregarded.]

(8) The debentures entitling the holders to object to an alteration of a company's objects are any debentures secured by a floating charge which were issued or first issued before 1st April 1961 or form part of the same series as any debentures so issued; and a special resolution altering a company's objects requires the same notice to the holders of any such debentures as to members of the company. In the absence of provisions regulating the giving of notice to any such debenture holders, the provisions of the company's articles regulating the giving of notice to members apply.

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**F51** SR 2004/275

### **Provisions supplementing Articles 15 and 16**

**17.—**(1) Where a company passes a resolution altering its objects, then—

- (a) if with respect to the resolution no application is made under Article 16, the company shall within 15 days from the end of the period for making such an application deliver to the registrar a printed copy of its memorandum as altered; and
- (b) if such an application is made, the company shall—
  - (i) forthwith give notice (in the prescribed form) of that fact to the registrar, and
  - (ii) within 15 days from the date of any order cancelling or confirming the alteration, deliver to the registrar an office copy of the order and, in the case of an order confirming the alteration, a printed copy of the memorandum as altered.

(2) The court may by order at any time extend the time for the delivery of documents to the registrar under paragraph (1)(b) for such period as the court may think proper.

(3) If a company makes default in giving notice or delivering any document to the registrar as required by paragraph (1), the company and every officer of it who is in default is liable to a fine and, for continued contravention, to a daily default fine.

(4) The validity of an alteration of a company's memorandum with respect to the objects of the company shall not be questioned on the ground that it was not authorised by Article 15, except in proceedings taken for the purpose (whether under Article 16 or otherwise) before the expiration of 21 days after the date of the resolution in that behalf.

(5) Where such proceedings are taken otherwise than under Article 16, paragraphs (1) to (3) apply in relation to the proceedings as if they had been taken under that Article and as if an order declaring the alteration invalid were an order cancelling it, and as if an order dismissing the proceedings were an order confirming the alteration.

#### **Modifications etc. (not altering text)**

**C1** Art. 17(3) applied (prosp.) by Charities Act (Northern Ireland) 2008 (c. 12), ss. 96(6), 185(1)

### *Articles of association*

#### **Regulation of companies by articles of association**

**18.—**(1) There may in the case of a company limited by shares, and there shall in the case of a company limited by guarantee or unlimited, be registered with the memorandum articles of association signed by the subscribers to the memorandum and making regulations for the company.

(2) In the case of an unlimited company having a share capital, its articles must state the amount of share capital with which the company proposes to be registered.

(3) Articles of association must—

- (a) be printed,
- (b) be divided into paragraphs numbered consecutively, and
- (c) [<sup>F52</sup>subject to paragraph (4),] be signed by each subscriber of the memorandum in the presence of at least one witness who must attest the signature.

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[<sup>F52</sup>(4) Where the articles are delivered to the registrar otherwise than in legible form and are authenticated by each subscriber to the memorandum in such manner as is directed by the registrar, the requirements in paragraph (3)(c) for signature in the presence of at least one witness and for attestation of the signature do not apply.]

**F52** SR 2003/3

### **Tables A, C, D and E**

**19.**—(1) Table A is as prescribed by regulations made by the Department; and a company may for its articles adopt the whole or any part of that Table.

(2) In the case of a company limited by shares, if articles are not registered or, if articles are registered, in so far as they do not exclude or modify Table A, that Table (so far as applicable, and as in force at the date of the company's registration) constitutes the company's articles in the same manner and to the same extent as if articles in the form of that Table had been duly registered.

(3) If in consequence of regulations under this Article Table A is altered, the alteration does not affect a company registered before the alteration takes effect, or revoke as respects that company any portion of the Table.

(4) The form of the articles of association of—

- (a) a company limited by guarantee and not having a share capital,
- (b) a company limited by guarantee and having a share capital, and
- (c) an unlimited company having a share capital,

shall be respectively in accordance with Table C, D or E prescribed by regulations made by the Department or as near to that form as circumstances admit.

*{prosp. insertion of art. 19A by 1990 NI10}*

**19A**<sup>F53</sup>

**F53** Art. 19A inserted (prosp.) by 1990 NI 10

### **Alteration of articles by special resolution**

**20.**—(1) Subject to the provisions of this Order and to the conditions contained in its memorandum, a company may by special resolution alter its articles.

(2) Alterations so made in the articles are (subject to this Order) as valid as if originally contained in them and are subject in like manner to alteration by special resolution.

### *Registration and its consequences*

### **Documents to be sent to registrar**

**21.**—(1) A company's memorandum and articles (if any) shall be delivered to the registrar.

(2) With the memorandum there shall be delivered a statement in the prescribed form containing the names and requisite particulars of—

- (a) the person who is, or the persons who are, to be the first director or directors of the company; and

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- [<sup>F54</sup>(ba) in the case of a company that is to be a private company, any person who is (or any persons who are) to be the first secretary (or joint secretaries) of the company;
- (bb) in the case of a company that is to be a public company, the person who is (or the persons who are) to be the first secretary (or joint secretaries) of the company.]

and the requisite particulars in each case are those set out in Schedule 1.

(3) The statement shall be signed by or on behalf of the subscribers of the memorandum and shall contain a consent signed by each of the persons named in it as a director, as secretary or as one of joint secretaries, to act in the relevant capacity.

(4) Where a memorandum is delivered by a person as agent for the subscribers, the statement shall specify that fact and the person's name and address.

(5) An appointment by a company's articles delivered with the memorandum of a person as director or secretary of the company is void unless he is named as a director or secretary in the statement.

(6) There shall in the statement be specified the intended situation of the company's registered office on incorporation.

**F54** Art. 21(2)(ba)(bb) substituted (6.4.2008) for art. 21(2)(b) by [Companies Act 2006 \(Consequential Amendments etc\) Order 2008 \(S.I. 2008/948\)](#), arts. 2(2), 3(1)(b), **Sch. 1 para. 113** (with arts. 6, 11, 12)

### ***Minimum authorised capital (public companies)***

**22.** When a memorandum delivered to the registrar under Article 21 states that the association to be registered is to be a public company,<sup>[F55]</sup> the share capital stated in the memorandum to be that with which the company proposes to be registered—

- (a) must have a nominal value of not less than the authorised minimum (as defined in section 763 of the Companies Act 2006); and
- (b) to the extent necessary to comply with that requirement, must be denominated in accordance with section 765 of that Act (allotted share capital of public company to be denominated either in sterling or in euros but not partly in one and partly in the other).]

**F55** Words in art. 22 substituted (6.4.2008) by [Companies Act 2006 \(Consequential Amendments etc\) Order 2008 \(S.I. 2008/948\)](#), arts. 2(2), 3(1)(b), **Sch. 1 para. 114** (with arts. 6, 11, 12)

### ***Duty of registrar***

**23.—**(1) The registrar shall not register a company's memorandum delivered under Article 21 unless he is satisfied that all the requirements of this Order in respect of registration and of matters precedent and incidental to it have been complied with.

(2) Subject to this, the registrar shall retain and register the memorandum and articles (if any) delivered to him under that Article.

- (3) [<sup>F56</sup>Subject to paragraph (4), a statutory declaration] in the prescribed form by—
- (a) a solicitor engaged in the formation of a company, or
- (b) a person named as a director or secretary of the company in the statement delivered under Article 21(2),

that those requirements have been complied with shall be delivered to the registrar and the registrar may accept such a declaration as sufficient evidence of compliance.

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[<sup>F56</sup>(4) In place of the statutory declaration referred to in paragraph (3), there may be delivered to the registrar using electronic communications a statement made by a person mentioned in subparagraph (a) or (b) of paragraph (3) that the requirements mentioned in paragraph (1) have been complied with; and the registrar may accept such a statement as sufficient evidence of compliance.

(5) Any person who makes a false statement under paragraph (4) which he knows to be false or does not believe to be true is liable to imprisonment or a fine, or both.]

**F56** SR 2003/3

### ***Effect of registration***

**24.**—(1) On the registration of a company's memorandum, the registrar shall give a certificate that the company is incorporated and, in the case of a limited company, that it is limited.

(2) The certificate shall be given under the registrar's hand.

(3) From the date of incorporation mentioned in the certificate, the subscribers of the memorandum, together with such other persons as may from time to time become members of the company, shall be a body corporate by the name contained in the memorandum.

(4) That body corporate is then capable forthwith of exercising all the functions of an incorporated company, but with such liability on the part of its members to contribute to its assets in the event of its being wound up as is provided by this Order[<sup>F57</sup> and the Insolvency Order].

This is subject, in the case of a public company, to [<sup>F58</sup>section 761 of the Companies Act 2006 (public company not to do business without trading certificate)].

(5) The persons named in the statement under Article 21 as directors, secretary or joint secretaries are, on the company's incorporation, deemed to have been respectively appointed as its first directors, secretary or joint secretaries.

(6) Where the registrar registers an association's memorandum which states that the association is to be a public company, the certificate of incorporation shall contain a statement that the company is a public company.

(7) A certificate of incorporation given in respect of an association is conclusive evidence—

- (a) that the requirements of this Order in respect of registration and of matters precedent and incidental to it have been complied with, and that the association is a company authorised to be registered, and is duly registered, under this Order; and
- (b) if the certificate contains a statement that the company is a public company, that the company is such a company.

**F57** 1989 NI 19

**F58** Words in art. 24(4) substituted (6.4.2008) by virtue of [Companies Act 2006 \(Consequential Amendments etc\) Order 2008 \(S.I. 2008/948\)](#), arts. 2(2), 3(1)(b), [Sch. 1 para. 115](#) (with arts. 6, 11, 12)

### ***Effect of memorandum and articles***

**25.**—(1) Subject to the provisions of this Order, the memorandum and articles, when registered, bind the company and its members to the same extent as if they respectively had been signed and sealed by each member, and contained covenants on the part of each member to observe all the provisions of the memorandum and of the articles.

(2) Money payable by a member to the company under the memorandum or articles is a debt due from him to the company.



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### ***Memorandum and articles of company limited by guarantee***

**26.**—(1) In the case of a company limited by guarantee and not having a share capital, every provision in the memorandum or articles, or in any resolution of the company purporting to give any person a right to participate in the divisible profits of the company otherwise than as a member, is void.

(2) For the purposes of provisions of this Order relating to the memorandum of a company limited by guarantee, and for those of Article 12(4) and this Article, every provision in the memorandum or articles, or in any resolution, of a company so limited purporting to divide the company's undertaking into shares or interests is to be treated as a provision for a share capital, notwithstanding that the nominal amount or number of the shares or interests is not specified by the provision.

### ***Effect of alteration on company's members***

**27.**—(1) A member of a company is not bound by an alteration made in its memorandum or articles after the date on which he became a member, if and so far as the alteration—

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

(2) Paragraph (1) operates notwithstanding anything in the memorandum or articles; but it does not apply in a case where the member agrees in writing, either before or after the alteration is made, to be bound by the alteration.

### ***Conditions in memorandum which could have been in articles***

**28.**—(1) A condition contained in a company's memorandum which could lawfully have been contained in articles of association instead of in the memorandum may be altered by the company by special resolution; but if an application is made to the court for the alteration to be cancelled, the alteration does not have effect except in so far as it is confirmed by the court.

(2) This Article—

- (a) is subject to Article 27, and also to [<sup>F59</sup>section 996 of the Companies Act 2006] (court order protecting minority), and
- (b) does not apply where the memorandum itself provides for or prohibits the alteration of all or any of the conditions referred to in paragraph (1), and does not authorise any variation or abrogation of the special rights of any class of members.

(3) Article 16 (except paragraphs (2)(b) and (8)) and Article 17(1) to (3) apply in relation to any alteration and to any application made under this Article as they apply in relation to alterations and applications under Articles 15 to 17.

**F59** Words in art. 28(2)(a) substituted (6.4.2008) by [Companies Act 2006 \(Consequential Amendments etc\) Order 2008 \(S.I. 2008/948\)](#), arts. 2(2), 3(1)(b), [Sch. 1 para. 116](#) (with arts. 6, 11, 12)

### ***Amendments of memorandum or articles to be recorded***

**29.**—<sup>F60</sup>(1) Where an alteration is made in a company's memorandum or articles by any statutory provision, a printed copy of the statutory provision shall, not later than 15 days after that provision comes into operation, be forwarded to the registrar and recorded by him.

(2) Where a company is required (by this Article or otherwise) to send to the registrar any document making or evidencing an alteration in the company's memorandum or articles (other

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than a special resolution under Article 15) the company shall send with it a printed copy of the memorandum or articles as altered.

(3) If a company fails to comply with this Article, the company and any officer of it who is in default is liable to a fine and, for continued contravention, to a daily default fine.

**F60** mod. by SR 1986/305

### ***Copies of memorandum and articles to be given to members***

**30.**—(1) A company shall, on being so required by any member, send to him a copy of its memorandum and of its articles (if any), and a copy of any statutory provision which alters the memorandum, subject to payment—

- (a) in the case of a copy of the memorandum and of the articles, of 5 pence or such less sum as the company may determine, and
- (b) in the case of a copy of a statutory provision, of such sum not exceeding its published price as the company may require.

(2) If a company makes default in complying with this Article, the company and every officer of it who is in default is liable for each offence to a fine.

### ***Issued copy of memorandum to embody alterations***

**31.**—(1) Where an alteration is made in a company's memorandum, every copy of the memorandum issued after the date of the alteration shall be in accordance with the alteration.

(2) If, where any such alteration has been made, the company at any time after the date of the alteration issues any copies of the memorandum which are not in accordance with the alteration, it is liable to a fine, and so too is every officer of the company who is in default.

## *A company's membership*

### ***Definition of “member”***

**32.**—(1) The subscribers of a company's memorandum are deemed to have agreed to become members of the company, and on its registration shall be entered as such in its register of members.

(2) Every other person who agrees to become a member of a company, and whose name is entered in its register of members, is a member of the company.

### **[<sup>F61</sup>Membership of holding company**

**33.**—(1) Except as mentioned in this Article, a body corporate cannot be a member of a company which is its holding company and any allotment or transfer of shares in a company to its subsidiary is void.

(2) The prohibition does not apply where the subsidiary is concerned only as personal representative or trustee unless, in the latter case, the holding company or a subsidiary of it is beneficially interested under the trust.

For the purpose of ascertaining whether the holding company or a subsidiary is so interested, there shall be disregarded—

- (a) any interest held only by way of security for the purposes of a transaction entered into by the holding company or subsidiary in the ordinary course of a business which includes the lending of money;

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(b) any such interest as is mentioned in Part I of Schedule 2.

<sup>F62</sup>(3) The prohibition does not apply where shares in the holding company are held by the subsidiary in the ordinary course of its business as an intermediary.

For this purpose a person is an intermediary if that person—

- (a) carries on a bona fide business of dealing in securities;
- (b) is a member of an EEA exchange (and satisfies any requirements for recognition as a dealer in securities laid down by that exchange) or is otherwise approved or supervised as a dealer in securities under the laws of an EEA State; and
- (c) does not carry on an excluded business.

(3A) The excluded businesses are the following—

- (a) any business which consists wholly or mainly in the making or managing of investments;
- (b) any business which consists wholly or mainly in, or is carried on wholly or mainly for the purpose of, providing services to persons who are connected with the person carrying on the business;
- (c) any business which consists in insurance business;
- (d) any business which consists in managing or acting as trustee in relation to a pension scheme or which is carried on by the manager or trustee of such a scheme in connection with or for the purposes of the scheme;
- (e) any business which consists in operating or acting as trustee in relation to a collective investment scheme or is carried on by the operator or trustee of such a scheme in connection with or for the purposes of the scheme.

(3B) For the purposes of paragraphs (3) and (3A)—

- (a) the question whether a person is connected with another shall be determined in accordance with the provisions of section 839 of the Income and Corporation Taxes Act 1988;
- (b) “collective investment scheme” has the meaning given in section 235 of the Financial Services and Markets Act 2000;
- (c) “EEA exchange” means a market which appears on the list drawn up by an EEA State pursuant to Article 16 of Council Directive [93/22/EEC](#) on investment services in the securities field;
- (d) “insurance business” means business which consists of the effecting or carrying out of contracts of insurance;
- (e) “securities” includes—
  - (i) options,
  - (ii) futures, and
  - (iii) contracts for differences,and rights or interests in those investments;
- (f) “trustee” and “the operator” shall, in relation to a collective investment scheme, be construed in accordance with section 237(2) of the Financial Services and Markets Act 2000.

(3C) Paragraph (3B) must be read with—

- (a) section 22 of the Financial Services and Markets Act 2000;
- (b) any relevant order under that section; and
- (c) Schedule 2 to that Act.

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(3D) Where—

- (a) a subsidiary which is a dealer in securities has purportedly acquired shares in its holding company in contravention of the prohibition in paragraph (1); and
- (b) a person acting in good faith has agreed, for value and without notice of that contravention, to acquire shares in the holding company from the subsidiary or from someone who has purportedly acquired the shares after their disposal by the subsidiary,

any transfer to that person of the shares mentioned in sub-paragraph (a) shall have the same effect as it would have had if their original acquisition by the subsidiary had not been in contravention of the prohibition.]

(4) Where a body corporate became a holder of shares in a company—

- (a) before 1st April 1961, or
- (b) on or after that date and before<sup>F62</sup> 2nd August 2004], in circumstances in which this Article as it then had effect did not apply,

but at any time<sup>F62</sup> on or after 2nd August 2004] falls within the prohibition in paragraph (1) in respect of those shares, it may continue to be a member of that company; but for so long as that prohibition would apply, apart from this paragraph, it has no right to vote in respect of those shares at meetings of the company or of any class of its members.

(5) Where a body corporate becomes a holder of shares in a company<sup>F62</sup> on or after 2nd August 2004.] in circumstances in which the prohibition in paragraph (1) does not apply, but subsequently falls within that prohibition in respect of those shares, it may continue to be a member of that company; but for so long as that prohibition would apply, apart from this paragraph, it has no right to vote in respect of those shares at meetings of the company or of any class of its members.

(6) Where a body corporate is permitted to continue as a member of a company by virtue of paragraph (4) or (5), an allotment to it of fully paid shares in the company may be validly made by way of capitalisation of reserves of the company; but for so long as the prohibition in paragraph (1) would apply, apart from paragraph (4) or (5), it has no right to vote in respect of those shares at meetings of the company or of any class of its members.

(7) The provisions of this Article apply to a nominee acting on behalf of a subsidiary as to the subsidiary itself.

(8) In relation to a company other than a company limited by shares, the references in this Article to shares shall be construed as references to the interest of its members as such, whatever the form of that interest.]

**F61** 1990 NI 10, art/ 64(1)

**F62** SR 2004/263

### ***Minimum membership for carrying on business***

**34**<sup>F63</sup>.—<sup>F64</sup>(1) If a company<sup>F65</sup>, other than a private company limited by shares or by guarantee,] carries on business without having at least two members and does so for more than 6 months, a person who, for the whole or any part of the period that it so carries on business after those 6 months—

- (a) is a member of the company, and
- (b) knows that it is carrying on business with only one member,

is liable (jointly and severally with the company) for the payment of the company's debts contracted during the period or, as the case may be, that part of it.

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[<sup>F64</sup>(2) For the purposes of this Article references to a member of a company do not include the company itself where it is such a member only by virtue of its holding shares as treasury shares.]

**F63** mod. by SR 2004/307  
**F64** SR 2004/275  
**F65** SR 1992/405

## CHAPTER II COMPANY NAMES

### *Name as stated in memorandum*

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

(2) In the case of a company limited by shares or by guarantee (not being a public company), the name must have “limited” as its last word, subject to Article 40 (exempting, in certain circumstances, a company from the requirement to have “limited” as part of the name).

### *Prohibition on registration of certain names*

**36.**—(1) A company shall not be registered under this Order by a name—

- (a) which includes, otherwise than at the end of the name, any of the following words or expressions, that is to say, “limited”, “unlimited”[<sup>F66</sup>, “public limited company”, “community interest company” or “community interest public limited company”];
- (b) which includes otherwise than at the end of the name an abbreviation of any of those words or expressions;
- [<sup>F67</sup>(bb) which includes, at any place in the name, the expression “investment company with variable capital” or “open-ended investment company”];
- [<sup>F68</sup>(bbb) which includes, at any place in the name, the expression “limited liability partnership”];
- (c) which is the same as a name appearing in the registrar's index of company names;
- (d) the use of which by the company would in the opinion of the Department constitute a criminal offence; or
- (e) which in the opinion of the Department is offensive.

(2) Except with the approval of the Department, a company shall not be registered under this Order by a name which—

- (a) in the opinion of the Department would be likely to give the impression that the company is connected in any way with Her Majesty's Government or with any district council; or
- (b) includes any word or expression for the time being prescribed in regulations under Article 39.

(3) In determining for the purposes of paragraph (1)(c) whether one name is the same as another, there are to be disregarded—

- (a) the definite article, where it is the first word of the name;
- (b) the following words and expressions where they appear at the end of the name, that is to say—  
“company”, “and company”, “company limited”, “and company limited”, “limited”, “unlimited”[<sup>F69</sup> . . . “public limited company”[<sup>F70</sup>, “community interest company”, “community

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interest public limited company”];<sup>F69F67</sup> . . . “investment company with variable capital”];<sup>F67</sup> and open-ended investment company]

(c) abbreviations of any of those words or expressions where they appear at the end of the name; and

(d) type and case of letters, accents, spaces between letters and punctuation marks;

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

**F66** Words in art. 36(1)(a) substituted (6.4.2007) by Companies Act 2006 (Commencement No. 2, Consequential Amendments, Transitional Provisions and Savings) Order 2007 (S.I. 2007/1093), arts. 1(3), 6(2), **Sch. 4 para. 48(a)** (with art. 11(1))

**F67** SR 2004/335

**F68** SR 2004/307

**F69** SR 1997/251

**F70** Words in art. 36(3)(b) inserted (6.4.2007) by Companies Act 2006 (Commencement No. 2, Consequential Amendments, Transitional Provisions and Savings) Order 2007 (S.I. 2007/1093), arts. 1(3), 6(2), **Sch. 4 para. 48(b)** (with art. 11(1))

**Modifications etc. (not altering text)**

**C2** Art. 36(3) applied (with modifications) (prosp.) by Charities Act (Northern Ireland) 2008 (c. 12), ss. 20(7), 185(1)

**Alternatives of statutory designations**

37.—(1) A company which by any provision of this Order is either required or entitled to include in its name, as the last part, any of the words specified in paragraph (4) may, instead of those words, include as the last part of its name the abbreviations there specified as alternatives in relation to those words.

(2) A reference in this Order to the name of a company or to the inclusion of any of those words in a company's name includes a reference to the name including (in place of any of the words so specified) the appropriate alternative, or to the inclusion of the appropriate alternative, as the case may be.

(3) A provision of this Order requiring a company not to include any of those words in its name also requires it not to include the abbreviated alternative specified in paragraph (4).

(4) For the purposes of this Article—

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

(b) the alternative of “public limited company” is “p.l.c.”<sup>F71</sup>; and

(c) the alternative of “community interest company” is “c.i.c.”; and

(d) the alternative of “community interest public limited company” is “community interest p.l.c.”.]

**F71** Art. 37(4)(c)(d) and preceding word inserted (6.4.2007) by Companies Act 2006 (Commencement No. 2, Consequential Amendments, Transitional Provisions and Savings) Order 2007 (S.I. 2007/1093), arts. 1(3), 6(2), **Sch. 4 para. 49** (with art. 11(1))

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### **Change of name**

**38.**—(1) A company may by special resolution change its name (but subject to Article 41 in the case of a company which has received a direction under paragraph (2) of that Article from the Department).

- (2) Where a company has been registered by a name which—
- (a) is the same as or, in the opinion of the Department, too like a name appearing at the time of the registration in the registrar's index of company names, or
  - (b) is the same as or, in the opinion of the Department, too like a name which should have appeared in that index at that time,

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

Article 36(3) applies in determining under this paragraph whether a name is the same as or too like another.

(3) If it appears to the Department that misleading information has been given for the purpose of a company's registration with a particular name, or that undertakings or assurances have been given for that purpose and have not been fulfilled, the Department may within 5 years of the date of the company's registration with that name in writing direct the company to change its name within such period as the Department may specify.

(4) Where a direction has been given under paragraph (2) or (3), the Department may by a further direction in writing extend the period within which the company is to change its name, at any time before the end of that period.

(5) A company which fails to comply with a direction under this Article, and any officer of it who is in default, is liable to a fine and, for continued contravention, to a daily default fine.

(6) Where a company changes its name under this Article, the registrar shall (subject to Article 36) enter the new name on the register in place of the former name, and shall issue a certificate of incorporation altered to meet the circumstances of the case; and the change of name has effect from the date on which the altered certificate is issued.

(7) A change of name by a company under this Article does not affect any rights or obligations of the company or render defective any legal proceedings by or against it; and any legal proceedings that might have been continued or commenced against it by its former name may be continued or commenced against it by its new name.

### **Regulations about names**

**39.**—<sup>F72</sup>(1) The Department may by regulations—

- (a) prescribe words or expressions for the registration of which as or as part of a company's corporate name the Department's approval is required under Article 36(2)(b), and
- (b) in relation to any such word or expression, prescribe a government department or other body as the relevant body for the purposes of paragraph (2).

(2) Where a company proposes to have as, or as part of, its corporate name any such word or expression in relation to which a relevant body has been prescribed under paragraph (1)(b), a request shall be made (in writing) to the relevant body to indicate whether (and if so why) it has any objections to the proposal; and the person to make the request is—

- (a) in the case of a company seeking to be registered under this Part, the person making the statutory declaration<sup>F73</sup> under Article 23(3) or statement under Article 23(4) (as the case may be)],

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- (b) in the case of a company seeking to be registered under Article 629, the persons making the statutory declaration<sup>F73</sup> under Article 635(2) or statement under Article 635(2A) (as the case may be)], and
  - (c) in any other case, a director or secretary of the company concerned.
- (3) The person who has made that request to the relevant body shall submit to the registrar a statement that it has been made and a copy of any response received from that body, together with—
- (a) the requisite statutory declaration<sup>F73</sup> or statement], or
  - (b) a copy of the special resolution changing the company's name,
- according as the case is the one or the other of those mentioned in paragraph (2).
- (4) Articles 658 and 659 (public inspection of documents kept by registrar) do not apply to documents sent under paragraph (3) other than documents mentioned in sub-paragraphs (a) and (b) of that paragraph.
- (5) Regulations under this Article may contain such transitional provisions and savings as the Department thinks appropriate.
- (6) The regulations shall be laid before the Assembly after being made and shall cease to have effect at the end of the statutory period next after the regulations have been so laid (but without prejudice to anything previously done by virtue of the regulations or to the making of new regulations) unless during that period they are approved by a resolution of the Assembly.]

**F72** Art. 39 repealed (1.1.2007 for certain purposes, otherwise prosp.) by [Companies Act 2006 \(c. 46\)](#), ss. 1284(2), 1295, 1300(2), [Sch. 16](#); S.I. 2006/3428, [art. 7\(a\)](#), Sch. 2 Pt. 2 (with arts. 6, 8, Sch. 5)

**F73** SR 2003/3

### ***Exemption from requirement of “limited” as part of the name***

**40.**—(1) Certain companies are exempt from requirements of this Order relating to the use of the word “limited” as part of the company name.

(2) A private company (including a private company about to be registered) limited by guarantee is exempt from those requirements and so too is a company which on 30th June 1983 was a private company limited by shares with a name which, by virtue of a licence under section 19 of the Act of 1960, did not include the word “limited”; but in either case the company must, to have the exemption, comply with the requirements of paragraph (3).

- (3) Those requirements are that—
- (a) the objects to the company are (or, in the case of a company about to be registered, are to be) the promotion of commerce, art, science, education, religion, charity or any profession, and anything incidental or conducive to any of those objects; and
  - (b) the company's memorandum or articles—
    - (i) require its profits (if any) or other income to be applied in promoting its objects,
    - (ii) prohibit the payment of dividends to its members, and
    - (iii) require all the assets which would otherwise be available to its members generally to be transferred on its winding up either to another body with objects similar to its own or to another body the objects of which are the promotion of charity and anything incidental or conducive thereto (whether or not the body is a member of the company).



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(4) [<sup>F74</sup>Subject to paragraph (5A), a statutory declaration] that a company complies with the requirements of paragraph (3) may be delivered to the registrar, who may accept the declaration as sufficient evidence of the matters stated in it<sup>F74</sup>. . . .

(5) The statutory declaration must be in the prescribed form and be made—

- (a) in the case of a company to be formed, by a solicitor engaged in its formation or by a person named as director or secretary in the statement delivered under Article 21(2);
- (b) in the case of a company to be registered in pursuance of Article 629, by two or more directors or other principal officers of the company; and
- (c) in the case of a company proposing to change its name so that it ceases to have the word “limited” as part of its name, by a director or secretary of the company.

[<sup>F74</sup>(5A) In place of the statutory declaration referred to in paragraph (4), there may be delivered to the registrar using electronic communications a statement made by a person falling within the applicable sub-paragraph of paragraph (5) stating that the company complies with the requirements of paragraph (3); and the registrar may accept such a statement as sufficient evidence of the matters stated in it.

(5B) The registrar may refuse to register a company by a name which does not include the word “limited” unless a statutory declaration under paragraph (4) or statement under paragraph (5A) has been delivered to him.

(5C) Any person who makes a false statement under paragraph (5A) which he knows to be false or does not believe to be true is liable to imprisonment or a fine, or both.]

(6) References in this Article to the word “limited” include the appropriate alternative.

(7) A company which [<sup>F75</sup>under this Article] is exempt from requirements relating to the use of the word “limited” and does not include that word as part of its name, is also exempt from the requirements of this Order relating to the publication of its name and the sending of lists of members to the registrar.

<p><b>F74</b> SR 2003/3</p> <p><b>F75</b> Words in <a href="#">art. 40(7)</a> inserted (6.4.2007) by <a href="#">Companies Act 2006 (Commencement No. 2, Consequential Amendments, Transitional Provisions and Savings) Order 2007 (S.I. 2007/1093)</a>, arts. 1(3), 6(2), <a href="#">Sch. 4 para. 50</a> (with <a href="#">art. 11(1)</a>)</p>
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**Provisions applying to company exempt under Article 40**

**41.**—(1) A company which is exempt under Article 40 and whose name does not include the word “limited” shall not alter its memorandum or articles so that it ceases to comply with the requirements of paragraph (3) of that Article.

(2) If it appears to the Department that such a company—

- (a) has carried on any business other than the promotion of any of the objects mentioned in that paragraph; or
- (b) has applied any of its profits or other income otherwise than in promoting such objects; or
- (c) has paid a dividend to any of its members,

the Department may, in writing, direct the company to change its name by resolution of the directors within such period as may be specified in the direction, so that its name ends with the word “limited”.

<sup>F76</sup> . . . . .

[<sup>F77</sup>(2A) Where such a resolution is passed by the directors, the company must give notice to the registrar of the change.

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(2B) Where a company changes its name under this Article, the registrar shall (subject to Article 36) enter the new name on the register in place of the former name, and shall issue a certificate of incorporation altered to meet the circumstances of the case; and the change of name has effect from the date on which the altered certificate is issued.

(2C) A change of name by a company under this Article does not affect any right or obligations of the company or render defective any legal proceedings by or against it; and any legal proceedings that might have been continued or commenced against it by its former name may be continued or commenced against it by its new name.]

(3) A company which has received a direction under paragraph (2) shall not thereafter be registered by a name which does not include the word “limited”, without the approval of the Department.

(4) References in this Article to the word “limited” include the appropriate alternative.

(5) A company which contravenes paragraph (1), and any officer of it who is in default, is liable to a fine and, for continued contravention, to a daily default fine.

(6) A company which fails to comply with a direction by the Department under paragraph (2), and any officer of the company who is in default, is liable to a fine and, for continued contravention, to a daily default fine.

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|------------|--|
| <b>F76</b> | Words in art. 41(2) omitted (1.10.2007) by virtue of <a href="#">Companies Act 2006 (Commencement No. 3, Consequential Amendments, Transitional Provisions and Savings) Order 2007 (S.I. 2007/2194)</a> , arts. 1(3)(a), 10(1), <b>Sch. 4 para. 17(1)</b> (with art. 12) |
| <b>F77</b> | Art. 41(2A)-(2C) inserted (1.10.2007) by <a href="#">Companies Act 2006 (Commencement No. 3, Consequential Amendments, Transitional Provisions and Savings) Order 2007 (S.I. 2007/2194)</a> , arts. 1(3)(a), 10(1), <b>Sch. 4 para. 17(1)</b> (with art. 12)             |

### ***Power to require company to abandon misleading name***

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

(2) The direction must, if not duly made the subject of an application to the court under paragraph (3), be complied with within a period of 6 weeks from the date of the direction or such longer period as the Department may think fit to allow.

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

(4) If a company makes default in complying with a direction under this Article, it is liable to a fine and, for continued contravention, to a daily default fine.

(5) Where a company changes its name under this Article, the registrar shall (subject to Article 36) enter the new name on the register in place of the former name, and shall issue a certificate of incorporation altered to meet the circumstances of the case; and the change of name has effect from the date on which the altered certificate is issued.

(6) A change of name by a company under this Article does not affect any of its rights or obligations or render defective any legal proceedings by or against it; and any legal proceedings that might have been continued or commenced against it by its former name may be continued or commenced against it by its new name.

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### **Prohibition on trading under misleading name**

**43.**—(1) A person who is not a public company is guilty of an offence if he carries on any trade, profession or business under a name which includes, as its last part, the words “public limited company” or any contraction or imitation of those words.

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

(3) A person guilty of an offence under paragraph (1) or (2) and, if that person is a company, any officer of the company who is in default, is liable to a fine and, for continued contravention, to a daily default fine.

### **Penalty for improper use of “limited”**

**44.** If any person trades or carries on business under a name or title of which the word “limited”, or any contraction or imitation of that word, is the last word, that person, unless duly incorporated with limited liability, is liable to a fine and, for continued contravention, to a daily default fine.

### **[<sup>F78</sup>Penalty for improper use of “community interest company”**

**44A.**—(1) A company which is not a community interest company is guilty of an offence if it carries on any trade, profession or business under a name which includes any of the expressions specified in paragraph (3).

(2) A person other than a company is guilty of an offence if it carries on any trade, profession or business under a name which includes any of those expressions (or any contraction of them) as its last part.

(3) The expressions are—

- (a) “community interest company”, and
- (b) “community interest public limited company”.

(4) Paragraphs (1) and (2) do not apply—

- (a) to a person who was carrying on a trade, profession or business under the name in question at any time during the period beginning with 1st January 2005 and ending with 15th March 2005, or
- (b) if the name in question was on 15th March 2005 a registered trade mark or Community trade mark (within the meaning of the Trade Marks Act 1994), to a person who was on that date a proprietor or licensee of that trade mark.

(5) A person guilty of an offence under paragraph (1) or (2) and, if that person is a company, any officer of the company who is in default, is liable to a fine and, for continued contravention, to a daily default fine.]

**F78** Art. 44A inserted (6.4.2007) by [The Companies Act 2006 \(Commencement No. 2, Consequential Amendments, Transitional Provisions and Savings\) Order 2007 \(S.I. 2007/1093\)](#), arts. 1(3), 6(2), [Sch. 4 para. 51](#) (with art. 11(1))

*{prosp. insertion of art. 44A by 2005 NI17}*

**4A**<sup>F79</sup>

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**F79** prosp. insertion by 2005 NI 17 (which amendment repealed (6.4.2007) by Companies Act 2006 (c. 46), s. 1295, Sch. 16; S.I. 2007/1093, art. 5, Sch. 2 Pt. 2)

## CHAPTER III

### A COMPANY'S CAPACITY; FORMALITIES OF CARRYING ON BUSINESS

#### A company's capacity not limited by its memorandum

**45.**—(1) The validity of an act done by a company shall not be called into question on the ground of lack of capacity by reason of anything in the company's memorandum.

(2) A member of a company may bring proceedings to restrain the doing of an act which but for paragraph (1) would be beyond the company's capacity; but no such proceedings shall lie in respect of an act to be done in fulfilment of a legal obligation arising from a previous act of the company.

(3) It remains the duty of the directors to observe any limitations on their powers flowing from the company's memorandum; and action by the directors which but for paragraph (1) would be beyond the company's capacity may only be ratified by the company by special resolution.

A resolution ratifying such action shall not affect any liability incurred by the directors or any other person; relief from any such liability must be agreed to separately by special resolution.

(4) The operation of this Article is restricted by Article 9A of the Charities (Northern Ireland) Order 1987 in relation to companies which are charities; and Article 330A below (invalidity of certain transactions to which directors or their associates are parties) has effect notwithstanding this Article.

#### Modifications etc. (not altering text)

**C3** Art. 45 restricted (prosp.) by Charities Act (Northern Ireland) 2008 (c. 12), ss. 97(1), 185(1)

#### Power of directors to bind the company

**45A.**—(1) In favour of a person dealing with a company in good faith, the power of the board of directors to bind the company, or authorise others to do so, shall be deemed to be free of any limitation under the company's constitution.

(2) For this purpose—

- (a) a person “deals with” a company if he is a party to any transaction or other act to which the company is a party;
- (b) a person shall not be regarded as acting in bad faith by reason only of his knowing that an act is beyond the powers of the directors under the company's constitution; and
- (c) a person shall be presumed to have acted in good faith unless the contrary is proved.

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

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

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

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(5) Nor does that paragraph affect any liability incurred by the directors, or any other person, by reason of the directors' exceeding their powers.

(6) The operation of this Article is restricted by Article 9A of the Charities (Northern Ireland) Order 1987 in relation to companies which are charities; and Article 330A below (invalidity of certain transactions to which directors or their associates are parties) has effect notwithstanding this Article.

**Modifications etc. (not altering text)**

C4 Art. 45A restricted (prosp.) by Charities Act (Northern Ireland) 2008 (c. 12), ss. 97(1), 185(1)

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

**45B.** A party to a transaction with a company is not bound to enquire as to whether it is permitted by the company's memorandum or as to any limitation on the powers of the board of directors to bind the company or authorise others to do so.

**Form of company contracts**

**46**<sup>F80</sup>. <sup>F81</sup>A contract may be made—

- (a) by a company, by writing under its common seal, or
- (b) on behalf of a company, by any person acting under its authority, express or implied;

and any formalities required by law in the case of a contract made by an individual also apply, unless a contrary intention appears, to a contract made by or on behalf of a company.

**F80** mod. by SR 2003/5

**F81** mod. by SR 2004/307

**Execution of documents**

**46A**<sup>F82</sup>.—(1) The following provisions have effect with respect to the execution of documents by a company.

- (2)<sup>F83</sup> .....
- (3) A company need not have a common seal,<sup>F84</sup> . . .
- (4)<sup>F83</sup> .....
- (5)<sup>F83</sup> .....
- (6)<sup>F83</sup> .....

**F82** mod. by SR 2003/5

**F83** Art. 46A(2)(4)-(6) repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), Sch. 16; S.I. 2007/3495, art. 8(a), Sch. 2 Pt. 2 (with arts. 7, 12, Sch. 4 para. 1(2)(3)) (with saving by Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2008/948), art. 8)

**F84** Words in art. 46A(3) repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), Sch. 16; S.I. 2007/3495, art. 8(a), Sch. 2 Pt. 2 (with arts. 7, 12, Sch. 4 para. 1(2)(3)) (with saving by Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2008/948), art. 8)

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## Pre-incorporation contracts and deeds

**46B**<sup>F85</sup>.—(1) A contract which purports to be made by or on behalf of a company at a time when the company has not been formed has effect, subject to any agreement to the contrary, as one made with the person purporting to act for the company or as agent for it, and he is personally liable on the contract accordingly.

(2) Paragraph (1) applies to the making of a deed as it applies to the making of a contract.

**F85** mod. by SR 2004/307

## Bills of exchange and promissory notes

**47**<sup>F86</sup>. A bill of exchange or promissory note is deemed to have been made, accepted or endorsed on behalf of a company if made, accepted or endorsed in the name of, or by or on behalf or on account of, the company by a person acting under its authority.

**F86** mod. by SR 2004/307

## Execution of deeds abroad

**48**<sup>F87</sup>.—(1) A company may, by writing under its common seal, empower any person, either generally or in respect of any specified matters, as its attorney, to execute deeds on its behalf in any place elsewhere than in the United Kingdom.

[<sup>F88</sup>(2) A deed executed by such an attorney on behalf of the company has the same effect as if it were executed under the company's common seal.]

**F87** mod. by SR 2004/307

**F88** 1990 NI 10

## Power of company to have official seal for use abroad

**49.**—(1 <sup>F89</sup> A company [<sup>F90</sup> which has a common seal and] whose objects require or comprise the transaction of business in foreign countries may, if authorised by its articles, have for use in any territory, district, or place elsewhere than in the United Kingdom, an official seal, which shall be a facsimile of [<sup>F90</sup> its common seal], with the addition on its face of the name of every territory, district or place where it is to be used.

[<sup>F90</sup>(2) The official seal when duly affixed to a document has the same effect as the company's common seal.]

(3) A company having an official seal for use in any such territory, district or place may, by writing under its common seal, authorise any person appointed for the purpose in that territory, district or place to affix the official seal to any deed or other document to which the company is party in that territory, district or place.

(4) As between the company and a person dealing with such an agent, the agent's authority continues during the period (if any) mentioned in the instrument conferring the authority, or if no period is there mentioned, then until notice of the revocation or determination of the agent's authority has been given to the person dealing with him.

(5) The person affixing the official seal shall certify in writing on the deed or other instrument to which the seal is affixed the date on which and the place at which it is affixed.

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**F89** mod. by SR 2004/307  
**F90** 1990 NI 10

**Official seal for share certificates, etc.**

**50.** <sup>F91</sup>A company<sup>F92</sup> which has a common seal] may have, for use for sealing securities issued by the company and for sealing documents creating or evidencing securities so issued, an official seal which is a facsimile of<sup>F92</sup> its common seal] with the addition on its face of the word “Securities”.<sup>F92</sup> The official seal when duly affixed to a document has the same effect as the company's common seal.]

**F91** mod. by SR 1986/305  
**F92** 1990 NI 10

**Authentication of documents**

**51.** <sup>F93</sup> .....

**F93** Art. 51 repealed (6.4.2007) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), Sch. 16; S.I. 2006/3428, art. 4(2)(b) (subject to art. 5, Sch. 1 and with arts. 6, 8, Sch. 5)

**Events affecting a company's status**

**52.** <sup>F94</sup> .....

**F94** Art. 52 repealed (1.1.2007) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), Sch. 16; S.I. 2006/3428, art. 7(a), Sch. 2 Pt. 2 (with arts. 6, 8, Sch. 5)

**PART III**

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

*Private company becoming public*

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

**53.**—(1) Subject to this Article and Articles 54 to 58, a private company (other than a company not having a share capital) may be re-registered as a public company if—

- (a) a special resolution that it should be so re-registered is passed; and
- (b) an application for re-registration is delivered to the registrar, together with the necessary documents.

A company cannot be re-registered under this Article if it has previously been re-registered as unlimited.

(2) The special resolution must—

- (a) alter the company's memorandum so that it states that the company is to be a public company; and

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- (b) make such other alterations in the memorandum as are necessary to bring it (in substance and in form) into conformity with the requirements of this Order with respect to the memorandum of a public company (the alterations to include compliance with Article 35(1)<sup>[F95]</sup>, or section 33 of the Companies (Audit, Investigations and Community Enterprise) Act 2004,] as regards the company's name); and
- (c) make such alterations in the company's articles as are requisite in the circumstances.
- (3) The application must be in the prescribed form and be signed by a director or secretary of the company; and the documents to be delivered with it are the following—
- (a) a printed copy of the memorandum and articles as altered in pursuance of the resolution;
- (b) a copy of a written statement by the company's auditors that in their opinion the relevant balance sheet shows that at the balance sheet date the amount of the company's net assets (within the meaning given to that expression by <sup>[F96]</sup>section 831 of the Companies Act 2006) was not less than the aggregate of its called-up share capital and undistributable reserves;
- (c) a copy of the relevant balance sheet, together with a copy of an unqualified report (as defined in Article 56) by the company's auditors in relation to that balance sheet;
- (d) if Article 54 applies, a copy of the valuation report under paragraph (2)(b) of that Article; and
- (e) <sup>[F97]</sup>subject to paragraph (3A),] a statutory declaration in the prescribed form by a director or secretary of the company—
- (i) that the special resolution required by this Article has been passed and that the conditions of Articles 54 and 55 (so far as applicable) have been satisfied, and
- (ii) that, between the balance sheet date and the application for re-registration, there has been no change in the company's financial position that has resulted in the amount of its net assets becoming less than the aggregate of its called-up share capital and undistributable reserves.

<sup>[F97]</sup>(3A) In place of the statutory declaration referred to in sub-paragraph (e) of paragraph (3), there may be delivered to the registrar using electronic communications a statement made by a director or secretary of the company as to the matters set out in heads (i) and (ii) of that sub-paragraph.

(3B) Any person who makes a false statement under paragraph (3A) which he knows to be false or does not believe to be true is liable to imprisonment or a fine, or both.]

(4) In this Article and Articles 54 and 56, “relevant balance sheet” means a balance sheet prepared as at a date not more than 7 months before the company's application under this Article.

(5) A resolution that a company be re-registered as a public company may change the company name by deleting the word “company” or the words “and company”, including any abbreviation of them.

**F95** Words in art. 53(2)(b) inserted (6.4.2007) by Companies Act 2006 (Commencement No. 2, Consequential Amendments, Transitional Provisions and Savings) Order 2007 (S.I. 2007/1093), arts. 1(3), 6(2), **Sch. 4 para. 52** (with art. 11(1))

**F96** Words in art. 53(3)(b) substituted (6.4.2008) by virtue of Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2008/948), arts. 2(2), 3(1)(b), **Sch. 1 para. 117** (with arts. 6, 11, 12)

**F97** SR 2003/3



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### **Consideration for shares recently allotted to be valued**

**54.**—(1) This Article applies if shares have been allotted by the company between the relevant balance sheet date and the passing of the special resolution under Article 53, and those shares were allotted as fully or partly paid up as to their nominal value or any premium on them otherwise than in cash.

(2) Subject to the following provisions of this Article, the registrar shall not entertain an application by the company under Article 53 unless beforehand—

- (a) the consideration for the allotment has been valued in accordance with Article 118, and
- (b) a report with respect to the value of the consideration has been made to the company (in accordance with that Article) during the 6 months immediately preceding the allotment of the shares.

(3) Where an amount standing to the credit of any of the company's reserve accounts, or of its profit and loss account, has been applied in paying up (to any extent) any of the shares allotted to members of the company or any premium on those shares, the amount applied does not count as consideration for the allotment, and accordingly paragraph (2) does not apply to it.

(4) Paragraph (2) does not apply if the allotment is in connection with an arrangement providing for it to be on terms that the whole or part of the consideration for the shares allotted is to be provided by the transfer to the company or the cancellation of all or some of the shares, or of all or some of the shares of a particular class, in another company (with or without the issue to the company applying under Article 53 of shares, or of shares of any particular class, in that other company).

(5) But paragraph (4) does not exclude the application of paragraph (2), unless under the arrangement it is open to all the holders of the shares in the other company in question (or, where the arrangement applies only to shares of a particular class, to all the holders of the other company's shares of that class) to take part in the arrangement.

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

(6) Paragraph (2) does not apply to preclude an application under Article 53, if the allotment of the company's shares is in connection with its proposed merger with another company; that is, where one of the companies concerned proposes to acquire all the assets and liabilities of the other in exchange for the issue of shares or other securities in that one to shareholders of the other, with or without any cash payment to those shareholders.

(7) In this Article—

- (a) “arrangement” means any agreement, scheme or arrangement, including an arrangement sanctioned in accordance with [<sup>F98</sup>section 899 of the Companies Act 2006] (company compromise with creditors and members) or [<sup>F99</sup> Article 96 of the Insolvency Order] (liquidator in winding up accepting shares as consideration for sale of a company's property), and
- (b) “another company” includes any body corporate and any body to which letters patent have been issued under the Chartered Companies Act 1837.

**F98** Words in art. 54(7)(a) substituted (6.4.2008) by [Companies Act 2006 \(Consequential Amendments etc\) Order 2008 \(S.I. 2008/948\)](#), arts. 2(2), 3(1)(b), [Sch. 1 para. 118](#) (with arts. 6, 11, 12)

**F99** [1989 NI 19](#)

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### **Additional requirements relating to share capital**

**55.**—(1) For a private company to be re-registered under Article 53 as a public company, the following conditions with respect to its share capital must be satisfied at the time the special resolution under that Article is passed.

(2) Subject to paragraphs (5) to (7)—

(a) the nominal value of the company's allotted share capital must be not less than the authorised minimum, [<sup>F100</sup>(see Chapter 2 of Part 20 of the Companies Act 2006)] and

(b) each of the company's allotted shares must be paid up at least as to one-quarter of the nominal value of that share and the whole of any premium on it.

(3) Subject to paragraph (5), if any shares in the company or any premium payable on them have been fully or partly paid up by an undertaking given by any person that he or another should do work or perform services (whether for the company or any other person), the undertaking must have been performed or otherwise discharged.

(4) Subject to paragraph (5), if shares have been allotted as fully or partly paid up as to their nominal value or any premium payable on them otherwise than in cash and the consideration for the allotment consists of or includes an undertaking (other than one to which paragraph (3) applies) to the company, then either—

(a) the undertaking must have been performed or otherwise discharged, or

(b) there must be a contract between the company and some person pursuant to which the undertaking is to be performed within 5 years from the time the special resolution under Article 53 is passed.

(5) For the purpose of determining whether paragraphs (2)(b), (3) and (4) are complied with, certain shares in the company may be disregarded; and these are—

(a) subject to paragraph (6), any share which was allotted on or before 31st December 1984, or

(b) any share which was allotted in pursuance of an employees' share scheme and by reason of which the company would, but for this paragraph, be precluded under paragraph (2)(b) (but not otherwise) from being re-registered as a public company.

(6) A share is not be disregarded under paragraph (5)(a) if the aggregate in nominal value of that share and other shares proposed to be so disregarded is more than one-tenth of the nominal value of the company's allotted share capital; but for this purpose the allotted share capital is treated as not including any shares disregarded under paragraph (5)(b).

(7) Any shares disregarded under paragraph (5) are treated as not forming part of the allotted share capital for the purposes of paragraph (2)(a).

**F100** Words in art. 55(2)(a) inserted (6.4.2008) by Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2008/948), arts. 2(2), 3(1)(b), **Sch. 1 para. 119** (with arts. 6, 11, 12)

### **Meaning of “unqualified report” in Article 53(3)**

**56.**—(1) The following paragraphs explain the reference in Article 53(3)(c) to an unqualified report of the company's auditors on the relevant balance sheet.

[<sup>F101</sup>(2) If the balance sheet was prepared for a financial year of the company, the reference is to an auditors' report stating without material qualification the auditors' opinion that the balance sheet has been properly prepared [<sup>F102</sup>in accordance with the Companies Act 2006].

(3) If the balance sheet was not prepared for a financial year of the company, the reference is to an auditors' report stating without material qualification the auditors' opinion that the balance sheet has

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been properly prepared in accordance with [F103 the provisions of the Companies Act 2006] which would have applied if it had been so prepared.

For the purposes of an auditors' report under this paragraph [F103 the provisions of the Companies Act 2006] shall be deemed to apply with such modifications as are necessary by reason of the fact that the balance sheet is not prepared for a financial year of the company.

(4) A qualification shall be regarded as material unless the auditors state in their report that the matter giving rise to the qualification is not material for the purpose of determining (by reference to the company's balance sheet) whether at the balance sheet date the amount of the company's net assets was not less than the aggregate of its called up share capital and undistributable reserves. In this paragraph "net assets" and "undistributable reserves" have the meaning given by [F104 section 831 of the Companies Act 2006][F105 and "financial year" has the meaning given by section 390 of that Act].]

**F101** 1990 NI 5

**F102** Words in art. 56(2) substituted (6.4.2008) by Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2008/948), arts. 2(2), 3(1)(b), **Sch. 1 para. 120(2)** (with arts. 6, 11, 12)

**F103** Words in art. 56(3) substituted (6.4.2008) by Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2008/948), arts. 2(2), 3(1)(b), **Sch. 1 para. 120(3)** (with arts. 6, 11, 12)

**F104** Words in art. 56(4) substituted (6.4.2008) by Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2008/948), arts. 2(2), 3(1)(b), **Sch. 1 para. 120(4)(a)** (with arts. 6, 11, 12)

**F105** Words in art. 56(4) inserted (6.4.2008) by Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2008/948), arts. 2(2), 3(1)(b), **Sch. 1 para. 120(4)(b)** (with arts. 6, 11, 12)

### ***Certificate of re-registration under Article 53***

**57.**—(1) If the registrar is satisfied, on an application under Article 53, that a company may be re-registered under that Article as a public company, he shall—

- (a) retain the application and other documents delivered to him under that Article; and
- (b) issue the company with a certificate of incorporation stating that the company is a public company.

(2) The registrar may accept a declaration under Article 53(3)(e)[F106 or a statement under Article 53(3A)] as sufficient evidence that the special resolution required by that Article has been passed and the other conditions of re-registration have been satisfied.

(3) The registrar shall not issue a certificate of incorporation if it appears to him that the court has made an order confirming a reduction of the company's capital which has the effect of bringing the nominal value of the company's allotted share capital below the authorised minimum [F107 (see Chapter 2 of Part 20 of the Companies Act 2006)].

(4) Upon the issue to a company of a certificate of incorporation under this Article—

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

(5) A certificate of incorporation is conclusive evidence—

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

**F106** SR 2003/3

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**F107** Words in art. 57(3) inserted (6.4.2008) by Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2008/948), arts. 2(2), 3(1)(b), **Sch. 1 para. 121** (with arts. 6, 11, 12)

### ***Modification for unlimited company re-registering***

**58.**—(1) In their application to unlimited companies, Articles 53 to 57 are modified as follows.

(2) The special resolution required by paragraph (1) of Article 53 must, in addition to the matters mentioned in paragraph (2) of that Article—

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

(3) The certificate of incorporation issued under paragraph (1) of Article 57 shall, in addition to containing the statement required by sub-paragraph (b) of that paragraph, state that the company has been incorporated as a company limited by shares; and—

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

### *Limited company becoming unlimited*

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

**59.**—(1) Subject as follows, a company which is registered as limited may be re-registered as unlimited in pursuance of an application in that behalf complying with the requirements of this Article.

(2) A company is excluded from re-registering under this Article if it is limited by virtue or re-registration under Article 119 of the Order of 1978 or Article 61 of this Order.

(3) A public company cannot be re-registered under this Article; nor can a company which has previously been re-registered as unlimited.

(4) An application under this Article must be in the prescribed form and be signed by a director or the secretary of the company, and be lodged with the registrar, together with the documents specified in paragraph (8).

(5) The application must set out such alterations in the company's memorandum as—

- (a) if it is to have a share capital, are requisite to bring it (in substance and in form) into conformity with the requirements of this Order with respect to the memorandum of a company to be formed as an unlimited company having a share capital; or
- (b) if it is not to have a share capital, are requisite in the circumstances.

(6) If articles of association have been registered, the application must set out such alterations in them as—

- (a) if the company is to have a share capital, are requisite to bring its articles (in substance and in form) into conformity with the requirements of this Order with respect to the articles of a company to be formed as an unlimited company having a share capital; or
- (b) if the company is not to have a share capital, are requisite in the circumstances.

(7) If articles of association have not been registered, the application must have annexed to it, and request the registration of, printed articles; and these must, if the company is to have a share capital,

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comply with the requirements mentioned in paragraph (6)(a) and, if not, be articles appropriate to the circumstances.

- (8) The documents to be lodged with the registrar are—
- (a) the prescribed form of assent to the company's being registered as unlimited, subscribed by or on behalf of all the members of the company;
  - (b) [<sup>F108</sup>subject to paragraph (8A),] a statutory declaration made by the directors of the company—
    - (i) that the persons by whom or on whose behalf the form of assent is subscribed constitute the whole membership of the company, and
    - (ii) that if any of the members have not subscribed that form themselves, that the directors have taken all reasonable steps to satisfy themselves that each person who subscribed it on behalf of a member was lawfully empowered to do so;
  - (c) a printed copy of the memorandum incorporating the alterations in it set out in the application; and
  - (d) if articles of association have been registered, a printed copy of them incorporating the alterations set out in the application.

[<sup>F108</sup>(8A) In place of the lodging of a statutory declaration under sub-paragraph (b) of paragraph (8), there may be delivered to the registrar using electronic communications a statement made by the directors of the company as to the matters set out in heads (i) and (ii) of that sub-paragraph.

(8B) Any person who makes a false statement under paragraph (8A) which he knows to be false or does not believe to be true is liable to imprisonment or a fine, or both.]

- (9) For the purposes of this Article—
- (a) subscription to a form of assent by the personal representative of a deceased member of a company is deemed a subscription by him; and
  - (b) the assignees or trustee in bankruptcy of a member of a company is, to the exclusion of that member, deemed a member of the company.

**F108** SR 2003/3

### ***Certificate of re-registration under Article 59***

**60.**—(1) The registrar shall retain the application and other documents lodged with him under Article 59 and shall—

- (a) if articles of association are annexed to the application, register them; and
  - (b) issue to the company a certificate of incorporation appropriate to the status to be assumed by it by virtue of that Article.
- (2) On the issue of the certificate—
- (a) the status of the company, by virtue of the issue, is changed from limited to unlimited; and
  - (b) the alterations in the memorandum set out in the application and (if articles of association have been previously registered) any alterations to the articles so set out take effect as if duly made by resolution of the company; and
  - (c) the provision of this Order apply accordingly to the memorandum and articles as altered by virtue of Article 59.
- (3) The certificate is conclusive evidence that the requirements of Article 59 in respect of re-registration and of matters precedent and incidental to it have been complied with, and that the

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company was authorised to be re-registered under this Order in pursuance of that Article and was duly so re-registered.

*Unlimited company becoming limited*

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

**61.**—(1) Subject as follows, a company which is registered as unlimited may be re-registered as limited if a special resolution that it should be so re-registered is passed, and the requirements of this Article are complied with in respect of the resolution and otherwise.

(2) A company cannot under this Article be re-registered as a public company; and a company is excluded from re-registering under it if it is unlimited by virtue of re-registration under Article 118 of the Order of 1978 or Article 59 or this Order.

(3) The special resolution must state whether the company is to be limited by shares or by guarantee and—

- (a) if it is to be limited by shares, must state what the share capital is to be and provide for the making of such alterations in the memorandum as are necessary to bring it (in substance and in form) into conformity with the requirements of this Order with respect to the memorandum of a company so limited, and such alterations in the articles of association as are requisite in the circumstances;
- (b) if it is to be limited by guarantee, must provide for the making of such alterations in its memorandum and articles as are necessary to bring them (in substance and in form) into conformity with the requirements of this Order with respect to the memorandum and articles of a company so limited.

(4) <sup>F109</sup> . . . an application for the company to be re-registered as limited, framed in the prescribed form and signed by a director or by the secretary of the company, must be lodged with the registrar, together with the necessary documents, not earlier than the day on which the copy of the resolution forwarded [<sup>F110</sup> under section 30 of the Companies Act 2006] is received by him.

(5) The documents to be lodged with the registrar are—

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

(6) This Article does not apply in relation to the re-registration of an unlimited company as a public company under Article 53.

**F109** Words in art. 61(4) omitted (1.10.2007) by virtue of [Companies Act 2006 \(Commencement No. 3, Consequential Amendments, Transitional Provisions and Savings\) Order 2007 \(S.I. 2007/2194\)](#), arts. 1(3)(a), 10(1), [Sch. 4 para. 17\(2\)\(a\)](#) (with art. 12)

**F110** Words in art. 61(4) substituted (1.10.2007) by [Companies Act 2006 \(Commencement No. 3, Consequential Amendments, Transitional Provisions and Savings\) Order 2007 \(S.I. 2007/2194\)](#), arts. 1(3)(a), 10(1), [Sch. 4 para. 17\(2\)\(b\)](#) (with arts. 12)

**Certificate of re-registration under Article 61**

**62.**—(1) The registrar shall retain the application and other documents lodged with him under Article 61, and shall issue to the company a certificate of incorporation appropriate to the status to be assumed by the company by virtue of that Article.

(2) On the issue of the certificate—

- (a) the status of the company is, by virtue of the issue, changed from unlimited to limited; and

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(b) the alterations in the memorandum specified in the resolution and the alterations in, and additions to, the articles so specified take effect.

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

### *Public company becoming private*

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

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

- (a) a special resolution complying with paragraph (2) that it should be so re-registered is passed and has not been cancelled by the court under Article 64;
- (b) an application for the purpose in the prescribed form and signed by a director or the secretary of the company is delivered to the registrar, together with a printed copy of the memorandum and articles of the company as altered by the resolution; and
- (c) the period during which an application for the cancellation of the resolution under Article 64 may be made has expired without any such application having been made; or
- (d) where such an application has been made, the application has been withdrawn or an order has been made under Article 64(5) confirming the resolution and a copy of that order has been delivered to the registrar.

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

(3) A company cannot under this Article be re-registered otherwise than as a company limited by shares or by guarantee.

#### **Litigation objection to resolution under Article 63**

**64.**—(1) Where a special resolution by a public company to be re-registered under Article 63 as a private company has been passed, an application may be made to the court for the cancellation of that resolution.

(2) The application may be made—

- (a) by the holders of not less in the aggregate than 5 per cent. in nominal value of the company's issued share capital or any class thereof;
- (b) if the company is not limited by shares, by not less than 5 per cent. of its members; or
- (c) by not less than 50 of its members;

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

[<sup>F111</sup>(2A) For the purposes of paragraph (2)(a), any of the company's issued share capital held as treasury shares must be disregarded.]

(3) The application must be made within 28 days after the passing of the resolution and may be made on behalf of the persons entitled to make the application by such one or more of their number as they may appoint in writing for the purpose.

(4) If such an application is made, the company shall forthwith give notice in the prescribed form of that fact to the registrar.

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

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- (a) may make that order on such terms and conditions as it thinks fit, and may (if it thinks fit) adjourn the proceedings in order that an arrangement may be made to the satisfaction of the court for the purchase of the interests of dissentient members; and
  - (b) may give such directions and make such orders as it thinks expedient for facilitating or carrying into effect any such arrangement.
- (6) The court's order may, if the court thinks fit, provide for the purchase by the company of the shares of any of its members and for the reduction accordingly of the company's capital, and may make such alterations in the company's memorandum and articles as may be required in consequence of that provision.
- (7) The company shall, within 15 days from the making of the court's order, or within such longer period as the court may at any time by order direct, deliver to the registrar an office copy of the order.
- (8) If the court's order requires the company not to make any, or any specified, alteration in its memorandum or articles, the company has not then power without the leave of the court to make any such alteration in breach of that requirement.
- (9) An alteration in the memorandum or articles made by virtue of an order under this Article, if not made by resolution of the company, is of the same effect as if duly made by resolution; and this Order applies accordingly to the memorandum or articles as so altered.
- (10) A company which fails to comply with paragraph (4) or paragraph (7), and any officer of it who is in default, is liable to a fine and, for continued contravention, to a daily default fine.

F111 SR 2004/275

### ***Certificate of re-registration under Article 63***

- 65.—(1) If the registrar is satisfied that a company may be re-registered under Article 63, he shall—
- (a) retain the application and other documents delivered to him under that Article; and
  - (b) issue the company with a certificate of incorporation appropriate to a private company.
- (2) On the issue of the certificate—
- (a) the company by virtue of the issue becomes a private company; and
  - (b) the alterations in the memorandum and articles set out in the resolution under Article 63 take effect accordingly.
- (3) The certificate is conclusive evidence—
- (a) that the requirements of Article 63 in respect of re-registration and of matters precedent and incidental to it have been complied with; and
  - (b) that the company is a private company.

## F112 PART IV CAPITAL ISSUES

**F112** Pt. IV (arts. 66-89) repealed by [Financial Services Act 1986 \(c. 60\)](#), ss. 211(1), 212(3), [Sch. 17 Pt. II](#) (the repeal coming into force as mentioned in [S.I. 1986/2246](#), art. 5, [Sch. 4](#), [S.I. 1988/740](#), arts. 2-7, [Sch.](#) (as amended by [S.I. 1988/1960](#), arts. 2-4 and by [S.I. 1988/2285](#), [arts. 2-6](#)) and [S.I. 1995/1538](#), [art. 2](#) and otherwise prosp.)



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## CHAPTER I ISSUES BY COMPANIES REGISTERED, OR TO BE REGISTERED, IN NORTHERN IRELAND

### *The prospectus*

#### <sup>F113</sup>***Matters to be stated, and reports to be set out, in prospectus***

**66.**—(1) Every prospectus issued by or on behalf of a company, or by or on behalf of any person who is or has been engaged or interested in the formation of the company, must comply—

- (a) with Part I of Schedule 3, as respects the matters to be stated in the prospectus, and
- (b) with Part II of that Schedule, as respects the reports to be set out.

(2) It is unlawful to issue any form of application for shares in or debentures of a company unless the form is issued with a prospectus which complies with the requirements of this Article.

(3) Paragraph (2) does not apply if it is shown that the form of application was issued either—

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

(4) If a person acts in contravention of paragraph (2), he is liable to a fine.

(5) This Article does not apply—

- (a) to the issue to existing members or debenture holders of a company of a prospectus or form of application relating to shares in or debentures of the company, whether an applicant for shares or debentures will or will not have the right to renounce in favour of other persons, or
- (b) to the issue of a prospectus or form of application relating to shares or debentures which are or are to be in all respects uniform with shares or debentures previously issued and for the time being listed on a prescribed stock exchange;

but subject to this, it applies to a prospectus or a form of application whether issued on or with reference to the formation of a company or subsequently.

**F113** Pt. IV (arts. 66-89) repealed by [Financial Services Act 1986 \(c. 60\)](#), ss. 211(1), 212(3), [Sch. 17 Pt. II](#) (the repeal coming into force as mentioned in [S.I. 1986/2246, art. 5](#), [Sch. 4](#), [S.I. 1988/740](#), arts. 2-7, [Sch.](#) (as amended by [S.I. 1988/1960](#), arts. 2-4 and by [S.I. 1988/2285, arts. 2-6](#)) and [S.I. 1995/1538, art. 2](#) and otherwise prosp.)

#### <sup>F114</sup>***Attempted evasion of Article 66 to be void***

**67.** A condition requiring or binding an applicant for shares in or debentures of a company to waive compliance with any requirement of Article 66, or purporting to affect him with notice of any contract, document or matter not specifically referred to in the prospectus, is void.

**F114** Pt. IV (arts. 66-89) repealed by [Financial Services Act 1986 \(c. 60\)](#), ss. 211(1), 212(3), [Sch. 17 Pt. II](#) (the repeal coming into force as mentioned in [S.I. 1986/2246, art. 5](#), [Sch. 4](#), [S.I. 1988/740](#), arts. 2-7, [Sch.](#) (as amended by [S.I. 1988/1960](#), arts. 2-4 and by [S.I. 1988/2285, arts. 2-6](#)) and [S.I. 1995/1538, art. 2](#) and otherwise prosp.)

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## **Document offering shares, etc. for sale deemed a prospectus**

### **68.** <sup>F115</sup> .....

**F115** Art. 68 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), Sch. 16; S.I. 2007/3495, art. 8(a), Sch. 2 Pt. 2 (with arts. 7, 12)

Arts. 69, 70 rep. by SI 2001/3649

### **<sup>F116</sup> Prospectus containing statement by expert**

**71.**—(1) A prospectus inviting persons to subscribe for a company's shares or debentures and including a statement purporting to be made by an expert shall not be issued unless—

- (a) he (the expert) has given and has not, before delivery of a copy of the prospectus for registration, withdrawn his written consent to its issue with the statement included in the form and context in which it is in fact included; and
- (b) a statement that he has given and not withdrawn that consent appears in the prospectus.

(2) If a prospectus is issued in contravention of this Article the company and every person who is knowingly a party to the issue of the prospectus is liable to a fine.

**F116** Pt. IV (arts. 66-89) repealed by Financial Services Act 1986 (c. 60), ss. 211(1), 212(3), Sch. 17 Pt. II (the repeal coming into force as mentioned in S.I. 1986/2246, art. 5, Sch. 4, S.I. 1988/740, arts. 2-7, Sch. (as amended by S.I. 1988/1960, arts. 2-4 and by S.I. 1988/2285, arts. 2-6) and S.I. 1995/1538, art. 2 and otherwise prosp.)

### **<sup>F117</sup> Meaning of “expert”**

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

**F117** Pt. IV (arts. 66-89) repealed by Financial Services Act 1986 (c. 60), ss. 211(1), 212(3), Sch. 17 Pt. II (the repeal coming into force as mentioned in S.I. 1986/2246, art. 5, Sch. 4, S.I. 1988/740, arts. 2-7, Sch. (as amended by S.I. 1988/1960, arts. 2-4 and by S.I. 1988/2285, arts. 2-6) and S.I. 1995/1538, art. 2 and otherwise prosp.)

### **<sup>F118</sup> Prospectus to be dated**

**73.** A prospectus issued by or on behalf of a company, or in relation to an intended company, shall be dated; and that date shall, unless the contrary is proved, be taken as its date of publication.

**F118** Pt. IV (arts. 66-89) repealed by Financial Services Act 1986 (c. 60), ss. 211(1), 212(3), Sch. 17 Pt. II (the repeal coming into force as mentioned in S.I. 1986/2246, art. 5, Sch. 4, S.I. 1988/740, arts. 2-7, Sch. (as amended by S.I. 1988/1960, arts. 2-4 and by S.I. 1988/2285, arts. 2-6) and S.I. 1995/1538, art. 2 and otherwise prosp.)

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## *Registration of prospectus*

### ***F119 Registration requirement applicable in all cases***

**74.**—(1) No prospectus shall be issued by or on behalf of a company, or in relation to an intended company, unless on or before the date of its publication there has been delivered to the registrar for registration a copy of the prospectus—

- (a) signed by every person who is named in it as a director or proposed director of the company, or by his agent authorised in writing, and
- (b) having endorsed on or attached to it any consent to its issue required by Article 71 from any person as an expert.

(2) Where the prospectus is such a document as is referred to in Article 68, the signatures required by paragraph (1) include those of every person making the offer, or his agent authorised in writing. Where the offer is made by a company or a firm, it is sufficient for the purposes of this paragraph if the document is signed on its behalf by 2 directors or (as the case may be) not less than half of the partners; and a director or partner may sign by his agent authorised in writing.

(3) Every prospectus shall on its face—

- (a) state that a copy has been delivered for registration as required by this Article, and
- (b) specify, or refer to statements in the prospectus specifying, any documents required by this Article or Article 75 to be endorsed on or attached to the copy delivered.

(4) The registrar shall not register a prospectus unless it is dated and the copy of it signed as required by this Article and unless it has endorsed on or attached to it the documents (if any) specified in paragraph (3)(b).

(5) If a prospectus is issued without a copy of it being delivered to the registrar as required by this Article, or without the copy so delivered having the required documents endorsed on or attached to it, the company and every person who is knowingly a party to the issue of the prospectus is liable to a fine and, for continued contravention, to a daily default fine.

**F119** Pt. IV (arts. 66-89) repealed by [Financial Services Act 1986 \(c. 60\)](#), ss. 211(1), 212(3), [Sch. 17 Pt. II](#) (the repeal coming into force as mentioned in [S.I. 1986/2246, art. 5](#), [Sch. 4](#), [S.I. 1988/740](#), arts. 2-7, [Sch.](#) (as amended by [S.I. 1988/1960](#), arts. 2-4 and by [S.I. 1988/2285, arts. 2-6](#)) and [S.I. 1995/1538, art. 2](#) and otherwise prosp.)

### ***F120 Additional requirements in case of prospectus issued generally***

**75.**—(1) In the case of a prospectus issued generally the following provisions apply in addition to those of Article 74.

(2) The copy of the prospectus delivered to the registrar must also have endorsed on or attached to it a copy of any contract required by paragraph 11 of Schedule 3 to be stated in the prospectus or, in the case of a contract not reduced into writing, a memorandum giving full particulars of it.

(3) In the case of a contract wholly or partly in a foreign language—

- (a) the copy required by paragraph (2) to be endorsed on or attached to the prospectus must be a copy of a translation of the contract into English or (as the case may be) a copy embodying a translation into English of the parts in a foreign language, and
- (b) the translation must be certified in the prescribed manner to be a correct translation.

(4) If the person making any report required by Part II of Schedule 3 have made in the report, or have (without giving reasons) indicated in it, any such adjustments as are mentioned in paragraph 21 of that Schedule (profits, losses, assets, liabilities), the copy of the prospectus delivered to the

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registrar must have endorsed on or attached to it a written statement signed by those persons setting out the adjustments and giving the reasons for them.

**F120** Pt. IV (arts. 66-89) repealed by [Financial Services Act 1986 \(c. 60\)](#), ss. 211(1), 212(3), [Sch. 17 Pt. II](#) (the repeal coming into force as mentioned in [S.I. 1986/2246, art. 5, Sch. 4](#), [S.I. 1988/740](#), arts. 2-7, [Sch.](#) (as amended by [S.I. 1988/1960](#), arts. 2-4 and by [S.I. 1988/2285, arts. 2-6](#)) and [S.I. 1995/1538, art. 2](#) and otherwise prosp.)

### *Liabilities and offences in connection with prospectus*

#### *<sup>F121</sup>Directors, etc. exempt from liability in certain cases*

**76.**—(1) In the event of contravention of Article 66, a director or other person responsible for the prospectus does not incur any liability by reason of that contravention if—

- (a) as regards any matter not disclosed, he proves that he was not cognisant of it, or
- (b) he proves that the contravention arose from an honest mistake of fact on his part, or
- (c) the contravention was in respect of matters which, in the opinion of the court dealing with the case, were immaterial or was otherwise such as ought (in the court's opinion, having regard to all the circumstances of the case) reasonably to be excused.

(2) In the event of failure to include in a prospectus a statement with respect to the matters specified in paragraph 13 of Schedule 3 (disclosure of directors' interests), no director or other person incurs any liability in respect of the failure unless it is proved that he had knowledge of the matters not disclosed.

(3) Nothing in Article 66 or 67 or this Article limits or diminishes any liability which a person may incur under the general law or this Order apart from those provisions.

**F121** Pt. IV (arts. 66-89) repealed by [Financial Services Act 1986 \(c. 60\)](#), ss. 211(1), 212(3), [Sch. 17 Pt. II](#) (the repeal coming into force as mentioned in [S.I. 1986/2246, art. 5, Sch. 4](#), [S.I. 1988/740](#), arts. 2-7, [Sch.](#) (as amended by [S.I. 1988/1960](#), arts. 2-4 and by [S.I. 1988/2285, arts. 2-6](#)) and [S.I. 1995/1538, art. 2](#) and otherwise prosp.)

#### *<sup>F122</sup>Compensation for subscribers misled by statement in prospectus*

**77.**—(1) Where a prospectus invites persons to subscribe for a company's shares or debentures, compensation is payable to all those who subscribe for any shares or debentures on the faith of the prospectus for the loss or damage which they may have sustained by reason of any untrue statement included in it.

(2) The persons liable to pay the compensation are—

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

(3) Paragraphs (1) and (2) have effect subject to Articles 78 and 79; and here and in those Articles “promoter” means a promoter who was party to the preparation of the prospectus, or of the portion

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of it containing the untrue statement, but does not include any person by reason of his acting in a professional capacity for persons engaged in procuring the formation of the company.

**F122** Pt. IV (arts. 66-89) repealed by [Financial Services Act 1986 \(c. 60\)](#), ss. 211(1), 212(3), [Sch. 17 Pt. II](#) (the repeal coming into force as mentioned in [S.I. 1986/2246](#), [art. 5](#), [Sch. 4](#), [S.I. 1988/740](#), arts. 2-7, [Sch.](#) (as amended by [S.I. 1988/1960](#), arts. 2-4 and by [S.I. 1988/2285](#), [arts. 2-6](#)) and [S.I. 1995/1538](#), [art. 2](#) and otherwise prosp.)

***F123 Exemption from Article 77 for those acting with propriety***

**78.**—(1) A person is not liable under Article 77 if he proves—

- (a) that, having consented to become a director of the company, he withdrew his consent before the issue of the prospectus, and that it was issued without his authority or consent, or
- (b) that the prospectus was issued without his knowledge or consent, and that on becoming aware of its issue he forthwith gave reasonable public notice that it was issued without his knowledge or consent, or
- (c) that after issue of the prospectus and before allotment under it he, on becoming aware of any untrue statement in it, withdrew his consent to its issue and gave reasonable public notice of the withdrawal and of the reason for it.

(2) A person is not liable under that Article if he proves that—

- (a) as regards every untrue statement nor purporting to be made on the authority of an expert or of a public official document or statement, he had reasonable ground to believe, and did up to the time of the allotment of the shares or debentures (as the case may be) believe, that the statement was true; and
- (b) as regards every untrue statement purporting to be a statement by an expert or contained in what purports to be a copy of or extract from a report or valuation of an expert, it fairly represented the statement, or was a correct and fair copy of or extract from the report or valuation, and he had reasonable ground to believe and did up to the time of issue of the prospectus believe that the person making the statement was competent to make it and that person had given the consent required by Article 71 to the issue of the prospectus and had not withdrawn that consent before delivery of a copy of the prospectus for registration or, to the defendant's knowledge, before allotment under it; and
- (c) as regards every untrue statement purporting to be made by an official person or contained in what purports to be a copy of or extract from a public official document, it was a correct and fair representation of the statement or copy of or extract from the document.

(3) Paragraphs (1) and (2) do not apply in the case of a person liable, by reason of his having given a consent required of him by Article 71, as a person who has authorised the issue of the prospectus in respect of an untrue statement purporting to be made by him as an expert.

(4) Where under Article 71 the consent of a person is required to the issue of a prospectus and he has given that consent, he is not by reason of his having given it liable under Article 77 as a person who has authorised the issue of the prospectus except in respect of an untrue statement purporting to be made by him as an expert.

(5) A person who, apart from this paragraph, would under Article 77 be liable, by reason of his having given a consent required of him by Article 71, as a person who has authorised the issue of a prospectus in respect of an untrue statement purporting to be made by him as an expert is not so liable if he proves—

- (a) that, having given his consent under Article 71 to the issue of the prospectus, he withdrew it in writing before the delivery of a copy of the prospectus for registration; or

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- (b) that, after delivery of a copy of the prospectus for registration and before allotment under it, he, on becoming aware of the untrue statement, withdrew his consent in writing and gave reasonable public notice of the withdrawal and of the reason for it; or
- (c) that he was competent to make the statement and that he had reasonable ground to believe, and did up to the time of the allotment of the shares or debentures (as the case may be) believe, that the statement was true.

**F123** Pt. IV (arts. 66-89) repealed by [Financial Services Act 1986 \(c. 60\)](#), ss. 211(1), 212(3), [Sch. 17 Pt. II](#) (the repeal coming into force as mentioned in [S.I. 1986/2246, art. 5](#), [Sch. 4](#), [S.I. 1988/740](#), arts. 2-7, [Sch.](#) (as amended by [S.I. 1988/1960](#), arts. 2-4 and by [S.I. 1988/2285, arts. 2-6](#)) and [S.I. 1995/1538, art. 2](#) and otherwise prosp.)

#### <sup>F124</sup> *Indemnity for innocent director or expert*

**79.**—(1) This Article applies where—

- (a) the prospectus contains the name of a person as a director of the company, or as having agreed to become a director of it, and he has not consented to become a director, or has withdrawn his consent before the issue of the prospectus, and has not authorised or consented to its issue, or
- (b) the consent of a person is required under Article 71 to the issue of the prospectus and he either has not given that consent or has withdrawn it before the issue of the prospectus.

(2) The directors of the company (except any without whose knowledge or consent the prospectus was issued) and any other person who authorised its issue are liable to indemnify the person named, or whose consent was required under Article 71 (as the case may be), against all damages, costs and expenses to which he may be liable by reason of his name having been inserted in the prospectus or of the inclusion in it of a statement purporting to be made by him as an expert (as the case may be), or in defending himself against any action or legal proceeding brought against him in respect of it.

(3) A person is not deemed for the purposes of this Article to have authorised the issue of a prospectus by reason only of his having given the consent required by Article 71 to the inclusion of a statement purporting to be made by him as an expert.

**F124** Pt. IV (arts. 66-89) repealed by [Financial Services Act 1986 \(c. 60\)](#), ss. 211(1), 212(3), [Sch. 17 Pt. II](#) (the repeal coming into force as mentioned in [S.I. 1986/2246, art. 5](#), [Sch. 4](#), [S.I. 1988/740](#), arts. 2-7, [Sch.](#) (as amended by [S.I. 1988/1960](#), arts. 2-4 and by [S.I. 1988/2285, arts. 2-6](#)) and [S.I. 1995/1538, art. 2](#) and otherwise prosp.)

#### <sup>F125</sup> *Criminal liability for untrue statements*

**80.**—(1) If a prospectus is issued with an untrue statement included in it, any person who authorised the issue of the prospectus is guilty of an offence and liable to imprisonment or a fine, or both, unless he proves either—

- (a) that the statement was immaterial, or
- (b) that he had reasonable ground to believe and did, up to the time of the issue of the prospectus, believe that the statement was true.

(2) A person is not deemed for the purpose of this Article to have authorised the issue of a prospectus by reason only of his having given the consent required by Article 71 to the inclusion in it of a statement purporting to be made by him as an expert.

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**F125** Pt. IV (arts. 66-89) repealed by [Financial Services Act 1986 \(c. 60\)](#), ss. 211(1), 212(3), [Sch. 17 Pt. II](#) (the repeal coming into force as mentioned in [S.I. 1986/2246](#), art. 5, [Sch. 4](#), S.I. 1988/740, arts. 2-7, Sch. (as amended by S.I. 1988/1960, arts. 2-4 and by [S.I. 1988/2285](#), [arts. 2-6](#)) and [S.I. 1995/1538](#), [art. 2](#) and otherwise prosp.)

### *Supplementary*

#### *F126 Interpretation for Articles 66 to 80*

**81.** For the purposes of Articles 66 to 80—

- (a) a statement included in a prospectus is deemed to be untrue if it is misleading in the form and context in which it is included, and
- (b) a statement is deemed to be included in a prospectus if it is contained in it, or in any report or memorandum appearing on its face, or by reference incorporated in, or issued with, the prospectus.

**F126** Pt. IV (arts. 66-89) repealed by [Financial Services Act 1986 \(c. 60\)](#), ss. 211(1), 212(3), [Sch. 17 Pt. II](#) (the repeal coming into force as mentioned in [S.I. 1986/2246](#), art. 5, [Sch. 4](#), S.I. 1988/740, arts. 2-7, Sch. (as amended by S.I. 1988/1960, arts. 2-4 and by [S.I. 1988/2285](#), [arts. 2-6](#)) and [S.I. 1995/1538](#), [art. 2](#) and otherwise prosp.)

## CHAPTER II

### ISSUES BY COMPANIES INCORPORATED, OR TO BE INCORPORATED, OUTSIDE THE UNITED KINGDOM

#### *F127 Prospectus of non-United Kingdom company*

**82.—**(1) It is unlawful for a person to issue, circulate or distribute in Northern Ireland any prospectus offering for subscription shares in or debentures of a company incorporated or to be incorporated outside the United Kingdom (whether the company has or has not established, or when formed will or will not establish, a place of business in the United Kingdom) unless the prospectus complies with the requirements of paragraphs (2) and (3).

- (2) The prospectus must be dated and contain particulars with respect to the following matters—
  - (a) the instrument constituting or defining the constitution of the company;
  - (b) the enactments, or provisions having the force of an enactment, by or under which the incorporation of the company was effected;
  - (c) an address in the United Kingdom where that instrument, and those enactments or provisions, or copies of them (and, if they are in a foreign language, a translation of them certified in the prescribed manner), can be inspected;
  - (d) the date on which, and the country in which, the company was incorporated; and
  - (e) whether the company has established a place of business in the United Kingdom and, if so, the address of its principal office in the United Kingdom.
- (3) Subject to the following provisions, the prospectus must comply—
  - (a) with Part I of Schedule 3, as respects the matters to be stated in the prospectus, and
  - (b) with Part II of that Schedule, as respects the reports to be set out.

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(4) Sub-paragraphs (a) to (c) of paragraph (2) do not apply in the case of a prospectus issued more than 2 years after the company is entitled to commence business.

(5) It is unlawful for a person to issue to any person in Northern Ireland a form of application for shares in or debentures of such a company or intended company as is mentioned in paragraph (1) unless the form is issued with a prospectus which complies with this Chapter and the issue of which in Northern Ireland does not contravene Article 84 or 85.

This paragraph does not apply if it is shown that the form of application was issued in connection with a bona fide invitation to a person to enter into an underwriting agreement with respect to the shares or debentures.

(6) This Article—

- (a) does not apply to the issue to a company's existing members or debenture holders of a prospectus or form of application relating to shares in or debentures of the company, whether an applicant for shares or debentures will or will not have the right to renounce in favour of other persons; and
- (b) except in so far as it requires a prospectus to be dated, does not apply to the issue of a prospectus relating to shares or debentures which are or are to be in all respects uniform with shares or debentures previously issued and for the time being listed on a prescribed stock exchange;

but subject to this, it applies to a prospectus or form of application whether issued on or with reference to the formation of a company or subsequently.

**F127** Pt. IV (arts. 66-89) repealed by [Financial Services Act 1986 \(c. 60\)](#), ss. 211(1), 212(3), [Sch. 17 Pt. II](#) (the repeal coming into force as mentioned in [S.I. 1986/2246, art. 5](#), [Sch. 4](#), [S.I. 1988/740](#), arts. 2-7, [Sch.](#) (as amended by [S.I. 1988/1960](#), arts. 2-4 and by [S.I. 1988/2285, arts. 2-6](#)) and [S.I. 1995/1538, art. 2](#) and otherwise prosp.)

<sup>F128</sup> **Attempted evasion of Article 82 to be void**

**83.** A condition requiring or binding an applicant for shares or debentures to waive compliance with any requirement imposed—

- (a) by paragraph (2) of Article 82, as regards the particulars to be contained in the prospectus, or
- (b) by paragraph (3) of that Article, as regards compliance with Schedule 3,

or purporting to affect an applicant with notice of any contract, document or matter not specifically referred to in the prospectus, is void.

**F128** Pt. IV (arts. 66-89) repealed by [Financial Services Act 1986 \(c. 60\)](#), ss. 211(1), 212(3), [Sch. 17 Pt. II](#) (the repeal coming into force as mentioned in [S.I. 1986/2246, art. 5](#), [Sch. 4](#), [S.I. 1988/740](#), arts. 2-7, [Sch.](#) (as amended by [S.I. 1988/1960](#), arts. 2-4 and by [S.I. 1988/2285, arts. 2-6](#)) and [S.I. 1995/1538, art. 2](#) and otherwise prosp.)

<sup>F129</sup> **Prospectus containing statement by expert**

**84.**—(1) This Article applies in the case of a prospectus offering for subscription shares in or debentures of a company incorporated or to be incorporated outside the United Kingdom (whether it has or has not established, or when formed will or will not establish, a place of business in the United Kingdom), if the prospectus includes a statement purporting to be made by an expert.



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(2) It is unlawful for any person to issue, circulate or distribute in Northern Ireland such a prospectus if—

- (a) the expert has not given, or has before the delivery of the prospectus for registration withdrawn, his written consent to the issue of the prospectus with the statement included in the form and context in which it is included; or
- (b) there does not appear in the prospectus a statement that he has given and has not withdrawn his consent as mentioned in sub-paragraph (a).

(3) For the purposes of this Article, a statement is deemed to be included in a prospectus if it is contained in it, or in any report or memorandum appearing on its face, or by reference incorporated in, or issued with, the prospectus.

**F129** Pt. IV (arts. 66-89) repealed by [Financial Services Act 1986 \(c. 60\)](#), ss. 211(1), 212(3), [Sch. 17 Pt. II](#) (the repeal coming into force as mentioned in [S.I. 1986/2246, art. 5, Sch. 4](#), [S.I. 1988/740](#), arts. 2-7, Sch. (as amended by [S.I. 1988/1960](#), arts. 2-4 and by [S.I. 1988/2285, arts. 2-6](#)) and [S.I. 1995/1538, art. 2](#) and otherwise prosp.)

#### <sup>F130</sup> **Restrictions on allotment to be secured in prospectus**

**85.**—(1) It is unlawful for a person to issue, circulate or distribute in Northern Ireland a prospectus offering for subscription shares in or debentures of a company incorporated or to be incorporated outside the United Kingdom (whether the company has or has not established, or when formed will or will not establish, a place of business in the United Kingdom), unless the prospectus complies with the following condition.

(2) The prospectus must have the effect, where an application is made in pursuance of it, of rendering all persons concerned bound by all the provisions (other than penal provisions) of Articles 92, 96 and 97 (restrictions on allotment), so far as applicable.

**F130** Pt. IV (arts. 66-89) repealed by [Financial Services Act 1986 \(c. 60\)](#), ss. 211(1), 212(3), [Sch. 17 Pt. II](#) (the repeal coming into force as mentioned in [S.I. 1986/2246, art. 5, Sch. 4](#), [S.I. 1988/740](#), arts. 2-7, Sch. (as amended by [S.I. 1988/1960](#), arts. 2-4 and by [S.I. 1988/2285, arts. 2-6](#)) and [S.I. 1995/1538, art. 2](#) and otherwise prosp.)

#### <sup>F131</sup> **Stock exchange certificate exempting from compliance with Schedule 3**

**86.**—(1) This Article applies where—

- (a) it is proposed to offer to the public by a prospectus issued generally any shares in or debentures of a company incorporated or to be incorporated outside the United Kingdom (whether the company has or has not established, or when formed will or will not establish, a place of business in the United Kingdom), and
- (b) application is made to a prescribed stock exchange for permission of those shares or debentures to be listed on that stock exchange.

(2) There may on the applicant's request be given by or on behalf of that stock exchange a certificate that, having regard to the proposals (as stated in the request) as to the size and other circumstances of the issue of shares or debentures and as to any limitation on the number and class of person to whom the offer is to be made, compliance with Schedule 3 would be unduly burdensome.

(3) If a certificate is given under paragraph (2), and if the proposals mentioned in that paragraph are adhered to and the particulars and information required to be published in connection with the application for permission to the stock exchange are so published, then—

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- (a) a prospectus giving the particulars and information in the form in which they are so required to be published is deemed to comply with Schedule 3, and
- (b) except as respects the requirement for the prospectus to be dated, Article 82 does not apply to any issue, after the permission applied for is given, of a prospectus or form of application relating to the shares or debentures.

**F131** Pt. IV (arts. 66-89) repealed by [Financial Services Act 1986 \(c. 60\)](#), ss. 211(1), 212(3), [Sch. 17 Pt. II](#) (the repeal coming into force as mentioned in [S.I. 1986/2246, art. 5](#), [Sch. 4](#), [S.I. 1988/740](#), arts. 2-7, [Sch.](#) (as amended by [S.I. 1988/1960](#), arts. 2-4 and by [S.I. 1988/2285, arts. 2-6](#)) and [S.I. 1995/1538, art. 2](#) and otherwise prosp.)

### <sup>F132</sup>*Registration of prospectus before issue*

**87.**—(1) It is unlawful for a person to issue, circulate or distribute in Northern Ireland a prospectus offering for subscription shares in or debentures of a company incorporated or to be incorporated outside the United Kingdom (whether the company has or has not established, or when formed will or will not establish, a place of business in the United Kingdom), unless before the issue, circulation or distribution of the prospectus in Northern Ireland the requirements of this Article have been complied with.

(2) A copy of the prospectus, certified by the chairman and two other directors of the company as having been approved by resolution of the managing body, must have been delivered for registration to the registrar or the registrar of companies as defined in the Companies Act 1985.

(3) The prospectus must state on the face of it that a copy has been so delivered and the following must be endorsed on or attached to that copy of the prospectus—

- (a) any consent to the issue of the prospectus which is required by Article 84;
- (b) a copy of any contract required by paragraph 11 of Schedule 3 to be stated in the prospectus or, in the case of a contract not reduced into writing, a memorandum giving full particulars of it; and
- (c) where the persons making any report required by Part II of Schedule 3 have made in it or have, without giving the reasons, indicated in it any such adjustments as are mentioned in paragraph 21 of that Schedule, a written statement signed by those persons setting out the adjustments and giving the reasons for them.

(4) If in the case of a prospectus deemed by virtue of a certificate under Article 86 to comply with Schedule 3, a contract or a copy of it, or a memorandum of a contract, is required to be available for inspection in connection with the application under that Article to the stock exchange, a copy or (as the case may be) a memorandum of the contract must be endorsed on or attached to the copy of the prospectus delivered to the registrar for registration.

(5) References in paragraphs (3)(b) and (4) to the copy of a contract are, in the case of a contract wholly or partly in a foreign language, to a copy of a translation of the contract into English, or a copy embodying a translation into English of the parts in foreign language (as the case may be); and—

- (a) the translation must in either case be certified in the prescribed manner to be a correct translation, and
- (b) the reference in paragraph (4) to a copy of a contract required to be available for inspection includes a copy of a translation of it or a copy embodying a translation of parts of it.

**F132** Pt. IV (arts. 66-89) repealed by [Financial Services Act 1986 \(c. 60\)](#), ss. 211(1), 212(3), [Sch. 17 Pt. II](#) (the repeal coming into force as mentioned in [S.I. 1986/2246, art. 5](#), [Sch. 4](#), [S.I. 1988/740](#), arts. 2-7,

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Sch. (as amended by S.I. 1988/1960, arts. 2-4 and by S.I. 1988/2285, arts. 2-6) and S.I. 1995/1538, art. 2 and otherwise prosp.)

<sup>F133</sup>**Consequences (criminal and civil) of contravention of Articles 82 to 87**

**88.**—(1) A person who is knowingly responsible for the issue, circulation or distribution of a prospectus, or for the issue of a form of application for shares or debentures, in contravention of any of the provisions of Articles 82 to 87 is liable to a fine.

(2) Articles 77, 78 and 79 extend to every prospectus offering for subscription shares in or debentures of a company incorporated or to be incorporated outside the United Kingdom (whether the company has or has not established, or when formed will or will not establish, a place of business in the United Kingdom), substituting for any reference to Article 71 a reference to Article 84.

(3) In the event of contravention of any of the requirements of Article 82(2) as regards the particulars to be contained in the prospectus, or Article 82(3) as regards compliance with Schedule 3, a director or other person responsible for the prospectus incurs no liability by reason of the contravention if—

- (a) as regards any matter not disclosed, he proves that he was not cognisant of it, or
- (b) he proves that the contravention arose from an honest mistake of fact on his part, or
- (c) the contravention was in respect of matters which, in the opinion of the court dealing with the case, were immaterial or was otherwise such as ought, in the court's opinion, having regard to all the circumstances of the case, reasonably to be excused.

(4) In the event of failure to include in a prospectus to which this Chapter applies a statement with respect to the matters contained in paragraph 13 of Schedule 3, no director or other person incurs any liability in respect of the failure unless it is proved that he had knowledge of the matters not disclosed.

(5) Nothing in Article 82 or 83 or this Article limits or diminishes any liability which a person may incur under the general law or this Order, apart from those provisions.

**F133** Pt. IV (arts. 66-89) repealed by Financial Services Act 1986 (c. 60), ss. 211(1), 212(3), Sch. 17 Pt. II (the repeal coming into force as mentioned in S.I. 1986/2246, art. 5, Sch. 4, S.I. 1988/740, arts. 2-7, Sch. (as amended by S.I. 1988/1960, arts. 2-4 and by S.I. 1988/2285, arts. 2-6) and S.I. 1995/1538, art. 2 and otherwise prosp.)

<sup>F134</sup>**Supplementary**

**89.**—(1) Where a document by which the shares in or debentures of a company incorporated outside the United Kingdom are offered for sale to the public would, if the company had been a company incorporated under this Order, have been deemed by virtue of Article 68 to be a prospectus issued by the company, that document is deemed, for the purposes of this Chapter, a prospectus so issued.

(2) An offer of shares or debentures for subscription or sale to a person whose ordinary business it is to buy or sell shares or debentures (whether as principal or agent) is not deemed an offer to the public for those purposes.

(3) In this Chapter “shares” and “debentures” have the same meaning as when those expressions are used, elsewhere in this Order, in relation to a company incorporated under this Order.

**F134** Pt. IV (arts. 66-89) repealed by Financial Services Act 1986 (c. 60), ss. 211(1), 212(3), Sch. 17 Pt. II (the repeal coming into force as mentioned in S.I. 1986/2246, art. 5, Sch. 4, S.I. 1988/740, arts. 2-7,

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Sch. (as amended by S.I. 1988/1960, arts. 2-4 and by S.I. 1988/2285, arts. 2-6) and S.I. 1995/1538, art. 2 and otherwise prosp.)

## PART V

### ALLOTMENT OF SHARES AND DEBENTURES

#### *General provisions as to allotment*

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

**90.**—(1) The directors of a company shall not exercise any power of the company to allot relevant securities unless they are, in accordance with this Article<sup>F135</sup> or Article 90A], authorised to do so by—

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

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

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

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

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

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

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

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

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

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

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

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(8) A resolution of a company to give, vary, revoke or renew such an authority may, notwithstanding that it alters the company's articles, be an ordinary resolution; [<sup>F136</sup>but in any case Chapter 3 of Part 3 of the Companies Act 2006 (resolutions affecting a company's constitution) applies to it.]

(9) A director who knowingly and wilfully contravenes, or permits or authorises a contravention of, this Article is liable to a fine.

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

(11) This Article does not apply to any allotment of relevant securities by a company, other than a public company registered as such on its original incorporation, if it is made in pursuance of an offer or agreement made before the earlier of the following two dates—

- (a) the date of the holding of the first general meeting of the company after its registration or re-registration as a public company, and
- (b) 1st January 1985;

but any resolution to give, vary or revoke an authority for the purposes of Article 16 of the Order of 1981 or this Article has effect for those purposes if passed at any time on or after 10th June 1981.

**F135** 1990 NI 10

**F136** Art. 90(8): word beginning "but it is in any case subject to Article 388" to the end omitted and substituted (1.10.2007) by virtue of [Companies Act 2006 \(Commencement No. 3, Consequential Amendments, Transitional Provisions and Savings\) Order 2007 \(S.I. 2007/2194\)](#), arts. 1(3), 10(1), [Sch. 4 para. 17\(3\)](#) (with art. 12)

### [<sup>F137</sup>Election by private company as to duration of authority

**90A.**—(1) A private company may elect (by elective resolution in accordance with Article 387A) that the provisions of this Article shall apply, instead of the provisions of Article 90(4) and (5), in relation to the giving or renewal, after the election, of an authority under that Article.

(2) The authority must state the maximum amount of relevant securities that may be allotted under it and may be given—

- (a) for an indefinite period, or
- (b) for a fixed period, in which case it must state the date on which it will expire.

(3) In either case an authority (including an authority contained in the articles) may be revoked or varied by the company in general meeting.

(4) An authority given for a fixed period may be renewed or further renewed by the company in general meeting.

(5) A resolution renewing an authority—

- (a) must state, or re-state, the amount of relevant securities which may be allotted under the authority or, as the case may be, the amount remaining to be allotted under it, and
- (b) must state whether the authority is renewed for an indefinite period or for a fixed period, in which case it must state the date on which the renewed authority will expire.

(6) The references in this Article to the maximum amount of relevant securities that may be allotted shall be construed in accordance with Article 90(6).

(7) If an election under this Article ceases to have effect, an authority then in force which was given for an indefinite period or for a fixed period of more than five years—

- (a) if given five years or more before the election ceases to have effect, shall expire forthwith, and

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(b) otherwise, shall have effect as if it had been given for a fixed period of five years.]

**F137** 1990 NI 10

**Restriction on public offers by private company**

**91.** <sup>F138</sup> .....

**F138** Art. 91 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), Sch. 16; S.I. 2007/3495, art. 8(a), Sch. 2 Pt. 2 (with arts. 7, 12, Sch. 4 para. 24(2))

<sup>F139</sup>**Application for, and allotment of, shares and debentures**

**92.—(1)** No allotment shall be made of a company's shares or debentures in pursuance of a prospectus issued generally, and no proceedings shall be taken on applications made in pursuance of a prospectus so issued, until the beginning of the third day after that on which the prospectus is first so issued or such later time (if any) as may be specified in the prospectus.

(2) The beginning of that third day, or that later time, is “the time of the opening of the subscription lists”.

(3) In paragraph (1), the reference to the day on which the prospectus is first issued generally is to the day when it is first so issued as a newspaper advertisement; and if it is not so issued as a newspaper advertisement before the third day after that on which it is first so issued in any other manner, the reference is to the day on which it is first so issued in any manner.

(4) In reckoning for this purpose the third day after another day—

- (a) any intervening day which is a Saturday or Sunday, or which is a bank holiday, is to be disregarded; and
- (b) if the third day (as so reckoned) is itself a Saturday or Sunday, or a bank holiday, there is to be substituted the first day after that which is none of them.

(5) The validity of an allotment is not affected by any contravention of paragraphs (1) to (4); but in the event of contravention, the company and every officer of it who is in default is liable to a fine.

(6) As applying to a prospectus offering shares or debentures for sale, paragraphs (1) to (5) are modified as follows—

- (a) for references to allotment, substitute references to sale; and
- (b) for the reference to the company and every officer of it who is in default, substitute a reference to any person by or through whom the offer is made and who knowingly and wilfully authorises or permits the contravention.

(7) An application for shares in or debentures of a company which is made in pursuance of a prospectus issued generally is not revocable until after the expiration of the third day after the time of the opening of the subscription lists, or the giving before the expiration of that day of the appropriate public notice; and that notice is one given by some person responsible under Articles 77 to 79 for the prospectus and having the effect under those Articles of excluding or limiting the responsibility of the giver.

**F139** prosp. in part rep. by 1986 c. 60

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<sup>F140</sup>**No allotment unless minimum subscription received**

**93.**—(1) No allotment shall be made of any share capital of a company offered to the public for subscription unless—

- (a) there has been subscribed the amount stated in the prospectus as the minimum amount which, in the opinion of the directors, must be raised by the issue of share capital in order to provide for the matters specified in paragraph 2 of Schedule 3 (preliminary expenses, purchase of property, working capital, etc); and
- (b) the sum payable on application for the amount so stated has been paid to and received by the company.

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

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

(4) If the above conditions have not been complied with on the expiration of 40 days after the first issue of the prospectus, all money received from applicants for shares shall be forthwith repaid to them without interest.

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

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

(7) This Article does not apply to an allotment of shares subsequent to the first allotment of shares offered to the public for subscription.

**F140** prosp. in part rep. by 1986 c. 60

**Allotment where issue not fully subscribed**

**94.**—(1) No allotment shall be made of any share capital of a public company offered for subscription unless—

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

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

<sup>F141</sup>This is without prejudice to Article 93.

(2) If shares are prohibited from being allotted by paragraph (1) and 40 days have elapsed after the first issue of the prospectus, all money received from applicants for shares shall be forthwith repaid to them without interest.

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

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

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

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

and references to interest apply accordingly.

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

**F141** prosp. in part rep. by [1986 c. 60](#)

### ***Effect of irregular allotment***

**95.**—(1) An allotment made by a company to an applicant in contravention of Article<sup>F142</sup> 93 or 94 is voidable at the instance of the applicant within one month after the date of the allotment, and not later, and is so voidable notwithstanding that the company is in the course of being wound up.

(2) If a director of a company knowingly contravenes, or permits or authorises the contravention of, any provision of either of those Articles with respect to allotment, he is liable to compensate the company and the allottee respectively for any loss, damages or costs which the company or the allottee may have sustained or incurred by the contravention.

(3) But proceedings to recover any such loss, damages or costs shall not be commenced after the expiration of 2 years from the date of the allotment.

**F142** prosp. in part rep. by [1986 c. 60](#)

### ***<sup>F143</sup>Allotment of shares, etc. to be listed on a stock exchange***

**96.**—(1) This Article applies where a prospectus, whether issued generally or not, states that application has been or will be made for permission for the shares or debentures offered by it to be listed on any stock exchange.

(2) An allotment made on an application in pursuance of the prospectus is, whenever made, void if the permission has not been applied for before the third day after the first issue of the prospectus or, if the permission has been refused, before the expiration of 3 weeks from the date of the closing of the subscription lists or such longer period (not exceeding 6 weeks) as may, within those 3 weeks, be notified to the applicant for permission by or on behalf of the stock exchange.

(3) In reckoning for this purpose the third day after another day—

- (a) any intervening day which is a Saturday or Sunday, or which is a bank holiday, is to be disregarded; and
- (b) if the third day (as so reckoned) is itself a Saturday or Sunday or a bank holiday, there is to be substituted the first day after that which is none of them.



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(4) Where permission has not been applied for as mentioned in paragraph (2), or has been refused as so mentioned, the company shall forthwith repay (without interest) all money received from applicants in pursuance of the prospectus.

(5) If any of the money is not repaid within 8 days after the company becomes liable to repay it, the directors of the company are jointly and severally liable to repay the money with interest at the rate of 5 per cent. per annum from the expiration of the 8th day, except that a director is not liable if he proves that the default in the repayment of the money was not due to any misconduct or negligence on his part.

(6) All money received from applicants in pursuance of the prospectus shall be kept in a separate bank account so long as the company may become liable to repay it under paragraph (4); and if default is made in complying with this paragraph, the company and every officer of it who is in default is liable to a fine.

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

(8) For the purposes of this Article, permission is not deemed to be refused if it is intimated that the application for it, though not at present granted, will be given further consideration.

(9) This Article has effect in relation to shares or debentures agreed to be taken by a person underwriting an offer of them by a prospectus as if he had applied for them in pursuance of the prospectus.

**F143** prosp. in part rep. by [1986 c. 60](#)

<sup>F144</sup>**Operation of Article 96 where prospectus offers shares for sale**

**97.**—(1) This Article has effect as regards the operation of Article 96 in relation to a prospectus offering shares for sale.

(2) Paragraphs (1) and (2) of that Article apply, but with the substitution for the reference in paragraph (2) to allotment of a reference to sale.

(3) Paragraphs (4) and (5) of that Article do not apply; but—

(a) if the permission referred to in paragraph (2) of that Article has not been applied for as there mentioned, or has been refused as there mentioned, the offeror of the shares shall forthwith repay (without interest) all money received from applicants in pursuance of the prospectus, and

(b) if any such money has not been repaid within 8 days after the offeror becomes liable to repay it, he becomes liable to pay interest on the money due, at the rate of 5 per cent. per annum from the end of the 8th day.

(4) Paragraphs (6) to (9) of that Article apply, except that in paragraph (6)—

(a) for the first reference to the company there is substituted a reference to the offeror, and

(b) for the reference to the company and every officer of the company who is in default there is substituted a reference to any person by or through whom the offer is made and who knowingly and wilfully authorises or permits the default.

**F144** prosp. in part rep. by [1986 c. 60](#)

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***Return as to allotments, etc.***

**98.**—(1) This Article applies to a company limited by shares and to a company limited by guarantee and having a share capital.

(2) When such a company makes an allotment of its shares, the company shall within one month thereafter deliver to the registrar for registration—

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

(3) Where such a contract as mentioned in paragraph (2) is not reduced to writing, the company shall within one month after the allotment deliver to the registrar for registration the prescribed particulars of the contract<sup>F145</sup>. . . .

*Para.(4) rep. by SI 2005/1634*

(5) If default is made in complying with this Article, every officer of the company who is in default is liable to a fine and, for continued contravention, to a daily default fine, but subject as follows.

(6) In the case of default in delivering to the registrar within one month after the allotment any document required by this Article to be delivered, the company, or any officer liable for the default, may apply to the court for relief; and the court, if satisfied that the omission to deliver the document was accidental or due to inadvertence or that it is just and equitable to grant relief, may make an order extending the time for the delivery of the document for such period as the court thinks proper.

**F145** SI 2005/1634

*Pre-emption rights*

***Offers to shareholders to be on pre-emptive basis***

**99.**—(1) Subject to the provisions of this Article and Articles 100 to 106, a company proposing to allot equity securities (as defined in Article 104)—

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

(2) Paragraph (3) applies to any provision of a company's memorandum or articles which requires the company, when proposing to allot equity securities consisting of relevant shares of any particular

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class, not to allot those securities on any terms unless it has complied with the condition that it makes such an offer as is described in paragraph (1) to each person who holds relevant shares or relevant employee shares of that class.

(3) If in accordance with a provision to which this paragraph applies—

(a) a company makes an offer to allot securities to such a holder, and

(b) he or anyone in whose favour he has renounced his right to their allotment accepts the offer, paragraph (1) does not apply to the allotment of those securities, and the company may allot them accordingly; but this is without prejudice to the application of paragraph (1) in any other case.

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

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

[<sup>F146</sup>(6) Where a company holds relevant shares as treasury shares—

(a) for the purposes of paragraphs (1) and (2), the company is not a “person who holds relevant shares”; and

(b) for the purposes of paragraph (1), the shares held as treasury shares do not form part of “the aggregate of relevant shares and relevant employee shares”.]

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### ***Communication of pre-emption offers to shareholders***

**100.**—(1) This Article has effect as to the manner in which offers required by Article 99(1), or by a provision to which Article 99(3) applies, are to be made to holders of a company's shares.

(2) Subject to paragraphs (3) to (7), an offer shall be in writing and shall be made to a holder of shares either personally or by sending it by post (that is to say, prepaying and posting a letter containing the offer) to him or to his registered address or, if he has no registered address in the United Kingdom, to the address in the United Kingdom supplied by him to the company for the giving of notice to him.

If sent by post, the offer is deemed to be made at the time at which the letter would be delivered in the ordinary course of post.

(3) Where shares are held by 2 or more persons jointly, the offer may be made to the joint holder first named in the register of members in respect of the shares.

(4) In the case of a holder's death or bankruptcy, the offer may be made—

(a) by sending it by post in a prepaid letter addressed to the persons claiming to be entitled to the shares in consequence of the death or bankruptcy by name, or by the title of representatives of the deceased, or assignee in bankruptcy, or by any like description, at the address in the United Kingdom supplied for the purpose by those so claiming, or

(b) until such an address has been so supplied, by giving the notice in any manner in which it might have been given if the death or bankruptcy had not occurred.

(5) If the holder—

(a) has no registered address in the United Kingdom and has not given to the company an address in the United Kingdom for the service of notices on him, or

(b) is the holder of a share warrant,

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the offer may be made by causing it, or a notice specifying where a copy of it can be obtained or inspected, to be published in the Belfast Gazette.

(6) The offer must state a period of not less than 21 days during which it may be accepted; and the offer shall not be withdrawn before the end of that period.

(7) This Article does not invalidate a provision to which Article 99(3) applies by reason that that provision requires or authorises an offer under it to be made in contravention of any of paragraphs (1) to (6); but, to the extent that the provision requires or authorises such an offer to be so made, it is of no effect.

### ***Exclusion of Articles 99 and 100 by private company***

**101.**—(1) Article 99(1), 100(1) to (5) or 100(6) may, as applying to allotments by a private company of equity securities or to such allotments of a particular description, be excluded by a provision contained in the memorandum or articles of that company.

(2) A requirement or authority contained in the memorandum or articles of a private company, if it is inconsistent with any of those Articles, has effect as a provision excluding that Article; but a provision to which Article 99(3) applies is not to be treated as inconsistent with Article 99(1).

### ***Consequences of contravening Articles 99 and 100***

**102.**—(1) If there is a contravention of Article 99(1), or of Article 100(1) to (5) or of Article 100(6), or of a provision to which Article 99(3) applies, the company, and every officer of it who knowingly authorised or permitted the contravention, are jointly and severally liable to compensate any person to whom an offer should have been made under the Article or provision contravened for any loss, damage, costs or expenses which the person has sustained or incurred by reason of the contravention.

(2) However, no proceedings to recover any such loss, damage, costs or expenses shall be commenced after the expiration of 2 years from the delivery to the registrar of the return of allotments in question or, where equity securities other than shares are granted, from the date of the grant.

### ***Saving for other restrictions as to offers***

**103.**—(1) Articles 99 to 102 are without prejudice to any statutory provision by virtue of which a company is prohibited (whether generally or in specified circumstances) from offering or allotting equity securities to any person.

(2) Where a company cannot by virtue of such a statutory provision offer or allot equity securities to a holder of relevant shares or relevant employee shares, those Articles have effect as if the shares held by that holder were not relevant shares or relevant employee shares.

### ***Interpretation for Articles 99 to 106***

**104.**—(1) The following paragraphs apply for the interpretation of Articles 99 to 106.

(2) “Equity security”, in relation to a company, means a relevant share in the company (other than a share shown in the memorandum to have been taken by a subscriber to the memorandum or a bonus share), or a right to subscribe for, or to convert securities into, relevant shares in the company.

(3) A reference to the allotment of equity securities or of equity securities consisting of relevant shares of a particular class includes the grant of a right to subscribe for, or to convert any securities into, relevant shares in the company or (as the case may be) relevant shares of a particular class; but such a reference does not include the allotment of relevant shares pursuant to such a right.

[<sup>F147</sup>(3A) A reference to the allotment of equity securities or of equity securities consisting of relevant shares of a particular class also includes the sale of any relevant shares in the company or

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(as the case may be) relevant shares of a particular class if, immediately before the sale, the shares were held by the company as treasury shares.]

(4) “Relevant employee shares”, in relation to a company, means shares of the company which would be relevant shares in it but for the fact that they are held by a person who acquired them in pursuance of an employees' share scheme.

(5) “Relevant shares”, in relation to a company, means shares in the company other than—

- (a) shares which as respects dividends and capital carry a right to participate only up to a specified amount in a distribution, and
- (b) shares which are held by a person who acquired them in pursuance of an employees' share scheme or, in the case of shares which have not been allotted, are to be allotted in pursuance of such a scheme<sup>F147</sup> or, in the case of shares held by the company as treasury shares, are to be transferred in pursuance of such a scheme].

(6) A reference to a class of shares is to shares to which the same rights are attached as to voting and as to participation, both as respects dividends and as respects capital, in a distribution.

(7) In relation to an offer to allot securities required by Article 99(1) or by any provision to which Article 99(3) applies, a reference in Articles 99 to 103 and this Article (however expressed) to the holder of shares of any description is to whoever was at the close of business on a date, to be specified in the offer and to fall in the period of 28 days immediately before the date of the offer, the holder of shares of that description.

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

**105.**—(1) Where the directors of a company are generally authorised for the purposes of Article 90, they may be given power by the articles of association, or by a special resolution of the company, to allot equity securities pursuant to that authority as if—

- (a) Article 99(1) did not apply to the allotment, or
- (b) that Article applied to the allotment with such modifications as the directors may determine;

and where the directors make an allotment under this paragraph, Articles 99 to 104 have effect accordingly.

(2) Where the directors of a company are authorised for the purposes of Article 90 (whether generally or otherwise), the company may by special resolution resolve either—

- (a) that Article 99(1) shall not apply to a specified allotment of equity securities to be made pursuant to that authority, or
- (b) that that Article shall apply to the allotment with such modifications as may be specified in the resolution;

and where such a resolution is passed, Articles 99 to 104 have effect accordingly.

<sup>F148</sup>(2A) Paragraphs (1) and (2) apply in relation to a sale of shares which is an allotment of equity securities by virtue of Article 104(3A) as if—

- (a) in paragraph (1) for “Where the directors of a company are generally authorised for the purposes of Article 90, they” there were substituted “ The directors of a company ” and the words “pursuant to that authority” were omitted, and
- (b) in paragraph (2), the words from “Where” to “otherwise), the” there were substituted “ The ” and, in sub-paragraph (a), the words “to be made pursuant to that authority” were omitted.]

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

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

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

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

(6) A person who knowingly or recklessly authorises or permits the inclusion in a statement circulated under paragraph (5) of any matter which is misleading, false or deceptive in a material particular is liable to imprisonment or a fine, or both.

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### ***Saving for company's pre-emption procedure operative before 1985***

**106.**—(1) Where a company which is re-registered or registered as a public company is or, but for the provisions of the Order of 1981 and the statutory provisions replacing it, would be subject at the time or re-registration or (as the case may be) registration to a pre-1985 pre-emption requirement, Articles 99 to 105 do not apply to an allotment of the equity securities which are subject to that requirement.

(2) A “pre-1985 pre-emption requirement” is a requirement imposed (whether by the company's memorandum or articles, or otherwise) before the relevant date by virtue of which the company must, when making an allotment of equity securities, make an offer to allot those securities or some of them in a manner which (otherwise than because involving a contravention of Article 100(1) to (5) or 100(6)) is inconsistent with Articles 99 to 104; and “the relevant date” is—

- (a) except in a case falling within sub-paragraph (b), 1st January 1985, and
- (b) in the case of a company which was re-registered or registered as a public company on an application made before that date, the date on which the application was made.

(3) A requirement which—

- (a) is imposed on a private company (having been so imposed before the relevant date) otherwise than by the company's memorandum or articles, and
- (b) if contained in the company's memorandum or articles, would have effect under Article 101 to the exclusion of any provisions of Articles 99 to 104,

has effect, so long as the company remains a private company as if it were contained in its memorandum or articles.

(4) If on the relevant date a company, other than a public company registered as such on its original incorporation, was subject to such a requirement as is mentioned in Article 99(2) imposed otherwise than by its memorandum or articles, the requirement is to be treated for the purposes of Articles 99 to 104 as if it were contained in the company's memorandum or articles.

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## *Commissions and discounts*

### ***Power of company to pay commissions***

**107.**—(1) It is lawful for a company to pay a commission to any person in consideration of his subscribing or agreeing to subscribe (whether absolutely or conditionally) for any shares in the company, or procuring or agreeing to procure subscriptions (whether absolute or conditional) for any shares in the company, if the following conditions<sup>F149</sup> are satisfied.

(2) The payment of the commission must be authorised by the company's articles; and—

(a) the commission paid or agreed to be paid must not exceed<sup>F149</sup> 10 per cent. of the price at which the shares are issued or the amount or rate authorised by the articles, whichever is the less;<sup>F150</sup> and

<sup>F150</sup>(b) the amount or rate per cent. of commission paid or agreed to be paid, and the number of shares which persons have agreed for a commission to subscribe absolutely, must be disclosed in the manner required by paragraph (3).

<sup>F150</sup>(3) Those matters must, in the case of shares offered to the public for subscription, be disclosed in the prospectus; and in the case of shares not so offered—

(a) they must be disclosed in a statement in the prescribed form signed by every director of the company or by his agent authorised in writing, and delivered (before payment of the commission) to the registrar for registration; and

(b) where a circular or notice (not being a prospectus) inviting subscription for the shares is issued, they must also be disclosed in that circular or notice.

<sup>F150</sup>(4) If default is made in complying with paragraph (3)(a) as regards delivery to the registrar of the statement in prescribed form, the company and every officer of it who is in default is liable to a fine.

**F149** prosp. 1986 c. 60

**F150** prosp. in part rep. by 1986 c. 60

### ***Apart from Article 107, commissions and discounts barred***

**108.**—(1) Except as permitted by Article 107, no company shall apply any of its shares or capital money either directly or indirectly in payment of any commission, discount or allowance to any person in consideration of his subscribing or agreeing to subscribe (whether absolutely or conditionally) for any shares in the company, or procuring or agreeing to procure subscriptions (whether absolute or conditional) for any shares in the company.

(2) This applies whether the shares or money be so applied by being added to the purchase money of any property acquired by the company or to the contract price of any work to be executed for the company, or the money be paid out of the nominal purchase money or contract price, or otherwise.

(3) Nothing in Article 107 or this Article affects the power of a company to pay such brokerage as has heretofore been lawful.

(4) A vendor to, or promoter of, or other person who receives payment in money or shares from, a company has and is deemed always to have had power to apply any part of the money or shares so received in payment of any commission, the payment of which, if made directly by the company, would have been lawful under Article 107 and this Article.

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### *Amount to be paid for shares; the means of payment*

#### **General rules as to payment for shares on allotment**

**109.**—(1) Subject to the following provisions of this Part, shares allotted by a company, and any premium on them, may be paid up in money or money's worth (including goodwill and know-how).

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

(3) If a public company accepts such an undertaking in payment up of its shares or any premium on them, the holder of the shares when they or the premium are treated as paid up (in whole or in part) by the undertaking is liable—

(a) to pay the company in respect of those shares an amount equal to their nominal value, together with the whole or any premium or, if the case so requires, such proportion of that amount as is treated as paid up by the undertaking; and

(b) to pay interest at the appropriate rate on the amount payable under sub-paragraph (a).

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

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

#### **Prohibition on allotment of shares at a discount**

**110.**—(1) A company's shares shall not be allotted at a discount.

(2) If shares are allotted in contravention of this Article, the allottee is liable to pay the company an amount equal to the amount of the discount, with interest at the appropriate rate.

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

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

(2) Paragraph (1) does not apply to shares allotted in pursuance of an employees' share scheme.

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

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

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

#### **Restriction on payment by long-term undertaking**

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



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

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

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

(5) Paragraph (6) applies where a public company allots shares for a consideration which consists of or includes (in accordance with paragraph (1)) an undertaking which is to be performed within 5 years of the allotment, but the undertaking is not performed within the period allowed by the contract for the allotment of the shares.

(6) The allottee is then liable to pay the company, at the end of the period so allowed, an amount equal to the aggregate of the nominal value of the shares and the whole of any premium (or, if the case so requires, so much of that aggregate as is treated as paid up by the undertaking), with interest at the appropriate rate.

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

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

**113.**—(1) A public company shall not allot shares as fully or partly paid up (as to their nominal value or any premium on them) otherwise than in cash unless—

- (a) the consideration for the allotment has been independently valued under Article 118; and
- (b) a report with respect to its value has been made to the company by a person appointed by the company (in accordance with that Article) during the 6 months immediately preceding the allotment of the shares; and
- (c) a copy of the report has been sent to the proposed allottee.

(2) Where an amount standing to the credit of any of a company's reserve accounts, or of its profit and loss account, is applied in paying up (to any extent) any shares allotted to members of the company or any premiums on shares so allotted, the amount applied does not count as consideration for the allotment, and accordingly paragraph (1) does not apply in that case.

(3) Paragraph (1) does not apply to the allotment of shares by a company in connection with an arrangement providing for the allotment of shares in that company on terms that the whole or part of the consideration for the shares allotted is to be provided by the transfer to that company (or the cancellation) of all or some of the shares, or of all or some of the shares of a particular class, in another company (with or without the issue to that company of shares, or of shares of any particular class, in that other company).

(4) But paragraph (3) does not exclude the application of paragraph (1) unless under the arrangement it is open to all the holders of the shares in the other company in question<sup>[F151]</sup> ("the relevant company") (or, where the arrangement applies only to shares of a particular class, to all the holders of shares in<sup>[F151]</sup> the relevant company], being holders of shares of that class) to take part in the arrangement.

<sup>[F151]</sup>In determining whether that is the case, the following shall be disregarded—

- (a) shares held by or by a nominee of the company proposing to allot the shares in connection with the arrangement ("the allotting company");
- (b) shares held by or by a nominee of a company which is—

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- (i) the holding company or a subsidiary of the allotting company, or
- (ii) a subsidiary of that holding company; and
- (c) shares held as treasury shares by the relevant company.]

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

- (6) If a company allots shares in contravention of paragraph (1) and either—
  - (a) the allottee has not received the valuer's report required by that paragraph to be sent to him; or
  - (b) there has been some other contravention of this Article or Article 118 which the allottee knew or ought to have known amounted to a contravention,

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

- (7) In this Article—
  - (a) “arrangement” means any agreement, scheme or arrangement (including an arrangement sanctioned in accordance with [<sup>F152</sup>section 899 of the Companies Act 2006] (company compromise with creditors and members) or [<sup>F153</sup> Article 96 of the Insolvency Order] (liquidator in winding up accepting shares as consideration for sale of company property)), and
  - (b) any reference to a company, except where it is or is to be construed as a reference to a public company, includes any body corporate and any body to which letters patent have been issued under the Chartered Companies Act 1837.

**F151** SR 2004/275

**F152** Words in art. 113(7)(a) in definition of "arrangement" substituted (6.4.2008) by [Companies Act 2006 \(Consequential Amendments etc\) Order 2008 \(S.I. 2008/948\)](#), arts. 2(2), 3(1)(b), [Sch. 1 para. 122](#) (with arts. 6, 11, 12)

**F153** 1989 NI 19

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

**114.**—(1) A public company formed as such shall not, unless the conditions of this Article have been complied with, enter into an agreement with a person for the transfer by him during the initial period of one or more non-cash assets to the company or another, if—

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

(2) “The initial period” for this purpose is 2 years beginning with the date of the company being issued with a certificate under [<sup>F154</sup>section 761 of the Companies Act 2006] (or the previous corresponding provision) that it was entitled to do business.

(3) This Article applies also to a company re-registered as a public company (except one re-registered under Article 10 of the Order of 1981 or Article 4 of the Consequential Provisions Order), or registered under Article 634 (joint stock company) or the previous corresponding provision; but in that case—

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- (a) there is substituted a reference in paragraph (1)(a) to a person who is a member of the company on the date of registration or re-registration, and
- (b) the initial period is then 2 years beginning with that date.

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

- (4) The conditions of this Article are as follows—
  - (a) the consideration to be received by the company, and any consideration other than cash to be given by the company, must have been independently valued under Article 119;
  - (b) a report with respect to the consideration to be so received and given must have been made to the company in accordance with that Article during the 6 months immediately preceding the date of the agreement;
  - (c) the terms of the agreement must have been approved by an ordinary resolution of the company; and
  - (d) not later than the giving of the notice of the meeting at which the resolution is proposed, copies of the resolution and report must have been circulated to the members of the company entitled to receive the notice and, if the person with whom the agreement in question is proposed to be made is not then a member of the company so entitled, to that person.
- (5) In paragraph (4)(a)—
  - (a) the reference to the consideration to be received by the company is to the asset to be transferred to it or the advantage to the company of the asset's transfer to another person; and
  - (b) the specified condition is without prejudice to any requirement to value any consideration for the purposes of Article 113.
- (6) In the case of the following agreements, this Article does not apply—
  - (a) where it is part of the company's ordinary business to acquire, or arrange for others to acquire, assets of a particular description, an agreement entered into by the company in the ordinary course of its business for the transfer of an asset of that description to it or to such a person, as the case may be; or
  - (b) an agreement entered into by the company under the supervision of the court, or of an officer authorised by the court for the purpose, for the transfer of an asset to the company or to another.

**F154** Words in art. 114(2) in the definition of "initial period" substituted (6.4.2008) by virtue of [Companies Act 2006 \(Consequential Amendments etc\) Order 2008 \(S.I. 2008/948\)](#), arts. 2(2), 3(1)(b), [Sch. 1 para. 123](#) (with arts. 6, 11, 12)

#### ***Agreements contravening Article 114***

**115.**—(1) Paragraph (2) applies if a public company enters into an agreement contravening Article 114, the agreement being made with the person referred to in paragraph (1)(a) or (as the case may be) paragraph (3) of that Article, and either—

- (a) that person has not received the valuer's report required for compliance with the conditions of that Article, or
- (b) there has been some other contravention of that Article or of Article 118(1), (2) or (5) or Article 119, which he knew or ought to have known amounted to a contravention.

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(2) The company is then entitled to recover from that person any consideration given by it under the agreement, or an amount equal to the value of the consideration at the time of the agreement; and the agreement, so far as not carried out, is void.

(3) However, if the agreement is or includes an agreement for the allotment of shares in the company, then—

- (a) whether or not the agreement also contravenes Article 113, paragraph (2) does not apply to it in so far as it is for the allotment of shares; and
- (b) the allottee is liable to pay the company an amount equal to the aggregate of the nominal value of the shares and the whole of any premium (or, if the case so requires, so much of that aggregate as is treated as paid up by the consideration), with interest at the appropriate rate.

### ***Shares issued to subscribers of memorandum***

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

### ***Meaning of “the appropriate rate”***

**117.** In Articles 109 to 115 “the appropriate rate”, in relation to interest, means 5 per cent. per annum or such other rate as may be specified by order made by the Department subject to negative resolution.

## *Valuation provisions*

### ***Valuation and report (Articles 54 and 113)***

**118.—(1)** The valuation and report required by Article 113 (or, where applicable, Article 54) shall be made by an independent person, that is to say a person qualified at the time of the report to be appointed, or continue to be, an auditor of the company.

(2) However, where it appears to the independent person (from here on referred to as “the valuer”) to be reasonable for the valuation of the consideration, or part of it, to be made (or for him to accept such a valuation) by another person who—

- (a) appears to him to have the requisite knowledge and experience to value the consideration or that part of it; and
- (b) is not an officer or servant of the company or any other body corporate which is that company's subsidiary or holding company or a subsidiary of that company's holding company or a partner or employee of such an officer or servant,

he may arrange for or accept such a valuation, together with a report which will enable him to make his own report under this Article and provide the note required by paragraph (6).

(3) The reference in paragraph (2)(b) to an officer or servant does not include an auditor.

(4) The valuer's report shall state—

- (a) the nominal value of the shares to be wholly or partly paid for by the consideration in question;
- (b) the amount of any premium payable on the shares;
- (c) the description of the consideration and, as respects so much of the consideration as he himself has valued, a description of that part of the consideration, the method used to value it and the date of the valuation;

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- (d) the extent to which the nominal value of the shares and any premium are to be treated as paid up—
  - (i) by the consideration;
  - (ii) in cash.
- (5) Where the consideration or part of it is valued by a person other than the valuer himself, the latter's report shall state that fact and shall also—
  - (a) state the former's name and what knowledge and experience he has to carry out the valuation; and
  - (b) describe so much of the consideration as was valued by the other person, and the method used to value it, and specify the date of the valuation.
- (6) The valuer's report shall contain or be accompanied by a note by him—
  - (a) in the case of a valuation made by a person other than himself, that it appeared to himself reasonable to arrange for it to be so made or to accept a valuation so made;
  - (b) whoever made the valuation, that the method of valuation was reasonable in all the circumstances;
  - (c) that it appears to the valuer that there has been no material change in the value of the consideration in question since the valuation; and
  - (d) that on the basis of the valuation the value of the consideration, together with any cash by which the nominal value of the shares or any premium payable on them is to be paid up, is not less than so much of the aggregate of the nominal value and the whole of any such premium as is treated as paid up by the consideration and any such cash.
- (7) Where the consideration to be valued is accepted partly in payment up of the nominal value of the shares and any premium and partly for some other consideration given by the company, Article 113 (and, where applicable, Article 54) and the foregoing provisions of this Article apply as if references to the consideration accepted by the company included the proportion of that consideration which is properly attributable to the payment up of that value and any premium; and—
  - (a) the valuer shall carry out, or arrange for, such other valuations as will enable him to determine that proportion; and
  - (b) his report shall state what valuations have been made under this paragraph and also the reason for, and method and date of, any such valuation and any other matters which may be relevant to that determination.

#### ***Valuation and report (Article 114)***

**119.**—(1) Article 118(1) to (3) and (5) applies also as respects the valuation and report for the purposes of Article 114.

- (2) The valuer's report for those purposes shall—
  - (a) state the consideration to be received by the company, describing the asset in question (specifying the amount to be received in cash) and the consideration to be given by the company (specifying the amount to be given in cash);
  - (b) state the method and date of valuation;
  - (c) contain or be accompanied by a note as to the matters mentioned in Article 118(6)(a) to (c); and
  - (d) contain or be accompanied by a note that on the basis of the valuation the value of the consideration to be received by the company is not less than the value of the consideration to be given by it.

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(3) A reference in Article 114 or this Article to consideration given for the transfer of an asset includes consideration given partly for its transfer; but—

- (a) the value of any consideration partly so given is to be taken as the proportion of the consideration properly attributable to its transfer;
- (b) the valuer shall carry out or arrange for such valuations of anything else as will enable him to determine that proportion; and
- (c) his report for the purposes of Article 114 shall state what valuation has been made under this paragraph and also the reason for, and method and date of, any such valuation and any other matters which may be relevant to that determination.

#### ***Entitlement of valuer to full disclosure***

**120.**—(1) A person carrying out a valuation or making a report under Article 113 or 114, with respect to any consideration proposed to be accepted or given by a company, is entitled to require from the officers of the company such information and explanation as he thinks necessary to enable him to carry out the valuation or make the report and provide a note under Article 118(6) or (as the case may be) Article 119(2)(c).

(2) A person who knowingly or recklessly makes a statement which—

- (a) is misleading, false or deceptive in a material particular, and
- (b) is a statement to which this paragraph applies,

is guilty of an offence and liable to imprisonment or a fine, or both.

(3) Paragraph (2) applies to any statement made (whether orally or in writing) to a person carrying out a valuation or making a report under Article 118 or 119, being a statement which conveys or purports to convey any information or explanation which that person requires, or is entitled to require, under paragraph (1).

#### ***Matters to be communicated to registrar***

**121.**—(1) A company to which a report is made under Article 118 as to the value of any consideration for which, or partly for which, it proposes to allot shares shall deliver a copy of the report to the registrar for registration at the same time that it files the return of the allotments of those shares under Article 98.

(2) A company which has passed a resolution under Article 114 with respect to the transfer of an asset shall, within 15 days of so doing, deliver to the registrar a copy of the resolution together with the valuer's report required by that Article.

(3) If default is made in complying with paragraph (1), every officer of the company who is in default is liable to a fine and, for continued contravention, to a daily default fine; but this is subject to the same exception as is made by Article 98(6) (relief on application to the court) in the case of default in complying with that Article.

(4) If a company fails to comply with paragraph (2), it and every officer of it who is in default is liable to a fine and, for continued contravention, to a daily default fine.

*Other matters arising out of allotment, etc.*

#### **[<sup>F155</sup>Right to damages, etc. not affected**

**121A.** 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 in respect of shares.]

**F155 1990 NI 10, art. 66(1)**

***Liability of subsequent holders of shares allotted***

**122.**—(1) If a person becomes a holder of shares in respect of which—

- (a) there has been a contravention of Article 109, 110, 111 or 113; and
- (b) by virtue of that contravention, another is liable to pay any amount under the Article contravened,

that person is also liable to pay that amount (jointly and severally with any other person so liable), unless he is exempted from liability by paragraph (3).

(2) If a company enters into an agreement in contravention of Article 114 and—

- (a) the agreement is or includes an agreement for the allotment of shares in the company; and
- (b) a person becomes a holder of shares allotted under the agreement; and
- (c) by virtue of the agreement and allotment under it, another person is liable to pay any amount under Article 115,

the person who becomes the holder of the shares is also liable to pay that amount (jointly and severally with any other person so liable), unless he is exempted from liability by paragraph (3); and this applies whether or not the agreement also contravenes Article 113.

(3) A person otherwise liable under paragraph (1) or (2) is exempted from that liability if either—

- (a) he is a purchaser for value and, at the time of the purchase, he did not have actual notice of the contravention concerned; or
- (b) he derived title to the shares (directly or indirectly) from a person who became a holder of them after the contravention and was not liable under paragraph (1) or (as the case may be) paragraph (2).

(4) References in this Article to a holder, in relation to shares in a company, include any person who has an unconditional right to be included in the company's register of members in respect of those shares or to have an instrument of transfer of the shares executed in his favour.

(5) As paragraphs (1) and (3) apply in relation to the contraventions there mentioned, they also apply—

- (a) to a contravention of Article 112; and
- (b) to a failure to carry out a term of contract as mentioned in paragraphs (5) and (6) of that Article.

***Relief in respect of certain liabilities under Articles 109ff.***

**123.**—(1) Where a person is liable to a company under—

- (a) Article 109, 112, 113 or 115;
- (b) Article 122(1) by reference to a contravention of Article 109 or 113; or
- (c) Article 122(2) or (5),

in relation to payment in respect of any shares in the company, or is liable by virtue of an undertaking given to it in, or in connection with, payment for any such shares, the person so liable may make an application to the court to be exempted in whole or in part from the liability.

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

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- (a) if and to the extent that it appears to the court just and equitable to do so having regard to the matters mentioned in paragraph (3);
  - (b) if and to the extent that it appears to the court just and equitable to do so in respect of any interest which he is liable to pay to the company under any of the relevant Articles.
- (3) The matters to be taken into account by the court under paragraph (2)(a) are—
  - (a) whether the applicant has paid, or is liable to pay, any amount in respect of any other liability arising in relation to those shares under any of the relevant Articles, or of any liability arising by virtue of any undertaking given in or in connection with a payment for those shares;
  - (b) whether any person other than the applicant has paid or is likely to pay (whether in pursuance of an order of the court or otherwise) any such amount; and
  - (c) whether the applicant or any other person has performed in whole or in part, or is likely so to perform, any such undertaking, or has done or is likely to do any other thing in payment or part payment for the shares.
- (4) Where the liability arises by virtue of an undertaking given to the company in, or in connection with, payment for shares in it, the court may, on an application under paragraph (1), exempt the applicant from the liability only if and to the extent that it appears to the court just and equitable to do so having regard to—
  - (a) whether the applicant has paid or is liable to pay any amount in respect of liability arising in relation to the shares under any of the provisions mentioned in that paragraph; and
  - (b) whether any person other than the applicant has paid or is likely to pay (whether in pursuance of an order of the court or otherwise) any such amount.
- (5) In determining whether it should exempt the applicant in whole or in part from any liability, the court shall have regard to the following overriding principles, namely—
  - (a) that a company which has allotted shares should receive money or money's worth at least equal in value to the aggregate of the nominal value of those shares and the whole of any premium or, if the case so requires, so much of that aggregate as is treated as paid up; and
  - (b) subject to this, that where such a company would, if the court did not grant the exemption, have more than one remedy against a particular person, it should be for the company to decide which remedy it should remain entitled to pursue.
- (6) If a person brings proceedings against another (“the contributor”) for a contribution in respect of liability to a company arising under any of Articles 109 to 115 or 122 and it appears to the court that the contributor is liable to make such a contribution, the court may exercise the powers of paragraph (7).
- (7) The court may, if and to the extent that it appears to it, having regard to the respective culpability (in respect of the liability to the company) of the contributor and the person bringing the proceedings, that it is just and equitable to do so—
  - (a) exempt the contributor in whole or in part from his liability to make such a contribution; or
  - (b) order the contributor to make a larger contribution than, but for this paragraph, he would be liable to make.
- (8) Where a person is liable to a company under paragraph (2) of Article 115, the court may, on application, exempt him in whole or in part from that liability if and to the extent that it appears to the court just and equitable to do so having regard to any benefit accruing to the company by virtue of anything done by him towards the carrying out of the agreement mentioned in that paragraph.



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**Penalty for contravention**

**124.** If a company contravenes any of the provisions of Articles 109 to 114 and 116 the company and any officer of it who is in default is liable to a fine.

**Undertakings to do work, etc.**

**125.**—(1) Subject to Article 123, an undertaking given by any person, in or in connection with payment for shares in a company, to do work or perform services or to do any other thing, if it is enforceable by the company apart from this Order, is so enforceable notwithstanding that there has been a contravention in relation to it of Article 109, 112 or 113.

(2) Where such an undertaking is given in contravention of Article 114 in respect of the allotment of shares, it is so enforceable notwithstanding the contravention.

**Application of Articles 109ff. to special cases**

**126.** Except as provided by Article 11 of the Consequential Provisions Order (transitional cases dealt with by Article 33 of the Order of 1981), Articles 109, 111 to 113, 116, 118<sup>F156</sup>, 120, 121 and 122 to 125] apply—

- (a) to a company which has passed and not revoked a resolution to be re-registered under Article 53 as a public company, and
- (b) to a joint stock company which has passed, and not revoked, a resolution that the company be a public company,

as those Articles apply to a public company.

**F156** 1990 NI 10

**PART VI**

**SHARE CAPITAL, ITS INCREASE, MAINTENANCE AND REDUCTION**

**CHAPTER I**

**GENERAL PROVISIONS ABOUT SHARE CAPITAL**

**Public company share capital requirements**

**127.** <sup>F157</sup> .....

**F157** Art. 127 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), Sch. 16; S.I. 2007/3495, art. 8(a), Sch. 2 Pt. 2 (with arts. 7, 12, Sch. 4 paras. 26, 27(2), 29(2))

**The authorised minimum**

**128.** <sup>F158</sup> .....

**F158** Art. 128 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), Sch. 16; S.I. 2007/3495, art. 8(a), Sch. 2 Pt. 2 (with arts. 7, 12)

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### ***Provision for different amounts to be paid on shares***

**129.** A company, if so authorised by its articles, may do any one or more of the following things—

- (a) make arrangements on the issue of shares for a difference between the shareholders in the amounts and times of payment of calls on their shares;
- (b) accept from any member the whole or a part of the amount remaining unpaid on any shares held by him, although no part of that amount has been called up;
- (c) pay dividend in proportion to the amount paid up on each share where a larger amount is paid up on some shares than on others.

### ***Reserve liability of limited company***

**130.** A limited company may by special resolution determine that any portion of its share capital which has not been already called up shall not be capable of being called up except in the event and for the purposes of the company being wound up; and that portion of its share capital is then not capable of being called up except in that event and for those purposes.

### ***Alteration of share capital (limited companies)***

**131.—**(1) A company limited by shares or a company limited by guarantee and having a share capital, if so authorised by its articles, may alter the conditions of its memorandum in any of the following ways.

(2) The company may—

- (a) increase its share capital by new shares of such amount as it thinks expedient;
- (b) consolidate and divide all or any of its share capital into shares of larger amount than its existing shares;
- (c) convert all or any of its paid-up shares into stock, and re-convert that stock into paid-up shares of any denomination;
- (d) sub-divide its shares, or any of them, into shares of smaller amount than is fixed by the memorandum (but subject to paragraph (3));
- (e) cancel shares which, at the date of the passing of the resolution to cancel them, have not been taken or agreed to be taken by any person, and diminish the amount of the company's share capital by the amount of the shares so cancelled.

(3) In any sub-division under paragraph (2)(d) the proportion between the amount paid and the amount, if any, unpaid on each reduced share must be the same as it was in the case of the share from which the reduced share is derived.

(4) The powers conferred by this Article must be exercised by the company in general meeting.

(5) A cancellation of shares under this Article does not for the purposes of this Order constitute a reduction of share capital.

### ***Notice to registrar of alteration***

**132.—**(1) If a company having a share capital has—

- (a) consolidated and divided its share capital into shares of larger amount than its existing shares; or
- (b) converted any shares into stock; or
- (c) re-converted stock into shares; or
- (d) sub-divided its shares or any of them; or

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- (e) redeemed any redeemable shares; or
- (f) cancelled any shares (otherwise than in connection with a reduction of share capital under Article 145);

it shall within one month after so doing give notice in the prescribed form to the registrar, specifying (as the case may be) the shares consolidated, divided, converted, sub-divided, redeemed or cancelled, or the stock re-converted.

(2) If default is made in complying with this Article, the company and every officer of it who is in default is liable to a fine and, for continued contravention, to a daily default fine.

#### ***Notice to registrar of increased share capital***

**133.**—(1) If a company having a share capital (whether or not its shares have been converted into stock) increases its share capital beyond the registered capital, it shall, within 15 days after the passing of the resolution authorising the increase, give to the registrar notice in the prescribed form of the increase, and the registrar shall record the increase.

(2) The notice must include such particulars as may be prescribed with respect to the classes of shares affected and the conditions subject to which the new shares have been or are to be issued.

(3) There shall be forwarded to the registrar together with the notice a printed copy of the resolution authorising the increase, or a copy of the resolution in some other form approved by the registrar.

(4) If default is made in complying with this Article, the company and every officer of it who is in default is liable to a fine and, for continued contravention, to a daily default fine.

#### ***Reserve capital of unlimited company***

**134.** An unlimited company having a share capital may by its resolution for re-registration as a public company under Article 53, or as a limited company under Article 61—

- (a) increase the nominal amount of its share capital by increasing the nominal amount of each of its shares (but subject to the condition that no part of the increased capital is to be capable of being called up except in the event and for the purpose of the company being wound up), and
- (b) alternatively or in addition, provide that a specified portion of its uncalled share capital is not to be capable of being called up except in that event and for that purpose.

## CHAPTER II

### CLASS RIGHTS

#### ***Variation of class rights***

**135.**—<sup>F159</sup>(1) This Article is concerned with the variation of the rights attached to any class of shares in a company whose share capital is divided into shares of different classes.

(2) Where the rights are attached to a class of shares otherwise than by the company's memorandum, and the company's articles do not contain provision with respect to the variation of the rights, those rights may be varied if, but only if—

- (a) the holders of three-quarters in nominal value of the issued shares of that class<sup>F160</sup> (excluding any shares of that class held as treasury shares)] consent in writing to the variation; or
- (b) <sup>F161</sup>a special resolution] passed at a separate general meeting of the holders of that class sanctions the variation;

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

(3) Where—

- (a) the rights are attached to a class of shares by the memorandum or otherwise;
- (b) the memorandum or articles contain provision for the variation of those rights; and
- (c) the variation of those rights is connected with the giving, variation, revocation or renewal of an authority for allotment under Article 90 or with a reduction of the company's share capital under Article 145;

those rights shall not be varied unless—

- (i) the condition mentioned in paragraph (2)(a) or (b) is satisfied; and
- (ii) any requirement of the memorandum or articles in relation to the variation of rights of that class is complied with to the extent that it is not comprised in that condition.

(4) If the rights are attached to a class of shares in the company by the memorandum or otherwise and—

- (a) where they are so attached by the memorandum, its articles contain provision with respect to their variation which had been included in the articles at the time of the company's original incorporation; or
- (b) where they are so attached otherwise, its articles contain such provision (whenever first so included),

and in either case the variation is not connected as mentioned in paragraph (3)(c), those rights may only be varied in accordance with that provision of the company's articles.

(5) If the rights are attached to a class of shares by the memorandum, and the memorandum and articles do not contain provision with respect to the variation of those rights, those rights may be varied if all the members of the company<sup>F160</sup> (excluding any member holding shares as treasury shares)] agree to the variation.

(6) The provisions of Article 377 (length of notice for calling company meetings), Article 378 (general provisions as to meetings and votes), and Articles 384 and 385 (circulation of members' resolutions) and the provisions of the company's articles relating to general meetings shall, so far as applicable, apply in relation to any meeting of shareholders required by this Article or otherwise to take place in connection with the variation of the rights attached to a class of shares, and shall so apply with the necessary modifications and subject to the following provisions, namely—

- (a) the necessary quorum at any such meeting other than an adjourned meeting shall be 2 persons holding or representing by proxy at least one-third in nominal value of the issued shares of the class in question<sup>F160</sup> (excluding any shares of that class held as treasury shares)] and at an adjourned meeting one person holding shares of the class in question or his proxy;
- (b) any holder of shares of the class in question present in person or by proxy may demand a poll.

(7) Any alteration of a provision contained in a company's articles for the variation of the rights attached to a class of shares, or the insertion of any such provision into its articles, is itself to be treated as a variation of those rights.

(8) In this Article and (except where the context otherwise requires) in any provision for the variation of the rights attached to a class of shares contained in a company's memorandum or articles, references to the variation of those rights are to be read as including references to their abrogation.]

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**F159** Art. 135 repealed (1.10.2007 for art. 135(6) and otherwise prosp.) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), **Sch. 16**; S.I. 2007/2194, arts. 1(3)(a), **8**, Sch. 2 Pt. 2 (with art. 12, Sch. 3 para. 31)

**F160** SR 2004/275

**F161** Words in art. 135(2) substituted (1.10.2007 with application as mentioned in Sch. 4 para. 18(2) of the amending Order) by Companies Act 2006 (Commencement No. 3, Consequential Amendments, Transitional Provisions and Savings) Order 2007 (S.I. 2007/2194), arts. 1(3), 10(1), **Sch. 4 para. 18(1)** (with art. 12)

### ***Saving for court's powers under other provisions***

**136.** Nothing in Article 135(2) to (5) derogates from the powers of the court under the following Articles, namely—

Articles 15 to 17 (company resolution to alter objects),

Article 64 (litigated objection to public company becoming private by re-registration),

[<sup>F162</sup>section 899 of the Companies Act 2006 (court sanction for compromise or arrangement with creditors or members)],

[<sup>F163</sup>section 900 of that Act (powers of court to facilitate reconstruction or amalgamation)],

[<sup>F164</sup>Part 30 of the Companies Act 2006 (protection of members against unfair prejudice)].

**F162** Words in art. 136 substituted (6.4.2008) by Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2008/948), arts. 2(2), 3(1)(b), **Sch. 1 para. 124(a)** (with arts. 6, 11, 12)

**F163** Words in art. 136 substituted (6.4.2008) by Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2008/948), arts. 2(2), 3(1)(b), **Sch. 1 para. 124(b)** (with arts. 6, 11, 12)

**F164** Words in art. 136 substituted (1.10.2007) by Companies Act 2006 (Commencement No. 3, Consequential Amendments, Transitional Provisions and Savings) Order 2007 (S.I. 2007/2194), arts. 1(3), 10(1), {Sch. 4 para. 25} (with art. 12)

### ***Shareholders' right to object to variation***

**137.—**(1) This Article applies if, in the case of a company whose share capital is divided into different classes of shares—

(a) provision is made by its memorandum or articles for authorising the variation of the rights attached to any class of shares in the company, subject to—

(i) the consent of any specified proportion of the holders of the issued shares of that class, or

(ii) the sanction of a resolution passed at a separate meeting of the holders of those shares,

and in pursuance of that provision the rights attached to any such class of shares are at any time varied; or

(b) the rights attached to any class of shares in the company are varied under Article 135(2).

(2) The holders of not less in the aggregate than 15 per cent. 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; and if such an application is made, the variation has no effect unless and until it is confirmed by the court.

[<sup>F165</sup>(2A) For the purposes of paragraph (2), any of the company's issued share capital held as treasury shares must be disregarded.]

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(3) 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 shareholders entitled to make the application by such one or more of their number as they may appoint in writing for the purpose.

(4) 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.

(5) The company shall within 15 days after the making of an order by the court on such an application forward an office copy of the order to the registrar; and, if default is made in complying with this provision, the company and every officer of it who is in default is liable to a fine and, for continued contravention, to a daily default fine.

(6) “Variation”, in this Article, includes abrogation.

F165 SR 2004/275

### **Registration of particulars of special rights**

**138.**—(1) If a company allots shares with rights which are not stated in its memorandum or articles, or in any resolution or agreement which is required by [F166section 30 of the Companies Act 2006] to be sent to the registrar, the company shall deliver to the registrar within one month from allotting the shares a statement in the prescribed form containing particulars of those rights.

(2) This does not apply if the shares are in all respects uniform with shares previously allotted; and shares are not for this purpose to be treated as different from shares previously allotted by reason only that the former do not carry the same rights to dividends as the latter during the 12 months immediately following the former's allotment.

(3) Where the rights attached to any shares of a company are varied otherwise than by an amendment of the company's memorandum or articles or by a resolution or agreement subject to Article 388, the company shall within one month from the date on which the variation is made deliver to the registrar a statement in the prescribed form containing particulars of the variation.

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

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

F166 Words in art. 138(1) substituted (1.10.2007) by [Companies Act 2006 \(Commencement No. 3, Consequential Amendments, Transitional Provisions and Savings\) Order 2007 \(S.I. 2007/2194\)](#), arts. 1(3), 10(1), [Sch. 4 para. 17\(4\)](#) (with art. 12)

### **Registration of newly created class rights**

**139.**—(1) If a company not having a share capital creates a class of members with rights which are not stated in its memorandum or articles or in a resolution or agreement to which [F167section 30 of the Companies Act 2006] applies, the company shall deliver to the registrar within one month from the date on which the new class is created a statement in the prescribed form containing particulars of the rights attached to that class.

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(2) If the rights of any class of members of the company are varied otherwise than by an amendment of the memorandum or articles or by a resolution or agreement subject to Article 388, the company shall within one month from the date on which the variation is made deliver to the registrar a statement in the prescribed form containing particulars of the variation.

(3) If a company (otherwise than by such an amendment, resolution or agreement as is mentioned in paragraph (2)) assigns a name or other designation, or a new name or other designation, to any class of its members, it shall within one month from doing so deliver to the registrar a notice in the prescribed form giving particulars of the name or designation so assigned.

(4) If a company fails to comply with this Article, the company and every officer of it who is in default is liable to a fine and, for continued contravention, to a daily default fine.

**F167** Words in art. 139(1) substituted (1.10.2007) by Companies Act 2006 (Commencement No. 3, Consequential Amendments, Transitional Provisions and Savings) Order 2007 (S.I. 2007/2194), arts. 1(3), 10(1), **Sch. 4 para. 17(5)** (with art. 12)

## CHAPTER III SHARE PREMIUMS

### *Application of share premiums*

**140.**—(1) If a company issues shares at a premium, whether for cash or otherwise, a sum equal to the aggregate amount or value of the premiums on those shares shall be transferred to an account called “the share premium account”.

(2) The share premium account may be applied by the company in paying up unissued shares to be allotted to members as fully paid bonus shares, or in writing off—

- (a) the company's preliminary expenses; or
- (b) the expenses of, or the commission paid or discount allowed on, any issue of shares or debentures of the company,

or in providing for the premium payable on redemption or debentures of the company.

(3) Subject to this, the provisions of this Order relating to the reduction of a company's share capital apply as if the share premium account were part of its paid-up share capital.

(4) Articles 141 and 142 give relief from the requirements of this Article, and in those Articles references to the issuing company are to the company issuing shares as mentioned in paragraph (1).

### *Merger relief*

**141.**—(1) With the exception made by Article 142(8) (group reconstruction) this Article applies where the issuing company has secured at least a 90 per cent. equity holding in another company in pursuance of an arrangement providing for the allotment of equity shares in the issuing company on terms that the consideration for the shares allotted is to be provided—

- (a) by the issue or transfer to the issuing company of equity shares in the other company, or
- (b) by the cancellation of any such shares not held by the issuing company.

(2) If the equity shares in the issuing company allotted in pursuance of the arrangement in consideration for the acquisition or cancellation of equity shares in the other company are issued at a premium, Article 140 does not apply to the premiums on those shares.

(3) Where the arrangement also provides for the allotment of any shares in the issuing company on terms that the consideration for those shares is to be provided by the issue or transfer to the issuing company of non-equity shares in the other company or by the cancellation of any such shares in that

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company not held by the issuing company, relief under paragraph (2) extends to any shares in the issuing company allotted on those terms in pursuance of the arrangement.

(4) Subject to paragraph (5), the issuing company is to be regarded for the purposes of this Article as having secured at least a 90 per cent. equity holding in another company in pursuance of such an arrangement as is mentioned in paragraph (1) if in consequence of an acquisition or cancellation of equity shares in that company (in pursuance of that arrangement) it holds equity shares in that company (whether all or any of those shares were acquired in pursuance of that arrangement or not) of an aggregate nominal value equal to 90 per cent. or more of the nominal value of that company's equity share capital<sup>F168</sup> (excluding any shares in that company held as treasury shares)].

(5) Where the equity share capital of the other company is divided into different classes of shares, this Article does not apply unless the requirements of paragraph (1) are satisfied in relation to each of those classes of shares taken separately.

(6) Shares held by a company which is the issuing company's holding company or subsidiary, or a subsidiary of the issuing company's holding company, or by its or their nominees, are to be regarded for the purposes of this Article as held by the issuing company.

(7) In relation to a company and its shares and capital, the following definitions apply for the purposes of this Article—

- (a) “equity shares” means shares comprised in the company's equity share capital;
- (b) “non-equity shares” means shares (of any class) not so comprised;

and “arrangement” means any agreement, scheme or arrangement (including an arrangement sanctioned under <sup>F169</sup>section 899 of the Companies Act 2006 (court sanction for compromise or arrangement with creditors or members)] or<sup>F170</sup> Article 96 of the Insolvency Order] (liquidator accepting shares, etc. as consideration for sale of company property)).

(8) The relief allowed by this Article does not apply if the issue of shares took place before 4th February 1981.

**F168** SR 2004/275

**F169** Words in art. 141(7) in definition of “arrangement” substituted (6.4.2008) by [Companies Act 2006 \(Consequential Amendments etc\) Order 2008 \(S.I. 2008/948\)](#), arts. 2(2), 3(1)(b), [Sch. 1 para. 125](#) (with arts. 6, 11, 12)

**F170** 1989 NI 19

### ***Relief in respect of group reconstructions***

**142.**—(1) This Article applies where the issuing company—

- (a) is a wholly-owned subsidiary of another company (“the holding company”), and
- (b) allots shares to the holding company or to another wholly-owned subsidiary of the holding company in consideration for the transfer to the issuing company of assets other than cash, being assets of any company (“the transferor company”) which is a member of the group of companies which comprises the holding company and all its wholly-owned subsidiaries.

(2) Where the shares in the issuing company allotted in consideration for the transfer are issued at a premium, the issuing company is not required by Article 140 to transfer any account in excess of the minimum premium value to the share premium account.

(3) In paragraph (2), “the minimum premium value” means the amount (if any) by which the base value of the consideration for the shares allotted exceeds the aggregate nominal value of those shares.

(4) For the purposes of paragraph (3), the base value of the consideration for the shares allotted is the amount by which the base value of the assets transferred exceeds the base value of any liabilities



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of the transferor company assumed by the issuing company as part of the consideration for the assets transferred.

(5) For the purposes of paragraph (4)—

(a) the base value of the assets transferred is to be taken as—

(i) the cost of those assets to the transferor company, or

(ii) the amount at which those assets are stated in the transferor company's accounting records immediately before the transfer,

whichever is the less; and

(b) the base value of the liabilities assumed is to be taken as the amount at which they are stated in the transferor company's accounting records immediately before the transfer.

(6) The relief allowed by this Article does not apply (subject to paragraph (7)) if the issue of shares took place before the date of the coming into operation of this Article.

(7) To the extent that the relief allowed by this Article would have been allowed by Article 39 of the Order of 1982 as originally enacted (the text of which Article is set out in Schedule 24), the relief applies where the issue of shares took place before the date of the coming into operation of this Article, but not if it took place before 4th February 1981.

(8) Article 141 does not apply in a case falling within this Article.

#### ***Provisions supplementing Articles 141 and 142***

**143.**—(1) An amount corresponding to one representing the premiums or part of the premiums on shares issued by a company which by virtue of Article 141 or 142 of this Order or Article 14 of the Consequential Provisions Order is not included in the company's share premium account may also be disregarded in determining the amount at which any shares or other consideration provided for the shares issued is to be included in the company's balance sheet.

(2) References in this Chapter (however expressed) to—

(a) the acquisition by a company of shares in another company; and

(b) the issue or allotment of shares to, or the transfer of shares to or by, a company,

include (respectively) the acquisition of any of those shares by, and the issue or allotment or (as the case may be) the transfer of any of those shares to or by, nominees of that company; and the references in Article 142 to the company transferring the shares is to be construed accordingly.

(3) References in this Chapter to the transfer of shares in a company include the transfer of a right to be included in the company's register of members in respect of those shares.

(4) In Articles 141, 142 and this Article “company”, except in references to the issuing company, includes any body corporate.

#### ***Provision for extending or restricting relief from Article 140***

**144.**—(1) The Department may by regulations make such provision as appears to it to be appropriate—

(a) for relieving companies from the requirements of Article 140 in relation to premiums other than cash premiums, or

(b) for restricting or otherwise modifying any relief from those requirements provided by this Chapter.

(2) No such regulations shall be made unless a draft of the regulations has been laid before, and approved by a resolution of, the Assembly.

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## CHAPTER IV REDUCTION OF SHARE CAPITAL

### ***Special resolution for reduction of share capital***

**145.**—(1) Subject to confirmation by the court, a company limited by shares or a company limited by guarantee and having a share capital may, if so authorised by its articles, by special resolution reduce its share capital in any way.

(2) In particular, and without prejudice to paragraph (1), the 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, cancel any paid-up share capital which is lost or unrepresented by available assets; or
- (c) either with or without extinguishing or reducing liability on any of its shares, pay off any paid-up share capital which is in excess of the company's wants;

and the company may, if and so far as is necessary, alter its memorandum by reducing the amount of its share capital and of its shares accordingly.

(3) A special resolution under this Article is in this Order referred to as “a resolution for reducing share capital”.

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

**146.**—(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 share 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,

and in any other case if the court so directs, paragraphs (3) to (5) shall have effect, but subject throughout to paragraph (6).

(3) Every creditor of the company who [<sup>F171</sup>—

- (a)] at the date fixed by the court is entitled to any debt or claim which, if that date were the commencement of the winding up of the company, would be admissible in proof against the company, [<sup>F172</sup>and
- (b) can show that there is a real likelihood that the reduction would result in the company being unable to discharge his debt or claim when it fell due,]

is entitled to object to the reduction of capital.

(4) The court shall settle a list of creditors entitled to object, and for that purpose—

- (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.

(5) 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 by appropriating (as the court may direct) the following amount—

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- (a) if the company admits the full amount of the debt or claim or, though not admitting it, is willing to provide for it, then the full amount of the debt or claim;
  - (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, then an amount fixed by the court after the like enquiry and adjudication as if the company were being wound up by the court.
- (6) If a proposed reduction of share capital involves either the diminution of any liability in respect of unpaid share capital or the payment to any shareholder of any paid-up share capital, the court may, if having regard to any special circumstances of the case it thinks proper to do so, direct that paragraphs (3) to (5) shall not apply as regards any class or any classes or creditors.

**F171** Words in art. 146(3) inserted (6.4.2008) by [Companies \(Reduction of Capital\) \(Creditor Protection\) Regulations 2008 \(S.I. 2008/719\)](#), [reg. 3\(a\)](#) (with [reg. 4](#))

**F172** Words in art. 146(3) inserted (6.4.2008) by [Companies \(Reduction of Capital\) \(Creditor Protection\) Regulations 2008 \(S.I. 2008/719\)](#), [reg. 3\(b\)](#) (with [reg. 4](#))

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

**147.**—(1) The court, if satisfied with respect to every creditor of the company who under Article 146 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,

may make an order confirming the reduction on such terms and conditions as it thinks fit.

(2) Where the court so orders, it may also—

- (a) if for any special reason it thinks proper to do so, make an order directing that the company shall, during such period (commencing on or at any time after the date of the order) as is specified in the order, add to its name as its last words the words “and reduced”; and
- (b) make an order requiring 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 which led to the reduction.

(3) Where a company is ordered to add to its name the words “and reduced”, those words are, until the expiration of the period specified in the order, deemed to be part of the company's name.

### ***Registration of order and minute of reduction***

**148.**—(1) The registrar, on production to him of an order of the court confirming the reduction of a company's share capital, and the delivery to him of an office copy of the order and of a minute (approved by the court) showing, with respect to the company's share capital as altered by the order—

- (a) the amount of the share capital;
- (b) the number of shares into which it is to be divided, and the amount of each share; and
- (c) the amount (if any) at the date of the registration deemed to be paid up on each share,

shall register the order and minute (but subject to Article 149).

(2) On the registration of the order and minute, and not before, the resolution for reducing share capital as confirmed by the order so registered takes effect.

(3) Notice of the registration shall be published in such manner as the court may direct.

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(4) The registrar shall certify under his hand the registration of the order and minute; and the certificate is conclusive evidence that all the requirements of this Order with respect to the reduction of share capital have been complied with, and that the company's share capital is as stated in the minute.

(5) The minute when registered is deemed to be substituted for the corresponding part of the company's memorandum, and is valid and alterable as if it had been originally contained therein.

(6) The substitution of such a minute for part of the company's memorandum is deemed an alteration of the memorandum for the purposes of Article 31.

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

**149.**—(1) This Article applies where the court makes an order confirming a reduction of a public company's capital which has the effect of bringing the nominal value of its allotted share capital below the authorised minimum.

(2) The registrar shall not register the order under Article 148 unless the court otherwise directs, or the company is first re-registered as a private company.

(3) The court may authorise the company to be so re-registered without its having passed the special resolution required by Article 63; and where that authority is given, the court shall specify in the order the alterations in the company's memorandum and articles to be made in connection with that re-registration.

(4) The company may then be re-registered as a private company, if an application in the prescribed form and signed by a director or secretary of the company is delivered to the registrar, together with a printed copy of the memorandum and articles as altered by the court's order.

(5) On receipt of such an application, the registrar shall retain it and the other documents delivered with it and issue the company with a certificate of incorporation appropriate to a company that is not a public company; and—

- (a) the company by virtue of the issue of the certificate becomes a private company, and the alterations in the memorandum and articles set out in the court's order take effect; and
- (b) the certificate is conclusive evidence that the requirements of this Article in respect of re-registration and of matters precedent and incidental thereto have been complied with, and that the company is a private company.

### ***Liability of members on reduced shares***

**150.**—(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 the amount of the share as fixed by the minute and 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) But paragraphs (3) and (4) apply if—

- (a) a creditor, entitled in respect of a debt or claim to object to the reduction of share capital, by reason of his ignorance of the proceedings for reduction of share capital, or of their nature and effect with respect to his claim, is not entered on the list of creditors; and
- (b) after the reduction of capital, the company is unable (within the meaning of<sup>F173</sup> Article 103 of the Insolvency Order) to pay the amount of his debt or claim.

(3) Every person who was a member of the company at the date of the registration of the order for reduction and minute is then liable to contribute for the payment of the debt or claim in question 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.

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(4) If the company is wound up, the court, on the application of the creditor in question and proof of ignorance referred to in paragraph (2)(a), may (if it thinks fit) settle accordingly a list of persons so liable to contribute, and make and enforce calls and orders on the contributories settled on the list, as if they were ordinary contributories in a winding up.

(5) Nothing in this Article affects the rights of the contributories among themselves.

F173 1989 NI 19

#### ***Penalty for concealing name of creditor, etc.***

**151.** If an officer of the company—

- (a) wilfully conceals the name of a creditor entitled to object to the reduction of capital;
- (b) wilfully misrepresents the nature or amount of the debt of claim of any creditor; or
- (c) aids, abets or is privy to any such concealment or misrepresentation,

he is guilty of an offence and liable to a fine.

### CHAPTER V

#### MAINTENANCE OF CAPITAL

#### ***Duty of directors on serious loss of capital***

**152.**—(1) Where the net assets of a public company are half or less of its called-up share capital, the directors shall, not later than 28 days from the earliest day on which that fact is known to a director of the company, duly convene an extraordinary general meeting of the company for a date not later than 56 days from that day for the purpose of considering whether any, and if so what, steps should be taken to deal with the situation.

(2) In paragraph (1), “net assets” means the aggregate of the company's assets less the aggregate of its liabilities ( “liabilities” to include any provision for liabilities or charges within paragraph 88 of Schedule 4).

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

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

is liable to a fine.

(4) Nothing in this Article authorises the consideration, at a meeting convened in pursuance of paragraph (1), of any matter which could not have been considered at that meeting apart from this Article.

#### ***General rule against company acquiring own shares***

**153.**—(1) Subject to the following provisions, a company limited by shares or limited by guarantee and having a share capital shall not acquire its own shares, whether by purchase, subscription or otherwise.

(2) If a company purports to act in contravention of this Article, the company is liable to a fine, and every officer of the company who is in default is liable to imprisonment or a fine, or both; and<sup>F174</sup>, subject to paragraph (2A),] the purported acquisition is void.

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[<sup>F174</sup>(2A) Where a company purchases qualifying shares out of distributable profits under Article 172, any contravention by the company of any provision of Article 172B(1) or (2) shall not render the acquisition void under paragraph (2).]

(3) A company limited by shares may acquire any of its own fully paid shares otherwise than for valuable consideration; and paragraph (1) does not apply in relation to—

- (a) the redemption or purchase of shares in accordance with Chapter VII,
- (b) the acquisition of shares in a reduction of capital duly made,
- (c) the purchase of shares in pursuance of an order of the court under Article 16 (alteration of objects), Article 64 (litigated objection to resolution for company to be re-registered as private) or [<sup>F175</sup>section 996 of the Companies Act 2006] (relief to members unfairly prejudiced), or
- (d) 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.

**F174** SR 2004/275

**F175** Words in art. 153(3)(c) substituted (6.4.2008) by [Companies Act 2006 \(Consequential Amendments etc\) Order 2008 \(S.I. 2008/948\)](#), arts. 2(2), 3(1)(b), [Sch. 1 para. 126](#) (with arts. 6, 11, 12)

### *Acquisition of shares by company's nominee*

**154.**—(1) Subject to Article 155, where shares are issued to a nominee of a company mentioned in Article 153(1), or are acquired by a nominee of such a company from a third person as partly paid up, then, 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.

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

- (a) if the shares were issued to him as subscriber to the memorandum by virtue of an undertaking of his in the memorandum, the other subscribers to the memorandum, or
- (b) if the shares were otherwise issued to or acquired by him, the directors of the company at the time of the issue or acquisition,

are jointly and severally liable with him to pay that amount.

(3) If in proceedings for the recovery of any such amount from any such subscriber or director under this Article it appears to the court—

- (a) that he is or may be liable to pay that amount, but
- (b) that he has acted honestly and reasonably and, having regard to all the circumstances of the case, he ought fairly to be excused from liability,

the court may relieve him, either wholly or partly, from his liability on such terms as the court thinks fit.

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

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### **Exceptions from Article 154**

**155.**—(1) Article 154(1) does not apply to shares acquired otherwise than by subscription by a nominee of a public company, 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) Article 154(1) and (2) does not apply—

- (a) to shares acquired by a nominee of a company when the company has no beneficial interest in those shares, or
- (b) to shares issued in consequence of an application made before 1st July 1983, or transferred in pursuance of an agreement to acquire them made before that date.

(3) Schedule 2 has effect for the interpretation of references in this Article to a company having, or not having, a beneficial interest in shares.

### **Treatment of shares held by or for public company**

**156.**—(1) Except as provided by Article 158, the following applies to a public company—

- (a) where shares in the company are forfeited, or surrendered to the company in lieu, in pursuance of its articles, for failure to pay any sum payable in respect of the shares;
- [<sup>F176</sup>(aa) where shares in the company are surrendered to the company in pursuance of section 102C(1)(b) of the Building Societies Act 1986;]
- (b) where shares in the company are acquired by it (otherwise than by any of the methods mentioned in Article 153 (3)(a) to (d)) and the company has a beneficial interest in the shares;
- (c) where the nominee of the company acquires shares in the company from a third person without financial assistance being given directly or indirectly by the company and the company has a beneficial interest in the shares; or
- (d) 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.

Schedule 2 has effect for the interpretation of references in this paragraph to the company having a beneficial interest in shares.

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

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

(3) For this purpose “the relevant period” is—

- (a) 3 years in the case of shares forfeited or surrendered to the company in lieu of forfeiture, or acquired as mentioned in paragraph (1)(b) or (c);
- (b) one year in the case of shares acquired as mentioned in paragraph (1)(d).

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

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**F176** 1997 c. 41

***Matters arising out of compliance with Article 156(2)***

**157.**—(1) The directors may take such steps as are requisite to enable the company to carry out its obligations under Article 156(2) without complying with Articles 145 and 146 (resolution to reduce share capital; application to court for approval).

(2) The steps taken may include the passing of a resolution to alter the company's memorandum so that it no longer states that the company is to be a public company; and the resolution may make such other alterations in the memorandum as are requisite in the circumstances.

[<sup>F177</sup>Chapter 3 of Part 3 of the Companies Act 2006 (resolutions affecting a company's constitution) applies to such a resolution.]

(3) The application for re-registration required by Article 156(2)(b) must be in the prescribed form and be signed by a director or secretary of the company, and must be delivered to the registrar together with a printed copy of the memorandum and articles of the company as altered by the resolution.

(4) If the registrar is satisfied that the company may be re-registered under Article 156, he shall retain the application and other documents delivered with it and issue the company with a certificate of incorporation appropriate to a company that is not a public company; and—

- (a) the company by virtue of the issue of the certificate becomes a private company, and the alterations in the memorandum and articles set out in the resolution take effect accordingly, and
- (b) the certificate is conclusive evidence that the requirements of Articles 156 to 158 in respect of re-registration and of matters precedent and incidental to it have been complied with, and that the company is a private company.

**F177** Words in art. 157(2) substituted (1.10.2007) by [Companies Act 2006 \(Commencement No. 3, Consequential Amendments, Transitional Provisions and Savings\) Order 2007 \(S.I. 2007/2194\)](#), arts. 1(3), 10(1), [Sch. 4 para. 17\(6\)](#) (with art. 12)

***Further provisions supplementing Articles 156 and 157***

**158.**—(1) 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, or
- (b) are acquired by the company (otherwise than by such surrender or forfeiture, and otherwise than by any of the methods mentioned in Article 153(3)), the company having a beneficial interest in the shares, or
- (c) are acquired by the nominee of a company in the circumstances mentioned in Article 156(1)(c), or
- (d) are acquired by any person in the circumstances mentioned in Article 156(1)(d),

the company is re-registered as a public company, Articles 156 and 157, and also Article 159, apply to the company as if it had been a public company at the time of the forfeiture, surrender or acquisition, but with the modification required by paragraph (2).

(2) That modification is to treat any reference to the relevant period from the forfeiture, surrender or acquisition as referring to the relevant period from the re-registration of the company as a public company.



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(3) Schedule 2 has effect for the interpretation of the reference in paragraph (1)(b) to the company having a beneficial interest in shares.

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

### **Sanctions for non-compliance**

**159.**—(1) If a public company required by paragraph (2) of Article 156 to apply to be re-registered as a private company fails to do so before the end of the relevant period referred to in that paragraph, [<sup>F178</sup>Chapter 1 of Part 20 of the Companies Act 2006] (restriction on public offers) applies to it as if it were a private company such as is mentioned in that Article; but, subject to this, the company continues to be treated for the purposes of this Order as a public company until it is so re-registered.

(2) If a company when required to do so by paragraph (2) of Article 156 (including that paragraph as applied by Article 158(1)) fails to cancel any shares in accordance with sub-paragraph (a) of that paragraph or to make an application for re-registration in accordance with sub-paragraph (b) of that paragraph, the company and every officer of it who is in default is liable to a fine and, for continued contravention, to a daily default fine.

**F178** Words in art. 159(1) substituted (6.4.2008) by [Companies Act 2006 \(Consequential Amendments etc\) Order 2008 \(S.I. 2008/948\)](#), arts. 2(2), 3(1)(b), [Sch. 1 para. 127](#) (with arts. 6, 11, 12)

### **Charges of public companies on own shares**

**160.**—(1) A lien or other charge of a public company on its own shares (whether taken expressly or otherwise), except a charge permitted by any of the following paragraphs, is void. This is subject to Article 8 of the Consequential Provisions Order (saving for charges of old public companies on their own shares).

(2) In the case of any description of company, a charge on its own shares is permitted if the shares are not fully paid and the charge is for any 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 of goods under a hire purchase agreement, or both,

a charge of the company on its own shares 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 its business.

(4) In the case of a company which is re-registered or is registered under Article 629 as a public company, a charge on its own shares is permitted if the charge was in existence immediately before the company's application for re-registration or (as the case may be) registration.

This paragraph does not apply in the case of such a company as is referred to in Article 8(3) of the Consequential Provisions Order (old public company remaining such after 31st December 1984 not having applied to be re-registered as a public company).

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## CHAPTER VI

### FINANCIAL ASSISTANCE BY A COMPANY FOR ACQUISITION OF ITS OWN SHARES

*Provisions applying to both public and private companies*

#### ***Financial assistance generally prohibited***

**161.**—(1) Subject to the following provisions of this Chapter, where a person is acquiring or is proposing to acquire shares in a company, it is not lawful for the company or any of its subsidiaries to give financial assistance directly or indirectly for the purpose of that acquisition before or at the same time as the acquisition takes place.

(2) Subject to those provisions, where a person has acquired shares in a company and any liability has been incurred (by that or any other person) for the purpose of that acquisition, it is not lawful for the company or any of its subsidiaries to give financial assistance directly or indirectly for the purpose of reducing or discharging the liability so incurred.

(3) If a company acts in contravention of this Article, it is liable to a fine, and every officer of it who is in default is liable to imprisonment or a fine, or both.

#### ***Interpretation for this Chapter***

**162.**—(1) In this Chapter—

(a) “financial assistance” means—

- (i) financial assistance given by way of gift;
- (ii) financial assistance given by way of guarantee, security or indemnity, other than an indemnity in respect of the indemnifier's own neglect or default, or by way of release or waiver;
- (iii) financial assistance given 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 by way of the novation of, or the assignment of rights arising under a loan or such other agreement; or
- (iv) any other financial assistance given by a company the net assets of which are thereby reduced to a material extent or which has no net assets;

(b) “distributable profits”, in relation to the giving of any financial assistance—

- (i) means those profits out of which the company could lawfully make a distribution equal in value to that assistance, and
- (ii) includes, in a case where the financial assistance is or includes a non-cash asset, any profit which, if the company were to make a distribution of that asset, would under [F179]section 846 of the Companies Act 2006] (distributions in kind) be available for that purpose, and

(c) “distribution” has the meaning given by [F180]section 829 of the Companies Act 2006].

(2) In paragraph (1)(a)(iv) “net assets” means the aggregate of the company's assets, less the aggregate of its liabilities ( “liabilities” to include any[F181] provision for liabilities] within paragraph 88 of Schedule 4[F181] that is made in Companies Order individual accounts and any provision that is made in IAS individual accounts] ).

(3) In this Chapter—

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- (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 purpose 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.

**F179** Words in art. 162(1)(b)(ii) substituted (6.4.2008) by Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2008/948), arts. 2(2), 3(1)(b), Sch. 1 para. 128(a) (with arts. 6, 11, 12)

**F180** Words in art. 162(1)(c) substituted (6.4.2008) by Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2008/948), arts. 2(2), 3(1)(b), Sch. 1 para. 128(b) (with arts. 6, 11, 12)

**F181** SR 2004/496

### ***Transactions not prohibited by Article 161***

**163.**—(1) Article 161(1) does not prohibit a company from giving financial assistance for the purpose of an acquisition of shares in it or its holding company if—

- (a) the company's principal purpose in giving that assistance is not to give it for the purpose of any such acquisition, or the giving of the assistance for that purpose is but an incidental part of some larger purpose of the company, and
- (b) the assistance is given in good faith in the interests of the company.

(2) Article 161 (2) 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 the reduction or discharge of any such liability is but an incidental part of some larger purpose of the company, and
- (b) the assistance is given in good faith in the interests of the company.

(3) Article 161 does not prohibit—

- (a) a distribution of a company's assets by way of dividend lawfully made or a distribution made in the course of the company's winding up,
- (b) the allotment of bonus shares,
- (c) a reduction of capital confirmed by order of the court under Article 147,
- (d) a redemption or purchase of shares made in accordance with Chapter VII,
- (e) anything done in pursuance of an order of the court under [F182]section 899 of the Companies Act 2006] (compromises and arrangements with creditors and members),
- (f) anything done under an arrangement made in pursuance of [F183] Article 96 of the Insolvency Order] (acceptance of shares by liquidator in winding up as consideration for sale of property), or
- (g) anything done under an arrangement made between a company and its creditors which is binding on the creditors by virtue of [F183] Part II of the Insolvency Order] (winding up imminent or in progress).

(4) Article 161 does not prohibit—

- (a) where the lending of money is part of the ordinary business of the company, the lending of money by the company in the ordinary course of its business,

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- [<sup>F184</sup>(b) the provision by a company, in good faith in the interests of the company, of financial assistance for the purposes of an employees' share scheme,]
- [<sup>F185</sup>(bb) without prejudice to sub-paragraph (b), the provision of financial assistance by a company or any of its subsidiaries for the purposes of or in connection with anything done by the company (or [<sup>F184</sup> a company in the same group]) for the purpose of enabling or facilitating transactions in shares in the first-mentioned company between, and involving the acquisition of beneficial ownership of those shares by, any of the following persons—
- (i) the bona fida employees or former employees of that company or of another company in the same group; or
  - (ii) the wives, husbands, widows, widowers, children, step-children or adopted children under the age of eighteen of such employees or former employees.]
- (c) the making by a 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.
- [<sup>F184</sup>(5) For the purposes of paragraph (4)(bb) 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.]

**F182** Words in art. 163(3)(e) substituted (6.4.2008) by Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2008/948), arts. 2(2), 3(1)(b), **Sch. 1 para. 129** (with arts. 6, 11, 12)

**F183** 1989 NI 19

**F184** 1990 NI 10

**F185** 1986 c. 60

### ***Special restriction for public companies***

**164.**—(1) In the case of a public company, Article 163(4) authorises the giving of financial assistance only if the company has net assets which are not thereby reduced or, to the extent that those assets are thereby reduced, if the assistance is provided out of distributable profits.

(2) For this purpose the following definitions apply—

- (a) “net assets” means the amount by which the aggregate of the company's assets exceeds the aggregate of its liabilities (taking the amount of both assets and liabilities to be as stated in the company's accounting records immediately before the financial assistance is given);
- (b) “liabilities” includes any amount retained as reasonably necessary for the purpose of providing for any liability [<sup>F186</sup> the nature of which is clearly defined and] 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.

**F186** SR 2004/496

### *Private companies*

#### ***Relaxation of Article 161 for private companies***

**165.**—(1) Article 161 does not prohibit a private company from giving financial assistance in a case where the acquisition of shares in question is or was an acquisition of shares in the company or, if it is a subsidiary of another private company, in that other company if the following provisions of this Article, and Articles 166 to 168, are complied with as respects the giving of that assistance.

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(2) The financial assistance may only be given if the company has net assets which are not thereby reduced or, to the extent that they are reduced, if the assistance is provided out of distributable profits. Article 164(2) applies for the interpretation of this paragraph.

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

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

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

(6) The directors of the company proposing to give the financial assistance and, where the shares acquired or to be acquired are shares in its holding company, the directors of that company and of any other company which is both the company's holding company and a subsidiary of that other holding company shall before the financial assistance is given make a statutory declaration in the prescribed form complying with Article 166.

#### ***Statutory declaration under Article 165***

**166.**—(1) A statutory declaration made by a company's directors under Article 165(6) shall contain such particulars of the financial assistance to be given, and of the business of the company of which they are directors, as may be prescribed, and shall identify the person to whom the assistance is to be given.

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

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

(3) In forming their opinion for the purposes of paragraph (2), the directors shall take into account the same liabilities (including contingent and prospective liabilities) as would be relevant under<sup>[F187]</sup> Article 102 of the Insolvency Order] (winding up by the court) to the question whether the company is unable to pay its debts.

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

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

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

- (a) together with a copy of any special resolution passed by the company under Article 165 and delivered to the registrar in compliance with <sup>[F188]</sup>section 30 of the Companies Act 2006], or

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(b) where no such resolution is required to be passed, within 15 days after the making of the declaration.

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

(7) A director of a company who makes a statutory declaration under Article 165 without having reasonable grounds for the opinion expressed in it is liable to imprisonment or a fine, or both.

**F187** 1989 NI 19

**F188** Words in art. 166(5)(a) substituted (1.10.2007) by Companies Act 2006 (Commencement No. 3, Consequential Amendments, Transitional Provisions and Savings) Order 2007 (S.I. 2007/2194), arts. 1(3), 10(1), **Sch. 4 para. 17(7)** (with art. 12)

### ***Special resolution under Article 165***

**167.**—(1) A special resolution required by Article 165 to be passed by a company approving the giving of financial assistance must be passed on the date on which the directors of that company make the statutory declaration required by that Article in connection with the giving of that assistance, or within the week immediately following that date.

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

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

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

(3) Article 64(3) to (10) (litigation to cancel resolution under Article 63) applies to applications under this Article as to applications under Article 64.

(4) A special resolution passed by a company is not effective for the purposes of Article 165—

- (a) unless the declaration made under paragraph (6) of that Article by the directors of the company, together with the auditors' report annexed to it, is available for inspection by members of the company at the meeting at which the resolution is passed,
- (b) if it is cancelled by the court on an application under this Article.

### ***Time for giving financial assistance under Article 165***

**168.**—(1) This Article applies as to the time before and after which financial assistance may not be given by a company in pursuance of Article 165.

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

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

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

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(3) If application for the cancellation of any such resolution is made under Article 167, the financial assistance shall not be given before the final determination of the application unless the court otherwise orders.

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

- (a) the date on which the directors of the company proposing to give the assistance made their statutory declaration under Article 165, or
- (b) where that company is a subsidiary and both its directors and the directors of any of its holding companies made such a declaration, the date on which the earliest of the declarations is made,

unless the court, on an application under Article 167, otherwise orders.

## CHAPTER VII

### REDEEMABLE SHARES; PURCHASE BY A COMPANY OF ITS OWN SHARES

#### *Redemption and purchase generally*

#### ***Power to issue redeemable shares***

**169**<sup>F189</sup>.—(1) Subject to the provisions of this Chapter, a company limited by shares or limited by guarantee and having a share capital may, if authorised to do so by its articles, issue shares which are to be redeemed or are liable to be redeemed at the option of the company or the shareholder.

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

(3) Redeemable shares may not be redeemed unless they are fully paid; and the terms of redemption must provide for payment on redemption.

F189 mod. by 1989 NI 19

#### ***{prosp. insertion of art. 169A by 1990 NI10}***

**169A**<sup>F190</sup>

F190 Art 169A inserted (prosp.) by 1990 NI 10

#### ***Financing, etc. of redemption***

**170**<sup>F191</sup>.—(1) Subject to paragraph (2) and to Articles 181 (private companies redeeming or purchasing own shares out of capital) and 188(4) (terms of redemption or purchase enforceable in a winding up)—

- (a) redeemable shares may only be redeemed out of distributable profits of the company or out of the proceeds of a fresh issue of shares made for the purposes of the redemption; and
- (b) any premium payable on redemption must be paid out of distributable profits of the company.

(2) 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—

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- (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; and in that case the amount of the company's share premium account shall be reduced by a sum corresponding (or by sums in the aggregate corresponding) to the amount of any payment made by virtue of this paragraph out of the proceeds of the issue of the new shares.

<sup>F192</sup>(3) Subject to the following provisions of this Chapter, redemption of shares may be effected on such terms and in such manner as may be provided by the company's articles.

(4) Shares<sup>F193</sup> redeemed under this Article shall be treated as cancelled on redemption, and the amount of the company's issued share capital shall be diminished by the nominal value of those shares accordingly; but the redemption of shares by a company is not to be taken as reducing the amount of the company's authorised share capital.

(5) Without prejudice to paragraph (4), where a company is about to redeem shares, it has power to issue shares up to the nominal value of the shares to be redeemed as if those shares had never been issued.

**F191** mod. by 1989 NI 19

**F192** prosp. repeal by 1990 NI 10

**F193** prosp. subst. by 1990 NI 10

*Art. 171 rep. by 1988 c. 39*

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

**172** <sup>F194</sup>—(1) Subject to the following provisions of this Chapter, a company limited by shares or limited by guarantee and having a share capital may, if authorised to do so by its articles, purchase its own shares (including any redeemable shares).

[<sup>F195</sup>(2) Articles 169 and 170 apply to the purchase by a company under this Article of its own shares as they apply to the redemption of redeemable shares. This is subject to paragraphs (2A) and (2B).

(2A) The terms and manner of a purchase under this Article need not be determined by the Articles as required by Article 170(3).

(2B) Where a company makes a purchase of qualifying shares out of distributable profits under this Article, Article 172A applies to the shares purchased and accordingly Article 170(4) does not apply to those shares.]

(3) A company may not under this Article purchase its own shares if as a result of the purchase there would no longer be any member of the company holding shares other than redeemable shares[<sup>F195</sup> or shares held as treasury shares].

[<sup>F195</sup>(4) For the purposes of this Chapter “qualifying shares” are shares which—

- (a) are included in the official list in accordance with the provisions of Part 6 of the Financial Services and Markets Act 2000,
- (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



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- (d) are traded on a market established in an EEA State which is a regulated market for the purposes of Article 16 of Council Directive 93/22/EEC on investment services in the securities field,

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

**F194** mod. by 1989 NI 19  
**F195** SR 2004/275

### ***Treasury shares***

**172A.**—(1) Where qualifying shares are purchased by a company out of distributable profits in accordance with Article 172, the company may—

- (a) hold the shares (or any of them), or
- (b) deal with any of them, at any time, in accordance with Article 172D.

(2) Where shares are held under paragraph (1)(a) then, for the purposes of Article 360, the company must be entered in the register as the member holding those shares.

(3) In this Order, references to a company holding shares as treasury shares are references to the company holding shares which—

- (a) were (or are treated as having been) purchased by it in circumstances in which this Article applies, and
- (b) have been held by the company continuously since they were so purchased.

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

**172B.**—(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 per cent 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 per cent of the nominal value of the issued share capital of the shares in that class at that time.

(3) Where paragraph (1) or (2) is contravened by a company, the company must dispose of or cancel the excess shares, in accordance with Article 172D, before the end of the period of 12 months beginning with the day on which that contravention occurs.

For this purpose “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.

### ***Treasury shares: voting and other rights***

**172C.**—(1) This Article applies to shares which are held by a company as treasury shares (“the 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.

(3) The rights to which paragraph (2) applies include any right to attend or vote at meetings (including <sup>F196</sup>meetings summoned under section 896 of the Companies Act 2006)].

(4) 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.

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- (5) Nothing in this Article is to be taken as preventing—
- (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).
- (6) Any shares allotted as fully paid bonus shares in respect of the treasury shares shall be treated for the purposes of this Order as if they were purchased by the company at the time they were allotted, in circumstances in which Article 172A(1) applied.

**F196** Words in art. 172C(3) substituted (6.4.2008) by Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2008/948), arts. 2(2), 3(1)(b), **Sch. 1 para. 130** (with arts. 6, 11, 12)

### ***Treasury shares: disposal and cancellation***

- 172D.**—(1) Where shares are held as treasury shares, a company may at any time—
- (a) sell the shares (or any of them) for cash,
  - (b) transfer the shares (or any of them) for the purposes of or pursuant to an employees' share scheme, or
  - (c) cancel the shares (or any of them).
- (2) For the purposes of paragraph (1)(a), “cash”, in relation to a sale of shares by a company, means—
- (a) cash (including foreign currency) received by the company, or
  - (b) a cheque received by the company in good faith which 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.
- (3) But if the company receives a notice under [F197section 979 of the Companies Act 2006] (right of offeror to buy out minority shareholders)[7] that a person desires to acquire any of the shares, the company must not, under paragraph (1), sell or transfer the shares to which the notice relates except to that person.
- (4) If under paragraph (1) the company cancels shares held as treasury shares, the company must diminish the amount of the issued share capital by the nominal value of the shares cancelled; but the cancellation is not to be taken as reducing the amount of the company's authorised share capital.
- (5) The directors may take such steps as are requisite to enable the company to cancel its shares under paragraph (1) without complying with Articles 145 and 146 (special resolution for reduction of share capital; application to court for order of confirmation).

**F197** Words in art. 172D(3) substituted (6.4.2007) by Companies Act 2006 (Commencement No. 2, Consequential Amendments, Transitional Provisions and Savings) Order 2007 (S.I. 2007/1093), arts.1(3), 6(1), **Sch. 3 para. 2** (with art. 11(1))

### ***Treasury shares: mandatory cancellation***

- 172E.**—(1) If shares held as treasury shares cease to be qualifying shares, the company must forthwith cancel the shares in accordance with Article 172D.

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(2) For the purposes of paragraph (1), 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.

(3) For the purposes of this Article “regulated market” means a market which is a regulated market for the purposes of Article 16 of Council Directive 93/22/EEC on investment services in the securities field.

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

**172F.**—(1) Where shares held as treasury shares are sold, the proceeds of sale shall be dealt with in accordance with this Article.

(2) Where the proceeds of sale are equal to or less than the purchase price paid by the company for the shares, the proceeds shall be treated for the purposes of [F198Part 23 of the Companies Act 2006] as a realised profit of the company.

- (3) Where the proceeds of sale exceed the purchase price paid by the company for the shares—
- (a) that part of the proceeds of sale that is equal to the purchase price paid shall be treated for the purposes of Part IX as a realised profit of the company, and
  - (b) a sum equal to the excess shall be transferred to the company's share premium account.

(4) The purchase price paid by the company for the shares shall be determined by the application of a weighted average price method.

(5) Where the shares were allotted to the company as fully paid bonus shares, the purchase price paid for them shall, for the purposes of paragraph (4), be treated as being nil.

**F198** Words in art. 172F(2) substituted (6.4.2008) by Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2008/948), arts. 2(2), 3(1)(b), Sch. 1 para. 131 (with arts. 6, 11, 12)

#### ***Treasury shares: penalty for contravention***

**172G.** If a company contravenes any provision of Articles 172A to 172F every officer of it who is in default is liable to a fine.

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

- 173** <sup>F199</sup>.—(1) A purchase by a company of its own shares is “off-market” if the shares either—
- (a) are purchased otherwise than on [F200 a recognised investment exchange], or
  - (b) are purchased on [F200 a recognised investment exchange] but are not subject to a marketing arrangement on [F200 that investment exchange].

(2) For this purpose, a company's shares are subject to a marketing arrangement on [F200 a recognised investment exchange] if either—

- (a) they are listed [F200 under [F201 Part 6 of the Financial Services and Markets Act 2000]]; or

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(b) the company has been afforded facilities for dealings in those shares to take place on<sup>F200</sup> that investment exchange] without prior permission for individual transactions from the authority governing<sup>F200</sup> that investment exchange] and without limit as to the time during which those facilities are to be available.

(3) A purchase by a company of its own shares is a “market” purchase if it is a purchase made on<sup>F200</sup> a recognised investment exchange], other than a purchase which is an off-market purchase by virtue of paragraph (1)(b).

<sup>F201</sup>(4) “Recognised investment exchange” means a recognised investment exchange other than an overseas investment exchange.

(5) Expressions used in the definition contained in paragraph (4) have the same meaning as in Part 18 of the Financial Services and Markets Act 2000.]

**F199** mod. by 1989 NI 19

**F200** 1986 c. 60

**F201** SI 2001/3649

#### ***Authority for off-market purchase***

**174** <sup>F202</sup>—(1) A company may only make an off-market purchase of its own shares in pursuance of a contract approved in advance in accordance with this Article or Article 175.

(2) The terms of the proposed contract must be authorised by a special resolution of the company before the contract is entered into; and the following paragraphs apply with respect to that authority and to resolutions conferring it.

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

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

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

For this purpose—

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

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

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

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

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

**F202** mod. by [1989 NI 19](#)

#### ***Authority for contingent purchase contract***

**175**<sup>F203</sup>.—(1) A contingent purchase contract is a contract entered into by a company and relating to any of its shares—

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

(2) A company may only make a purchase of its own shares in pursuance of a contingent purchase contract if the contract is approved in advance by a special resolution of the company before the contract is entered into; and paragraphs (3) to (7) of Article 174 apply to the contract and its terms.

**F203** mod. by [1989 NI 19](#)

#### ***Authority for market purchase***

**176**<sup>F204</sup>.—(1) A company shall not make a market purchase of its own shares unless the purchase has first been authorised by the company in general meeting.

- (2) That authority—
  - (a) may be general for that purpose, or limited to the purchase of shares of any particular class or description, and
  - (b) may be unconditional or subject to conditions.
- (3) The authority must—
  - (a) specify the maximum number of shares authorised to be acquired,
  - (b) determine both the maximum and the minimum prices which may be paid for the shares, and
  - (c) specify a date on which it is to expire.

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

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

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

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

[<sup>F205</sup>(7) Chapter 3 of Part 3 of the Companies Act 2006 (resolutions affecting a company's constitution) applies to a resolution of a company conferring, varying, revoking or renewing authority under this Article.]

**F204** mod. by 1989 NI 19

**F205** Words in art. 176(7) substituted (1.10.2007) by Companies Act 2006 (Commencement No. 3, Consequential Amendments, Transitional Provisions and Savings) Order 2007 (S.I. 2007/2194), arts. 1(3), 10(1), **Sch. 4 para. 17(8)** (with art. 12)

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

**177** <sup>F206</sup>—(1) The rights of a company under a contract approved under Article 174 or 175, or under a contract for a purchase authorised under Article 176, are not capable of being assigned.

(2) An agreement by a company to release its rights under a contract approved under Article 174 or 175 is void unless the terms of the release agreement are approved in advance by a special resolution of the company before the agreement is entered into; and paragraphs (3) to (7) of Article 174 apply to approval for a proposed release agreement as to authority for a proposed variation of an existing contract.

**F206** mod. by 1989 NI 19

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

**178** <sup>F207</sup>—(1) A payment made by a company in consideration of—

- (a) acquiring any right with respect to the purchase of its own shares in pursuance of a contract approved under Article 175, or
- (b) the variation of a contract approved under Article 174 or 175, or
- (c) the release of any of the company's obligations with respect to the purchase of any of its own shares under a contract approved under Article 174 or 175 or under a contract for a purchase authorised under Article 176,

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

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

- (a) in a case within paragraph (1)(a), no purchase by the company of its own shares in pursuance of that contract is lawful under this Chapter,
- (b) in a case within paragraph (1)(b), no such purchase following the variation is lawful under this Chapter, and
- (c) in a case within paragraph (1)(c), the purported release is void.

**F207** mod. by 1989 NI 19

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

**179**<sup>F208</sup>.—(1) Within the period of 28 days beginning with the date on which any shares purchased by a company under this Chapter are delivered to it, the company shall deliver to the registrar for registration a return in the prescribed form stating with respect to shares of each class purchased the number and nominal value of those shares and the date on which they were delivered to the company.

[<sup>F209</sup>(1A) But in the case of a company which has purchased its own shares in circumstances in which Article 172A applies, the requirement to deliver a return under paragraph (1) shall apply only where some or all of the shares have been cancelled forthwith after the date of their delivery in accordance with Article 172D(1) and in those circumstances the particulars required by that paragraph to be stated with respect to the shares purchased shall apply only to such of the shares as have been so cancelled.

(1B) Where a company has purchased its own shares in circumstances in which Article 172A applies, the company shall within the period of 28 days beginning with the date on which such shares are delivered to it (except where all of the shares have been cancelled forthwith after the date of their delivery in the circumstances referred to in paragraph (1A)) deliver to the registrar for registration a return in the prescribed form stating with respect to shares of each class purchased (other than any shares which have been cancelled in the circumstances referred to in paragraph (1A)) the number and nominal value of each of those shares which are held as treasury shares and the date on which they were delivered to the company.]

(2) In the case of a public company, [<sup>F209</sup> any return under paragraph (1) or (1B)] shall also state—

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

(3) Particulars of shares delivered to the company on different dates and under different contracts may be included in a single return [<sup>F209</sup> under either paragraph (1) or (1B)] to the registrar; and in such a case the amount required to be stated under paragraph (2)(a) is the aggregate amount paid by the company for all the shares to which the return relates.

(4) Where a company enters into a contract approved under Article 174 or 175, or a contract for a purchase authorised under Article 176, the company shall keep at its registered office—

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

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

(5) Every copy and memorandum so required to be kept shall<sup>F210</sup> . . . be open to inspection without charge—

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

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

(7) If default is made in complying with paragraph (4), or if an inspection required under paragraph (5) is refused, the company and every officer of it who is in default is liable to a fine and, for continued contravention, to a daily default fine.

(8) In the case of a refusal of an inspection required under paragraph (5) of a copy or memorandum, the court may by order compel an immediate inspection of it.

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(9) The obligation of a company under paragraph (4) to keep a copy of any contract or (as the case may be) a memorandum of its terms applies to any variation of the contract so long as it applies to the contract.

**F208** mod. by 1989 NI 19  
**F209** SR 2004/275  
**F210** 1990 NI 10

**[<sup>F211</sup>Disclosure by company of cancellation or disposal of treasury shares**

**179A.**—(1) Paragraph (2) applies in relation to any shares held by a company as treasury shares if—

- (a) the company is or was required to make a return under Article 179(1B) in relation to the shares, and
- (b) the shares have—
  - (i) been cancelled in accordance with Article 172D(1), or
  - (ii) been sold or transferred for the purposes of or pursuant to an employees' share scheme under Article 172D(1).

(2) Within the period of 28 days beginning with the date on which such shares are cancelled or disposed of, the company shall deliver to the registrar for registration a return in the prescribed form stating with respect to shares of each class cancelled or disposed of—

- (a) the number and nominal value of those shares, and
- (b) the date on which they were cancelled or disposed of.

(3) Particulars of shares cancelled or disposed of on different dates may be included in a single return to the registrar.

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

**F211** SR 2004/275

**The capital redemption reserve**

**180** <sup>F212</sup>.—(1) Where under this Chapter shares of a company are redeemed or purchased wholly out of the company's profits, the amount by which the company's issued share capital is diminished in accordance with Article 170(4) on cancellation of the shares redeemed or purchased<sup>[<sup>F213</sup>, or in accordance with Article 172D(4) on cancellation of shares held as treasury shares,]</sup> shall be transferred to a reserve, called “the capital redemption reserve”.

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

(3) But paragraph (2) does not apply if the proceeds of the fresh issue are applied by the company in making a redemption or purchase of its own shares in addition to a payment out of capital under Article 181.

(4) The provisions of this Order relating to the reduction of a company's share capital apply as if the capital redemption reserve were paid-up share capital of the company, except that the reserve



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may be applied by the company in paying up its unissued shares to be allotted to members of the company as fully paid bonus shares.

**F212** mod. by 1989 NI 19  
**F213** SR 2004/275

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

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

**181** <sup>F214</sup>.—(1) Subject to the following provisions of this Chapter, a private company limited by shares or limited by guarantee and having a share capital may, if so authorised by its articles, make a payment in respect of the redemption or purchase under Article 170 (as the case may be) Article 172, of its own shares otherwise than out of its distributable profits or the proceeds of a fresh issue of shares.

(2) References in this Chapter to payment out of capital are (subject to paragraph (6)) to any payment so made, whether or not it would be regarded apart from this Article as a payment out of capital.

(3) The payment which may (if authorised in accordance with the following provisions of this Chapter) be made by a company out of capital in respect of the redemption or purchase of its own shares is such an amount as, taken together with—

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

is equal to the price of redemption or purchase; and the payment permissible under this paragraph is referred to in this Chapter as the permissible capital payment for the shares.

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

(5) Subject to paragraph (6), 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 [<sup>F215</sup>any revaluation reserve maintained by the company in accordance with regulations made under section 396 of the Companies Act 2006],

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

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

**F214** mod. by 1989 NI 19  
**F215** Words in art. 181(5)(b) substituted (6.4.2008) by Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2008/948), arts. 2(2), 3(1)(b), **Sch. 1 para. 132** (with arts. 6, 11, 12)

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### **Availability of profits for the purposes of Article 181**

**182** <sup>F216</sup>.—(1) The reference in Article 181(3)(a) to available profits of the company is to the company's profits which are available for distribution (within the meaning of [<sup>F217</sup>Part 23 of the Companies Act 2006]); but the question whether a company has any profits so available and the amount of any such profits are to be determined for the purposes of that Article in accordance with the following paragraphs, instead of [<sup>F218</sup>Chapter 2 of that Part].

(2) Subject to paragraph (3), that question is to be determined by reference to [<sup>F219</sup>the following items as stated in the relevant accounts for determining the permissible capital payments for shares]

(a) profits, losses, assets and liabilities;

(b) [<sup>F219</sup>the following provisions—]

[<sup>F219</sup>(i)] [<sup>F219</sup>in the case of Companies Order individual accounts,] provisions of any of the kinds mentioned in paragraphs 87 and 88 of Schedule 4 (depreciation, diminution in value of assets, retentions to meet liabilities, etc.) [<sup>F219</sup>, and]

[<sup>F219</sup>(ii)] [<sup>F219</sup>in the case of IAS individual accounts, provisions of any kind]; and

(c) share capital and reserves (including undistributable reserves),

<sup>F219</sup>  
...

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

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

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

(a) financial assistance lawfully given out of distributable profits in a case falling within Article 164 or 165,

(b) any payment lawfully made by the company in respect of the purchase by it of any shares in the company (except a payment lawfully made otherwise than out of distributable profits), and

(c) a payment of any description specified in Article 178(1) lawfully made by the company.

(6) References in this Article to the period for determining the amount of the permissible capital payment for shares are to the period of 3 months ending with the date on which the statutory declaration of the directors purporting to specify the amount of that payment is made in accordance with Article 183(3).

**F216** mod. by 1989 NI 19

**F217** Words in art. 182(1) substituted (6.4.2008) by Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2008/948), arts. 2(2), 3(1)(b), **Sch. 1 para. 133(a)** (with arts. 6, 11, 12)

**F218** Words in art. 182(1) substituted (6.4.2008) by Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2008/948), arts. 2(2), 3(1)(b), **Sch. 1 para. 133(b)** (with arts. 6, 11, 12)

**F219** SR 2004/496

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

**183**<sup>F220</sup>.—(1) Subject to any order of the court under Article 187, a payment out of capital by a private company for the redemption or purchase of its own shares is not lawful unless the requirements of this Article and Articles 184 and 185 are satisfied.

(2) The payment out of capital must be approved by a special resolution of the company.

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

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

(4) In forming their opinion for the purposes of paragraph (3)(a), the directors shall take into account the same liabilities (including prospective and contingent liabilities) as would be relevant under<sup>F221</sup> Article 102 of the Insolvency Order] (winding up by the court) to the question whether a company is unable to pay its debts.

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

- (a) they have inquired into the company's state of affairs; and
- (b) the amount specified in the declaration as the permissible capital payment for the shares in question is in their view properly determined in accordance with Articles 181 and 182; and
- (c) they are not aware of anything to indicate that the opinion expressed by the directors in the declaration as to any of the matters mentioned in paragraph (3) is unreasonable in all the circumstances.

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

**F220** mod. by 1989 NI 19

**F221** 1989 NI 19

### **Procedure for special resolution under Article 183**

**184**<sup>F222</sup>.—(1) The resolution required by Article 183 must be passed on, or within the week immediately following, the date on which the directors make the statutory declaration required by that Article; and the payment out of capital must be made no earlier than 5 nor more than 7 weeks after the date of the resolution.

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

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

(4) The resolution is ineffective unless the statutory declaration and auditors' report required by Article 183 are available for inspection by members of the company at the meeting at which the resolution is passed.

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

F222 mod. by 1989 NI 19

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

**185**<sup>F223</sup>.—(1) Within the week immediately following the date of the resolution for payment out of capital the company must cause to be published in the Belfast Gazette a notice—

- (a) stating that the company has approved a payment out of capital for the purpose of acquiring its own shares by redemption or purchase or both (as the case may be);
- (b) specifying the amount of the permissible capital payment for the shares in question and the date of the resolution under Article 183;
- (c) stating that the statutory declaration of the directors and the auditors' report required by that Article are available for inspection at the company's registered office; and
- (d) stating that any creditor of the company may at any time within the 5 weeks immediately following the date of the resolution for payment out of capital apply to the court under Article 186 for an order prohibiting the payment.

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

(3) References in this Article to the first notice date are to the day on which the company first publishes the notice required by paragraph (1) or first publishes or gives the notice required by paragraph (2) (whichever is the earlier).

(4) Not later than the first notice date the company must deliver to the registrar a copy of the statutory declaration of the directors and of the auditors' report required by Article 183.

(5) The statutory declaration and auditors' report—

- (a) shall be kept at the company's registered office throughout the period beginning with the first notice date and ending 5 weeks after the date of the resolution for payment out of capital, and
- (b) shall<sup>F224</sup> . . . be open to the inspection of any member or creditor of the company without charge.

(6) If an inspection required under paragraph (5) is refused, the company and every officer of it who is in default is liable to a fine and, for continued contravention, to a daily default fine.

(7) In the case of refusal of an inspection required under paragraph (5) of a declaration or report, the court may by order compel an immediate inspection of that declaration or report.

F223 mod. by 1989 NI 19

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**F224** 1990 NI 10

### **Objections by company's members or creditors**

**186** <sup>F225</sup>—(1) Where a private company passes a special resolution approving for the purposes of this Chapter any payment out of capital for the redemption or purchase of any of its shares—

- (a) any member of the company other than one who consented to or voted in favour of the resolution; and
- (b) any creditor of the company,

may within 5 weeks of the date on which the resolution was passed apply to the court for cancellation of the resolution.

(2) The application may be made on behalf of the persons entitled to make it by such one or more of their number as they may appoint in writing for the purpose.

(3) If an application is made, the company shall—

- (a) forthwith give notice in the prescribed form of that fact to the registrar; and
- (b) within 15 days from the making of any order of the court on the hearing of the application, or such longer period as the court may by order direct, deliver an office copy of the order to the registrar.

(4) A company which fails to comply with paragraph (3) and any officer of it who is in default is liable to a fine and, for continued contravention, to a daily default fine.

**F225** mod. by 1989 NI 19

### **Powers of court on application under Article 186**

**187** <sup>F226</sup>—(1) On the hearing of an application under Article 186 the court may, if it thinks fit, adjourn the proceedings in order that an arrangement may be made to the court's satisfaction for the purchase of the interests of dissentient members or for the protection of dissentient creditors (as the case may be); and the court may give such directions and make such orders as it thinks expedient for facilitating or carrying into effect any such arrangement.

(2) Without prejudice to its powers under paragraph (1), the court shall make an order on such terms and conditions as it thinks fit either confirming or cancelling the resolution; and, if the court confirms the resolution, it may in particular by order alter or extend any date or period of time specified in the resolution or in any provision in this Chapter which applies to the redemption or purchase of shares to which the resolution refers.

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

(4) If the court's order requires the company not to make any, or any specified, alteration in its memorandum or articles, the company has not then power without leave of the court to make any such alteration in breach of the requirement.

(5) An alteration in the memorandum or articles made by virtue of an order under this Article, if not made by resolution of the company, is of the same effect as if duly made by resolution; and this Order applies accordingly to the memorandum or articles as so altered.

**F226** mod. by 1989 NI 19

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## *Supplementary*

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

**188**<sup>F227</sup>.—(1) This Article has effect where a company has, on or after 1st July 1983—

- (a) issued shares on terms that they are or are liable to be redeemed, or
- (b) agreed to purchase any of its own shares.

(2) The company is not liable in damages in respect of any failure on its part to redeem or purchase any of the shares.

(3) Paragraph (2) is without prejudice to any right of the holder of the shares other than his right to sue the company for damages in respect of its failure; but the court shall not grant an order for specific performance of the terms of redemption or purchase if the company shows that it is unable to meet the costs of redeeming or purchasing the shares in question out of distributable profits.

(4) If the company is wound up and at the commencement of the winding up any of the shares have not been redeemed or purchased, the terms of redemption or purchase may be enforced against the company; and when shares are redeemed or purchased under this paragraph they are treated as cancelled.

(5) However, paragraph (4) does not apply if—

- (a) the terms provided for the redemption or purchase to take place at a date later than that of the commencement of the winding up, or
- (b) during the period beginning with the date on which the redemption or purchase was to have taken place and ending with the commencement of the winding up the company could not at any time have lawfully made a distribution equal to value to the price at which the shares were to have been redeemed or purchased.

(6) There shall be paid in priority to any amount which the company is liable under paragraph (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),
- (b) if other shares carry rights (whether as to capital or as to income) which are preferred to the rights as to capital attaching to the first-mentioned shares, any amount due in satisfaction of those preferred rights;

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

*Para. (7) rep. by 1989 NI 19*

F227 mod. by 1989 NI 19
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### ***Power of Department to modify this Chapter***

**189**<sup>F228</sup>.—(1) The Department may by regulations modify the provisions of this Chapter with respect to any of the following matters—

- (a) the authority required for a purchase by a company of its own shares,
- (b) the authority required for the release by a company of its rights under a contract for the purchase of its own shares or a contract under which the company may (subject to any conditions) become entitled or obliged to purchase its own shares,
- (c) the information to be included in a return delivered by a company to the registrar in accordance with Article 179(1),

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- (d) the matters to be dealt with in the statutory declaration of the directors under Article 183 with a view to indicating their opinion of their company's ability to make a proposed payment out of capital with due regard to its financial situation and prospects, and
  - (e) the contents of the auditors' report required by that Article to be annexed to that declaration.
- (2) The Department may also by regulations make such provision (including modification of the provisions of this Chapter) as appears to it to be appropriate—
- (a) for wholly or partly relieving companies from the requirement of Article 181(3)(a) that any available profits must be taken into account in determining the amount of the permissible capital payment for shares under that Article, or
  - (b) for permitting a company's share premium account to be applied, to any extent appearing to the Department to be appropriate, in providing for the premiums payable on the redemption or purchase by the company of any of its own shares.
- (3) Regulations under this Article may make such further modification of any provisions of this Chapter as appears to the Department to be reasonably necessary in consequence of any provision made under such regulations by virtue of paragraph (1) or (2).
- (4) No regulations shall be made under this Article unless a draft of the regulations has been laid before, and approved by a resolution of, the Assembly.

F228 mod. by 1989 NI 19

#### ***Transitional cases arising under this Chapter; and savings***

**190**<sup>F229</sup>.—(1) Any preference shares issued by a company before 1st July 1983 which could but for the repeal by the Order of 1982 of section 58 of the Act of 1960 (power to issue redeemable preference shares) have been redeemed under that section are subject to redemption in accordance with the provisions of this Chapter.

(2) In a case to which Articles 169 and 170 apply by virtue of this Article, any premium payable on redemption may, notwithstanding the repeal by the Order of 1982 of any provision of the Act of 1960, be paid out of the share premium account instead of out of profits, or partly out of that account and partly out of profits (but subject to the provisions of this Chapter so far as payment is out of profits).

(3) Any capital redemption reserve fund established before 1st July 1983 by a company for the purposes of section 58 of the Act of 1960 is to be known as the company's capital redemption reserve and to be treated as if it had been established for the purposes of Article 180; and accordingly, a reference in any statutory provision or in the articles of any company, or in any other instrument, to a company's capital redemption reserve fund is to be construed as a reference to the company's capital redemption reserve.

F229 mod. by 1989 NI 19

#### ***Interpretation for Chapter VII***

**191**<sup>F230</sup>. In this Chapter—

- (a) “distributable profits”, in relation to the making of any payment by a company, means those profits out of which it could lawfully make a distribution (within the meaning given by [F231]section 829 of the Companies Act 2006]), equal in value to the payment, and
- (b) “permissible capital payment” means the payment permitted by Article 181;

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and references to payment out of capital are to be construed in accordance with Article 181.

**F230** mod. by 1989 NI 19  
**F231** Words in art. 191(a) substituted (6.4.2008) by Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2008/948), arts. 2(2), 3(1)(b), **Sch. 1 para. 134** (with arts. 6, 11, 12)

CHAPTER VIII

MISCELLANEOUS PROVISIONS ABOUT SHARES AND DEBENTURES

*Share and debenture certificates, transfers and warrants*

**Nature, transfer and numbering of shares**

- 192.**—<sup>F232</sup>(1) The shares or other interest of any member in a company—
- (a) are personal estate and are not in the nature of real estate,
  - (b) are transferable in manner provided by the company's articles, but subject to the Stock Transfer Act (Northern Ireland) 1963 (which enables securities of certain descriptions to be transferred by a simplified process)<sup>F233</sup> and to regulations made under section 207 of the Companies Act 1989 (which enable title to securities to be evidenced and transferred without a written instrument).]

(2) Each share in a company having a share capital shall be distinguished by its appropriate number; except that, if at any time all the issued shares in a company, or all the issued shares in it of a particular class, are fully paid up and rank pari passu for all purposes, none of those shares need thereafter have a distinguishing number so long as it remains fully paid up and ranks pari passu for all purposes with all shares of the same class for the time being issued and fully paid up.]

**F232** Art. 192 repealed (6.4.2008 for art. 192(1)(b) and otherwise prosp.) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 2 (with arts. 7, 12)  
**F233** SI 1995/3272

**Transfer and registration**

**193.** <sup>F234</sup> .....

**F234** Art. 193 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 2 (with arts. 7, 12)

**Certification of transfers**

**194.** <sup>F235</sup> .....

**F235** Art. 194 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 2 (with arts. 7, 12)

**Duty of company as to issue of certificates**

**195.** <sup>F236</sup> .....



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**F236** Art. 195 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 2 (with arts. 7, 12)

### *Certificate to be evidence of title*

**196.** <sup>F237</sup> .....

**F237** Art. 196 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 2 (with arts. 7, 12)

### *Evidence of grant of representation or confirmation as executor*

**197.** <sup>F238</sup> .....

**F238** Art. 197 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 2 (with arts. 7, 12)

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

**198.** <sup>F239</sup> .....

**F239** Art. 198 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 2 (with arts. 7, 12)

## *Debentures*

### *Register of debenture holders*

**199** <sup>F240</sup> <sup>F241</sup> .....

**F240** mod. by SR 2004/307

**F241** Art. 199 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 2 (with arts. 7, 12)

### *Right to inspect register*

**200.** <sup>F242</sup> .....

**F242** Art. 200 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 2 (with arts. 7, 12, Sch. 4 para. 22(2))

### *Liability of trustees of debentures*

**201** <sup>F243</sup> <sup>F244</sup> .....

**F243** mod. by SR 2004/307

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**F244** Art. 201 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 2 (with arts. 7, 12)

**Perpetual debentures**

**202** <sup>F245</sup> <sup>F246</sup> .....

**F245** mod. by SR 2004/307  
**F246** Art. 202 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 2 (with arts. 7, 12)

**Power to re-issue redeemed debentures**

**203.** <sup>F247</sup> .....

**F247** Art. 203 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 2 (with arts. 7, 12)

**Contract to subscribe for debentures**

**204** <sup>F248</sup> <sup>F249</sup> .....

**F248** mod. by SR 2004/307  
**F249** Art. 204 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 2 (with arts. 7, 12)

**Payment of debts out of assets subject to floating charge**

**205.** <sup>F250</sup> .....

**F250** Art. 205 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 2 (with arts. 7, 12)

**PART VII**

**DISCLOSURE OF INTERESTS IN SHARES**

*Individual and group acquisitions*

**Obligation of disclosure; the cases in which it may arise and “the relevant time”**

**206.** <sup>F251</sup> .....

**F251** Arts. 206-228 repealed (20.1.2007) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), **Sch. 16**; S.I. 2006/3428, **art. 7(b)**, Sch. 3 Pt. 2 (with arts. 6, 8, Sch. 5)

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### ***Interests to be disclosed***

**207.** <sup>F252</sup> .....

**F252** Arts. 206-228 repealed (20.1.2007) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), **Sch. 16**; S.I. 2006/3428, **art. 7(b)**, Sch. 3 Pt. 2 (with arts. 6, 8, Sch. 5)

### ***“Percentage level” in relation to notifiable interests***

**208.** <sup>F253</sup> .....

**F253** Arts. 206-228 repealed (20.1.2007) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), **Sch. 16**; S.I. 2006/3428, **art. 7(b)**, Sch. 3 Pt. 2 (with arts. 6, 8, Sch. 5)

*Art. 209 rep. by 1990 NI 10*

### ***Particulars to be contained in notification***

**210.** <sup>F254</sup> .....

**F254** Arts. 206-228 repealed (20.1.2007) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), **Sch. 16**; S.I. 2006/3428, **art. 7(b)**, Sch. 3 Pt. 2 (with arts. 6, 8, Sch. 5)

### ***Notification of family and corporate interests***

**211.** <sup>F255</sup> .....

**F255** Arts. 206-228 repealed (20.1.2007) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), **Sch. 16**; S.I. 2006/3428, **art. 7(b)**, Sch. 3 Pt. 2 (with arts. 6, 8, Sch. 5)

### ***Agreement to acquire interests in a particular company***

**212.** <sup>F256</sup> .....

**F256** Arts. 206-228 repealed (20.1.2007) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), **Sch. 16**; S.I. 2006/3428, **art. 7(b)**, Sch. 3 Pt. 2 (with arts. 6, 8, Sch. 5)

### ***Obligation of disclosure arising under Article 212***

**213.** <sup>F257</sup> .....

**F257** Arts. 206-228 repealed (20.1.2007) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), **Sch. 16**; S.I. 2006/3428, **art. 7(b)**, Sch. 3 Pt. 2 (with arts. 6, 8, Sch. 5)

### ***Obligation of persons acting together to keep each other informed***

**214.** <sup>F258</sup> .....

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**F258** Arts. 206-228 repealed (20.1.2007) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), Sch. 16; S.I. 2006/3428, art. 7(b), Sch. 3 Pt. 2 (with arts. 6, 8, Sch. 5)

**Interests in shares by attribution**

**215.** <sup>F259</sup> .....

**F259** Arts. 206-228 repealed (20.1.2007) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), Sch. 16; S.I. 2006/3428, art. 7(b), Sch. 3 Pt. 2 (with arts. 6, 8, Sch. 5)

**Interests in shares which are to be notified**

**216.** <sup>F260</sup> .....

**F260** Arts. 206-228 repealed (20.1.2007) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), Sch. 16; S.I. 2006/3428, art. 7(b), Sch. 3 Pt. 2 (with arts. 6, 8, Sch. 5)

**Interests to be disregarded**

**217.** <sup>F261</sup> .....

**F261** Arts. 206-228 repealed (20.1.2007) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), Sch. 16; S.I. 2006/3428, art. 7(b), Sch. 3 Pt. 2 (with arts. 6, 8, Sch. 5)

**Other provisions about notification under this Part**

**218.** <sup>F262</sup> .....

**F262** Arts. 206-228 repealed (20.1.2007) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), Sch. 16; S.I. 2006/3428, art. 7(b), Sch. 3 Pt. 2 (with arts. 6, 8, Sch. 5)

**Power to make further provision by regulations**

**218A.** <sup>F263</sup> .....

**F263** Arts. 206-228 repealed (20.1.2007) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), Sch. 16; S.I. 2006/3428, art. 7(b), Sch. 3 Pt. 2 (with arts. 6, 8, Sch. 5)

*Registration and investigation of share acquisitions and disposals*

**Register of interests in shares**

**219.** <sup>F264</sup> .....

**F264** Arts. 206-228 repealed (20.1.2007) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), Sch. 16; S.I. 2006/3428, art. 7(b), Sch. 3 Pt. 2 (with arts. 6, 8, Sch. 5)

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### **Company investigations**

**220.** <sup>F265</sup> .....

**F265** Arts. 206-228 repealed (20.1.2007) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), **Sch. 16**; S.I. 2006/3428, **art. 7(b)**, Sch. 3 Pt. 2 (with arts. 6, 8, Sch. 5)

### **Registration of interests disclosed under Article 220**

**221.** <sup>F266</sup> .....

**F266** Arts. 206-228 repealed (20.1.2007) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), **Sch. 16**; S.I. 2006/3428, **art. 7(b)**, Sch. 3 Pt. 2 (with arts. 6, 8, Sch. 5)

### **Company investigation on requisition by members**

**222.** <sup>F267</sup> .....

**F267** Arts. 206-228 repealed (20.1.2007) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), **Sch. 16**; S.I. 2006/3428, **art. 7(b)**, Sch. 3 Pt. 2 (with arts. 6, 8, Sch. 5)

### **Company report to members**

**223.** <sup>F268</sup> .....

**F268** Arts. 206-228 repealed (20.1.2007) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), **Sch. 16**; S.I. 2006/3428, **art. 7(b)**, Sch. 3 Pt. 2 (with arts. 6, 8, Sch. 5)

### **Penalty for failure to provide information**

**224.** <sup>F269</sup> .....

**F269** Arts. 206-228 repealed (20.1.2007) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), **Sch. 16**; S.I. 2006/3428, **art. 7(b)**, Sch. 3 Pt. 2 (with arts. 6, 8, Sch. 5)

### **Removal of entries from register**

**225.** <sup>F270</sup> .....

**F270** Arts. 206-228 repealed (20.1.2007) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), **Sch. 16**; S.I. 2006/3428, **art. 7(b)**, Sch. 3 Pt. 2 (with arts. 6, 8, Sch. 5)

### **Otherwise, entries not to be removed**

**226.** <sup>F271</sup> .....

**F271** Arts. 206-228 repealed (20.1.2007) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), **Sch. 16**; S.I. 2006/3428, **art. 7(b)**, Sch. 3 Pt. 2 (with arts. 6, 8, Sch. 5)

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**Inspection of register and reports**

**227.** <sup>F272</sup> .....

**F272** Arts. 206-228 repealed (20.1.2007) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), **Sch. 16**; S.I. 2006/3428, **art. 7(b)**, Sch. 3 Pt. 2 (with arts. 6, 8, Sch. 5)

*Supplementary*

**Interpretation of Part VII**

**228.** <sup>F273</sup> .....

**F273** Arts. 206-228 repealed (20.1.2007) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), **Sch. 16**; S.I. 2006/3428, **art. 7(b)**, Sch. 3 Pt. 2 (with arts. 6, 8, Sch. 5)

**F274F275F276F277** Part VIII

Accounts and Audit

**F274** mod. SR 1994/133  
**F275** Pt. VIII substituted by S.I. 1990/593 (N.I. 5), **Pt. II**  
**F276** Pt. VIII modified by S.R. 2004/307 (as amended (1.10.2006) by Limited Liability Partnerships (Amendment) Regulations (Northern Ireland) 2006 (S.R. 2006/377), reg. 2, **Sch. 1**)  
**F277** Pt. VIII modified by {S.R. 2004/496}

Chapter 1

Provisions Applying to Companies Generally

*Accounting records*

**Duty to keep accounting records**

**229.** <sup>F278</sup> .....

**F278** Arts. 229-242ZZA repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 2 (with arts. 7, 12)

**Where and for how long records to be kept**

**230.** <sup>F279</sup> .....

**F279** Arts. 229-242ZZA repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 2 (with arts. 7, 12)

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## *A company's financial and accounting reference periods*

### **A company's financial year**

**231.** <sup>F280</sup> .....

**F280** Arts. 229-242ZZA repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), Sch. 16; S.I. 2007/3495, art. 8(a), Sch. 2 Pt. 2 (with arts. 7, 12)

### **Accounting reference periods and accounting reference date**

**232.** <sup>F281</sup> .....

**F281** Arts. 229-242ZZA repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), Sch. 16; S.I. 2007/3495, art. 8(a), Sch. 2 Pt. 2 (with arts. 7, 12)

### **Alteration of accounting reference date**

**233.** <sup>F282</sup> ..... <sup>F283</sup>

**F282** Arts. 229-242ZZA repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), Sch. 16; S.I. 2007/3495, art. 8(a), Sch. 2 Pt. 2 (with arts. 7, 12)

**F283** mod. SR 1994/133

## *Annual accounts*

### **Duty to prepare individual accounts**

**234.** <sup>F284</sup> .....

**F284** Arts. 229-242ZZA repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), Sch. 16; S.I. 2007/3495, art. 8(a), Sch. 2 Pt. 2 (with arts. 7, 12)

### **Companies Order individual accounts**

**234A.** <sup>F285</sup> .....

**F285** Arts. 229-242ZZA repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), Sch. 16; S.I. 2007/3495, art. 8(a), Sch. 2 Pt. 2 (with arts. 7, 12)

### **IAS individual accounts**

**234B.** <sup>F286</sup> .....

**F286** Arts. 229-242ZZA repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), Sch. 16; S.I. 2007/3495, art. 8(a), Sch. 2 Pt. 2 (with arts. 7, 12)

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## Duty to prepare group accounts

**235.** <sup>F287</sup> .....

**F287** Arts. 229-242ZZA repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), Sch. 16; S.I. 2007/3495, art. 8(a), Sch. 2 Pt. 2 (with arts. 7, 12)

## Companies Order group accounts

**235A.** <sup>F288</sup> .....

**F288** Arts. 229-242ZZA repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), Sch. 16; S.I. 2007/3495, art. 8(a), Sch. 2 Pt. 2 (with arts. 7, 12)

## IAS group accounts

**235B.** <sup>F289</sup> .....

**F289** Arts. 229-242ZZA repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), Sch. 16; S.I. 2007/3495, art. 8(a), Sch. 2 Pt. 2 (with arts. 7, 12)

## Consistency of accounts

**235C.** <sup>F290</sup> .....

**F290** Arts. 229-242ZZA repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), Sch. 16; S.I. 2007/3495, art. 8(a), Sch. 2 Pt. 2 (with arts. 7, 12)

## Exemption for parent companies included in accounts of larger group

**236.** <sup>F291</sup> .....

**F291** Arts. 229-242ZZA repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), Sch. 16; S.I. 2007/3495, art. 8(a), Sch. 2 Pt. 2 (with arts. 7, 12)

## Exemption for parent companies included in non#EEA group accounts

**236A.** <sup>F292</sup> .....

**F292** Arts. 229-242ZZA repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), Sch. 16; S.I. 2007/3495, art. 8(a), Sch. 2 Pt. 2 (with arts. 7, 12)

## Subsidiary undertakings included in the consolidation

**237.** <sup>F293</sup> .....

**F293** Arts. 229-242ZZA repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), Sch. 16; S.I. 2007/3495, art. 8(a), Sch. 2 Pt. 2 (with arts. 7, 12)



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## Treatment of individual profit and loss account where group accounts prepared

**238.** <sup>F294</sup> .....

**F294** Arts. 229-242ZZA repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), Sch. 16; S.I. 2007/3495, art. 8(a), Sch. 2 Pt. 2 (with arts. 7, 12)

## Disclosure required in notes to accounts: related undertakings

**239.** <sup>F295</sup> .....

**F295** Arts. 229-242ZZA repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), Sch. 16; S.I. 2007/3495, art. 8(a), Sch. 2 Pt. 2 (with arts. 7, 12)

## Disclosure required in notes to annual accounts: particulars of staff

**239A.** <sup>F296</sup> .....

**F296** Arts. 229-242ZZA repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), Sch. 16; S.I. 2007/3495, art. 8(a), Sch. 2 Pt. 2 (with arts. 7, 12)

## Disclosure required in notes to accounts: emoluments and other benefits of directors and others

**240** <sup>F297</sup> <sup>F298</sup> .....

**F297** mod. SR 1994/133  
**F298** Arts. 229-242ZZA repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), Sch. 16; S.I. 2007/3495, art. 8(a), Sch. 2 Pt. 2 (with arts. 7, 12) and art. 240 subject to an amendment (6.4.2008) by Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2008/948), arts. 2(2), 3(1)(b)(2), Sch. 1 para. 135, {Sch. 2 Note 1} (with arts. 6, 11, 12)

## *Approval and signing of accounts*

### Approval and signing of accounts

**241** <sup>F299</sup> <sup>F300</sup> .....

**F299** mod. SR 1994/133  
**F300** Arts. 229-242ZZA repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), Sch. 16; S.I. 2007/3495, art. 8(a), Sch. 2 Pt. 2 (with arts. 7, 12)

## *DIRECTORS' REPORT*

### Duty to prepare directors' report

**242.** <sup>F301</sup> .....

*Status: Point in time view as at 06/04/2008. This version of this Order contains provisions that are not valid for this point in time.*

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**F301** Arts. 229-242ZZA repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), Sch. 16; S.I. 2007/3495, art. 8(a), Sch. 2 Pt. 2 (with arts. 7, 12)

**Directors' report: general requirements**

**242ZZA.** <sup>F302</sup> .....

**F302** Arts. 229-242ZZA repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), Sch. 16; S.I. 2007/3495, art. 8(a), Sch. 2 Pt. 2 (with arts. 7, 12)

**Directors' report: business review**

**242ZZB.** <sup>F303</sup> .....

**F303** Art. 242ZZB repealed (1.10.2007) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), Sch. 16; S.I. 2007/2194, arts. 1(3)(a), 8, Sch. 2 Pt. 2 (with art. 12, Sch. 3 para. 43(2))

**F304** .....

**F304** Arts. 242ZA-259 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), Sch. 16; S.I. 2007/3495, art. 8(a), Sch. 2 Pt. 2 (with arts. 7, 12)

**Approval and signing of directors' report**

**242A.** <sup>F305</sup> .....

**F305** Arts. 242ZA-259 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), Sch. 16; S.I. 2007/3495, art. 8(a), Sch. 2 Pt. 2 (with arts. 7, 12)

*F306* ...

**F306** Heading before art. 242AA omitted (31.3.2006) by virtue of Companies (1986 Order) (Operating and Financial Review) (Repeal) Regulations (Northern Ireland) 2006 (S.R. 2006/94), reg. 2(2), Sch. para. 2

**Duty to prepare operating and financial review**

**242AA.** <sup>F307</sup> .....

**F307** Art. 242AA repealed (31.3.2006) by Companies (1986 Order) (Operating and Financial Review) (Repeal) Regulations (Northern Ireland) 2006 (S.R. 2006/94), reg. 2(1)

**Approval and signing of operating and financial review**

**242AB.** <sup>F308</sup> .....

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**F308** Art. 242AB omitted (31.3.2006) by virtue of Companies (1986 Order) (Operating and Financial Review) (Repeal) Regulations (Northern Ireland) 2006 (S.R. 2006/94), reg. 2(2), **Sch. para. 3**

*Quoted companies: directors' remuneration report*

**Duty to prepare directors' remuneration report**

**242B.** <sup>F309</sup> .....

**F309** Arts. 242ZA-259 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 2 (with arts. 7, 12)

**Approval and signing of directors' remuneration report**

**242C.** <sup>F310</sup> .....

**F310** Arts. 242ZA-259 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 2 (with arts. 7, 12)

*[<sup>F311</sup> Auditors' report]*

**F311** 1990 NI 5

**Auditors' report**

**243.** <sup>F312</sup> .....

**F312** Arts. 242ZA-259 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 2 (with arts. 7, 12, Sch. 4 paras. 9(2), 12(2))

**Signature of auditors' report**

**244.** <sup>F313</sup> .....

**F313** Arts. 242ZA-259 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 2 (with arts. 7, 12, Sch. 4 para. 12(2))

**Duties of auditors**

**245.** <sup>F314</sup> .....

**F314** Arts. 242ZA-259 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 2 (with arts. 7, 12, Sch. 4 para. 12(2))

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*[<sup>F315</sup>Publication of accounts and reports]*

**F315** 1990 NI 5

**Persons entitled to receive copies of accounts and reports**

**246.** <sup>F316</sup> .....

**F316** Art. 246 repealed (20.1.2007 for art. 246(4A)-(4E) and otherwise prosp.) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), **Sch. 16**; S.I. 2006/3428, **art. 7(b)**, Sch. 3 Pt. 2 (with arts. 6, 8, Sch. 5)

**Time allowed for sending out copies of accounts and reports**

**246A.** <sup>F317</sup> .....

**F317** Arts. 242ZA-259 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 2 (with arts. 7, 12)

**Right to demand copies of accounts and reports**

**247.** <sup>F318</sup> .....

**F318** Art. 247 repealed (20.1.2007 for art. 247(2A)(2B) and otherwise prosp.) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), **Sch. 16**; S.I. 2006/3428, **art. 7(b)**, Sch. 3 Pt. 2 (with arts. 6, 8, Sch. 5)

**Requirements in connection with publication of accounts**

**248.** <sup>F319</sup> .....

**F319** Arts. 242ZA-259 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 2 (with arts. 7, 12)

*[<sup>F320</sup>Laying and delivering of accounts and reports]*

**F320** 1990 NI 5

**shell centre redevAccounts and reports to be laid before company in general meeting**

**249.** <sup>F321</sup> .....

**F321** Art. 249 repealed (1.10.2007 for certain purposes and otherwise prosp.) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), **Sch. 16**; S.I. 2007/2194, arts. 1(3)(a), **8**, Sch. 2 Pt. 2 (with art. 12)

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## Members' approval of directors' remuneration report

249A. <sup>F322</sup> .....

**F322** Arts. 242ZA-259 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), Sch. 16; S.I. 2007/3495, art. 8(a), Sch. 2 Pt. 2 (with arts. 7, 12)

## Accounts and reports to be delivered to the registrar

250. <sup>F323</sup> .....

**F323** Arts. 242ZA-259 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), Sch. 16; S.I. 2007/3495, art. 8(a), Sch. 2 Pt. 2 (with arts. 7, 12)

## Civil penalty for failure to deliver accounts

250A. <sup>F324</sup> .....

**F324** Arts. 242ZA-259 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), Sch. 16; S.I. 2007/3495, art. 8(a), Sch. 2 Pt. 2 (with arts. 7, 12) and art. 250A subject to amendments (6.4.2008) by S.R. 2008/133, {regs. 2, 3}

## Delivery and publication of accounts in ECUs

250B. <sup>F325</sup> .....

**F325** Arts. 242ZA-259 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), Sch. 16; S.I. 2007/3495, art. 8(a), Sch. 2 Pt. 2 (with arts. 7, 12)

*Art. 251 rep. by SR 2004/496*

## Period allowed for laying and delivering accounts and reports

252. <sup>F326</sup> .....

**F326** Arts. 242ZA-259 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), Sch. 16; S.I. 2007/3495, art. 8(a), Sch. 2 Pt. 2 (with arts. 7, 12)

*[<sup>F327</sup>Revision of defective accounts and reports]*

**F327** 1990 NI 5

## Voluntary revision of annual accounts or directors' report

253. <sup>F328</sup> .....

**F328** Arts. 242ZA-259 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), Sch. 16; S.I. 2007/3495, art. 8(a), Sch. 2 Pt. 2 (with arts. 7, 12)

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**Department's notice in respect of annual accounts**

**253A.** <sup>F329</sup> .....

**F329** Arts. 242ZA-259 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 2 (with arts. 7, 12)

**Application to court in respect of defective accounts**

**253B.** <sup>F330</sup> .....

**F330** Arts. 242ZA-259 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 2 (with arts. 7, 12)

**Other persons authorised to apply to court**

**253C.** <sup>F331</sup> .....

**F331** Arts. 242ZA-259 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 2 (with arts. 7, 12)

**Disclosure of information held by Inland Revenue to persons authorised to apply to court**

**253D** <sup>F332</sup> .....

**F332** Arts. 242ZA-259 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 2 (with arts. 7, 12)

**Restrictions on use and further disclosure of information disclosed under Article 253D**

**253E** <sup>F333</sup> .....

**F333** Arts. 242ZA-259 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 2 (with arts. 7, 12)

.....

**253F** <sup>F334</sup> .....

**F334** Arts. 242ZA-259 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 2 (with arts. 7, 12)

[<sup>F335</sup>CHAPTER II]

[<sup>F335</sup>Exemptions, exceptions and special provisions]

**F335** 1990 NI 5

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*[<sup>F336</sup>Small and medium#sized companies and groups]*

F336 1990 NI 5

**Special provisions for small companies**

254. <sup>F337</sup> .....

F337 Arts. 242ZA-259 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), Sch. 16; S.I. 2007/3495, art. 8(a), Sch. 2 Pt. 2 (with arts. 7, 12)

**Special provisions for medium#sized companies**

254A. <sup>F338</sup> .....

F338 Art. 254A repealed (1.10.2007 for art. 254A(2A), otherwise prosp.) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), Sch. 16; S.I. 2007/2194, arts. 1(3)(a), 8, Sch. 2 Pt. 2 (with art. 12)

**Qualification of company as small or medium#sized**

255. <sup>F339</sup> .....

F339 Arts. 242ZA-259 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), Sch. 16; S.I. 2007/3495, art. 8(a), Sch. 2 Pt. 2 (with arts. 7, 12)

**Cases in which special provisions do not apply**

255A. <sup>F340</sup> .....

F340 Arts. 242ZA-259 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), Sch. 16; S.I. 2007/3495, art. 8(a), Sch. 2 Pt. 2 (with arts. 7, 12)

**Special auditors' report**

255B. <sup>F341</sup> .....

F341 Arts. 242ZA-259 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), Sch. 16; S.I. 2007/3495, art. 8(a), Sch. 2 Pt. 2 (with arts. 7, 12)

**Exemption for small and medium#sized groups**

256. <sup>F342</sup> .....

F342 Arts. 242ZA-259 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), Sch. 16; S.I. 2007/3495, art. 8(a), Sch. 2 Pt. 2 (with arts. 7, 12)

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**Group accounts prepared by small company**

**256A.** <sup>F343</sup> .....

**F343** Arts. 242ZA-259 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 2 (with arts. 7, 12)

**Qualification of group as small or medium-sized**

**257.** <sup>F344</sup> .....

**F344** Arts. 242ZA-259 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 2 (with arts. 7, 12)

*[<sup>F345</sup>Exemptions from audit for certain categories of small company]*

**F345** SR 1995/128

**Exemptions from audit**

**257A.** <sup>F346</sup> .....

**F346** Arts. 242ZA-259 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 2 (with arts. 7, 12, Sch. 4 para. 9(2))

**Dormant Companies**

**257AA.** <sup>F347</sup> .....

**F347** Arts. 242ZA-259 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 2 (with arts. 7, 12, Sch. 4 para. 9(2))

**Cases where exemptions not available**

**257B.** <sup>F348</sup> .....

**F348** Arts. 242ZA-259 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 2 (with arts. 7, 12, Sch. 4 para. 9(2))

**The report required for the purposes of Article 257A(2)**

**257C.** <sup>F349</sup> .....

**F349** Art. 257C repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1175, 1284(2), 1295, 1300(2), **Sch. 9 para. 13**, Sch. 16; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 2 (with arts. 7, 12)



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## The reporting accountant

**257D.** <sup>F350</sup> .....

**F350** Art. 257D repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1175, 1284(2), 1295, 1300(2), **Sch. 9 para. 14**, Sch. 16; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 2 (with arts. 7, 12)

## Effect of exemptions

**257E.** <sup>F351</sup> .....

**F351** Arts. 242ZA-259 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 2 (with arts. 7, 12)

*Art. 258 rep. by SR 2001/153*

*[<sup>F352</sup>Listed public companies]*

**F352** 1990 NI 5

## Summary financial statement

**259.** <sup>F353</sup> .....

**F353** Art. 259 repealed (20.1.2007 for art. 259(2A)-(2E) and otherwise prosp.) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), **Sch. 16**; S.I. 2006/3428, **art. 7(b)**, Sch. 3 Pt. 2 (with arts. 6, 8, Sch. 5)

*Private companies*

## Election to dispense with laying of accounts and reports before general meeting

**260.** <sup>F354</sup> .....

**F354** Art. 260 repealed (1.10.2007) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), **Sch. 16**; S.I. 2007/2194, arts. 1(3)(a), **8**, Sch. 2 Pt. 2 (with art. 12, Sch. 3 para. 49)

## Right of shareholder to require laying of accounts

**261.** <sup>F355</sup> .....

**F355** Art. 261 repealed (20.1.2007 for art. 261(2A) and otherwise prosp.) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), **Sch. 16**; S.I. 2006/3428, **art. 7(b)**, Sch. 3 Pt. 2 (with arts. 6, 8, Sch. 5)

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*Unlimited companies*

**Exemption from requirement to deliver accounts and reports**

**262.** <sup>F356</sup> .....

**F356** Arts. 262-289 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 2 (with arts. 7, 12, Sch. 4 para. 33(2))

*[<sup>F357</sup>Banking and insurance companies and groups]*

**F357** SR 1992/258

**Special provisions for banking and insurance companies**

**263.** <sup>F358</sup> .....

**F358** Arts. 262-289 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 2 (with arts. 7, 12, Sch. 4 para. 33(2))

**Special provisions for banking and insurance groups**

**263A.** <sup>F359</sup> .....

**F359** Arts. 262-289 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 2 (with arts. 7, 12, Sch. 4 para. 33(2))

**Modification of disclosure requirements in relation to banking company or group**

**263B.** <sup>F360</sup> .....

**F360** Arts. 262-289 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 2 (with arts. 7, 12, Sch. 4 para. 33(2))

*Art. 263C rep. by SR 1994/428*

**Power to apply provisions to banking partnerships**

**263D.** <sup>F361</sup> .....

**F361** Arts. 262-289 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 2 (with arts. 7, 12, Sch. 4 para. 33(2))

**[<sup>F362</sup>CHAPTER III]**

**SUPPLEMENTARY PROVISIONS**

**F362** 1990 NI 5

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*[<sup>F363</sup>Accounting standards]*

**F363** 1990 NI 5

**Accounting standards**

**264.** <sup>F364</sup> .....

**F364** Arts. 262-289 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 2 (with arts. 7, 12, Sch. 4 para. 33(2))

*Power to alter accounting requirements*

**Power of Department to alter accounting requirements**

**265.** <sup>F365</sup> .....

**F365** Arts. 262-289 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 2 (with arts. 7, 12, Sch. 4 para. 33(2))

*Parent and subsidiary undertakings*

**Parent and subsidiary undertakings**

**266.** <sup>F366</sup> .....

**F366** Arts. 262-289 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 2 (with arts. 7, 12, Sch. 4 para. 33(2))

*[<sup>F367</sup>Other interpretation provisions]*

**F367** 1990 NI 5

**Meaning of “undertaking” and related expressions**

**267.** <sup>F368</sup> .....

**F368** Arts. 262-289 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 2 (with arts. 7, 12, Sch. 4 para. 33(2))

**Participating interests**

**268.** <sup>F369</sup> .....

**F369** Arts. 262-289 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 2 (with arts. 7, 12, Sch. 4 para. 33(2))

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## Notes to the accounts

269. <sup>F370</sup> .....

**F370** Arts. 262-289 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 2 (with arts. 7, 12, Sch. 4 para. 33(2))

## Minor definitions

270. <sup>F371</sup> .....

**F371** Art. 270 repealed (20.1.2007 for the definition of "address" and otherwise prosp.) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), **Sch. 16**; S.I. 2006/3428, **art. 7(b)**, Sch. 3 Pt. 2 (with arts. 6, 8, Sch. 5)

## Index of defined expressions

270A. <sup>F372</sup> .....

**F372** Art. 270A repealed (20.1.2007 for the entry "address" and otherwise prosp.) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), **Sch. 16**; S.I. 2006/3428, **art. 7(b)**, Sch. 3 Pt. 2 (with arts. 6, 8, Sch. 5)

# PART IX

## DISTRIBUTION OF PROFITS AND ASSETS

### *Limits of company's power of distribution*

#### *Certain distributions prohibited*

271. <sup>F373</sup> .....

**F373** Arts. 262-289 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 2 (with arts. 7, 12, Sch. 4 para. 33(2))

#### *Restriction on distribution of assets*

272. <sup>F374</sup> .....

**F374** Arts. 262-289 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 2 (with arts. 7, 12, Sch. 4 para. 33(2))

#### *Other distributors by investment companies*

273. <sup>F375</sup> .....

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**F375** Arts. 262-289 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 2 (with arts. 7, 12, Sch. 4 para. 33(2))

**Meaning of “investment company”**

**274.** <sup>F376</sup> .....

**F376** Arts. 262-289 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 2 (with arts. 7, 12, Sch. 4 para. 33(2))

**Extension of Articles 273 and 274 to other companies**

**275.** <sup>F377</sup> .....

**F377** Arts. 262-289 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 2 (with arts. 7, 12, Sch. 4 para. 33(2))

**Realised profits of insurance company with long term business**

**276.** <sup>F378</sup> .....

**F378** Arts. 262-289 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 2 (with arts. 7, 12, Sch. 4 para. 33(2))

**Treatment of development costs**

**277.** <sup>F379</sup> .....

**F379** Arts. 262-289 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 2 (with arts. 7, 12, Sch. 4 para. 33(2))

*Relevant accounts*

**Distribution to be justified by reference to company's accounts**

**278.** <sup>F380</sup> .....

**F380** Arts. 262-289 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 2 (with arts. 7, 12, Sch. 4 para. 33(2))

**Requirements for last annual accounts**

**279.** <sup>F381</sup> .....

**F381** Arts. 262-289 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 2 (with arts. 7, 12, Sch. 4 para. 33(2))

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**Requirements for interim accounts**

**280.** <sup>F382</sup> .....

**F382** Arts. 262-289 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 2 (with arts. 7, 12, Sch. 4 para. 33(2))

**Requirements for initial accounts**

**281.** <sup>F383</sup> .....

**F383** Arts. 262-289 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 2 (with arts. 7, 12, Sch. 4 para. 33(2))

**Method of apply Article 278 so successive distributions**

**282.** <sup>F384</sup> .....

**F384** Arts. 262-289 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 2 (with arts. 7, 12, Sch. 4 para. 33(2))

**Treatment of assets in the relevant accounts**

**283.** <sup>F385</sup> .....

**F385** Arts. 262-289 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 2 (with arts. 7, 12, Sch. 4 para. 33(2))

**Distributors in kind**

**284.** <sup>F386</sup> .....

**F386** Arts. 262-289 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 2 (with arts. 7, 12, Sch. 4 para. 33(2))

*Supplementary*

**Consequences of unlawful distribution**

**285.** <sup>F387</sup> .....

**F387** Arts. 262-289 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 2 (with arts. 7, 12, Sch. 4 para. 33(2))

**Saving for provision in a company's articles operative before the Order of 1981**

**286.** <sup>F388</sup> .....

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**F388** Arts. 262-289 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 2 (with arts. 7, 12, Sch. 4 para. 33(2))

### ***Distributions by banking or insurance companies***

**287.** <sup>F389</sup> .....

**F389** Arts. 262-289 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 2 (with arts. 7, 12, Sch. 4 para. 33(2))

### ***Interpretation for Part IX***

**288.** <sup>F390</sup> .....

**F390** Arts. 262-289 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 2 (with arts. 7, 12, Sch. 4 para. 33(2))

### ***Saving for other restraints on distribution***

**289.** <sup>F391</sup> .....

**F391** Arts. 262-289 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 2 (with arts. 7, 12, Sch. 4 para. 33(2))

## **PART X**

### **A COMPANY'S MANAGEMENT; DIRECTORS AND SECRETARIES; THEIR QUALIFICATIONS, DUTIES AND RESPONSIBILITIES**

#### *Officers and registered office*

#### ***Directors***

**290.** <sup>F392</sup> .....

**F392** Art. 290 repealed (1.10.2007) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), **Sch. 16**; S.I. 2007/2194, arts. 1(3)(a), **8**, Sch. 2 Pt. 2 (with art. 12)

#### ***Secretary***

**291.** <sup>F393</sup> .....

**F393** Art. 291 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 2 (with arts. 7, 12)

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### **Acts done by person in dual capacity**

**292.** <sup>F394</sup> .....

**F394** Art. 292 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), Sch. 16; S.I. 2007/3495, art. 8(a), Sch. 2 Pt. 2 (with arts. 7, 12)

### **Validity of acts of directors**

**293.** <sup>F395</sup> .....

**F395** Art. 293 repealed (1.10.2007) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), Sch. 16; S.I. 2007/2194, arts. 1(3)(a), 8, Sch. 2 Pt. 2 (with art. 12, Sch. 3 para. 4(2))

### **Qualifications of company secretaries**

**294.** <sup>F396</sup> .....

**F396** Art. 294 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), Sch. 16; S.I. 2007/3495, art. 8(a), Sch. 2 Pt. 2 (with arts. 7, 12, Sch. 4 para. 5(2))

### **[<sup>F397</sup>Registered office**

**295** <sup>F398</sup>.—(1) A company shall at all times have a registered office to which all communications and notices may be addressed.

(2) On incorporation the situation of the company's registered office is that specified in the statement sent to the registrar under Article 21.

(3) The company may change the situation of its registered office from time to time by giving notice in the prescribed form to the registrar.

(4) The change takes effect upon the notice being registered by the registrar, but until the end of the period of 14 days beginning with the date on which it is registered a person may validly serve any document on the company at its previous registered office.

(5) For the purposes of any duty of a company—

(a) to keep at its registered office, or make available for public inspection there, any register, index or other document, or

(b) to mention the address of its registered office in any document,

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

(6) Where a company unavoidably ceases to perform at its registered office any such duty as is mentioned in paragraph (5)(a) in circumstances in which it was not practicable to give prior notice to the registrar of a change in the situation of its registered office, but—

(a) resumes performance of that duty at other premises as soon as practicable, and

(b) gives notice accordingly to the registrar of a change in the situation of its registered office within 14 days of doing so,

it shall not be treated as having failed to comply with that duty.



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(7) In proceedings for an offence of failing to comply with any such duty as is mentioned in paragraph (5), it is for the person charged to show that by reason of the matters referred to in that paragraph or paragraph (6) no offence was committed.]

**F397** 1990 NI 10, art. 71  
**F398** mod. by SR 2004/307

### **Register of directors and secretaries**

**296**<sup>F399</sup>.—<sup>F400</sup>(1) Every company shall keep, at the same office as its register of members is kept, a register of its directors and secretaries; and the register shall, with respect to the particulars to be contained in it of those persons, comply with Articles 297 and 298.

(2) The company shall, within the period of 14 days from the occurrence of—

- (a) any change among its directors or in its secretary, or
- (b) any change in particulars contained in the register,

send to the registrar a notification in the prescribed form of the change and of the date on which it occurred; and a notification of a person having become a director or secretary, or one of joint secretaries, of the company shall contain a consent, signed by that person, to act in the relevant capacity.

(3) The register shall<sup>F401</sup> . . . be open to the inspection of any member of the company without charge and of any other person on payment of<sup>F401</sup> such fee as may be prescribed].

(4) If an inspection required under this Article is refused, or if default is made in complying with paragraph (1) or (2), the company and every officer of it who is in default is liable to a fine and, for continued contravention, to a daily default fine.

(5) In the case of a refusal of inspection of the register, the court may by order compel an immediate inspection of it.

(6) For the purposes of this Article and Article 297, a shadow director of a company is deemed a director and officer of it.

**F399** mod. by 2000 c. 38  
**F400** mod. by SR 2004/307  
**F401** 1990 NI 10

### **Particulars of directors to be registered under Article 296**

**297.**—(1) Subject to the provisions of this Article, the register kept by a company under Article 296 shall contain the following particulars with respect to each director—

- (a) in the case of an individual—
  - (i) his present<sup>F402</sup> name],
  - (ii) any former<sup>F402</sup> name],
  - (iii) his usual residential address,
  - (iv) his nationality,
  - (v) his business occupation (if any),
  - (vi) particulars of any other directorships held by him or which have been held by him, and

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- [<sup>F402</sup>(vii) the date of his birth;]
- (b) in the case of a corporation[<sup>F402</sup> or Scottish firm], its corporate[<sup>F402</sup> or firm] name and registered or principal office, and particulars of any other directorships held by it or which have been held by it.
- [<sup>F402</sup>(2) In paragraph (1)(a)—
- (a) “name” means a person's Christian name (or other forename) and surname, except that in the case of a peer, or an individual usually known by a title, the title may be stated instead of his Christian name (or other forename) and surname, or in addition to either or both or them; and
- (b) the reference to a former name does not include—
- (i) in the case of a peer, or an individual normally known by a British title, the name by which he was known previous to the adoption of or succession to the title, or
- (ii) in the case of any person, a former name which was changed or disused before he attained the age of 18 years or which has been changed or disused for 20 years or more, or
- (iii) in the case of a married woman, the name by which she was known previous to the marriage.]
- (3) It is not necessary for the register to contain on any day particulars of a directorship—
- (a) which has not been held by a director at any time during the 5 years preceding that day,
- (b) which is held by a director in a company which—
- (i) is dormant or grouped with the company keeping the register, and
- (ii) if he also held that directorship for any period during those 5 years, was for the whole of that period either dormant or so grouped,
- (c) which was held by a director for any period during those 5 years in a company which for the whole of that period was either dormant or grouped with the company keeping the register.
- (4) For the purposes of paragraph (3), “company” includes any body incorporated in Northern Ireland; and—
- (a) [<sup>F403</sup>section 481 of the Companies Act 2006] applies as regards whether and when a company is or has been dormant, and
- (b) a company is to be regarded as being or having been grouped with another at any time if at that time it is or was a company of which the other is or was a wholly-owned subsidiary, or if it is or was a wholly-owned subsidiary of the other or of another company of which that other is or was a wholly-owned subsidiary.

**F402** 1990 NI 10

**F403** Words in art. 297(4)(a) substituted (6.4.2008) by Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2008/948), arts. 2(2), 3(1)(b), **Sch. 1 para. 136** (with arts. 6, 11, 12)

### ***Particulars of secretaries to be registered under Article 296***

**298.**—(1) The register to be kept by a company under Article 296 shall contain the following particulars with respect to the secretary [<sup>F404</sup>(if any)] or, where there are joint secretaries, with respect to each of them—

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- (a) in the case of an individual, his present<sup>F405</sup> name], any former<sup>F405</sup> name] and his usual residential address, and
  - (b) in the case of a body corporate or a Scottish firm, its corporate or firm name and registered or principal office.
- (2) Where all the partners in a firm are joint secretaries, the name and principal office of the firm may be stated instead of the particulars mentioned in paragraph (1).
- <sup>F405</sup>(3) Article 297(2)(a) and (b) apply for the purposes of the obligation under paragraph (1)(a) of this Article to state the name or former name of an individual.]

**F404** Words in art. 298(1) inserted (6.4.2008) by Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2008/948), arts. 2(2), 3(1)(b), **Sch. 1 para. 137** (with arts. 6, 11, 12)

**F405** 1990 NI 10

*Provisions governing appointment of directors*

**Share qualifications of directors**

- 299.—(1) It is the duty of every director who is by the company's articles required to hold a specified share qualification, and who is not already qualified, to obtain his qualification within 2 months after his appointment, or such shorter time as may be fixed by the articles.
- (2) For the purpose of any provision of the company's articles requiring a director to hold any specified share qualification, the bearer of a share warrant is not deemed the holder of the shares specified in the warrant.
- (3) The office of director of a company is vacated if the director does not within 2 months from the date of his appointment (or within such shorter time as may be fixed by its articles) obtain his qualification, or if after the expiration of that period or shorter time he ceases at any time to hold his qualification.
- (4) A person vacating office under this Article is incapable of being reappointed a director of the company until he has obtained his qualification.
- (5) If after the expiration of that period or shorter time any unqualified person acts as a director of the company, he is liable to a fine and, for continued contravention, to a daily default fine.

**Appointment of directors to be voted on individually**

**300.** <sup>F406</sup> .....

**F406** Art. 300 repealed (1.10.2007) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), **Sch. 16**; S.I. 2007/2194, arts. 1(3)(a), **8**, Sch. 2 Pt. 2 (with art. 12)

**Age limit for directors**

**301.** <sup>F407</sup> .....

**F407** Art. 301 repealed (6.4.2007) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), **Sch. 16**; S.I. 2006/3428, **art. 4(2)(c)** (subject to art. 5, Sch. 1 and with arts. 6, 8, Sch. 5)

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### ***Duty of director to disclose his age***

**302.** <sup>F408</sup> .....

**F408** Art. 302 repealed (6.4.2007) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), Sch. 16; S.I. 2006/3428, art. 4(2)(c) (subject to art. 5, Sch. 1 and with arts. 6, 8, Sch. 5)

*Arts. 303#310 rep. by 1989 NI 18*

### *Removal of directors*

#### ***Resolution to remove director***

**311.** <sup>F409</sup> .....

**F409** Art. 311 repealed (1.10.2007) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), Sch. 16; S.I. 2007/2194, arts. 1(3)(a), 8, Sch. 2 Pt. 2 (with art. 12)

#### ***Director's right to protest removal***

**312.** <sup>F410</sup> .....

**F410** Art. 312 repealed (1.10.2007) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), Sch. 16; S.I. 2007/2194, arts. 1(3)(a), 8, Sch. 2 Pt. 2 (with art. 12, Sch. 3 para. 5(2))

### *Other provisions about directors and officers*

#### ***Directors' names on company correspondence, etc.***

**313** <sup>F411</sup>.—(1) A company to which this Article applies shall not state, in any form, the name of any its directors (otherwise than in the text or as a signatory) on any business letter on which the company's name appears unless it states on the letter in legible characters<sup>[F412</sup> the name of every director of the company].

(2) This Article applies to—

- (a) every company registered under this Order or under the former Companies Acts (except a company registered before 23rd November 1916); and
- (b) every company incorporated outside Northern Ireland which has an established place of business within Northern Ireland unless it had established such a place of business before that date.

(3) If a company makes default in complying with this Article, every officer of the company who is in default is liable for each offence to a fine; and for this purpose, where a corporation is an officer of the company, any officer of the corporation is deemed an officer of the company.

<sup>[F412</sup>(4) For the purposes of the obligation under paragraph (1) to state the name of every director of the company, a person's "name" means—

- (a) in the case of an individual, his Christian name (or other forename) and surname; and
- (b) in the case of a corporation or Scottish firm, its corporate or firm name.

(5) The initial or a recognised abbreviation of a person's Christian name or other forename may be stated instead of the full Christian name or other forename.

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(6) In the case of a peer, or an individual usually known by a title, the title may be stated instead of his Christian name (or other forename) and surname or in addition to either or both of them.

(7) In this Article “director” includes a shadow director and the reference in paragraph (3) to an “officer” shall be construed accordingly.]

F411 mod. by 2000 c. 38  
F412 1990 NI 10

**Limited company may have directors with unlimited liability**

314.—(1) In the case of a limited company, the liability of the directors or of the managing director may, if so provided by the memorandum, be unlimited.

(2) In the case of a limited company in which the liability of a director is unlimited, the directors of the company and the member who proposes any person for election or appointment to the office of director, shall add to that proposal a statement that the liability of the person holding that office will be unlimited.

(3) Before the person accepts the office or acts in it, notice in writing that his liability will be unlimited shall be given to him by the following or one of the following persons, namely—

- (a) the promoters of the company,
- (b) the directors of the company,
- (c) the company secretary.

(4) If a director or proposer makes default in adding such a statement, or if a promoter, director or secretary makes default in giving the notice required by paragraph (3), then—

- (a) he is liable to a fine, and
- (b) he is also liable for any damage which the person so elected or appointed may sustain from the default;

but the liability of the person elected or appointed is not affected by the default.

**Special resolution making liability of directors unlimited**

315.—(1) A limited company, if so authorised by its articles, may by special resolution alter its memorandum so as to render unlimited the liability of its directors or of any managing director.

(2) When such a special resolution is passed, its provisions are as valid as if they had been originally contained in the memorandum.

**Assignment of office by directors**

316. If provision is made by a company's articles, or by any agreement entered into between any person and the company, for empowering a director of the company to assign his office as such to another person, any assignment of office made in pursuance of that provision is (notwithstanding anything to the contrary contained in the provision) of no effect unless and until it is approved by a special resolution of the company.

**Directors to have regard to interests of employees**

317. <sup>F413</sup> .....

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**F413** Art. 317 repealed (1.10.2007) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), Sch. 16; S.I. 2007/2194, arts. 1(3)(a), 8, Sch. 2 Pt. 2 (with art. 12)

### Provisions protecting directors from liability

**317A.**—(1) This Article applies in relation to any liability attaching to a director of a company in connection with any negligence, default, breach of duty or breach of trust by him in relation to the company.

(2) Any provision which purports to exempt (to any extent) a director of a company from any liability within paragraph (1) is void.

(3) Subject to paragraphs (4) and (5), any provision by which a company directly or indirectly provides (to any extent) an indemnity for a director of—

- (a) the company, or
- (b) an associated company,

against any liability within paragraph (1) is void.

(4) Paragraph (3) does not apply to a qualifying third party indemnity provision within the meaning of Article 317B(1).

(5) Paragraph (3) does not prevent a company from purchasing and maintaining for a director of—

- (a) the company, or
- (b) an associated company,

insurance against any liability within paragraph (1).

(6) In this Article—

“associated company”, in relation to a company (“C”), means a company which is C's subsidiary, or C's holding company or a subsidiary of C's holding company;

“provision” means a provision of any nature, whether or not it is contained in a company's articles or in any contract with a company.

### Qualifying third party indemnity provisions

**317B.**—(1) For the purposes of Article 317A(4) a provision is a qualifying third party indemnity provision if it is a provision such as is mentioned in Article 317A(3) in relation to which conditions A to C are satisfied.

(2) Condition A is that the provision does not provide any indemnity against any liability incurred by the director—

- (a) to the company, or
- (b) to any associated company.

(3) Condition B is that the provision does not provide any indemnity against any liability incurred by the director to pay—

- (a) a fine imposed in criminal proceedings, or
- (b) a sum payable to a regulatory authority by way of a penalty in respect of non-compliance with any requirement of a regulatory nature (however arising).

(4) Condition C is that the provision does not provide any indemnity against any liability incurred by the director—

- (a) in defending any criminal proceedings in which he is convicted, or

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- (b) in defending any civil proceedings brought by the company, or an associated company, in which judgment is given against him, or
- (c) in connection with any application under any of the following provisions in which the court refuses to grant him relief, namely—
  - (i) Article 154(3) or (4), or
  - (ii) Article 675.
- (5) In sub-paragraph (a), (b) or (c) of paragraph (4) the reference to any such conviction, judgment or refusal of relief is a reference to one that has become final.
- (6) For the purposes of paragraph (5) a conviction, judgment or refusal of relief becomes final—
  - (a) if not appealed against, at the end of the period for bringing an appeal, or
  - (b) if appealed against, at the time when the appeal (or any further appeal) is disposed of.
- (7) An appeal is disposed of—
  - (a) if it is determined and the period for bringing any further appeal has ended, or
  - (b) if it is abandoned or otherwise ceases to have effect.
- (8) In this Article “associated company” and “provision” have the same meaning as in Article 317A.

#### **Disclosure of qualifying third party indemnity provisions**

**317C.**—(1) Paragraphs (2) and (3) impose disclosure requirements in relation to a directors' report under Article 242 in respect of a financial year.

- (2) If —
  - (a) at the time when the report is approved under Article 242A, any qualifying third party indemnity provision (whether made by the company or otherwise) is in force for the benefit of one or more directors of the company, or
  - (b) at any time during the financial year, any such provision was in force for the benefit of one or more persons who were then directors of the company,the report must state that any such provision is or (as the case may be) was so in force.

- (3) If the company has made a qualifying third party indemnity provision and—
  - (a) at the time when the report is approved under Article 242A, any qualifying third party indemnity provision made by the company is in force for the benefit of one or more directors of an associated company, or
  - (b) at any time during the financial year, any such provision was in force for the benefit of one or more persons who were then directors of an associated company,the report must state that any such provision is or (as the case may be) was so in force.

(4) Paragraph (5) applies where a company has made a qualifying third party indemnity provision for the benefit of a director of the company or of an associated company.

- (5) Article 326 shall apply to—
  - (a) the company, and
  - (b) if the director is a director of an associated company, the associated company,as if a copy of the provision, or (if it is not in writing) a memorandum setting out its terms, were included in the list of documents in Article 326(1).

- (6) In this Article—
  - “associated company” and “provision” have the same meaning as in Article 317A; and

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“qualifying third party indemnity provision” has the meaning given by Article 317B(1).

**Provisions [<sup>F414</sup>protecting] auditors from liability**

**318.** <sup>F415</sup> .....

**F414** Art. 318: words in heading substituted (6.4.2006) by Companies (Audit, Investigations and Community Enterprise) (Northern Ireland) Order 2005 (S.I. 2005/1967 (N.I. 17)), arts. 1(2), 18(2); S.R. 2006/93, **art. 2**, Sch. (with art. 3)

**F415** Art. 318 repealed (1.10.2007 for certain purposes and otherwise prosp.) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), **Sch. 16**; S.I. 2007/2194, arts. 1(3)(a), **8**, Sch. 2 Pt. 2 (with art. 12, Sch. 3 para. 15(2))

**PART XI**

**ENFORCEMENT OF FAIR DEALING BY DIRECTORS**

*Restrictions on directors taking financial advantage*

**Prohibition on tax-free payments to directors**

**319.** <sup>F416</sup> .....

**F416** Art. 319 repealed (6.4.2007) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), **Sch. 16**; S.I. 2006/3428, arts. 4(2)(a), **7(c)**, Sch. 4 Pt. 2 (subject to art. 5, Sch. 1 and with arts. 6, 8, Sch. 5)

**Payment to director for loss of office, etc.**

**320.** <sup>F417</sup> .....

**F417** Arts. 320-324 repealed (1.10.2007) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), **Sch. 16**; S.I. 2007/2194, arts. 1(3)(a), **8**, Sch. 2 Pt. 2 (with art. 12, Sch. 3 para. 12(3))

**Company approval for property transfer**

**321.** <sup>F418</sup> .....

**F418** Arts. 320-324 repealed (1.10.2007) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), **Sch. 16**; S.I. 2007/2194, arts. 1(3)(a), **8**, Sch. 2 Pt. 2 (with art. 12, Sch. 3 para. 12(3))

**Director's duty of disclosure on takeover, etc.**

**322.** <sup>F419</sup> .....

**F419** Arts. 320-324 repealed (1.10.2007) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), **Sch. 16**; S.I. 2007/2194, arts. 1(3)(a), **8**, Sch. 2 Pt. 2 (with art. 12, Sch. 3 para. 12(3))



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### **Consequences of non-compliance with Article 322**

**323.** <sup>F420</sup> .....

**F420** Arts. 320-324 repealed (1.10.2007) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), Sch. 16; S.I. 2007/2194, arts. 1(3)(a), 8, Sch. 2 Pt. 2 (with art. 12, sch. 3 para. 12(3))

### **Provisions supplementing Articles 320 to 323**

**324.** <sup>F421</sup> .....

**F421** Arts. 320-324 repealed (1.10.2007) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), Sch. 16; S.I. 2007/2194, arts. 1(3)(a), 8, Sch. 2 Pt. 2 (with art. 12, Sch. 3 para. 12(3))

### **Directors to disclose interest in contracts**

**325** <sup>F422</sup>.—(1) It is the duty of a director of a company who is in any way, whether directly or indirectly, interested in a contract or proposed contract with the company to declare the nature of his interest at a meeting of the directors of the company.

(2) In the case of a proposed contract, the declaration shall be made—

- (a) at the meeting of the directors at which the question of entering into the contract is first taken into consideration; or
- (b) if the director was not at the date of that meeting interested in the proposed contract, at the next meeting of the directors held after he become so interested;

and, in a case where the director becomes interested in a contract after it is made, the declaration shall be made at the first meeting of the directors held after he becomes so interested.

(3) For the purposes of this Article, a general notice given to the directors of a company by a director to the effect that—

- (a) he is a member of a specified company or firm and is to be regarded as interested in any contract which may, after the date of the notice, be made with that company or firm; or
- (b) he is to be regarded as interested in any contract which may after the date of the notice be made with a specified person who is connected with him (within the meaning of Article 354),

is deemed a sufficient declaration of interest in relation to any such contract.

(4) However, no such notice is of effect unless either it is given at a meeting of the directors or the director takes reasonable steps to secure that it is brought up and read at the next meeting of the directors after it is given.

(5) A reference in this Article to a contract includes any transaction or arrangement (whether or not constituting a contract) made or entered into on or after 1st July 1983.

(6) For the purposes of this Article, a transaction or arrangement of a kind described in [<sup>F423</sup>section 197, 198, 200, 201 or 203 of the Companies Act 2006] (prohibition of loans, quasi-loans, etc. to directors) made by a company for a director of the company or a person connected with such a director is treated (if it would not otherwise be so treated, and whether or not it is prohibited by that Article) as a transaction or arrangement in which that director is interested.

(7) A director who fails to comply with this Article is liable to a fine.

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(8) This Article applies to a shadow director as it applies to a director, except that a shadow director shall declare his interest, not at a meeting of directors, but by a notice in writing to the directors which is either—

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

(9) Nothing in this Article prejudices the operation of any rule of law restricting directors of a company from having an interest in contracts with the company.

**F422** mod. by 2000 c. 38  
**F423** Words in art. 325(6) substituted (1.10.2007) by Companies Act 2006 (Commencement No. 3, Consequential Amendments, Transitional Provisions and Savings) Order 2007 (S.I. 2007/2194), arts. 1(3), 10(1), **Sch. 4 para. 21** (with art. 12)

***Directors' service contracts to be open to inspection***

**326.** <sup>F424</sup> .....

**F424** Arts. 326-330 repealed (1.10.2007) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), **Sch. 16**; S.I. 2007/2194, arts. 1(3)(a), **8**, Sch. 2 Pt. 2 (with art. 12, Sch. 3 paras. 6(4), 7(3), 13(4))

***Director's contract of employment for more than 5 years***

**327.** <sup>F425</sup> .....

**F425** Arts. 326-330 repealed (1.10.2007) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), **Sch. 16**; S.I. 2007/2194, arts. 1(3)(a), **8**, Sch. 2 Pt. 2 (with art. 12, Sch. 3 paras. 6(4), 7(3), 13(4))

***Substantial property transactions involving directors, etc.***

**328** <sup>F426</sup> <sup>F427</sup> .....

**F426** mod. by 2000 c. 38  
**F427** Arts. 326-330 repealed (1.10.2007) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), **Sch. 16**; S.I. 2007/2194, arts. 1(3)(a), **8**, Sch. 2 Pt. 2 (with art. 12, Sch. 3 paras. 6(4), 7(3), 13(4))

***Exceptions from Article 328***

**329.** <sup>F428</sup> .....

**F428** Arts. 326-330 repealed (1.10.2007) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), **Sch. 16**; S.I. 2007/2194, arts. 1(3)(a), **8**, Sch. 2 Pt. 2 (with art. 12, Sch. 3 paras. 6(4), 7(3), 13(4))

***Liabilities arising from contravention of Article 328***

**330.** <sup>F429</sup> .....

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**F429** Arts. 326-330 repealed (1.10.2007) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), Sch. 16; S.I. 2007/2194, arts. 1(3)(a), 8, Sch. 2 Pt. 2 (with art. 12, Sch. 3 paras. 6(4), 7(3), 13(4))

**[<sup>F430</sup>Invalidity of certain transactions involving directors, etc.**

**330A.**—(1) This Article applies where a company enters into a transaction to which the parties include—

- (a) a director of the company or of its holding company, or
- (b) a person connected with such a director or a company with whom such a director is associated,

and the board of directors, in connection with the transaction, exceed any limitation on their powers under the company's constitution.

(2) The transaction is voidable at the instance of the company.

(3) Whether or not it is avoided, any such party to the transaction as is mentioned in paragraph (1) (a) or (b), and any director of the company who authorised the transaction, is liable—

- (a) to account to the company for any gain which he has made directly or indirectly by the transaction, and
- (b) to indemnify the company for any loss or damage resulting from the transaction.

(4) Nothing in the above provisions shall be construed as excluding the operation of any other statutory provision or rule of law by virtue of which the transaction may be called in question or any liability to the company may arise.

(5) The transaction ceases to be voidable if—

- (a) restitution of any money or other asset which was the subject-matter of the transaction is no longer possible, or
- (b) the company is indemnified for any loss or damage resulting from the transaction, or
- (c) rights acquired bona fide for value and without actual notice of the directors' exceeding their powers by a person who is not party to the transaction would be affected by the avoidance, or
- (d) the transaction is ratified by the company in general meeting, by ordinary or special resolution or otherwise as the case may require.

(6) A person other than a director of the company is not liable under paragraph (3) if he shows that at the time the transaction was entered into he did not know that the directors were exceeding their powers.

(7) This Article does not affect the operation of Article 45A in relation to any party to the transaction not within paragraph (1)(a) or (b).

But where a transaction is voidable by virtue of this Article and valid by virtue of that Article in favour of such a person, the court may, on the application of that person or of the company, make such order affirming, severing or setting aside the transaction, on such terms, as appear to the court to be just.

(8) In this Article “transaction” includes any act; and the reference in paragraph (1) to limitations under the company's constitution includes limitations deriving—

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

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**F430** 1990 NI 10, **art. 45(1)**

**Contracts with sole members who are directors**

**330B.** <sup>F431</sup> .....

**F431** Art. 330B repealed (1.10.2007) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), **Sch. 16**; S.I. 2007/2194, arts. 1(3)(a), **8**, Sch. 2 Pt. 2 (with art. 12, Sch. 3 para. 14(2))

*Share dealings by directors and their families*

**Prohibition on directors dealing in share options**

**331.** <sup>F432</sup> .....

**F432** Arts. 331-337 repealed (6.4.2007) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), **Sch. 16**; S.I. 2006/3428, arts. 4(2)(a), **7(c)**, Sch. 4 Pt. 2 (subject to art. 5, Sch. 1 and with arts. 6, 8, Sch. 5)

**Duty of director to disclose shareholdings in own company**

**332.** <sup>F433</sup> .....

**F433** Arts. 331-337 repealed (6.4.2007) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), **Sch. 16**; S.I. 2006/3428, arts. 4(2)(a), **7(c)**, Sch. 4 Pt. 2 (subject to art. 5, Sch. 1 and with arts. 6, 8, Sch. 5)

**Register of directors' interests notified under Article 332**

**333.** <sup>F434</sup> .....

**F434** Arts. 331-337 repealed (6.4.2007) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), **Sch. 16**; S.I. 2006/3428, arts. 4(2)(a), **7(c)**, Sch. 4 Pt. 2 (subject to art. 5, Sch. 1 and with arts. 6, 8, Sch. 5)

**Sanctions for non-compliance**

**334.** <sup>F435</sup> .....

**F435** Arts. 331-337 repealed (6.4.2007) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), **Sch. 16**; S.I. 2006/3428, arts. 4(2)(a), **7(c)**, Sch. 4 Pt. 2 (subject to art. 5, Sch. 1 and with arts. 6, 8, Sch. 5)

**Extension of Article 331 to spouses [<sup>F436</sup>, civil partners] and children**

**335.** <sup>F437</sup> .....

**F436** 2004 c.33

**F437** Arts. 331-337 repealed (6.4.2007) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), **Sch. 16**; S.I. 2006/3428, arts. 4(2)(a), **7(c)**, Sch. 4 Pt. 2 (subject to art. 5, Sch. 1 and with arts. 6, 8, Sch. 5)

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**Extention of Article 332 to spouses <sup>F438</sup>, civil partners] and children**

**336.** <sup>F439</sup> .....

**F438** 2004 c.33

**F439** Arts. 331-337 repealed (6.4.2007) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), **Sch. 16**; S.I. 2006/3428, arts. 4(2)(a), **7(c)**, Sch. 4 Pt. 2 (subject to art. 5, Sch. 1 and with arts. 6, 8, Sch. 5)

**Duty to notify stock exchange of matters notified under Articles 332 to 336**

**337.** <sup>F440</sup> .....

**F440** Arts. 331-337 repealed (6.4.2007) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), **Sch. 16**; S.I. 2006/3428, arts. 4(2)(a), **7(c)**, Sch. 4 Pt. 2 (subject to art. 5, Sch. 1 and with arts. 6, 8, Sch. 5)

*Restrictions on a company's power to make loans, etc. to directors and persons connected with them*

**General restriction on loans, etc. to directors and persons connected with them**

**338.** <sup>F441</sup> .....

**F441** Art. 338 repealed (1.10.2007) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), **Sch. 16**; S.I. 2007/2194, arts. 1(3)(a), **8**, Sch. 2 Pt. 2 (with art. 12, Sch. 3 para. 8(3))

**Interpretation for Articles 338ff.**

**339.** <sup>F442</sup> .....

**F442** Art. 339 repealed (1.10.2007) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), **Sch. 16**; S.I. 2007/2194, arts. 1(3)(a), **8**, Sch. 2 Pt. 2 (with art. 12, Sch. 3 para. 8(3))

**Short-term quasi-loans**

**340.** <sup>F443</sup> .....

**F443** Art. 340 repealed (1.10.2007) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), **Sch. 16**; S.I. 2007/2194, arts. 1(3)(a), **8**, Sch. 2 Pt. 2 (with art. 12, Sch. 3 para. 8(3))

**Inter-company loans in the same group**

**341.** <sup>F444</sup> .....

**F444** Art. 341 repealed (1.10.2007) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), **Sch. 16**; S.I. 2007/2194, arts. 1(3)(a), **8**, Sch. 2 Pt. 2 (with art. 12, Sch. 3 para. 8(3))

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### **Loans of small amounts**

**342.** <sup>F445</sup> .....

**F445** Art. 342 repealed (1.10.2007) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), **Sch. 16**; S.I. 2007/2194, arts. 1(3)(a), **8**, Sch. 2 Pt. 2 (with art. 12, Sch. 3 para. 8(3))

### **Minor and business transactions**

**343.** <sup>F446</sup> .....

**F446** Art. 343 repealed (1.10.2007) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), **Sch. 16**; S.I. 2007/2194, arts. 1(3)(a), **8**, Sch. 2 Pt. 2 (with art. 12, Sch. 3 para. 8(3))

### **Transactions at behest of holding company**

**344.** <sup>F447</sup> .....

**F447** Art. 344 repealed (1.10.2007) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), **Sch. 16**; S.I. 2007/2194, arts. 1(3)(a), **8**, Sch. 2 Pt. 2 (with art. 12, Sch. 3 para. 8(3))

### **Funding of director's expenditure on duty to company**

**345.** <sup>F448</sup> .....

**F448** Art. 345 repealed (1.10.2007) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), **Sch. 16**; S.I. 2007/2194, arts. 1(3)(a), **8**, Sch. 2 Pt. 2 (with art. 12, Sch. 3 para. 8(3))

### **[<sup>F449</sup>Funding of director's expenditure on defending proceedings**

**345A.** <sup>F450</sup> .....]

**F449** Art. 345A inserted (6.4.2006) by Companies (Audit, Investigations and Community Enterprise) (Northern Ireland) Order 2005 (S.I. 2005/1967 (N.I. 17)), arts. 1(2), 19; S.R. 2006/93, **art. 2**, Sch.

**F450** Art. 345A repealed (1.10.2007) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), **Sch. 16**; S.I. 2007/2194, arts. 1(3)(a), **8**, Sch. 2 Pt. 2 (with art. 12, Sch. 3 para. 8(3))

### **Loan or quasi-loan by money-lending company**

**346.** <sup>F451</sup> .....

**F451** Art. 346 repealed (1.10.2007) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), **Sch. 16**; S.I. 2007/2194, arts. 1(3)(a), **8**, Sch. 2 Pt. 2 (with art. 12, Sch. 3 para. 8(3))

### **“Relevant amounts” for the purposes of Articles 342ff.**

**347.** <sup>F452</sup> .....

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**F452** Art. 347 repealed (1.10.2007) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), **Sch. 16**; S.I. 2007/2194, arts. 1(3)(a), **8**, Sch. 2 Pt. 2 (with art. 12, Sch. 3 para. 8(3))

### ***“Value” of transactions and arrangements***

**348.** <sup>F453</sup> .....

**F453** Art. 348 repealed (1.10.2007) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), **Sch. 16**; S.I. 2007/2194, arts. 1(3)(a), **8**, Sch. 2 Pt. 2 (with art. 12, Sch. 3 para. 8(3))

### ***Civil remedies for breach of Article 338***

**349.** <sup>F454</sup> .....

**F454** Art. 349 repealed (1.10.2007) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), **Sch. 16**; S.I. 2007/2194, arts. 1(3)(a), **8**, Sch. 2 Pt. 2 (with art. 12, Sch. 3 para. 8(3))

### ***Criminal penalties for breach of Article 338***

**350.** <sup>F455</sup> .....

**F455** Art. 350 repealed (1.10.2007) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), **Sch. 16**; S.I. 2007/2194, arts. 1(3)(a), **8**, Sch. 2 Pt. 2 (with art. 12, Sch. 3 para. 8(3))

### ***Record of transactions not disclosed in company accounts***

**351.** <sup>F456</sup> .....

**F456** Art. 351 repealed (6.4.2007) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), **Sch. 16**; S.I. 2006/3428, arts. 4(2)(a), **7(c)**, Sch. 4 Pt. 2 (subject to art. 5, Sch. 1 and with arts. 6, 8, Sch. 5)

### ***Exceptions from Article 351***

**352.** <sup>F457</sup> .....

**F457** Art. 352 repealed (6.4.2007) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), **Sch. 16**; S.I. 2006/3428, arts. 4(2)(a), **7(c)**, Sch. 4 Pt. 2 (subject to art. 5, Sch. 1 and with arts. 6, 8, Sch. 5)

## *Supplementary*

### ***Power to increase financial limits***

**353.** <sup>F458</sup> .....

**F458** Art. 353 repealed (1.10.2007) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), **Sch. 16**; S.I. 2007/2194, arts. 1(3)(a), **8**, Sch. 2 Pt. 2 (with art. 12)

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**“Connected persons”, etc.**

**354.** <sup>F459</sup> .....

**F459** Art. 354 repealed (1.10.2007) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), Sch. 16; S.I. 2007/2194, arts. 1(3)(a), 8, Sch. 2 Pt. 2 (with art. 12)

**Transactions under foreign law**

**355.** <sup>F460</sup> .....

**F460** Art. 355 repealed (1.10.2007) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), Sch. 16; S.I. 2007/2194, arts. 1(3)(a), 8, Sch. 2 Pt. 2 (with art. 12)

## PART XII

### COMPANY ADMINISTRATION AND PROCEDURE

#### CHAPTER I

##### Company Identification

**Company name to appear outside place of business**

**356** <sup>F461</sup>.—(1) Every company shall paint or affix, and keep painted or affixed, its name on the outside of every office or place in which its business is carried on, in a conspicuous position and in letters easily legible.

(2) If a company does not paint or affix its name as required by paragraph (1), the company and every officer of it who is in default is liable to a fine; and if a company does not keep its name painted or affixed as so required, the company and every officer of it who is in default is liable to a fine, for continued contravention, to a daily default fine.

**F461** mod. by SR 2004/307

**Company's name to appear in its correspondence, etc.**

**357** <sup>F462</sup>.—(1) Every company shall have its name mentioned in legible characters—

- (a) in all business letters [<sup>F463</sup>and order forms] of the company,
- (b) in all its notices and other official publications,

[<sup>F464</sup>(bb) on all its websites,]

- (c) in all bills of exchange, promissory notes, endorsements, cheques and orders for money or goods purporting to be signed by or on behalf of the company, and
- (d) in all its bills of parcels, invoices, receipts and letters of credit.

(2) If a company fails to comply with paragraph (1) it is liable to a fine.

(3) If an officer of a company or a person on its behalf—



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(a) issues or authorises the issue of any business letter [<sup>F465</sup>or order form] of the company or any notice or other official publication of the company, in which the company's name is not mentioned as required by paragraph (1), <sup>F466</sup> . . .

[<sup>F467</sup>(aa) causes or authorises the appearance of a website on which the company's name is not so mentioned, or]

(b) issues or authorises the issue of any bill of parcels, invoice, receipt or letter of credit of the company in which its name is not so mentioned,

he is liable to a fine.

(4) If an officer of a company or a person on its behalf signs or authorises to be signed on behalf of the company any bill of exchange, promissory note, endorsement, cheque or order for money or goods in which the company's name is not mentioned as required by paragraph (1), he is liable to a fine; and he is further personally liable to the holder of the bill of exchange, promissory note, cheque or order for money or goods for the amount of it (unless it is duly paid by the company).

[<sup>F468</sup>(5) References in this Article to a document of any type are to a document of that type in hard copy, electronic or any other form.]

**F462** mod. by SR 2004/307

**F463** Words in art. 357(1)(a) inserted (1.1.2007) by Companies (Registrar, Languages and Trading Disclosures) Regulations 2006 (S.I. 2006/3429), reg. 6(2), **Sch. 2 para. 1(2)(a)**

**F464** Art. 357(1)(bb) inserted (1.1.2007) by Companies (Registrar, Languages and Trading Disclosures) Regulations 2006 (S.I. 2006/3429), reg. 6(2), **Sch. 2 para. 1(2)(b)**

**F465** Words in art. 357(3)(a) inserted (1.1.2007) by Companies (Registrar, Languages and Trading Disclosures) Regulations 2006 (S.I. 2006/3429), reg. 6(2), **Sch. 2 para. 1(3)(a)**

**F466** Word in art. 357(3)(a) omitted (1.1.2007) by virtue of Companies (Registrar, Languages and Trading Disclosures) Regulations 2006 (S.I. 2006/3429), reg. 6(2), **Sch. 2 para. 1(3)(b)**

**F467** Art. 357(3)(aa) inserted (1.1.2007) by Companies (Registrar, Languages and Trading Disclosures) Regulations 2006 (S.I. 2006/3429), reg. 6(2), **Sch. 2 para. 1(3)(c)**

**F468** Art. 357(5) inserted (1.1.2007) by Companies (Registrar, Languages and Trading Disclosures) Regulations 2006 (S.I. 2006/3429), reg. 6(2), **Sch. 2 para. 1(4)**

### **Company seal**

**358** <sup>F469</sup>.—[<sup>F470</sup>(1) A company which has a common seal shall have its name engraved in legible characters on the seal; and if it fails to comply with this paragraph it is liable to a fine.]

(2) If an officer of a company or a person on its behalf uses or authorises the use of any seal purporting to be a seal of the company on which its name is not engraved as required by paragraph (1), he is liable to a fine.

**F469** mod. by SR 2004/307

**F470** 1990 NI 10

### **Particulars in correspondence, etc.**

**359.**—(1 <sup>F471</sup> Every company shall have the following particulars mentioned in legible characters in all business letters and order forms of the company [<sup>F472</sup>, and on all the company's websites,] , namely—

- (a) the company's place of registration and the number with which it is registered,
- (b) the address of its registered office,

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- (c)<sup>F473</sup> in the case of an investment company ([<sup>F474</sup>as defined for the purposes of Part 23 of the Companies Act 2006 (see section 833 of that Act)]), the fact that it is such a company, and
- (d)<sup>F473</sup> in the case of a limited company exempt from the obligation to use the word “limited” as part of its name [<sup>F475</sup>under Article 40 or a community interest company which is not a public company], the fact that it is a limited company.

[<sup>F476</sup>(2) If in the case of a company having a share capital there is a reference to the amount of share capital—

- (a) on the stationery used for any such letters,
- (b) on the company's order forms, or
- (c) on any of the company's websites,

the reference must be to paid-up share capital.]

(3) As to contraventions of this Article, the following applies—

- (a) if a company fails to comply with paragraph (1) or (2), it is liable to a fine, and
- (b) if an officer of a company or a person on its behalf issues or authorises the issue of any business letter or order form not complying with those paragraphs, he is liable to a fine.

[<sup>F477</sup>(ba) if an officer of a company or a person on its behalf causes or authorises the appearance of a website not complying with those paragraphs, he is liable to a fine.]

[<sup>F478</sup>(6) References in this Article to a document of any type are to a document of that type in hard copy, electronic or any other form.]

**F471** mod. by SR 1986/305

**F472** Words in art. 359(1) inserted (1.1.2007) by Companies (Registrar, Languages and Trading Disclosures) Regulations 2006 (S.I. 2006/3429), reg. 6(2), **Sch. 2 para. 2(2)**

**F473** mod. by SR 2004/307

**F474** Words in art. 359(1)(c) substituted (6.4.2008) by Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2008/948), arts. 2(2), 3(1)(b), **Sch. 1 para. 138** (with arts. 6, 11, 12)

**F475** Words in art. 359(1)(d) inserted (6.4.2007) by Companies Act 2006 (Commencement No. 2, Consequential Amendments, Transitional Provisions and Savings) Order 2007 (S.I. 2007/1093), arts. 1(3), 6(2), **Sch. 4 para. 53** (with art. 11(1))

**F476** Art. 359(2) substituted (1.1.2007) by Companies (Registrar, Languages and Trading Disclosures) Regulations 2006 (S.I. 2006/3429), reg. 6(2), **Sch. 2 para. 2(3)**

**F477** Art. 359: "In paragraph (5), after sub-paragraph (b)" there is inserted (1.1.2007) para. (ba) by virtue of Companies (Registrar, Languages and Trading Disclosures) Regulations 2006 (S.I. 2006/3429), reg. 6(2), **Sch. 2 para. 2(4)**

**F478** Art. 359: After reference to paragraph (5) there is inserted (1.1.2007) art. 359(6) by virtue of Companies (Registrar, Languages and Trading Disclosures) Regulations 2006 (S.I. 2006/3429), reg. 6(2), **Sch. 2 para. 2(5)**

## CHAPTER II

### Register of Members

#### *Obligation to keep and enter up register*

**360.**—[<sup>F479</sup>(1) Every company shall keep a register of its members and enter in it the particulars required by this Article.

(2) There shall be entered in the register—

- (a) the names and addresses of the members;

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- (b) the date on which each person was registered as a member; and
  - (c) the date at which any person ceased to be a member.
- (3) This paragraph applies in the case of a company having a share capital—
- (a) with the names and addresses of the members there shall be entered a statement—
    - (i) of the shares held by each member, distinguishing each share by its number (so long as the share has a number) and, where the company has more than one class of issued shares, by its class, and
    - (ii) of the amount paid or agreed to be considered as paid on the shares of each member;
  - (b) where the company has converted any of its shares into stock and given notice of the conversion to the register, the register shall show the amount and class of stock held by each member, instead of the amount of shares and the particulars relating to shares specified in sub-paragraph (a).

[<sup>F480</sup>(3A) Where a company purchases one or more of its own shares in circumstances in which Article 172A applies—

- (a) the requirements of paragraphs (2) and (3) must be complied with unless the company cancels all of the shares forthwith after the purchase in accordance with Article 172D(1), but
- (b) any share which is so cancelled must be disregarded for the purposes of paragraph (3).]

(4) In the case of a company which does not have a share capital but has more than one class of members, there shall be entered in the register, with the names and addresses of the members, the class to which each member belongs.

(5) If a company makes default in complying with this Article, the company and every officer of it who is in default is liable to a fine and, for continued contravention, to a daily default fine.

(6) An entry relating to a former member of a company may be removed from the register after the expiration of 20 years from the date on which he ceased to be a member.

(7) Liability incurred by a company from the making or deletion of an entry in its register of members or debenture holders, or from a failure to make or delete any such entry, is not enforceable more than 20 years after the date on which the entry was made or deleted or, in the case of any such failure, the failure first occurred.

This is without prejudice to any lesser period of limitation.]

**F479** Art. 360 repealed (6.4.2008 for art. 360(6)(7) and otherwise prosp.) by [Companies Act 2006 \(c. 46\)](#), ss. 1284(2), 1295, 1300(2), [Sch. 16](#); S.I. 2007/3495, [art. 8\(a\)](#), [Sch. 2 Pt. 2](#) (with arts. 7, 12)

**F480** SR 2004/275

#### [<sup>F481</sup>*Statement that company has only one member*

**360A.**—(1) If the number of members of a private company limited by shares or by guarantee falls to one there shall upon the occurrence of that event be entered in the company's register of members with the name and address of the sole member—

- (i) a statement that the company has only one member; and
- (ii) the date on which the company became a company having only one member.

(2) If the membership of a private company limited by shares or by guarantee increases from one to two or more members there shall upon the occurrence of that event be entered in the company's register of members, with the name and address of the person who was formerly the sole member, a statement that the company has ceased to have only one member together with the date on which that event occurred.

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(3) If a company makes default in complying with this Article, the company and every officer of it who is in default is liable to a fine and, for continued contravention, to a daily default fine.]

F481 SR 1992/405

### **Location of register**

- 361.**—(1) A company's register of members shall be kept at its registered office, except that—
- (a) if the work of making it up is done at another office of the company, it may be kept there; and
  - (b) if the company arranges with some other person for the making up of the register to be undertaken on its behalf by that other, it may be kept at the office of the other at which the work is done;

but it must not be kept at a place outside Northern Ireland.

(2) Subject to paragraph (3), every company shall send notice in the prescribed form to the registrar of the place where its register of members is kept, and of any change in that place.

(3) The notice need not be sent if the register has, at all times since it came into existence (or, in the case of a register in existence on 1st April 1961, at all times since then) been kept at the company's registered office.

(4) If a company makes default for 14 days in complying with paragraph (2), the company and every officer of it who is in default is liable to a fine and, for continued contravention, to a daily default fine.

### **Index of members**

**362.**—(1) Every company having more than 50 members shall, unless the register of members is in such a form as to constitute in itself an index of the names of the members of the company and shall, within 14 days after the date on which any alteration is made in the register of members, make any necessary alteration in the index.

(2) The index shall in respect of each member contain a sufficient indication to enable the account of that member in the register to be readily found.

(3) The index shall be at all times kept at the same place as the register of members.

(4) If default is made in complying with this Article, the company and every officer of it who is in default is liable to a fine and, for continued contravention, to a daily default fine.

### **Entries in register in relation to share warrants**

**363.**—(1) On the issue of a share warrant the company shall strike out of its register of members the name of the member then entered therein as holding the shares specified in the warrant as if he had ceased to be a member, and shall enter in the register the following particulars, namely—

- (a) the fact of the issue of the warrant;
- (b) a statement of the shares included in the warrant, distinguishing each share by its number so long as the share has a number; and
- (c) the date of the issue of the warrant.

(2) Subject to the company's articles, the bearer of a share warrant is entitled, on surrendering it for cancellation, to have his name entered as a member in the register of members.

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(3) The company is responsible for any loss incurred by any person by reason of the company entering in the register the name of a bearer of a share warrant in respect of the shares therein specified without the warrant being surrendered and cancelled.

(4) Until the warrant is surrendered, the particulars specified in paragraph (1) are deemed to be those required by this Order to be entered in the register of members; and, on the surrender, the date of the surrender must be entered.

(5) Except as provided by Article 299(2) (director's share qualification), the bearer of a share warrant may, if the articles of the company so provide, be deemed a member of the company within the meaning of this Order, either to the full extent or for any purposes defined in its articles.

### **Inspection of register and index**

**364.** <sup>F482</sup> .....

**F482** Art. 364 repealed (1.10.2007) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), Sch. 16; S.I. 2007/2194, arts. 1(3)(a), 8, Sch. 2 Pt. 2 (with art. 12, Sch. 3 para. 2(2))

### **Non-compliance with Articles 361, 362 and 364; agent's default**

**365.** Where under Article 361(1)(b) the register of members is kept at the office of some person other than the company, and by reason of any default of his the company fails to comply with—

Article 361(2) (notice to registrar),

Article 362(3) (index to be kept with register), or

<sup>F483</sup> . . . ,

or with any requirement of this Order as to the production of the register, that other person is liable to the same penalties as if he were an officer of the company who was in default, <sup>F483</sup> . . .

**F483** Words in art. 365 repealed (1.10.2007) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), Sch. 16; S.I. 2007/2194, arts. 1(3)(a), 8, Sch. 2 Pt. 2 (with art. 12, Sch. 3 para. 2)

### **Power to close register**

**366.** A company may, on giving notice by advertisement in a newspaper circulating in the district in which the company's registered office is situated, close the register of members for any time or times not exceeding in the whole 30 days in each year.

### **Power of court to rectify register**

**367.—(1)** If—

(a) the name of any person is, without sufficient cause, entered in or omitted from a company's register of members, or

(b) default is made or unnecessary delay takes place in entering on the register the fact of any person ceased to be a member,

the person aggrieved, or any member of the company, or the company, may apply to the court for rectification of the register.

(2) The court may either refuse the application or may order rectification of the register and payment by the company of any damages sustained by any party aggrieved.

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(3) On such an application the court may decide any question relating to the title of a person who is a party to the application to have his name entered in or omitted from the register, whether the question arises between members or alleged members, or between members or alleged members on the one hand and the company on the other hand, and generally may decide any question necessary or expedient to be decided for rectification of the register.

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

### ***Trusts not be entered on register***

**368.** No notice of any trust, expressed, implied or constructive, shall be entered on the register, or be receivable by the registrar.

### ***Register to be evidence***

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

### ***External branch registers***

**370.**—(1) A company having a share capital whose objects comprise the transaction of business in any of the countries or territories specified in Part I of Schedule 14 may cause to be kept in any such country or territory in which it transacts business a branch register of members resident in that country or territory.

(2) Such a branch register is to be known as an “external branch register”; and—

- (a) any dominion register kept by a company under section 116 of the Act of 1960 is to become known as an external branch register of the company;
- (b) where any statutory provision or instrument (including in particular a company's articles) refers to a company's dominion register, that reference is to be read (unless the context otherwise requires) as being to an external branch register kept under this Article; and
- (c) references to a colonial register occurring in articles registered before 1st January 1933 are to be read as referring to an external branch register.

(3) Part II of Schedule 14 has effect with respect to external branch registers kept under this Article.

## CHAPTER III ANNUAL RETURN

### **Duty to deliver annual returns**

**371** <sup>F484</sup>.—(1) Every company shall deliver to the registrar successive annual returns each of which is made up to a date not later than the date which is from time to time the company's “return date”, that is—

- (a) the anniversary of the company's incorporation, or
- (b) if the company's last return delivered in accordance with this Chapter was made up to a different date, the anniversary of that date.

(2) Each return shall—

- (a) be in the prescribed form,
- (b) contain the information required by or under the following provisions of this Chapter, and

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(c) be signed by a director or the secretary of the company;  
and it shall be delivered to the registrar within 28 days after the date on which it is made up.

(3) If a company fails to deliver an annual return in accordance with this Chapter before the end of the period of 28 days after a return date, the company is guilty of an offence and liable to a fine and, in the case of continued contravention, to a daily default fine.

The contravention continues until such time as an annual return made up to that return date and complying with the requirements of paragraph (2) (except as to date of delivery) is delivered by the company to the registrar.

(4) Where a company is guilty of an offence under paragraph (3), every director or secretary of the company is similarly liable unless he shows that he took all reasonable steps to avoid the commission or continuation of the offence.

(5) The references in this Article to a return being delivered “in accordance with this Chapter” are—

- (a) in relation to a return made after the coming into operation of Article 74 of the Companies (No. 2) (Northern Ireland) Order 1990, to a return with respect to which all the requirements of paragraph (2) are complied with;
- (b) in relation to a return made before that time, to a return with respect to which the formal and substantive requirements of this Chapter as it then had effect were complied with, whether or not the return was delivered in time.

F484 mod. by SR 2004/307

### Contents of annual return: general

**372** <sup>F485</sup>.—(1) Every annual return shall state the date to which it is made up and shall contain the following information—

- (a) the address of the company's registered office;
- (b) the type of company it is and its principal business activities;
- (c) the name and address of the company secretary [<sup>F486</sup>(if any)];
- (d) the name and address of every director of the company;
- (e) in the case of each individual director—
  - (i) his nationality, date of birth and business occupation, and
  - (ii) such particulars of other directorships and former names as are required to be contained in the company's register of directors;
- (f) in the case of any corporate director, such particulars of other directorships as would be required to be contained in that register in the case of an individual;
- (g) if the register of members is not kept at the company's registered office, the address of the place where it is kept;
- (h) if any register of debenture holders (or a duplicate of any such register or a part of it) is not kept at the company's registered office, the address of the place where it is kept;
- (i) if the company has elected—
  - (i) to dispense under Article 260 with the laying of accounts and reports before the company in general meeting, or
  - (ii) to dispense under Article 374A with the holding of annual general meetings, a statement to that effect.

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(2) The information as to the company's type shall be given by reference to the classification scheme prescribed for the purposes of this Article.

(3) The information as to the company's principal business activities may be given by reference to one or more categories of any prescribed system of classifying business activities.

(4) A person's "name" and "address" mean, respectively—

(a) in the case of an individual, his Christian name (or other forename) and surname and his usual residential address;

(b) in the case of a corporation or Scottish firm, its corporate or firm name and its registered or principal office.

(5) In the case of a peer, or an individual usually known by a title, the title may be stated instead of his Christian name (or other forename) and surname or in addition to either or both of them.

(6) Where all the partners in a firm are joint secretaries, the name and principal office of the firm may be stated instead of the names and addresses of the partners.

**F485** mod. by SR 2004/307

**F486** Words in art. 372(1)(c) inserted (6.4.2008) by [Companies Act 2006 \(Consequential Amendments etc\) Order 2008 \(S.I. 2008/948\)](#), arts. 2(2), 3(1)(b), **Sch. 1 para. 139** (with arts. 6, 11, 12)

### **Contents of annual return: particulars of share capital and shareholders**

**372A.**—(1) The annual return of a company having a share capital shall contain the following information with respect to its share capital and members.

(2) The return shall state the total number of issued shares of the company at the date to which the return is made up and the aggregate nominal value of those shares.

(3) The return shall state with respect to each class of shares in the company—

(a) the nature of the class, and

(b) the total number and aggregate nominal value of issued shares of that class at the date to which the return is made up.

(4) The return shall contain a list of the names and addresses of every person who—

(a) is a member of the company on the date to which the return is made up, or

(b) has ceased to be a member of the company since the date to which the last return was made up (or, in the case of the first return, since the incorporation of the company);

and if the names are not arranged in alphabetical order the return shall have annexed to it an index sufficient to enable the name of any person in the list to be easily found.

(5) The return shall also state—

(a) the number of shares of each class held by each member of the company at the date to which the return is made up, and

(b) the number of shares of each class transferred since the date to which the last return was made up (or, in the case of the first return, since the incorporation of the company) by each member or person who has ceased to be a member, and the dates of registration of the transfers.

(6) The return may, if either of the two immediately preceding returns has given the full particulars required by paragraphs (4) and (5), give only such particulars as relate to persons ceasing to be or becoming members since the date of the last return and to shares transferred since that date.



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(7) Paragraphs (4) and (5) do not require the inclusion of particulars entered in an external branch register if copies of those entries have not been received at the company's registered office by the date to which the return is made up.

Those particulars shall be included in the company's next annual return after they are received.

(8) Where the company has converted any of its shares into stock, the return shall give the corresponding information in relation to that stock, stating the amount of stock instead of the number or nominal value of shares.

VALID FROM 01/10/2008

**Contents of annual return: information about shareholders: non-traded companies**

**372B.**—(1) The annual return of a company that was a non-traded company throughout the return period shall also contain the following information.

(2) The return shall contain a list of the names of every person who was a member of the company at any time during the return period. If the names are not arranged in alphabetical order the return shall have annexed to it an index sufficient to enable the name of any person in the list to be easily found.

(3) The return shall also state—

- (a) the number of shares of each class held at the end of the date to which the return is made up by each person who was a member of the company at that time,
- (b) the number of shares of each class transferred during the return period by or to each person who was a member of the company at any time during that period, and
- (c) the dates of registration of those transfers.

(4) If either of the two immediately preceding returns has given the full particulars required by paragraphs (2) and (3), the return need only give such particulars as relate—

- (a) to persons who became, or ceased to be, members during the return period, and
- (b) to shares transferred during that period.

(5) Paragraphs (2) and (3) do not require the inclusion of particulars entered in an overseas branch register if copies of those entries have not been received at the company's registered office by the date to which the return is made up. Those particulars shall be included in the company's next annual return after they are received.

VALID FROM 01/10/2008

**Contents of annual return: information about shareholders: traded companies**

**372C.**—(1) The annual return of a company that was a traded company at any time during the return period shall also contain the following information.

(2) The return shall contain a list of the names and addresses of every person who held at least 5% of the issued shares of any class of the company at any time during the return period. If the names are not arranged in alphabetical order the return shall have annexed to it an index sufficient to enable the name of any person in the list to be easily found.

(3) The return shall also state—

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- (a) the number of shares of each class held at the end of the date to which the return is made up by each person who held at least 5% of the issued shares of any class of the company at that time,
  - (b) the number of shares of each class transferred during the return period by or to each person who held at least 5% of the issued shares of any class of the company at any time during the return period, and
  - (c) the dates of registration of those transfers.
- (4) If either of the two immediately preceding returns has given the full particulars required by paragraphs (2) and (3), the return need only give such particulars as relate—
- (a) to persons who came to hold, or ceased to hold, at least 5% of the issued shares of any class of the company during the return period, and
  - (b) to shares transferred during that period.
- (5) Paragraphs (2) and (3) do not require the inclusion of particulars entered in an overseas branch register if copies of those entries have not been received at the company's registered office by the date to which the return is made up. Those particulars shall be included in the company's next annual return after they are received.

VALID FROM 01/10/2008

### Contents of annual return: information about shareholders: supplementary

**372D.**—(1) In Articles 372, 372B and 372C—

“non-traded company” means a company none of whose shares are shares admitted to trading on a regulated market (so that “traded company” means a company any of whose shares are shares admitted to trading on a regulated market);

“regulated market” means a market which appears on the list drawn up by an EEA State pursuant to Article 47 of Directive [2004/39/EC](#) of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments; and

“return period”, in relation to an annual return, means the period beginning immediately after the date to which the last return was made up (or, in the case of the first return, with the incorporation of the company) and ending with the date to which the return is made up.

(2) Where a company has converted any of its shares into stock, the return shall give information in relation to that stock corresponding to that required by Article 372B or 372C (as the case may be) in relation to shares of the company, stating the amount of stock instead of the number of shares.

### Supplementary provisions: regulations and interpretation

**373.**—(1) The Department may by regulations make further provision as to the information to be given in a company's annual return, which may amend or repeal the provisions of Articles 372 and 372A.

(2) For the purposes of this Chapter, except Article 371(2)(c) (signature of annual return), a shadow director shall be deemed to be a director.

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## CHAPTER IV Meetings and Resolutions

### *Meetings*

#### ***Annual general meeting***

**374.** <sup>F487</sup> .....

**F487** Art. 374 repealed (1.10.2007) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), **Sch. 16**; S.I. 2007/2194, arts. 1(3)(a), **8**, Sch. 2 Pt. 2 (with art. 12, Sch. 3 paras. 29(3), 35(1)(a))

#### ***Election by private company to dispense with annual general meetings***

**374A.** <sup>F488</sup> .....

**F488** Art. 374A repealed (20.1.2007 for art. 374A(3A)(6) and otherwise prosp.) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), **Sch. 16**; S.I. 2006/3428, **art. 7(b)**, Sch. 3 Pt. 2 (with arts. 6, 8, Sch. 5)

#### ***Department's power to call meeting in default***

**375.** <sup>F489</sup> .....

**F489** Art. 375 repealed (1.10.2007) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), **Sch. 16**; S.I. 2007/2194, arts. 1(3)(a), **8**, Sch. 2 Pt. 2 (with art. 12)

#### ***Extraordinary general meeting on member's requisition***

**376.** <sup>F490</sup> .....

**F490** Art. 376 repealed (1.10.2007) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), **Sch. 16**; S.I. 2007/2194, arts. 1(3)(a), **8**, Sch. 2 Pt. 2 (with art. 12, Sch. 3 para. 25(2))

#### ***Length of notice for calling meetings***

**377.** <sup>F491</sup> .....

**F491** Art. 377 repealed (20.1.2007 for art. 377(5)-(11) and otherwise prosp.) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), **Sch. 16**; S.I. 2006/3428, **art. 7(b)**, Sch. 3 Pt. 2 (with arts. 6, 8, Sch. 5)

#### ***General provisions as to meetings and votes***

**378.** <sup>F492</sup> .....

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**F492** Art. 378 repealed (1.10.2007) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), **Sch. 16**; S.I. 2007/2194, arts. 1(3)(a), **8**, Sch. 2 Pt. 2 (with art. 12, Sch. 3 paras. 22(2)(3), 26(2)(3), 30(2)(3))

**Quorum at meetings of the sole member**

**378A.** <sup>F493</sup> .....

**F493** Art. 378A repealed (1.10.2007) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), **Sch. 16**; S.I. 2007/2194, arts. 1(3)(a), **8**, Sch. 2 Pt. 2 (with art. 12, Sch. 3 para. 30(2)(3))

**Power of court to order meeting**

**379.** <sup>F494</sup> .....

**F494** Art. 379 repealed (1.10.2007) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), **Sch. 16**; S.I. 2007/2194, arts. 1(3)(a), **8**, Sch. 2 Pt. 2 (with art. 12)

**Proxies**

**380.** <sup>F495</sup> .....

**F495** Art. 380 repealed (20.1.2007 for certain purposes, otherwise prosp.) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), **Sch. 16**; S.I. 2006/3428, **art. 7(b)**, Sch. 3 Pt. 2 (with arts. 6, 8, Sch. 5)

**Right to demand a poll**

**381.** <sup>F496</sup> .....

**F496** Art. 381 repealed (1.10.2007) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), **Sch. 16**; S.I. 2007/2194, arts. 1(3)(a), **8**, Sch. 2 Pt. 2 (with art. 12, Sch. 3 para. 30(2)(3))

**Voting on a poll**

**382.** <sup>F497</sup> .....

**F497** Art. 382 repealed (1.10.2007) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), **Sch. 16**; S.I. 2007/2194, arts. 1(3)(a), **8**, Sch. 2 Pt. 2 (with art. 12, Sch. 3 para. 30(2)(3))

**Representation of bodies corporate at meetings**

**383.** <sup>F498</sup> .....

**F498** Art. 383 repealed (1.10.2007) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), **Sch. 16**; S.I. 2007/2194, arts. 1(3)(a), **8**, Sch. 2 Pt. 2 (with art. 12, Sch. 3 para. 30(2)(3))

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## Resolutions

### Circulation of members' resolutions

**384.** <sup>F499</sup> .....

**F499** Art. 384 repealed (1.10.2007) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), **Sch. 16**; S.I. 2007/2194, arts. 1(3)(a), **8**, Sch. 2 Pt. 2 (with art. 12, Sch. 3 para. 29(2), 38(2))

### In certain cases, compliance with Article 384 not required

**385.** <sup>F500</sup> .....

**F500** Art. 385 repealed (1.10.2007) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), **Sch. 16**; S.I. 2007/2194, arts. 1(3)(a), **8**, Sch. 2 Pt. 2 (with art. 12, Sch. 3 para. 29(2), 38(2))

### Extraordinary and special resolutions

**386.** <sup>F501</sup> .....

**F501** Art. 386 repealed (1.10.2007) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), **Sch. 16**; S.I. 2007/2194, arts. 1(3)(a), **8**, Sch. 2 Pt. 2 (with art. 12, Sch. 3 para. 22(2)(3), 30(2)(3))

### Resolution requiring special notice

**387.** <sup>F502</sup> .....

**F502** Art. 387 repealed (1.10.2007) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), **Sch. 16**; S.I. 2007/2194, arts. 1(3)(a), **8**, Sch. 2 Pt. 2 (with art. 12, Sch. 3 para. 27(2))

### <sup>F503</sup> Elective resolution of private company

**387A.**—<sup>F504</sup>(1) An election by a private company for the purposes of—

- (a) Article 90A (election as to duration of authority to allot shares),
- (b) Article 260 (election to dispense with laying of accounts and reports before general meeting),
- (c) Article 374A (election to dispense with holding of annual general meeting),
- (d) Article 377(4) or 386(3) (election as to majority required to authorise short notice of meeting), or
- (e) Article 394 (election to dispense with appointment of auditors annually),

shall be made by resolution of the company in general meeting in accordance with this Article.

Such a resolution is referred to in this Order as an “elective resolution”.

(2) An elective resolution is not effective unless—

- (a) at least 21 days' notice in writing is given of the meeting, stating that an elective resolution is to be proposed and stating the terms of the resolution, and

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(b) the resolution is agreed to at the meeting, in person or by proxy, by all the members entitled to attend and vote at the meeting.

[<sup>F505</sup>(2A) An elective resolution is effective notwithstanding the fact that less than 21 days' notice in writing of the meeting is given if all the members entitled to attend and vote at the meeting so agree.]

[<sup>F506</sup>(2B) For the purposes of this Article, notice in writing of the meeting is to be taken as given to a person where notice of the meeting is sent using electronic communications to such address as may for the time being be notified by that person to the company for that purpose.

(2C) For the purposes of this Article a notice in writing of the meeting is also to be treated as given to a person where—

- (a) the company and that person have agreed that notices of meetings required to be given to that person may instead be accessed by him on a web site;
- (b) the meeting is a meeting to which that agreement applies;
- (c) that person is notified, in manner for the time being agreed between him and the company for the purpose, of—
  - (i) the publication of the notice on a web site;
  - (ii) the address of that web site; and
  - (iii) the place on that web site where the notice may be accessed, and how it may be accessed; and
- (d) the notice continues to be published on that web site throughout the period beginning with the giving of that notification and ending with the conclusion of the meeting;

and for the purposes of this Article a notice treated in accordance with this paragraph as given to any person is to be treated as so given at the time of the notification mentioned in sub-paragraph (c).

(2D) A notification given for the purposes of paragraph (2C)(c) must—

- (a) state that it concerns a notice of a company meeting at which an elective resolution is to be proposed, and
- (b) specify the place, date and time of the meeting.

(2E) Nothing in paragraph (2C) shall invalidate the proceedings of a meeting where—

- (a) any notice that is required to be published as mentioned in sub-paragraph (d) of that paragraph is published for a part, but not all, of the period mentioned in that sub-paragraph; and
- (b) the failure to publish that notice throughout that period is wholly attributable to circumstances which it would not be reasonable to have expected the company to prevent or avoid.

(2F) In so far as the articles of the company do not provide for notices and notifications to be served using electronic communications, the provisions of Table A (as for the time being in operation) as to such service shall apply.]

(3) The company may revoke an elective resolution by passing an ordinary resolution to that effect.

(4) An elective resolution shall cease to have effect if the company is re-registered as a public company.

(5) An elective resolution may be passed or revoked in accordance with this Article, and the provisions referred to in [<sup>F506</sup> paragraphs (1) and (2B) to (2E)] have effect, notwithstanding any contrary provision in the company's articles of association.

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[<sup>F506</sup>(6) In this article, “address” includes any number or address used for the purposes of electronic communications.]]

**F503** Art. 387A subst. by 1990 NI 10, art. 51

**F504** Art. 387A repealed (20.1.2007 for art. 387A(2B)-(2F)(6), 1.10.2007 for art. 387A(1)(b)-(e) and otherwise prosp.) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), Sch. 16; S.I. 2006/3428, art. 7(b), Sch. 3 Pt. 2 (with arts. 6, 8, Sch. 5); S.I. 2007/2194, arts. 1(3)(a), 8, Sch. 2 Pt. 2 (with art. 12)

**F505** 1997 NI 22

**F506** SR 2003/3

### **Registration, etc. of resolutions and agreements**

**388.**—[<sup>F507</sup>(1) A copy of every resolution or agreement to which this Article applies shall, within 15 days after it is passed or made, be forwarded to the registrar and recorded by him; and it must be either a printed copy or else a copy in some other form approved by the registrar.

(2) Where a company's articles have been registered, a copy of [<sup>F508</sup>every such resolution, and every resolution or agreement to which Chapter 3 of Part 3 of the Companies Act 2006 applies (resolutions and agreements affecting a company's constitution), which is] for the time being in force shall be embodied in or annexed to every copy of the articles issued after the passing of the resolution or the making of the agreement.

(3) Where a company's articles have not been registered, a printed copy of every such resolution or agreement shall be forwarded to any member at his request on payment of 5 pence or such less sum as the company may direct.

(4) This Article applies to—

- (a) special resolutions;
- (b) extraordinary resolutions;

[<sup>F509</sup>(bb) an elective resolution or a resolution revoking such a resolution;]

- (c) resolutions or agreements which have been agreed to by all the members of a company but which, if not so agreed to, would not have been effective for their purpose unless (as the case may be) they had been passed as special resolutions or as extraordinary resolutions;
- (d) resolutions or agreements which have been agreed to by all the members of some class of shareholders but which, if not agreed to, would not have been effective for their purpose unless they had been passed by some particular majority or otherwise in some particular manner, and all resolutions or agreements which effectively bind all the members of any class of shareholders though not agreed to by all those members;
- (e) a resolution passed by the directors of a company in compliance with a direction under Article 41(2) (change of name on Department's direction);
- (f) a resolution of a company to give, vary, revoke or renew an authority to the directors for the purposes of Article 90 (allotment of relevant securities);
- (g) a resolution of the directors passed under Article 157(2) (alteration of memorandum on company ceasing to be a public company, following acquisition of its own shares);
- (h) a resolution conferring, varying[<sup>F510</sup>, revoking or renewing] authority under Article 176 (market purchase of company's own shares);
- (j) a resolution for voluntary winding up, passed under[<sup>F511</sup> Article 70(1)(a) of the Insolvency Order]; and

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(k) a resolution passed by the directors of an old public company, under Article 4(1) of the Consequential Provisions Order, that the company should be re-registered as a public company.

[<sup>F512</sup>(l) a resolution of the directors passed by virtue of regulation 16(2) of the Uncertificated Securities Regulations 1995 (which allow title to a company's shares to be evidenced and transferred without written instrument); and

(m) a resolution of a company passed by virtue of regulation 16(6) of the Uncertificated Securities Regulations 1995 (which prevents or reverses a resolution of the directors under regulation 16(2) of those Regulations).]

[<sup>F513</sup>(4A) For the purposes of this Article, references to a member of a company do not include the company itself where it is such a member by virtue only of its holding shares as treasury shares, and accordingly, in such circumstances, the company is not, for those purposes, to be treated as a member of any class of the company's shareholders.]

(5) If a company fails to comply with paragraph (1), the company and every officer of it who is in default is liable to a fine and, for continued contravention, to a daily default fine.

(6) If a company fails to comply with paragraph (2) or (3), the company and every officer of it who is in default is liable to a fine.

(7) For the purposes of paragraphs (5) and (6), a liquidator of a company is deemed an officer of it.]

<b>F507</b>	Art. 388 repealed (1.10.2007 for art. 388(4)(a)(c)-(m), 6.4.2008 for art. 388(4)(b) and otherwise prosp.) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), Sch. 16; S.I. 2007/2194, arts. 1(3)(a), 8, Sch. 2 Pt. 2 (with art. 12, Sch. 3 para. 1(2)) (as amended by S.I. 2007/2607, art. 4(3)(a)); S.I. 2007/3495, art. 8(a), Sch. 2 Pt. 2 (with arts. 7, 12)
<b>F508</b>	Words in art. 388(2) substituted (6.4.2008) by Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2008/948), arts. 2(2), 3(1)(b), Sch. 1 para. 140 (with arts. 6, 11, 12)
<b>F509</b>	1990 NI 5
<b>F510</b>	1989 NI 18
<b>F511</b>	1989 NI 19
<b>F512</b>	SI 1995/3272
<b>F513</b>	SR 2004/275

**Resolution passed at adjourned meeting**

**389.** <sup>F514</sup> .....

<b>F514</b>	Arts. 389-391 repealed (1.10.2007) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), Sch. 16; S.I. 2007/2194, arts. 1(3)(a), 8, Sch. 2 Pt. 2 (with art. 12, Sch. 3 paras. 19(2), 24(2), 40(2))
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*Written resolutions of private companies*

**Written resolutions of private companies**

**389A.** <sup>F515</sup> .....

<b>F515</b>	Arts. 389-391 repealed (1.10.2007) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), Sch. 16; S.I. 2007/2194, arts. 1(3)(a), 8, Sch. 2 Pt. 2 (with art. 12, Sch. 3 paras. 19(2), 24(2), 40(2))
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## Duty to notify auditors of proposed written resolution

**389B.** <sup>F516</sup> .....

**F516** Arts. 389-391 repealed (1.10.2007) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), **Sch. 16**; S.I. 2007/2194, arts. 1(3)(a), **8**, Sch. 2 Pt. 2 (with art. 12, Sch. 3 paras. 19(2), 24(2), 40(2))

## Written resolutions: supplementary provisions

**389C.** <sup>F517</sup> .....

**F517** Arts. 389-391 repealed (1.10.2007) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), **Sch. 16**; S.I. 2007/2194, arts. 1(3)(a), **8**, Sch. 2 Pt. 2 (with art. 12, Sch. 3 paras. 19(2), 24(2), 40(2))

## *Records of proceedings*

## Minutes of meetings

**390.** <sup>F518</sup> .....

**F518** Arts. 389-391 repealed (1.10.2007) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), **Sch. 16**; S.I. 2007/2194, arts. 1(3)(a), **8**, Sch. 2 Pt. 2 (with art. 12, Sch. 3 paras. 19(2), 24(2), 40(2))

## Recording of written resolutions

**390A.** <sup>F519</sup> .....

**F519** Arts. 389-391 repealed (1.10.2007) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), **Sch. 16**; S.I. 2007/2194, arts. 1(3)(a), **8**, Sch. 2 Pt. 2 (with art. 12, Sch. 3 paras. 19(2), 24(2), 40(2))

## *Recording of decisions by the sole member*

**390B.** <sup>F520</sup> .....

**F520** Arts. 389-391 repealed (1.10.2007) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), **Sch. 16**; S.I. 2007/2194, arts. 1(3)(a), **8**, Sch. 2 Pt. 2 (with art. 12, Sch. 3 paras. 19(2), 24(2), 40(2))

## *Inspection of minute books*

**391.** <sup>F521</sup> .....

**F521** Arts. 389-391 repealed (1.10.2007) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), **Sch. 16**; S.I. 2007/2194, arts. 1(3)(a), **8**, Sch. 2 Pt. 2 (with art. 12, Sch. 3 paras. 19(2), 24(2), 40(2))

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## Chapter V AUDITORS

### *Appointment of auditors*

#### **Duty to appoint auditors**

**392.** <sup>F522</sup> .....

**F522** Art. 392 repealed (1.10.2007 for certain purposes and otherwise prosp.) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), Sch. 16; S.I. 2007/2194, arts. 1(3)(a), 8, Sch. 2 Pt. 2 (with art. 12, Sch. 3 para. 44(2))

#### **Appointment at general meeting at which accounts laid**

**393.** <sup>F523</sup> .....

**F523** Art. 393 repealed (1.10.2007 for certain purposes and otherwise prosp.) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), Sch. 16; S.I. 2007/2194, arts. 1(3)(a), 8, Sch. 2 Pt. 2 (with art. 12, Sch. 3 para. 44(2))

#### **Appointment by private company which is not obliged to lay accounts**

**393A.** <sup>F524</sup> .....

**F524** Art. 393A repealed (1.10.2007) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), Sch. 16; S.I. 2007/2194, arts. 1(3)(a), 8, Sch. 2 Pt. 2 (with art. 12, Sch. 3 para. 44(2))

#### **Election by private company to dispense with annual appointment**

**394.** <sup>F525</sup> .....

**F525** Art. 394 repealed (1.10.2007) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), Sch. 16; S.I. 2007/2194, arts. 1(3)(a), 8, Sch. 2 Pt. 2 (with art. 12, Sch. 3 para. 44(2))

#### **Appointment by Department in default of appointment by company**

**395.** <sup>F526</sup> .....

**F526** Art. 395 repealed (1.10.2007 for certain purposes otherwise prosp.) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), Sch. 16; S.I. 2007/2194, arts. 1(3)(a), 8, Sch. 2 Pt. 2 (with art. 12, Sch. 3 para. 44(2))

#### **Filling of casual vacancies**

**396.** <sup>F527</sup> .....

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**F527** Art. 396 repealed (1.10.2007 for certain purposes otherwise prosp.) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), **Sch. 16**; S.I. 2007/2194, arts. 1(3)(a), **8**, Sch. 2 Pt. 2 (with art. 12, Sch. 3 para. 44(2))

### Certain companies exempt from obligation to appoint auditors

**396A.** <sup>F528</sup> .....

**F528** Art. 396A repealed (1.10.2007 for certain purposes otherwise prosp.) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), **Sch. 16**; S.I. 2007/2194, arts. 1(3)(a), **8**, Sch. 2 Pt. 2 (with art. 12, Sch. 3 para. 44(2))

*Art. 397 rep. by 1990 NI 5*

### *Rights of auditors*

#### Rights to information

**397A.** <sup>F529</sup> .....

**F529** Arts. 397A-400A repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 2 (with arts. 7, 12, Sch. 4 paras. 11(2)(3), 12(2)(4), 13(2), 14(2), 15(2))

#### Offences relating to the provision of information to auditors

**397B.** <sup>F530</sup> .....

**F530** Arts. 397A-400A repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 2 (with arts. 7, 12, Sch. 4 paras. 11(2)(3), 12(2)(4), 13(2), 14(2), 15(2))

#### Right to attend company meetings, &c.

**398.** <sup>F531</sup> .....

**F531** Arts. 397A-400A repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 2 (with arts. 7, 12, Sch. 4 paras. 11(2)(3), 12(2)(4), 13(2), 14(2), 15(2))

### *Remuneration of auditors*

#### Remuneration of auditors

**398A.** <sup>F532</sup> .....

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**F532** Arts. 397A-400A repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), Sch. 16; S.I. 2007/3495, art. 8(a), Sch. 2 Pt. 2 (with arts. 7, 12, Sch. 4 paras. 11(2)(3), 12(2)(4), 13(2), 14(2), 15(2))

**Remuneration of auditors or their associates for non-audit work**

**F533** **398B** <sup>F534</sup> <sup>F535</sup> .....

**F533** prosp. subst. by 2005 NI 17  
**F534** mod. by SR 2004/307  
**F535** Arts. 397A-400A repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), Sch. 16; S.I. 2007/3495, art. 8(a), Sch. 2 Pt. 2 (with arts. 7, 12, Sch. 4 paras. 11(2)(3), 12(2)(4), 13(2), 14(2), 15(2))

*Removal, resignation, &c. of auditors*

**Removal of auditors**

**399.** <sup>F536</sup> .....

**F536** Arts. 397A-400A repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), Sch. 16; S.I. 2007/3495, art. 8(a), Sch. 2 Pt. 2 (with arts. 7, 12, Sch. 4 paras. 11(2)(3), 12(2)(4), 13(2), 14(2), 15(2))

**Rights of auditors who are removed or not re-appointed**

**399A.** <sup>F537</sup> .....

**F537** Arts. 397A-400A repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), Sch. 16; S.I. 2007/3495, art. 8(a), Sch. 2 Pt. 2 (with arts. 7, 12, Sch. 4 paras. 11(2)(3), 12(2)(4), 13(2), 14(2), 15(2))

**Resignation of auditors**

**400.** <sup>F538</sup> .....

**F538** Arts. 397A-400A repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), Sch. 16; S.I. 2007/3495, art. 8(a), Sch. 2 Pt. 2 (with arts. 7, 12, Sch. 4 paras. 11(2)(3), 12(2)(4), 13(2), 14(2), 15(2))

**Rights of resigning auditors**

**400A.** <sup>F539</sup> .....

**F539** Arts. 397A-400A repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), Sch. 16; S.I. 2007/3495, art. 8(a), Sch. 2 Pt. 2 (with arts. 7, 12, Sch. 4 paras. 11(2)(3), 12(2)(4), 13(2), 14(2), 15(2))

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## Termination of appointment of auditors not appointed annually

**401.** <sup>F540</sup> .....

**F540** Art. 401 repealed (1.10.2007) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), Sch. 16; S.I. 2007/2194, arts. 1(3)(a), 8, Sch. 2 Pt. 2 (with art. 12)

## Statement by person ceasing to hold office as auditor

**401A** <sup>F541</sup> <sup>F542</sup> .....

**F541** mod. by SR 2004/307

**F542** Arts. 401A-401B repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), Sch. 16; S.I. 2007/3495, art. 8(a), Sch. 2 Pt. 2 (with arts. 7, 12, Sch. 4 para. 16(2))

## Offences of failing to comply with Article 401A

**401B** <sup>F543</sup> <sup>F544</sup> .....

**F543** mod. by SR 2004/307

**F544** Arts. 401A-401B repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), Sch. 16; S.I. 2007/3495, art. 8(a), Sch. 2 Pt. 2 (with arts. 7, 12, Sch. 4 para. 16(2))

## <sup>F545</sup>PART XIII

### REGISTRATION OF CHARGES

**F545** Pt. XIII (arts. 402-417J) substituted (prosp.) for arts. 402-417 by 1990 NI 10, arts. 28-40 (never in operation; amending provisions repealed 1.10.2009 by 2006 c. 46, Sch. 16)

#### Modifications etc. (not altering text)

**C5** Pt. XIII excluded (21.2.2009) by Banking Act 2009 (c. 1), ss. 252(2)(b), 263(1) (with s. 247); S.I. 2009/296, art. 3, Sch. para. 11

### *Certain charges void if not registered*

**402** <sup>F546</sup>—(1) Subject to the provisions of this Part, a charge created by a company and being a charge to which this Article applies is, so far as any security on the company's property or undertaking is conferred by the charge, void against the liquidator<sup>F547</sup> or administrator] and any creditor of the company, unless the prescribed particulars of the charge together with the instrument (if any) by which the charge is created or evidenced, are delivered to or received by the registrar for registration in the manner required by this Part, within 21 days after the date of the charge's creation.

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

**F546** mod. by SR 2004/307

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**F547** 1989 NI 19

### ***Charges which have to be registered***

**403.**—(1) Article 402 applies to the following charges—

- (a) a charge for the purposes of securing any issue of debentures,
- (b) <sup>F548</sup> a charge on uncalled share capital of the company,
- (c) a charge created or evidenced by an instrument which, if executed by an individual, would require registration as a bill of sale,
- (d) a charge on land (wherever situated) or any interest in it, but not including a charge for any rent or other periodical sum issuing out of land,
- (e) a charge on book debts of the company,
- (f) a floating charge on the company's undertaking or property,
- (g) <sup>F548</sup> a charge on calls made but not paid,
- (h) a charge on a ship or aircraft, or any share in a ship,
- (j) a charge on goodwill,<sup>[F549</sup> or on any intellectual property].

(2) Where a negotiable instrument has been given to secure the payment of any book debts of a company, the deposit of the instrument for the purpose of securing an advance to the company is not, for the purposes of Article 402 and this Article, to be treated as a charge on those book debts.

(3) The holding of debentures entitling the holder to a charge on land is not for the purposes of this Article deemed to be an interest in land.

<sup>[F549</sup>(3A) The following are “intellectual property” for the purposes of this Article—

- <sup>F550</sup>(a) any patent, trade mark,<sup>F551</sup> . . . registered design, copyright or design right;
- (b) any licence under or in respect of any such right.]

(4) In this Part, “charge” includes mortgage.

**F548** mod. by SR 2004/307

**F549** 1988 c. 48

**F550** mod. by 1994 c. 26

**F551** 1994 c. 26

### ***Formalities of registration (debentures)***

**404.**—(1) Where a series of debentures containing, or giving by reference to another instrument, any charge to the benefit of which the debenture holders of that series are entitled *pari passu* is created by a company, it is for the purposes of Article 402 sufficient if there are delivered to or received by the registrar, within 21 days after the execution of the deed containing the charge (or, if there is no such deed, after the execution of any debentures of the series), the following particulars in the prescribed form—

- (a) the total amount secured by the whole series, and
- (b) <sup>F552</sup> the dates of the resolutions authorising the issue of the series and the date of the covering deed (if any) by which the security is created or defined, and
- (c) a general description of the property charged, and
- (d) the names of the trustees (if any) of the debenture holders,

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together with the deed containing the charge or, if there is no such deed, one of the debentures of the series, so, however, that there shall be sent to the registrar for entry in the register particulars in the prescribed form of the date and amount of each issue of debentures of the series, but any omission to do this does not affect the validity of any of those debentures.

(2) Where any commission, allowance or discount has been paid or made either directly or indirectly by a company to a person in consideration of his—

- (a) subscribing or agreeing to subscribe, whether absolutely or conditionally, for debentures of the company, or
- (b) procuring or agreeing to procure subscriptions, whether absolute or conditional, for such debentures,

the particulars required to be sent for registration under Article 402 shall include particulars as to the amount or rate per cent. of the commission, discount or allowance so paid or made, but omission to do this does not affect the validity of the debentures issued.

(3) The deposit of debentures as security for a debt of the company is not, for the purposes of paragraph (2), treated as the issue of the debentures at a discount.

F552 mod. by SR 2004/307

#### ***Verification of charge on property outside Northern Ireland***

**405**<sup>F553</sup>.—(1) In the case of a charge created out of the United Kingdom comprising property situated outside the United Kingdom, the delivery to and the receipt by the registrar of a copy (verified in the prescribed manner) of the instrument by which the charge is created or evidenced has the same effect for the purposes of Articles 402 to 404 and this Article as the delivery and receipt of the instrument itself.

(2) In that case, 21 days after the date on which the instrument or copy could, in due course of post (and if despatched with due diligence), have been received in Northern Ireland are substituted for the 21 days mentioned in Article 402(1) (or as the case may be, Article 404(1)) as the time within which the particulars and instrument or copy are to be delivered to the registrar.

(3) Where a charge is created in the United Kingdom but comprises property outside the United Kingdom, the instrument creating or purporting to create the charge may be sent for registration under Article 402 notwithstanding that further proceedings may be necessary to make the charge valid or effectual according to the law of the country in which the property is situated.

(4) Where a charge comprises property situated in Great Britain and registration in the country where the property is situated is necessary to make the charge valid or effectual according to the law of that country, the delivery to and the receipt by the registrar of a copy (verified in the prescribed manner) of the instrument by which the charge is created or evidenced, together with a certificate in the prescribed form stating that the charge was presented for registration in the country in which the property is situated on the date on which it was so presented has, for the purposes of Articles 402 to 404 and this Article, the same effect as the delivery and receipt of the instrument itself.

F553 mod. by SR 2004/307

#### ***Company's duty to notify registrar of charges it creates***

**406**<sup>F554</sup>.—(1) It is a company's duty to send to the registrar for registration the particulars of every charge created by the company and of the issues of debentures of a series requiring registration under Articles 402 to 405; but registration of any such charge may be effected on the application of any person interested in it.

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(2) Where registration is effected on the application of some person other than the company, that person is entitled to recover from the company the amount of any fees properly paid by him to the registrar on the registration.

(3) If a company fails to comply with paragraph (1), then, unless the registration has been effected on the application of some other person, the company and every officer of it who is in default is liable to a fine and, for continued contravention, to a daily default fine.

F554 mod. by SR 2004/307

### ***Charges existing on property acquired***

**407** <sup>F555</sup>.—(1) This Article applies where a company acquires property which is subject to a charge of any such kind as would, if it had been created by the company after the acquisition of the property, have been required to be registered under this part.

(2) The company shall cause the prescribed particulars of the charge, together with a copy (certified in the prescribed manner to be a correct copy) of the instrument (if any) by which the charge was created or is evidenced, to be delivered to the registrar for registration in the manner required by this Part within 21 days after the date on which the acquisition is completed.

(3) However, if the property is situated and the charge was created outside Northern Ireland, 21 days after the date on which the copy of the instrument could in due course of post, and if despatched with due diligence, have been received in Northern Ireland is substituted for the 21 days mentioned in paragraph (2) as the time within which the particulars and copy of the instrument are to be delivered to the registrar.

(4) If default is made in complying with this Article, the company and every officer of it who is in default is liable to a fine and, for continued contravention, to a daily default fine.

F555 mod. by SR 2004/307

### ***Registration of orders charging land, etc.***

**408.**—(1) Where—

- (a) a charge imposed under Article 46 of the Judgments Enforcement (Northern Ireland) Order 1981 or notice thereof is registered in the Land Registry against registered land or any estate in registered land of a company; or
- (b) any such order is registered in the Registry of Deeds against any unregistered land or estate in land of a company;

the Registrar of Titles in the case of sub-paragraph (a) and the Registrar of Deeds in the case of sub-paragraph (b) shall as soon as may be cause 2 copies of the order made under Article 46 of that Order or of any notice registered under Article 48 of that order to be delivered to the registrar.

(2) The registrar shall on receipt of such copies—

- (a) register one of them in accordance with the provisions of Article 409; and
- (b) not later than 7 days from the date of such receipt, cause the other copy together with a certificate of registration under Article 409(3) to be sent to the company against which the judgment was given.

(3) Where any charge to which paragraph (1) applies is vacated, the Registrar of Titles or, as the case may be, the Registrar of Deeds shall cause a certified copy of the certificate of satisfaction lodged under Article 132(1) of the Judgments Enforcement (Northern Ireland) Order 1981 to be delivered to the registrar for entry of a memorandum of satisfaction pursuant to Article 411.



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### **Register of charges to be kept by registrar**

**409**<sup>F556</sup>.—(1) The registrar shall keep, with respect to each company, a register in the prescribed form of all the charges requiring registration under this Part.

(2) He shall enter in the register with respect to such charges the following particulars—

- (a) in the case of a charge to the benefit of which the holders of a series of debentures are entitled, the particulars specified in Article 404(1);
- (b) in the case of a charge imposed by the Enforcement of Judgments Office under Article 46 of the Judgments Enforcement (Northern Ireland) Order 1981, the date on which the charge became effective;
- (c) in the case of any other charge—
  - (i) if it is a charge created by the company, the date of its creation, and if it is a charge which was existing on property acquired by the company, the date of the acquisition of the property, and
  - (ii) the amount secured by the charge, and
  - (iii) short particulars of the property charged, and
  - (iv) the persons entitled to the charge.

(3) The registrar shall give a certificate of the registration of any charge registered in pursuance of this Part, stating the amount secured by the charge.

The certificate—

- (a) shall be signed by the registrar, and
  - (b) is conclusive evidence that the requirements of this Part as to registration have been satisfied.
- (4) The register kept in pursuance of this Article shall be open to inspection by any person.

F556 mod. by SR 2004/307

### **Endorsement of certificate on debentures**

**410**<sup>F557</sup>.—(1) The company shall cause a copy of every certificate of registration given under Article 409 to be endorsed on every debenture or certificate of debenture stock which is issued by the company and the payment of which is secured by the charge so registered.

(2) But this does not require a company to cause a certificate of registration of any charge so given to be endorsed on any debenture or certificate of debenture stock issued by the company before the charge was created.

(3) If a person knowingly and wilfully authorises or permits the delivery of a debenture or certificate of debenture stock which under this Article is required to have endorsed on it a copy of a certificate of registration without the copy being so endorsed upon it, he is liable (without prejudice to any other liability) to a fine.

F557 mod. by SR 2004/307

### **Entries of satisfaction and release**

**411.**—(1) [<sup>F558</sup>Subject to paragraph (1A), the registrar], on receipt of a statutory declaration in the prescribed form verifying, with respect to a registered charge—

- (a) that the debt for which the charge was created has been paid or satisfied in whole or in part, or

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- (b) that part of the property or undertaking charged has been released from the charge or has ceased to form part of the company's property or undertaking,

may enter on the register a memorandum of satisfaction in whole or in part, or of the fact that part of the property or undertaking has been released from the charge or has ceased to form part of the company's property or undertaking (as the case may be).

[<sup>F558</sup>(1A <sup>F559</sup> The registrar may make any such entry as is mentioned in paragraph (1) where, instead of receiving such a statutory declaration as is mentioned in that paragraph, he receives a statement by a director, secretary, administrator or administrative receiver of the company which is contained in an electronic communication and that statement—

- (a) verifies the matters set out in sub-paragraph (a) or (b) of that paragraph,
- (b) contains a description of the charge,
- (c) states the date of creation of the charge and the date of its registration under this Part,
- (d) states the name and address of the chargee or, in the case of a debenture, trustee, and
- (e) where sub-paragraph (b) of paragraph (1) applies, contains short particulars of the property or undertaking which has been released from the charge, or which has ceased to form part of the company's property or undertaking (as the case may be).]

(2) Where the registrar enters a memorandum of satisfaction in whole, he shall, if required, furnish the company with a copy of it.

[<sup>F558</sup>(3) Any person who makes a false statement under paragraph (1A) which he knows to be false or does not believe to be true is liable to imprisonment or a fine, or both.]

**F558** SR 2003/3  
**F559** mod. by SR 2004/307

### ***Rectification of register of charges***

**412.**—(1 <sup>F560</sup> This Article applies if the court is satisfied that the omission to register a charge within the time required by this Part or that the omission or mis-statement of any particular with respect to any such charge or in a memorandum of satisfaction was accidental, or due to inadvertence or to some other sufficient cause, or is not of a nature to prejudice the position of creditors or shareholders of the company, or that on other grounds it is just and equitable to grant relief.

(2) The court may, on the application of the company or a person interested, and on such terms and conditions as seem to the court just and expedient, order that the time for registration shall be extended or, as the case may be, that the omission or mis-statement shall be rectified.

**F560** mod. by SR 2004/307

### ***Registration of enforcement of security***

**413** <sup>F561</sup>.—(1) If a person obtains an order for the appointment of a receiver or manager of a company's property, or appoints such a receiver or manager under powers contained in an instrument, he shall within 7 days of the order or of the appointment under those powers, give notice of the fact to the registrar; and the registrar shall enter the fact in the register of charges.

(2) Where a person appointed receiver or manager of a company's property under powers contained in an instrument ceases to act as such receiver or manager, he shall, on so ceasing, give the registrar notice to that effect, and the registrar shall enter the fact in the register of charges.

(3) A notice under this Article shall be in the prescribed form.

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(4) If a person makes default in complying with the requirements of this Article, he is liable to a fine and, for continued contravention, to a daily default fine.

**F561** mod. by SR 2004/307

### ***Companies to keep copies of instruments creating charges***

**414**<sup>F562</sup>.—(1) Every company shall cause a copy of every instrument creating a charge requiring registration under this Part, including every order or notice a copy of which has been delivered to the company under Article 408, to be kept at the same office as its register of members is kept.

(2) In the case of a series of uniform debentures, a copy of one debenture of the series is sufficient.

**F562** mod. by SR 2004/307

### ***Company's register of charges***

**415.**—(1)<sup>F563</sup> Every limited company shall keep at the same office as its register of members is kept a register of charges and enter in it all charges specifically affecting property of the company and all floating charges on the company's undertaking or any of its property.

(2) The entry shall in each case give a short description of the property charged, the amount of the charge and, except in the case of securities to bearer, the names of the persons entitled to the charge.

(3) If an officer of the company knowingly and wilfully authorises or permits the omission of any entry required to be made in pursuance of this Article, he is liable to a fine.

**F563** mod. by SR 2004/307

### ***Right to inspect instruments which create charges, etc.***

**416.**—(1)<sup>F564</sup> The copies of instruments referred to in Article 414 and the register of charges kept in pursuance of Article 415, shall be open during business hours (subject to such reasonable restrictions as the company in general meeting may impose, but so that not less than 2 hours each day are allowed for inspection) to the inspection of any creditor or member of the company without fee.

(2) The register of charges shall also be open to the inspection of any other person on payment of such fee, not exceeding 5 pence for each inspection, as the company may determine.

(3) If inspection of the copies referred to, or of the register, is refused, every officer of the company who is in default is liable to a fine and, for continued contravention, to a daily default fine.

(4) If such a refusal occurs the court may by order compel an immediate inspection of the copies or register.

**F564** mod. by SR 2004/307

### ***Application of this Part to companies incorporated outside Northern Ireland***

**417.**—(1) This Part extends to charges on property in Northern Ireland which are created, and to charges on property in Northern Ireland which is acquired, by a company (whether a company within the meaning of this Order or not) incorporated outside Northern Ireland which has an established place of business in Northern Ireland.

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(2) In relation to such a company, Articles 414 and 415 apply with the substitution, for the reference to the office at which the register of members is kept, of a reference to the company's principal place of business in Northern Ireland.

## PART XIV

### ARRANGEMENTS AND RECONSTRUCTIONS

#### *Power of company to compromise with creditors and members*

**418.** <sup>F565</sup> .....

**F565** Arts. 418-420A repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 2 (with arts. 7, 12, Sch. 4 para. 36(2))

#### *Information as to compromise to be circulated*

**419.** <sup>F566</sup> .....

**F566** Arts. 418-420A repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 2 (with arts. 7, 12, Sch. 4 para. 36(2))

#### *Provisions for facilitating company reconstruction or amalgamation*

**420.** <sup>F567</sup> .....

**F567** Arts. 418-420A repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 2 (with arts. 7, 12, Sch. 4 para. 36(2))

#### *Application of Articles 418 to 420 mergers and divisions of public companies*

**420A.** <sup>F568</sup> .....

**F568** Arts. 418-420A repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 2 (with arts. 7, 12, Sch. 4 para. 36(2))

## PART XIVA

### TAKEOVER OFFERS

#### *Takeover offers*

**421.** <sup>F569</sup> .....

**F569** Arts. 421-423F repealed (6.4.2007) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), **Sch. 16**; S.I. 2007/1093, **art. 5**, Sch. 2 Pt. 2 (with arts. 8, 11(1), Sch. 6 para. 1)

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### **Right of offeror to buy out minority shareholders**

**422.** <sup>F570</sup> .....

**F570** Arts. 421-423F repealed (6.4.2007) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), **Sch. 16**; S.I. 2007/1093, **art. 5**, Sch. 2 Pt. 2 (with arts. 8, 11(1), Sch. 6 para. 1)

### **Effect of notice under Article 422**

**423.** <sup>F571</sup> .....

**F571** Arts. 421-423F repealed (6.4.2007) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), **Sch. 16**; S.I. 2007/1093, **art. 5**, Sch. 2 Pt. 2 (with arts. 8, 11(1), Sch. 6 para. 1)

### **Right of minority shareholder to be bought out by offeror**

**423A.** <sup>F572</sup> .....

**F572** Arts. 421-423F repealed (6.4.2007) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), **Sch. 16**; S.I. 2007/1093, **art. 5**, Sch. 2 Pt. 2 (with arts. 8, 11(1), Sch. 6 para. 1)

### **Effect of requirement under Article 423A**

**423B.** <sup>F573</sup> .....

**F573** Arts. 421-423F repealed (6.4.2007) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), **Sch. 16**; S.I. 2007/1093, **art. 5**, Sch. 2 Pt. 2 (with arts. 8, 11(1), Sch. 6 para. 1)

### **Applications to the court**

**423C.** <sup>F574</sup> .....

**F574** Arts. 421-423F repealed (6.4.2007) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), **Sch. 16**; S.I. 2007/1093, **art. 5**, Sch. 2 Pt. 2 (with arts. 8, 11(1), Sch. 6 para. 1)

### **Joint offers**

**423D.** <sup>F575</sup> .....

**F575** Arts. 421-423F repealed (6.4.2007) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), **Sch. 16**; S.I. 2007/1093, **art. 5**, Sch. 2 Pt. 2 (with arts. 8, 11(1), Sch. 6 para. 1)

### **Associates**

**423E.** <sup>F576</sup> .....

**F576** Arts. 421-423F repealed (6.4.2007) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), **Sch. 16**; S.I. 2007/1093, **art. 5**, Sch. 2 Pt. 2 (with arts. 8, 11(1), Sch. 6 para. 1)

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## **Convertible securities**

**423F.** <sup>F577</sup> .....

**F577** Arts. 421-423F repealed (6.4.2007) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), Sch. 16; S.I. 2007/1093, art. 5, Sch. 2 Pt. 2 (with arts. 8, 11(1), Sch. 6 para. 1)

## **PART XV**

### **INVESTIGATION OF COMPANIES AND THEIR AFFAIRS; REQUISITION OF DOCUMENTS**

#### *Appointment and functions of inspectors*

#### ***Investigation of a company on its own application or that of its members***

**424.**—(1) The Department may appoint one or more competent inspectors to investigate the affairs of a company and to report on them to the Department in such manner as the Department may direct.

(2) <sup>F578</sup> The appointment may be made—

- (a) in the case of a company having a share capital, on the application either of not less than 200 members or of members holding not less than one-tenth of the shares issued<sup>F579</sup> (excluding any shares held as treasury shares)];
- (b) in the case of a company not having a share capital, on the application of not less than one-fifth in number of the persons on the company's register of members, and
- (c) in any case, on application of the company.

(3) The application shall be supported by such evidence as the Department may require for the purpose of showing that the applicant or applicants have good reason for requiring the investigation.

(4) The Department may, before appointing inspectors, require the applicant or applicants to give security, to an amount not exceeding £5,000, or such other sum as it may by order, subject to negative resolution, specify, for payment of the costs of the investigation.

**F578** mod. by SR 2004/307

**F579** SR 2004/275

#### ***Other company investigations***

**425.**—(1) The Department shall appoint one or more competent inspectors to investigate the affairs of a company and report on them in such manner as the Department directs, if the court by order declares that the company's affairs ought to be so investigated.

(2) The Department may make such an appointment if it appears to the Department that there are circumstances suggesting—

- (a) that the company's affairs are being or have been conducted with intent to defraud its creditors or the creditors of any other person or otherwise for a fraudulent or unlawful purpose, or in a manner which is unfairly prejudicial to some part of its members, or

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- (b) that any actual or proposed act or omission of the company (including an act or omission on its behalf) is or would be so prejudicial, or that the company was formed for any fraudulent or unlawful purpose, or
- (c) that persons concerned with the company's formation or the management of its affairs have in connection therewith been guilty of fraud, misfeasance or other misconduct towards it or towards its members, or
- (d) that the company's members have not been given all the information with respect to its affairs which they might reasonably expect.

[<sup>F580</sup>(2A) Inspectors may be appointed under paragraph (2) on terms that any report they may make is not for publication; and in such a case, the provisions of Article 430(3) (availability and publication of inspectors' reports) do not apply.]

(3) Paragraphs (1) and (2) are without prejudice to the powers of the Department under Article 424; and the power conferred by paragraph (2) is exercisable with respect to a body corporate notwithstanding that it is in course of being voluntarily wound up.

(4 <sup>F581</sup> The reference in paragraph (2)(a) to a company's members includes any person who is not a member but to whom shares in the company have been transferred or transmitted by operation of law.

**F580** 1990 NI 10

**F581** mod. by SR 2004/307

### ***Inspectors' powers during investigation***

**426** <sup>F582</sup>.—(1) If inspectors appointed under Article 424 or 425 to investigate the affairs of a company think it necessary for the purposes of their investigation to investigate also the affairs of another body corporate which is or at any relevant time has been the company's subsidiary or holding company, or a subsidiary of its holding company or a holding company of its subsidiary, they have power to do so; and they shall report on the affairs of the other body corporate so far as they think that the results of their investigation of its affairs are relevant to the investigation of the affairs of the company first mentioned.

*Para. (2) rep. by 1986 c. 60*

**F582** mod. by SR 2004/307

### ***Production of documents and evidence to inspectors***

**427** <sup>F583</sup>.—(1) When inspectors are appointed under Article 424 or 425, it is the duty of all officers and agents of the company, and of all officers and agents of any other body corporate whose affairs are investigated under Article 426(1)—

- (a) to produce to the inspectors all [<sup>F584</sup> documents] of or relating to the company or, as the case may be, the other body corporate which are in their custody or power,
- (b) to attend before the inspectors when required to do so, and
- (c) otherwise to give the inspectors all assistance in connection with the investigation which they are reasonably able to give.

[<sup>F584</sup>(2) If the inspectors consider that an officer or agent of the company or other body corporate, or any other person, is or may be in possession of information relating to a matter which they believe to be relevant to the investigation, they may require him—

- (a) to produce to them any documents in his custody or power relating to that matter,

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- (b) to attend before them, and
- (c) otherwise to give them all assistance in connection with the investigation which he is reasonably able to give;

and it is that person's duty to comply with the requirement.]

[<sup>F584</sup>(3) An inspector may for the purposes of the investigation examine any person on oath, and may administer an oath accordingly.]

(4) In this Article, a reference to officers or to agents includes past as well as present, officers or agents (as the case may be); and “agents”, in relation to a company or other body corporate, includes its bankers and solicitors and persons employed by it as auditors, whether those persons are or are not officers of the company or other body corporate.

(5) An answer given by a person to a question put to him in exercise of powers conferred by this Article (whether as it has effect in relation to an investigation under any of Articles 424 to 426, or as applied by any other Article in this Part) may be used in evidence against him.

[<sup>F585</sup>(5A) However, in criminal proceedings in which that person is charged with an offence to which this paragraph applies—

- (a) no evidence relating to the answer may be adduced, and
- (b) no question relating to it may be asked,

by or on behalf of the prosecution, unless evidence relating to it is adduced, or a question relating to it is asked, in the proceedings by or on behalf of that person.

(5B) Paragraph (5A) applies to any offence other than an offence under Article 7 or 10 of the Perjury (Northern Ireland) Order 1979 (false statements made on an oath otherwise than in judicial proceedings or made otherwise than on oath).]

[<sup>F584</sup>(6) In this Article “documents” includes information recorded in any form; and, in relation to information recorded otherwise than in legible form, the power to require its production includes power to require the production of a copy of the information in legible form<sup>F586</sup>, or in a form from which it can readily be produced in visible and legible form].]

**F583** mod. by SR 2004/307  
**F584** 1990 NI 10  
**F585** 1999 c. 23  
**F586** 2001 c. 16

*Art. 428 rep. by 1990 NI 10*

### ***Obstruction of inspectors treated as contempt of court***

**429** <sup>F587</sup>.—[<sup>F588</sup>(1) If any person—

- (a) fails to comply with article 427(1)(a) or (c),
- (b) refuses to comply with a requirement under Article 427(1)(b) or (2), or
- (c) refuses to answer any question put to him by the inspectors for the purposes of the investigation,

the inspectors may certify that fact in writing to the court.]

(3) The court may thereupon inquire into the case; and, after hearing any witnesses who may be produced against or on behalf of the alleged offender and after hearing any statement which may be offered in defence, the court may punish the offender in like manner as if he had been guilty of contempt of the court.



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**F587** mod. by SR 2004/307

**F588** 1990 NI 10

### ***Inspectors' reports***

**430** <sup>F589</sup>.—(1) The inspectors may, and if so directed by the Department shall, make interim reports to the Department, and on the conclusion of their investigation shall make a final report to the Department.

Any such report shall be written or printed, as the Department directs.

[<sup>F590</sup>(1A) Any persons who have been appointed under Article 424 or 425 may at any time and, if the Department directs them to do so shall, inform it of any matters coming to their knowledge as a result of their investigation.]

[<sup>F591</sup>(1B) If it appears to the Department that matters have come to light in the course of the inspectors' investigation which suggest that a criminal offence has been committed, and those matters have been referred to the appropriate prosecuting authority, it may direct the inspectors to take no further steps in the investigation or to take only such further steps as are specified in the direction.

(1C) Where an investigation is the subject of a direction under paragraph (1B), the inspectors shall make a final report to the Department only where—

- (a) they were appointed under Article 425(1) (appointment in pursuance of an order of the court), or
- (b) the Department directs them to do so.]

(2) If the inspectors were appointed under Article 425 in pursuance of an order of the court, the Department shall furnish a copy of any report of theirs to the court.

(3) In any case the Department may, if it thinks fit—

- (a) forward a copy of any report made by the inspectors to the company's registered office,
- (b) furnish a copy on request and on payment of the prescribed fee to—
  - (i) any member of the company or other body corporate which is the subject of the report,
  - (ii) any person whose conduct is referred to in the report,
  - (iii) the auditors of that company or body corporate,
  - (iv) the applicants for the investigation,
  - (v) any other person whose financial interests appear in the Department to be affected by the matters dealt with in the report, whether as a creditor of the company or body corporate, or otherwise, and
- (c) cause any such report to be printed and published.

**F589** mod. by SR 2004/307

**F590** 1986 c. 60

**F591** 1990 NI 10

### ***Power to bring civil proceedings on company's behalf***

**431.** <sup>F592</sup> .....

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**F592** Art. 431 repealed (6.4.2007) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), Sch. 16; S.I. 2006/3428, art. 4(2)(a) (subject to art. 5, Sch. 1 and with arts. 6, 8, Sch. 5)

### *Expenses of investigating a company's affairs*

**432.**—<sup>F593</sup><sup>F594</sup>(1) The expenses of an investigation under any of the powers conferred by this Part shall be defrayed in the first instance by the Department but it may recover those expenses from the persons liable in accordance with this Article.

There shall be treated as expenses of the investigation, in particular, such reasonable sums as the Department may determine in respect of general staff costs and overheads.]

(2) A person who is convicted on a prosecution instituted as a result of the investigation, or is ordered to pay the whole or any part of the costs of proceedings brought under Article 431, may in the same proceedings be ordered to pay those expenses to such extent as may be specified in the order.

(3) A body corporate in whose name proceedings are brought under that Article is liable to the amount or vale of any sums or property recovered by it as a result of those proceedings; and any amount for which a body corporate is liable under this paragraph is a first charge on the sums or property recovered.

(4) A body corporate dealt with by<sup>F594</sup> an inspectors' report], where the inspectors were appointed otherwise than of the Department's own motion, is liable except where it was the applicant for the investigation and except so far as the Department otherwise directs.

<sup>F594</sup>(5) Where inspectors were appointed—

(a) <sup>F595</sup> under Article 424, or

(b) <sup>F595</sup> on an application under Article 435(3),

the applicant or applicants for the investigation is or are liable to such extent (if any) as the Department may direct.]

(6) The report of inspectors appointed otherwise than of the Department's own motion may, if they think fit, and shall if the Department so directs, include a recommendation as to the directions (if any) which they think appropriate, in the light of their investigation, to be given under paragraph (4) or (5).

(7) For the purposes of this Article, any costs or expenses incurred by the Department in or in connection with proceedings brought under Article 431 (including expenses incurred under paragraph (2) of it) are to be treated as expenses of the investigation giving rise to the proceedings.

(8) Any liability to repay the Department imposed by paragraphs (2) and (3) is (subject to satisfaction of the Department's right to repayment) a liability also to indemnify all persons against liability under paragraphs (4) and (5); and any such liability imposed by paragraph (2) is (subject as mentioned above) a liability also to indemnify all persons against liability under paragraph (3).

(9) A person liable under any one of paragraphs (2) to (5) is entitled to contribution from any other person liable under the same paragraph, according to the amount of their respective liabilities under it.]

**F593** Art. 432 repealed (6.4.2007 for certain purposes, otherwise prosp.) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), Sch. 16; S.I. 2006/3428, arts. 4(2)(a), 7(c), Sch. 4 Pt. 2 (subject to art. 5, Sch. 1 and with arts. 6, 8, Sch. 5)

**F594** 1990 NI 10

**F595** mod. by SR 2004/307

*Art. 433 rep. by 1990 NI 10*

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### ***Inspectors' report to be evidence***

**434** <sup>F596</sup>.—(1) A copy of any report of inspectors appointed under<sup>F597</sup> this Part] certified by the Department to be a true copy, is admissible in any legal proceedings as evidence of the opinion of the inspectors in relation to any matter contained in the report<sup>F598</sup> and in proceedings on an application under<sup>F599</sup> Article 11 of the Company Directors Disqualification (Northern Ireland) Order 2002], as evidence of any fact stated in the report].

(2) A document purporting to be such a certificate as is mentioned in paragraph (1) shall be received in evidence and be deemed to be such a certificate, unless the contrary is proved.

**F596** mod. by SR 2004/307

**F597** 1990 NI 10

**F598** 1989 NI 18

**F599** 2002 NI 4

### *Other powers of investigation available to the Department*

#### ***Power to investigate company ownership***

**435.**—(1) Where it appears to the Department that there is good reason to do so, the Department may appoint one or more competent inspectors to investigate and report on the membership of any company, and otherwise with respect to the company, for the purpose of determining the true persons who are or have been financially interested in the success or failure (real or apparent) of the company or able to control or materially to influence its policy.

(2) The appointment of inspectors under this Article may define the scope of their investigation (whether as respects the matters or the period to which it is to extend or otherwise) and in particular may limit the investigation to matters connected with particular shares or debentures.

<sup>F600</sup>(3) If an application for investigation under this Article with respect to particular shares or debentures of a company is made to the Department by members of the company, and the number of applicants or the amount of shares held by them is not less than that required for an application for the appointment of inspectors under Article 424(2)(a) or (b), then, subject to the following provisions, the Department shall appoint inspectors to conduct the investigation applied for.

(3A) The Department shall not appoint inspectors if it is satisfied that the application is vexatious; and where inspectors are appointed their terms of appointment shall exclude any matter in so far as the Department is satisfied that it is unreasonable for it to be investigated.

(3B) The Department may, before appointing inspectors, require the applicant or applicants to give security, to an amount not exceeding £5,000, or such other sum as it may by order subject to negative resolution specify, for payment of the costs of the investigation.

(3C) If on an application under paragraph (3) it appears to the Department that the powers conferred by Article 437 are sufficient for the purposes of investigating the matters which inspectors would be appointed to investigate, it may instead conduct the investigation under that Article.]

(4) Subject to the terms of their appointment, the inspectors' powers extend to the investigation of any circumstances suggesting the existence of an arrangement or understanding which, though not legally binding, is or was observed or likely to be observed in practice and which is relevant to the purposes of the investigation.

**F600** 1990 NI 10

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### ***Provisions applicable on investigation under Article 435***

**436.**—(1) For the purposes of an investigation under Article 435, Articles 426(1), 427, 429 and 430 apply with the necessary modifications of references to the affairs of the company or to those of any other body corporate, subject however to paragraphs (2)<sup>F601</sup> and (3)].

(2) Those Articles apply to—

- (a) all persons who are or have been, or whom the inspector has reasonable cause to believe to be or have been, financially interested in the success or failure or the apparent success or failure of the company or any other body corporate whose membership is investigated with that of the company, or able to control or materially influence its policy (including persons concerned only on behalf of others), and
- (b) any other person whom the inspector has reasonable cause to believe possesses information relevant to the investigation.

as they apply in relation to officers and agents of the company or other body corporate (as the case may be).

(3) If the Department is of opinion that there is good reason for not divulging any part of a report made by virtue of Article 435 and this Article, the Department may under Article 430 disclose the report with the omission of that part; and the Department may cause to be kept by the registrar a copy of the report with that part omitted or, in the case of any other such report, a copy of the whole report.

**F601** 1989 NI 18

### ***Power to obtain information as to those interested in shares, etc.***

**437.**—(1) If it appears to the Department that there is good reason to investigate the ownership of any shares in or debentures of a company and that it is unnecessary to appoint inspectors for the purpose, the Department may require any person whom the Department has reasonable cause to believe to have or to be able to obtain any information as to the present and past interests in those shares or debentures and the names and addresses of the persons interested and of any persons who act or have acted on their behalf in relation to the shares or debentures to give any such information to the Department.

(2) For this purpose a person is deemed to have an interest in shares or debentures if he has any right to acquire or dispose of them or of any interest in them, or to vote in respect of them, or if his consent is necessary for the exercise of any of the rights of other persons interested in them, or if other persons interested in them can be required, or are accustomed, to exercise their rights in accordance with his instructions.

(3) A person who fails to give information required of him under this Article, or who in giving such information makes any statement which he knows to be false in a material particular, or recklessly makes any statement which is false in a material particular, is liable to imprisonment or a fine, or both.

### ***Power to impose restrictions on shares and debentures***

**438.**—(1) If in connection with an investigation under either Article 435 or 437 it appears to the Department that there is difficulty in finding out the relevant facts about any shares (whether issued or to be issued), the Department may by order direct that the shares shall until further order be subject to the restrictions imposed by Part XVI.

<sup>F602</sup>(1A) If the Department is satisfied that an order under paragraph (1) may unfairly affect the rights of third parties in respect of shares then the Department, for the purpose of protecting such

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rights and subject to such terms as it thinks fit, may direct that such acts by such persons and for such purposes as may be set out in the order, shall not constitute a breach of the restrictions of Part XVI.]

(2) This Article, and Part XVI in its application to orders under it, apply in relation to debentures as in relation to shares<sup>F602</sup> save that paragraph (1A) shall not apply.]

F602 SR 1992/257

### **Investigation of share dealings**

**439.**—(1) If it appears to the Department that there are circumstances suggesting that contraventions may have occurred, in relation to a company's shares or debentures, of Article 331 or 332 (taken with Schedule 13), or of Article 336(3) to (5) (restrictions on share dealings by directors and their families; obligation of director to disclose shareholding in his own company), the Department may appoint one or more competent inspectors to carry out such investigations as are requisite to establish whether or not such contraventions have occurred and to report the result of their investigations to the Department.

(2) The appointment of inspectors under this Article may limit the period to which their investigation is to extend or confine it to shares or debentures of a particular class, or both.

<sup>F603</sup>(3) Articles 427 to 429 apply for the purposes of an investigation under this Article to the following persons as they apply to officers of the company or of the other body corporate—

- (a) an authorised person;
- (b) a relevant professional;
- (c) a person not falling within sub-paragraph (a) or (b) who may carry on a regulated activity without contravening the prohibition imposed by section 19 of the Financial Services and Markets Act 2000; and
- (d) in relation to an authorised person, to a relevant professional or to a person falling within sub-paragraph (c)—
  - (i) if it is a body corporate, any person who is or has been an officer of it,
  - (ii) if it is a partnership, any person who is or has been a partner in it,
  - (iii) if it is an unincorporated association, any person who is or has been a member of its governing body or an officer of it.

(3A) In paragraph (3)—

“authorised person” has the meaning given in section 31(2) of the Financial Services and Markets Act 2000;

“relevant professional” means a member of a profession if a body has been designated under section 326(1) of that Act in relation to that profession, and, in relation to such a profession, “member” has the meaning given in section 325(2) of that Act.]

(4) Articles 427 to 429 apply under paragraph (3)—

- <sup>F604</sup>(a) to an individual who is an authorised person within the meaning of the Financial Services Act 1986;
- (b) to any individual who holds a permission granted under paragraph 23 of Schedule 1 to that Act;
- (c) to an officer (whether past or present) of a body corporate which is such an authorised person or holds such a permission;
- (d) to any partner (whether past or present) in a partnership which is such an authorised person or holds such a permission;

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- (e) to any member of the governing body or officer (in either case whether past or present) of an unincorporated association which is such an authorised person or holds such a permission,]

as they apply to officers of the company or of the other body corporate.

*Paras. (5), (6) rep. by 1986 c. 60*

**F603** SI 2001/3649

**F604** 1986 c. 60

### *Requisition and seizure of books and papers*

#### ***Department's power to require production of documents***

*Para. (1) rep. by 1990 NI 10*

(2) The Department may at any time, if it thinks there is good reason to do so, give directions to<sup>[F607 a company]</sup> requiring it, at such time and place as may be specified in the directions, to produce such<sup>[F607 documents]</sup> as may be so specified

(3) The Department may at any time, if it thinks there is good reason to do so, authorise an officer of the Department<sup>[F607 or any other competent person]</sup>, on producing (if so required) evidence of his authority, to require<sup>[F607 a company]</sup> to produce to him forthwith any<sup>[F607 documents]</sup> which<sup>[F607 he]</sup> may specify.

(4) Where by virtue of paragraph (2) or (3) the Department or an officer of the Department<sup>[F607 or other person]</sup> has power to require the production of<sup>[F607 documents]</sup> from<sup>[F607 a company]</sup>, the Department or the officer<sup>[F607 or other person]</sup> has the like power to require production of those<sup>[F607 documents]</sup> from any person who appears to the Department or the officer<sup>[F607 or other person]</sup> to be in possession of them; but where any such person claims a lien on<sup>[F607 documents]</sup> produced by him, the production is without prejudice to the lien.

(5) The power under this Article to require<sup>[F607 a company]</sup> or other person to produce<sup>[F607 documents]</sup> includes power—

- (a) if the<sup>[F607 documents]</sup> are produced—
- (i) to take copies of them or extracts from them, and
  - (ii) to require that person, or any other person who is a present or past officer of, or is or was at any time employed by,<sup>[F607 the company]</sup> in question, to provide an explanation of any of them;
- (b) if the<sup>[F607 documents]</sup> are not produced, to require the person who was required to produce them to state, to the best of his knowledge and belief, where they are.

(6) If the requirement to produce<sup>[F607 documents]</sup> or provide an explanation or make a statement is not complied with,<sup>[F607 the company]</sup> or other person on whom the requirement was so imposed is guilty of an offence and liable to a fine.

<sup>[F607</sup>Articles 680 (restriction on prosecutions), 680A (liability of individuals for corporate default) and 680B (criminal proceedings against unincorporated bodies) apply to this offence.]

(7) However, where a person is charged with an offence under paragraph (6) in respect of a requirement to produce any<sup>[F607 documents]</sup>, it is a defence to prove that they were not in his possession or under his control and that it was not reasonably practicable for him to comply with the requirement.

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(8) A statement made by a person in compliance with such a requirement may be used in evidence against him.

[<sup>F608</sup>(8A) However, in criminal proceedings in which that person is charged with an offence to which this paragraph applies—

- (a) no evidence relating to the statement may be adduced, and
- (b) no question relating to it may be asked,

by or on behalf of the prosecution, unless evidence relating to it is adduced, or a question relating to it is asked, in the proceedings by or on behalf of that person.

(8B) Paragraph (8A) applies to any offence other than—

- (a) an offence under paragraph (6) or Article 444; or
- (b) an offence under Article 10 of the Perjury (Northern Ireland) Order 1979 (false statements made otherwise than an oath.)

[<sup>F607</sup>(9) In this Article “documents” includes information recorded in any form; and, in relation to information recorded otherwise than in legible form, the power to require its production includes power to require the production of a copy of it in legible form[<sup>F609</sup>, or in a form from which it can readily be produced in visible and legible form].]

**F605** prosp. subst. by 2005 NI 17 (which amendment repealed (1.10.2009) by Companies Act 2006 (c. 46), s. 1295, Sch. 16; S.I. 2008/2860, art. 4, Sch. 1 Pt. 2)

**F606** mod. by SR 2004/307

**F607** 1990 NI 10

**F608** 1999 c. 23

**F609** 2001 c. 16

F610

**F610** prosp. insertion by 2005 NI 17 (which amendment repealed (1.10.2009) by Companies Act 2006 (c. 46), s. 1295, Sch. 16; S.I. 2008/2860, art. 4, Sch. 1 Pt. 2)

### [<sup>F611</sup>Entry and search of premises

**441** <sup>F612</sup>.—(1) A justice of the peace may issue a warrant under this Article if satisfied by complaint on oath made by or on behalf of the Department, or by a person appointed or authorised to exercise powers under this Part, that there are reasonable grounds for believing that there are on any premises documents whose production has been required under this Part and which have not been produced in compliance with the requirement.

(2) A justice of the peace may also issue a warrant under this Article if satisfied by complaint on oath made by or on behalf of the Department, or by a person appointed or authorised to exercise powers under this Part—

- (a) that there are reasonable grounds for believing that an offence has been committed for which the penalty on conviction on indictment is imprisonment for a term of not less than two years and that there are on any premises documents relating to whether the offence has been committed,
- (b) that the Department, or the person so appointed or authorised, has power to require the production of the documents under this Part, and

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- (c) that there are reasonable grounds for believing that if production was so required the documents would not be produced but would be removed from the premises, hidden, tampered with or destroyed.
- (3) A warrant under this Article shall authorise a constable, together with any other person named in it and any other constables—
- (a) to enter the premises specified in the complaint, using such force as is reasonably necessary for the purpose;
  - (b) to search the premises and take possession of any documents appearing to be such documents as are mentioned in paragraph (1) or (2), as the case may be, or to take, in relation to any such documents, any other steps which may appear to be necessary for preserving them or preventing interference with them;
  - (c) to take copies of any such documents; and
  - (d) to require any person named in the warrant to provide an explanation of them or to state where they may be found.
- (4) If in the case of a warrant under paragraph (2) the justice of the peace is satisfied by complaint on oath that there are reasonable grounds for believing that there are also on the premises other documents relevant to the investigation, the warrant shall also authorise the actions mentioned in paragraph (3) to be taken in relation to such documents.
- (5) A warrant under this Article shall continue in force until the end of the period of one month beginning with the day on which it is issued.
- (6) Any documents of which possession is taken under this Article may be retained—
- (a) for a period of three months; or
  - (b) if within that period proceedings to which the documents are relevant are commenced against any person for any criminal offence, until the conclusion of those proceedings.
- (7) Any person who intentionally obstructs the exercise of any rights conferred by a warrant issued under this Article or fails without reasonable excuse to comply with any requirement imposed in accordance with paragraph (3)(d) is guilty of an offence and liable to a fine.
- Articles 680 (restriction on prosecutions), 680A (liability of individuals for corporate default) and 680B (criminal proceedings against unincorporated bodies) apply to this offence.
- (8) For the purposes of Articles 442 and 444A (provision for security of information) documents obtained under this Article shall be treated as if they had been obtained under the provision of this Part under which their production was or, as the case may be, could have been required.
- (9) In this Article “document” includes information recorded in any form.]

**F611** Art. 441 subst. 1990 NI 10, art. 12(1)  
**F612** mod. by SR 2004/307

F613

**F613** prosp. insertion by 2005 NI 17 (which amendment repealed (1.10.2009) by Companies Act 2006 (c. 46), s. 1295, Sch. 16; S.I. 2008/2860, art. 4, Sch. 1 Pt. 2)

### ***Provision for security of information obtained***

**442**<sup>F614</sup>.—(1) No information or document relating to a<sup>F615</sup> company] which has been obtained under Article 440<sup>F615</sup>. . . shall, without the previous consent in writing of that<sup>F615</sup> company], be



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published or disclosed, except to a competent authority, unless the publication or disclosure is required—

- [<sup>F616</sup>(a) with a view to the institution of or otherwise for the purposes of criminal proceedings;]
- [<sup>F617</sup>(b) with a view to the institution of, or otherwise for the purposes of, any proceedings on an application under [<sup>F618</sup> Article 9, 10 or 11 of the Company Directors Disqualification (Northern Ireland) Order 2002];]
- [<sup>F615</sup>(c) for the purposes of enabling or assisting any inspector appointed under this Part, <sup>F619</sup> . . . , to discharge his functions;]
- [<sup>F615</sup>(cc) for the purpose of enabling or assisting any person authorised to exercise powers [<sup>F619</sup> Article 440 of this Order] or section 84 of the Companies Act 1989 to discharge his functions;]
- [<sup>F619</sup>(cd) for the purposes of enabling or assisting a person appointed under—
  - (i) section 167 of the Financial Services and Markets Act 2000 (general investigations),
  - (ii) section 168 of that Act (investigations in particular cases),
  - (iii) section 169(1)(b) of that Act (investigation in support of overseas regulator),
  - (iv) section 284 of that Act (investigations into affairs of certain collective investment schemes), or
  - (v) regulations made as a result of section 262(2)(k) of that Act (investigations into open-ended investment companies),to conduct an investigation to discharge his functions;]
- [<sup>F616</sup>(d) for the purpose of enabling or assisting the Department to exercise any of its functions under this Order, the Insider Dealing Order [<sup>F615</sup> Part III of the Companies (Northern Ireland) Order 1990, Part II or V of the Companies (No. 2) (Northern Ireland) Order 1990] or <sup>F620</sup> . . . ;
- (dd) for the purpose of enabling or assisting the Secretary of State to exercise any functions conferred on him by the enactments relating to companies or insolvency, the Prevention of Fraud (Investments) Act 1958, [<sup>F621</sup> or the Financial Services and Markets Act 2000,] or for the purpose of enabling or assisting any inspector appointed by him under the enactments relating to companies to discharge his functions;]

*Sub.#paras. (de), (df) rep. by SI 2001/3649*

- [<sup>F622</sup>(dg) for the purpose of enabling or assisting the Pensions Regulator to discharge the functions conferred on it by or by virtue of the Pension Schemes (Northern Ireland) Act 1993, the Pensions (Northern Ireland) Order 1995, the Welfare Reform and Pensions (Northern Ireland) Order 1999 or the Pensions (Northern Ireland) Order 2005 or any enactment in force in Great Britain corresponding to any of those provisions;
- (dh) for the purpose of enabling or assisting the Board of the Pensions Protection Fund to discharge the functions conferred on it by or by virtue of Part III of the Pensions (Northern Ireland) Order 2005 or any provision in force in Great Britain corresponding to that Part.]

*Sub-para. (e) rep. by 1990 NI 10*

- [<sup>F616</sup> [<sup>F623</sup>(f) for the purpose of enabling or assisting the Bank of England to discharge its functions;]
- [<sup>F619</sup>(fa) for the purposes of enabling or assisting the Financial Services Authority to discharge its functions under the legislation relating to friendly societies or to industrial and provident societies, under the Building Societies Act 1986, under Part 7 of the Companies Act 1989 or under the Financial Services and Markets Act 2000;

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- (g) for the purposes of enabling or assisting a body corporate established in accordance with section 212(1) of the Financial Services and Markets Act 2000 (compensation scheme manager) to discharge its functions;
- (h) for the purposes of any proceedings before the Financial Services Tribunal by virtue of the Financial Services and Markets Act 2000 (Transitional Provisions) (Partly Completed Procedures) Order 2001;
- (ha) with a view to the institution of or otherwise for the purposes of proceedings before the Financial Services and Markets Tribunal;
- (hb) for the purpose of enabling or assisting a recognised investment exchange or a recognised clearing house to discharge its functions as such;
- (hc) for the purpose of enabling or assisting a body designated under section 326(1) of the Financial Services and Markets Act 2000 (designated professional bodies) to discharge its functions in its capacity as a body designated under that section;]

*Sub.#para. (i) rep. by SI 2001/3649*

*Sub.#para. (j) rep. by SI 2001/1283*

- (k) for the purpose of enabling or assisting the official assignee to discharge his functions under the enactments relating to companies or bankruptcy;
- (l) with a view to the institution of, or otherwise for the purposes of, any disciplinary proceedings relating to the exercise by a solicitor, auditor, accountant, valuer or actuary of his professional duties;

[ with a view to the institution of, or otherwise for the purposes of, any disciplinary  
F615(1l) proceedings relating to the discharge by a public servant of his duties;]

[ for the purpose of enabling or assisting an overseas regulatory authority to exercise its  
F615(m) regulatory functions.]]

[F624(n) for the purposes of proceedings before the Pensions Regulator Tribunal.]

[F616]  
F615(1A) In paragraph (1)—

[ in sub-paragraph (hb) “recognised investment exchange” and “recognised clearing house”  
F619(aa) have the same meaning as in section 285 of the Financial Services and Markets Act 2000;]

- (a) in sub-paragraph (1l) “public servant” means an officer or servant of the Crown or of any public or other authority for the time being designated for the purposes of that sub-paragraph by the Department by order;
- (b) in sub-paragraph (m) “overseas regulatory authority” and “regulatory functions” have the same meaning as in section 82 of the Companies Act 1989.]

(1B) Subject to paragraph (1C), paragraph (1) shall not preclude publication or disclosure for the purpose of enabling or assisting any public or other authority for the time being[F615 designated for the purposes of this paragraph] by an order made by the Department to discharge any functions which are specified in the order.

(1C) An order under paragraph (1B) designating an authority for the purpose of that paragraph may—

- (a) impose conditions subject to which the publication or disclosure of any information or document is permitted by that paragraph; and
- (b) otherwise restrict the circumstances in which that paragraph permits publication or disclosure.

*Para. (1D) rep. by SI 2001/3649]*

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(2) A person who publishes or discloses any information or document in contravention of this Article is guilty of an offence and liable to imprisonment or a fine, or both.

[<sup>F615</sup>Articles 680 (restriction on prosecutions), 680A (liability of individuals for corporate default) and 680B (criminal proceedings against unincorporated bodies) apply to this offence.]

[<sup>F615</sup>(3) For the purposes of this Article each of the following is a competent authority—

- (a) the Department,
- (b) an inspector appointed under this Part<sup>F619</sup> . . . ,

[ a person appointed under—

- <sup>F619</sup>(ba) (i) section 167 of the Financial Services and Markets Act 2000 (general investigations),
- (ii) section 168 of that Act (investigations in particular cases),
- (iii) section 169(1)(b) of that Act (investigation in support of overseas regulator),
- (iv) section 284 of that Act (investigations into affairs of certain collective investment schemes), or
- (v) regulations made as a result of section 262(2)(k) of that Act (investigations into open-ended investment companies),

to conduct an investigation;]

- (c) any person authorised to exercise powers<sup>F625</sup> or appointed<sup>F619</sup> under Article 440 of this Order]] or section 84 of the Companies Act 1989,
- (d) the Secretary of State,
- (e) the Treasury,
- (f) the Bank of England,
- (g) the Lord Advocate,
- (h) the Director of Public Prosecutions for Northern Ireland and the Director of Public Prosecutions in England and Wales,

[ the Financial Services Authority;]

<sup>F619</sup>(ha)

- (l) any constable,
- (m) any procurator fiscal.

(3A) Any information which may by virtue of this Article be disclosed to a competent authority may be disclosed to any officer or servant of the authority.]

[<sup>F616</sup>(4) An order under<sup>F615</sup> paragraph (1A)(a) or (1B)] is subject to negative resolution.]

**F614** mod. by SR 2004/307

**F615** 1990 NI 10

**F616** 1986 c. 60

**F617** 1989 NI 18

**F618** 2002 NI 4

**F619** SI 2001/3649

**F620** Words in art. 442(1)(d) repealed (29.4.1988 for certain purposes, otherwise prosp.) by Financial Services Act 1986 (c. 60), ss. 211(1), 212(3), **Sch. 17 Pt. II**; S.I. 1988/740, art. 2, **Sch.**

**F621** SI 2004/355

**F622** Art. 442(1)(dg)(dh) substituted (6.4.2006) for art. 442(1)(dg) by Pensions (Northern Ireland) Order 2005 (S.I. 2005/255 (N.I. 1)), arts. 1(2), 290(1), Sch. 10 para. 2 (with art. 285(5)); S.R. 2006/95, **art. 2(c)**, Sch. Pt. 3

**F623** 1998 c. 11

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**F624** Art. 442(1)(n) inserted (6.4.2006) by Pensions (Northern Ireland) Order 2005 (S.I. 2005/255 (N.I. 1)), arts. 1(2), 100 (with art. 285(5)); S.R. 2006/95, art. 2(c), Sch. Pt. 3

**F625** SI 1994/1696

### ***Punishment for destroying, mutilating, etc. company documents***

**443.**—(1) [<sup>F626</sup>An officer of a company<sup>F627</sup> . . . ] who—

- (a) destroys, mutilates or falsifies, or is privy to the destruction, mutilation or falsification of a document affecting or relating to the [<sup>F626</sup> company's] property or affairs, or
- (b) makes, or is privy to the making of, a false entry in such a document,

is guilty of an offence, unless he proves that he had no intention to conceal the state of affairs of [<sup>F626</sup> the company] or to defeat the law.

[<sup>F627</sup>(1A <sup>F628</sup> Paragraph (1) applies to an officer of an authorised insurance company which is not a body corporate as it applies to an officer of a company.)]

(2) Such a person as is mentioned in paragraph (1) who fraudulently either parts with, alters or makes an omission in any such document or is privy to fraudulent parting with, fraudulent altering or fraudulent making of an omission in, any such document, is guilty of an offence.

(3) A person guilty of an offence under this Article is liable to imprisonment or a fine, or both.

[<sup>F626</sup>(4) Articles 680 (restriction on prosecutions), 680A (liability of individuals for corporate default) and 680B (criminal proceedings against unincorporated bodies) apply to an offence under this Article.]

[<sup>F626</sup>(5) In this Article “document” includes information recorded in any form.]

**F626** 1990 NI 10

**F627** SI 2001/3649

**F628** mod. by SR 2004/307

### ***Punishment for furnishing false information***

<sup>F629</sup>**444** <sup>F630</sup>. A person who, in purported compliance with a requirement imposed under Article 440 to provide an explanation or make a statement, provides or makes an explanation or statement which he knows to be false in a material particular or recklessly provides or makes an explanation or statement which is so false, is guilty of an offence and liable to imprisonment or a fine, or both.

**F629** prosp. subst. by 2005 NI 17

**F630** mod. by SR 2004/307

### **[<sup>F631</sup>Disclosure of information by Department or inspector**

**444A.**—<sup>F632</sup>(1 <sup>F633</sup> This Article applies to information obtained under Articles 427 to 439.

(2) The Department may, if it thinks fit—

- (a) disclose any information to which this Article applies to any person to whom, or for any purpose for which, disclosure is permitted under Article 442, or
- (b) authorise or require an inspector appointed under this Part to disclose such information to any such person or for any such purpose.

[

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<sup>F634</sup>(3) Information to which this Article applies may also be disclosed by an inspector appointed under this Part to—

- (a) another inspector appointed under this Part;
- (b) a person appointed under—
  - (i) section 167 of the Financial Services and Markets Act 2000 (general investigations),
  - (ii) section 168 of that Act (investigations in particular cases),
  - (iii) section 169(1)(b) of that Act (investigation in support of overseas regulator),
  - (iv) section 284 of that Act (investigations into affairs of certain collective investment schemes), or
  - (v) regulations made as a result of section 262(2)(k) of that Act (investigations into open-ended investment companies),
- to conduct an investigation; or
- (c) a person authorised to exercise powers under—
  - (i) Article 440 of this Order; or
  - (ii) section 84 of the Companies Act 1989 (exercise of powers to assist overseas regulatory authority).]

(4) Any information which may by virtue of paragraph (3) be disclosed to any person may be disclosed to any officer or servant of that person.

(5 <sup>F633</sup> The Department may, if it thinks fit, disclose any information obtained under Article 437 to—

- (a) the company whose ownership was the subject of the investigation,
- (b) any member of the company,
- (c) any person whose conduct was investigated in the course of the investigation,
- (d) the auditors of the company, or
- (e) any person whose financial interests appear to the Department to be affected by matters covered by the investigation. <sup>F635</sup>]

**F631** Art. 444A subst. 1990 NI 10, **art. 16**

**F632** prosp. subst. by 2005 NI 17

**F633** mod. by SR 2004/307

**F634** SI 2001/3649

**F635** prosp. insertion by 2005 NI 17 (which amendment repealed (1.10.2009) by **Companies Act 2006** (c. 46), s. 1295, **Sch. 16**; S.I. 2008/2860, art. 4, **Sch. 1 Pt. 2**)

### *Supplementary*

#### ***Privileged information***

**445.**—<sup>F636</sup>(1 <sup>F637</sup> Nothing in Articles 424 to 439 requires the disclosure to the Department or to an inspector appointed by the Department—

- (a) by any person of information which he would in an action in the High Court be entitled to refuse to disclose on grounds of legal professional privilege except, if he is a lawyer, the name and address of his client,

*Sub-para. (b) rep. by 1990 NI 10*

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<sup>F638</sup>(1A <sup>F637</sup> Nothing in Article 427, 436 or 439 requires a person (except as mentioned in paragraph (1B)) to disclose information or produce documents in respect of which he owes an obligation of confidence by virtue of carrying on the business of banking unless—

- (a) the person to whom the obligation of confidence is owed is the company or other body corporate under investigation,
- (b) the person to whom the obligation of confidence is owed consents to the disclosure or production, or
- (c) the making of the requirement is authorised by the Department.

(1B) Paragraph (1A) does not apply where the person owing the obligation of confidence is the company or other body corporate under investigation under Article 424, 425 or 426.]

<sup>F636</sup>(2) Nothing in Articles 440 to 444 compels the production by any person of a document which he would in an action in the High Court be entitled to refuse on grounds of legal<sup>F639</sup> professional] privilege, or authorises the taking of possession of any such document which is in the person's possession.

<sup>F636</sup>(3) The Department shall not under Article 440 require, or authorise an officer of the Department<sup>F638</sup> or other person] to require, the production by a person carrying on the business of banking of a document relating to the affairs of a customer of his unless either it appears to the Department that it is necessary to do so for the purpose of investigating the affairs of the first-mentioned person<sup>F640</sup> or the customer is—]

- <sup>F640</sup>(a) a person on whom a requirement has been imposed under that Article, or
- (b) an authorised insurance company on whom a requirement to produce information or documents has been imposed by or on behalf of the Secretary of State under Part XI of the Financial Services and Markets Act 2000.]

**F636** prosp. subst. by [2005 NI 17](#)

**F637** mod. by SR 2004/307

**F638** [1990 NI 10](#)

**F639** [1989 NI 18](#)

**F640** SI 2001/3649

### Investigation of bodies incorporated outside Northern Ireland

**446.**—<sup>F641</sup>(1) The provisions of this Part apply to bodies corporate incorporated outside Northern Ireland which are carrying on business in Northern Ireland, or have at any time carried on business there, as they apply to companies under this Order; but subject to the following exceptions, adaptations and modifications.

- (2) The following provisions do not apply to such bodies—
  - (a) Article 424 (investigation on application of company or its members),
  - (b) Article 431 (power to bring civil proceedings on the company's behalf),
  - (c) Articles 435 to 438 (investigation of company ownership and power to obtain information as to those interested in shares, &c.), and
  - (d) Article 439 (investigation of share dealings).

(3) The other provisions of this Part apply to such bodies subject to such adaptations and modifications as may be prescribed.]

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**F641** Art. 446 repealed (6.4.2007 for certain purposes, otherwise prosp.) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), Sch. 16; S.I. 2006/3428, arts. 4(2)(a), 7(c), Sch. 4 Pt. 2 (subject to art. 5, Sch. 1 and with arts. 6, 8, Sch. 5)

F642

**F642** prosp. insertion by 2005 NI 17 (which amendment repealed (1.10.2009) by Companies Act 2006 (c. 46), s. 1295, Sch. 16; S.I. 2008/2860, art. 4, Sch. 1 Pt. 2)

F643

**F643** prosp. insertion by 2005 NI 17 (which amendment repealed (1.10.2009) by Companies Act 2006 (c. 46), s. 1295, Sch. 16; S.I. 2008/2860, art. 4, Sch. 1 Pt. 2)

### Offences by bodies corporate

**446D.** Where an offence under any of Articles 441, 442 to 444 and 446B is committed by a body corporate, every officer of the body who is in default also commits the offence. For this purpose—

- (a) any person who purports to act as director, manager or secretary of the body is treated as an officer of the body, and
- (b) if the body is a company, any shadow director is treated as an officer of the company.

## PART XVI

### ORDERS IMPOSING RESTRICTIONS ON SHARES ([<sup>F644</sup>ARTICLE 438])

**F644** Words in Pt. XVI heading substituted (1.10.2007) by Companies Act 2006 (Commencement No. 3, Consequential Amendments, Transitional Provisions and Savings) Order 2007 (S.I. 2007/2194), arts. 1(3), 10(1), Sch. 4 para. 27(2) (with art. 12)

### Consequence of order imposing restrictions

**447.**—(1) So long as any shares are directed to be subject to the restrictions of this Part[<sup>F645</sup> then, subject to any directions made in relation to an order [<sup>F646</sup>pursuant to Article 438(1A) or 449(1A)]]

- (a) any transfer of those shares or, in the case of unissued shares, any transfer of the right to be issued with them, and any issue of them, is void;
- (b) no voting rights are exercisable in respect of the shares;
- (c) no further shares shall be issued in right of them or in pursuance of any offer made to their holder; and
- (d) except in a liquidation, no payment shall be made of any sums due from the company on the shares, whether in respect of capital or otherwise.

(2) Where shares are subject to the restrictions of paragraph (1)(a), any agreement to transfer the shares or, in the case of unissued shares, the right to be issued with them is void (except[<sup>F645</sup> such agreement or right as may be made or exercised under the terms of directions made by the Department or the court under [<sup>F647</sup>Article 438(1A) or 449(1A)] or] an agreement to[<sup>F648</sup> transfer] the shares on the making of an order under Article 449(3)(b)).

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(3) Where shares are subject to the restrictions of paragraph (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 (except<sup>F645</sup> such agreement or right as may be made or exercised under the terms of directions made by the Department or the court under [<sup>F649</sup>Article 438(1A) or 449(1A)] or) an agreement to transfer any such right on the<sup>F648</sup> transfer] of the shares on the making of an order under Article 449(3)(b)).

**F645** SR 1992/257

**F646** Words in art. 447(1) substituted (1.10.2007) by Companies Act 2006 (Commencement No. 3, Consequential Amendments, Transitional Provisions and Savings) Order 2007 (S.I. 2007/2194), arts. 1(3), 10(1), **Sch. 4 para. 27(3)** (with art. 12)

**F647** Words in art. 447(2) substituted (1.10.2007) by Companies Act 2006 (Commencement No. 3, Consequential Amendments, Transitional Provisions and Savings) Order 2007 (S.I. 2007/2194), arts. 1(3), 10(1), **Sch. 4 para. 27(4)** (with art. 12)

**F648** 1990 NI 10

**F649** Words in art. 447(3) substituted (1.10.2004) by Companies Act 2006 (Commencement No. 3, Consequential Amendments, Transitional Provisions and Savings) Order 2007 (S.I. 2007/2194), arts. 1(3), 10(1), **Sch. 4 para. 27(5)** (with art. 12)

### ***Punishment for attempted evasion of restrictions***

**448.**—(1) [<sup>F650</sup>Subject to the terms of any directions made under [<sup>F651</sup>Article 438(1A) or 449]] A person is liable to a fine if he—

- (a) exercise or purports to exercise any right to dispose of any shares which, to his knowledge, are for the time being subject to the restrictions of this Part or 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 any 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 any 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 any agreement which is void under Article 447(2) or (3).

(2) [<sup>F650</sup>Subject to the terms of any directions made under [<sup>F652</sup>Article 438(1A) or 449]] If shares in a company are issued in contravention of the restrictions, the company and every officer of it who is in default is liable to a fine.

(3) Article 680 (restriction on prosecutions) applies to an offence under this Article.

**F650** SR 1992/257

**F651** Art. 448(1) substituted (1.10.2007) by Companies Act 2006 (Commencement No. 3, Consequential Amendments, Transitional Provisions and Savings) Order 2007 (S.I. 2007/2194), arts. 1(3), 10(1), **Sch. 4 para. 27(6)** (with art. 12)

**F652** Art. 448(2) substituted (1.10.2007) by Companies Act 2006 (Commencement No. 3, Consequential Amendments, Transitional Provisions and Savings) Order 2007 (S.I. 2007/2194), arts. 1(3), 10(1), **Sch. 4 para. 27(7)** (with art. 12)



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### **Relaxation and removal of restrictions**

**449.**—(1) Where shares in a company are by order made subject to the restrictions of this Part, application may be made to the court for an order directing that the shares be no longer so subject.

[<sup>F653</sup>(1A) Where the court is satisfied that an order subjecting the shares to the restrictions of this Part unfairly affects the rights of third parties in respect of shares then the court, for the purpose of protecting such rights and subject to such terms as it thinks fit and in addition to any order it may make under paragraph (1), may direct on an application made under that paragraph that such acts by such persons and for such purposes as may be set out in the order, shall not constitute breach of the restrictions of Part XVI.

Paragraph (3) does not apply to an order made under this paragraph.]

(2) If the order applying the restrictions was made by the Department, or it has refused to make an order disapplying them, the application may be made by any person aggrieved; <sup>F654</sup> . . .

(3) Subject as follows, and order of the court or the Department directing that shares shall cease to be subject to the restrictions may be made only if—

(a) the court or (as the case may be) the Department 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 [<sup>F655</sup> transferred for valuable consideration] and the court (in any case) or the Department (if the order was made under Article <sup>F656</sup> . . . 438) approves the [<sup>F655</sup> transfer].

(4) [<sup>F653</sup>Without prejudice to the power of the court to give directions under paragraph (1A),] where shares in a company are subject to the restrictions, the court may on application order the shares to be sold, subject to the court's approval as to the sale, and may also direct that the shares shall cease to be subject to the restrictions.

An application to the court under this paragraph may be made by the Department <sup>F657</sup> . . . , or by the company.

(5) Where an order has been made under paragraph (4), the court may on application make such further order relating to the sale or transfer of the shares as it thinks fit.

An application to the court under this paragraph may be made—

(a) by the Department <sup>F658</sup> . . . , or

(b) by the company, or

(c) by the person appointed by or in pursuance of the order to effect the sale, or

(d) by any person interested in the shares.

(6) An order (whether of the Department or the court) directing that shares shall cease to be subject to the restrictions of this Part, if it is—

(a) expressed to be made with a view to permitting a transfer of the shares, or

(b) made under paragraph (4),

may continue the restrictions mentioned in Article 447(1)(c) and (d), either in whole or in part, so far as they relate to any right acquired or offer made before the transfer.

(7) Paragraph (3) does not apply to an order directing that shares shall cease to be subject to any restrictions which have been continued in force in relation to those shares under paragraph (6).

**F653** SR 1992/257

**F654** Words in art. 449(2) omitted (1.10.2007) by virtue of Companies Act 2006 (Commencement No. 3, Consequential Amendments, Transitional Provisions and Savings) Order 2007 (S.I. 2007/2194), arts. 1(3), 10(1), **Sch. 4 para. 27(8)** (with art. 12)

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**F655** 1990 NI 10

**F656** Words in art. 449(3)(b) omitted (1.10.2007) by virtue of Companies Act 2006 (Commencement No. 3, Consequential Amendments, Transitional Provisions and Savings) Order 2007 (S.I. 2007/2194), arts. 1(3), 10(1), **Sch. 4 para. 27(9)** (with art. 12)

**F657** Words in art. 449(4) omitted (1.10.2007) by virtue of Companies Act 2006 (Commencement No. 3, Consequential Amendments, Transitional Provisions and Savings) Order 2007 (S.I. 2007/2194), arts. 1(3), 10(1), **Sch. 4 para. 27(10)** (with art. 12)

**F658** Words in art. 449(5)(a) omitted (1.10.2007) by virtue of Companies Act 2006 (Commencement No. 3, Consequential Amendments, Transitional Provisions and Savings) Order 2007 (S.I. 2007/2194), arts. 1(3), 10(1), **Sch. 4 para. 27(11)** (with art. 12)

***Further provisions on sale by court order of restricted shares***

**450.**—(1) Where shares are sold in pursuance of an order of the court under Article 449(4) the proceeds of sale, less the costs of the sale, shall be paid into court for the benefit of the persons who are beneficially interested in the shares; and any such person may apply to the court for the whole or part of those proceeds to be paid to him.

(2) On application under paragraph (1) the court shall (subject to paragraph (3)) order the payment to the applicant of the whole of the proceeds of sale together with any interest thereon or, if any other person had a beneficial interest in the shares at the time of their sale, such proportion of those proceeds and interest as is equal to the proportion which the value of the applicant's interest in the shares bears to the total value of the shares.

(3) On granting an application for an order under Article 449(4) or (5) the court may order that the applicant's costs be paid out of the proceeds of sale; and if that order is made, the applicant is entitled to payment of his costs out of those proceeds before any person interested in the shares in question receives any part of those proceeds.

**PART XVII**

**FRAUDULENT TRADING BY A COMPANY**

***Punishment for fraudulent trading***

**451.** <sup>F659</sup> .....

**F659** Arts. 451-454 repealed (1.10.2007) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), **Sch. 16**; S.I. 2007/2194, arts. 1(3)(a), **8**, Sch. 2 Pt. 2 (with art. 12, Sch. 3 para. 46)

**PART XVIII**

**PROTECTION OF COMPANY'S MEMBERS AGAINST UNFAIR PREJUDICE**

***Order on application of company member***

**452.** <sup>F660</sup> .....

**F660** Arts. 451-454 repealed (1.10.2007) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), **Sch. 16**; S.I. 2007/2194, arts. 1(3)(a), **8**, Sch. 2 Pt. 2 (with art. 12)

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### **Order on application of the Department**

**453.** <sup>F661</sup> .....

**F661** Arts. 451-454 repealed (1.10.2007) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), Sch. 16; S.I. 2007/2194, arts. 1(3)(a), 8, Sch. 2 Pt. 2 (with art. 12)

### **Provisions as to petitions and orders under this Part**

**454.** <sup>F662</sup> .....

**F662** Arts. 451-454 repealed (1.10.2007) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), Sch. 16; S.I. 2007/2194, arts. 1(3)(a), 8, Sch. 2 Pt. 2 (with art. 12)

Part XIX - rep. by 1989 NI 19

## **PART XX**

### **WINDING UP OF COMPANIES REGISTERED UNDER THIS ORDER OR THE FORMER COMPANIES ACTS**

CHAPTER I - V - Rep. by 1989 NI 19

CHAPTER VI

PROVISIONS AS TO DISSOLUTION

#### **Power of court to declare dissolution of company void**

**602** <sup>F663</sup>—(1) Where a company has been dissolved, the court may<sup>F664</sup> . . . , on an application made for the purpose by the liquidator of the company or by any other person appearing to the court to be interested, make an order, on such terms as the court thinks fit, declaring the dissolution to have been void.

(2) Thereupon such proceedings may be taken as might have been taken if the company had not been dissolved.

(3) It is the duty of the person on whose application the order was made, within 7 days after its making (or such further time as the court may allow), to deliver to the registrar for registration an office copy of the order.

If the person fails to do so, he is liable to a fine and, for continued contravention, to a daily default fine.

[<sup>F664</sup>(4) Subject to the following provisions, an application under this Article may not be made after the end of the period of two years from the date of the dissolution of the company.

(5) An application for the purpose of bringing proceedings against the company—

(a) for damages in respect of personal injuries (including any sum claimed by virtue of section 14(2)(c) of the Law Reform (Miscellaneous Provisions) Act (Northern Ireland) 1937 (funeral expenses)), or

(b) for damages under the Fatal Accidents (Northern Ireland) Order 1977,

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may be made at any time; but no order shall be made on such an application if it appears to the court that the proceedings would fail by virtue of any statutory provision as to the time within which proceedings must be brought.

(6) Nothing in paragraph (5) affects the power of the court on making an order under this Article to direct that the period between the dissolution of the company and the making of the order shall not count for the purposes of any such statutory provision.

(7) In paragraph (5)(a) “personal injuries” includes any disease and any impairment of a person's physical or mental condition.]

F663 mod. by SR 2004/307

F664 1990 NI 10

**Modifications etc. (not altering text)**

C6 Art. 602(1) modified (prosp.) by Charities Act (Northern Ireland) 2008 (c. 12), ss. 95(3), 185(1)

***Registrar may strike defunct company off register***

**603.**—(1) If the registrar has reasonable cause to believe that a company is not carrying on business or in operation, he may send to the company by post a letter inquiring whether the company is carrying on business or in operation.

(2) If the registrar does not within one month of sending the letter receive any answer to it, he shall within 14 days after the expiration of that month send to the company by registered post or recorded delivery service a letter referring to the first letter, and stating that no answer to it has been received, and that if an answer is not received to the second letter within one month from its date, a notice will be published in the Belfast Gazette with a view to striking the company's name off the register

(3) If the registrar either receives an answer to the effect that the company is not carrying on business or in operation, or does not within one month after sending the second letter receive any answer, he may publish in the Belfast Gazette, and send to the company by post, a notice that at the expiration of 3 months from the date of that notice the name of the company mentioned in it will, unless cause is shown to the contrary, be struck off the register and the company will be dissolved.

(4) If, in a case where a company is being wound up, the registrar has reasonable cause to believe either that no liquidator is acting, or that the affairs of the company are fully wound up, and the returns required to be made by the liquidator have not been made for a period of 6 consecutive months, the registrar shall publish in the Belfast Gazette and send to the company or the liquidator (if any) a like notice as is provided in paragraph (3).

(5) At the expiration of the time mentioned in the notice the registrar may, unless cause to the contrary is previously shown by the company, strike its name off the register, and shall publish notice of this in the Belfast Gazette; and on the publication of that notice in the Belfast Gazette the company is dissolved.

(6) However—

(a) <sup>F665</sup> the liability (if any) of every director, managing officer and member of the company continues and may be enforced as if the company has not been dissolved, and

(b) nothing in paragraph (5) or sub-paragraph (a) affects the power of the court to wind up a company the name of which has been struck off the register.

(7) A notice to be sent to a liquidator under this Article may be addressed to him at his last known place of business; and a letter or notice to be sent under this Article to a company may be addressed to the company at its registered office, or if no office has been registered, to the care of some officer of the company.

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If there is no officer of the company whose name and address are known to the registrar, the letter or notice may be sent to each of the persons who subscribed the memorandum, addressed to him at the address mentioned in the memorandum.

**F665** mod. by SR 2004/307

**Modifications etc. (not altering text)**

**C7** [Art. 603\(2\)](#) modified (prosp.) by [Charities Act \(Northern Ireland\) 2008 \(c. 12\)](#), **ss. 95(4)**, 185(1)

***Registrar may strike private company off register on application***

**603A**<sup>F666</sup>.—(1)<sup>F666</sup> On application by a private company, the registrar may strike the company's name off the register.

(2) An application by a company under this Article shall—

(a)<sup>F666</sup> be made on its behalf by its directors or by a majority of them,

(b)<sup>F666</sup> be in the prescribed form, and

(c) contain the prescribed information.

(3) The registrar shall not strike a company off under this Article until after the expiration of 3 months from the publication by him in the Belfast Gazette of a notice—

(a) stating that he may exercise his power under this Article in relation to the company, and

(b) inviting any person to show cause why he should not do so.

(4) Where the registrar strikes a company off under this Article, he shall publish notice of that fact in the Belfast Gazette.

(5) On the publication in the Belfast Gazette of a notice under paragraph (4), the company to which the notice relates is dissolved.

(6)<sup>F666</sup> However, the liability (if any) of every director, managing officer and member of the company continues and may be enforced as if the company had not been dissolved.

(7) Nothing in this Article affects the power of the court to wind up a company the name of which has been struck off the register.

**F666** mod. by SR 2004/307

***Duties in connection with making application under Article 603A***

**603B.**—(1) A person shall not make an application under Article 603A on behalf of a company if, at any time in the previous 3 months, the company has—

(a) changed its name,

(b) traded or otherwise carried on business,

(c) made a disposal for value of property or rights which, immediately before ceasing to trade or otherwise carry on business, it held for the purpose of disposal for gain in the normal course of trading or otherwise carrying on business, or

(d) engaged in any other activity, except one which is—

(i) necessary or expedient for the purpose of making an application under Article 603A, or deciding whether to do so,

(ii) necessary or expedient for the purpose of concluding the affairs of the company,

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(iii) necessary or expedient for the purpose of complying with any statutory requirement,  
or

(iv) specified for the purposes of this head by the Department by order made subject to negative resolution.

(2) For the purposes of paragraph (1), a company shall not be treated as trading or otherwise carrying on business by virtue only of the fact that it makes a payment in respect of a liability incurred in the course of trading or otherwise carrying on business.

(3) A person shall not make an application under Article 603A on behalf of a company at a time when any of the following is the case—

(a) an application has been made to the court under Article 418 on behalf of the company for the sanctioning of a compromise or arrangement and the matter has not been finally concluded;

(b) a voluntary arrangement in relation to the company has been proposed under Part II of the Insolvency (Northern Ireland) Order 1989 and the matter has not been finally concluded;

[<sup>F667</sup>(c) the company is in administration under Part III of that Order;

(ca) an application to the court for an administration order in respect of the company has been made and not finally dealt with or withdrawn;

(cb) a copy of notice of intention to appoint an administrator of the company under paragraph 15 of Schedule B1 to that Order has been filed with the court and neither of the events mentioned in paragraph 45(2)(a) and (b) of that Schedule has occurred;

(cc) a copy of notice of intention to appoint an administrator of the company under paragraph 23 of that Schedule has been filed with the court and neither of the events mentioned in paragraph 45(4)(a) and (b) of that Schedule has occurred;]

(d) the company is being wound up under Part V of that Order, whether voluntarily or by the court, or a petition under that Part for the winding up of the company by the court has been presented and not finally dealt with or withdrawn;

(e) there is a receiver or manager of the company's property.

(4) For the purposes of paragraph (3)(a), the matter is finally concluded if—

(a) the application has been withdrawn,

(b) the application has been finally dealt with without a compromise or arrangement being sanctioned by the court, or

(c) a compromise or arrangement has been sanctioned by the court and has, together with anything required to be done under any provision made in relation to the matter by order of the court, been fully carried out.

(5) For the purposes of paragraph (3)(b), the matter is finally concluded if—

(a) <sup>F668</sup> no meetings are to be summoned under Article 16 of the Insolvency (Northern Ireland) Order 1989,

(b) <sup>F668</sup> meetings summoned under that Article fail to approve the arrangement with no, or the same, modifications,

(c) <sup>F668</sup> an arrangement approved by meetings summoned under that Article, or in consequence of a direction under Article 19(4)(b) of that Order, has been fully implemented, or

(d) <sup>F668</sup> the court makes an order under paragraph (5) of Article 19 of that Order revoking approval given at previous meetings and, if the court gives any directions under paragraph (6) of that Article, the company has done whatever it is required to do under those directions.

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(6) A person who makes an application under Article 603A on behalf of a company shall secure that a copy of the application is given, within 7 days from the day on which the application is made, to every person who, at any time on that day, is—

- (a) a member of the company,
- (b) an employee of the company,
- (c) a creditor of the company,
- (d) a director of the company,
- (e) a manager or trustee of any pension fund established for the benefit of employees of the company, or
- (f) a person of a description specified for the purposes of this sub-paragraph by regulations made by the Department.

(7) Paragraph (6) shall not require a copy of the application to be given to a director who is a party to the application.

(8) The duty imposed by paragraph (6) shall cease to apply if the application is withdrawn before the end of the period for giving the copy application.

(9) The Department may by order, made subject to negative resolution, amend paragraph (1) for the purpose of altering the period in relation to which the doing of the things mentioned in sub-paragraphs (a) to (d) of that paragraph is relevant.

**F667** Art. 603B(3)(c)-(cc) substituted (27.3.2006) for art. 603B(3)(c) by [Insolvency \(Northern Ireland\) Order 2005 \(S.I. 2005/1455 \(N.I. 10\)\)](#), arts. 1(3), 3(3), Sch. 2 para. 16; S.R. 2006/21, **art. 2** (with S.R. 2006/22, arts. 2-7)

**F668** mod. by SR 2004/307

**Modifications etc. (not altering text)**

**C8** Art. 603B(6) modified (prosp.) by [Companies \(Audit, Investigations and Community Enterprise\) \(Northern Ireland\) Order 2005 \(S.I. 2005/1967 \(N.I. 17\)\)](#), **arts. 1(2)**, 49(3)

**Directors' duties following application under Article 603A**

**603C.**—(1) Paragraph (2) applies in relation to any time after the day on which a company makes an application under Article 603A and before the day on which the application is finally dealt with or withdrawn.

(2) <sup>F669</sup> A person who is a director of the company at the end of a day on which a person other than himself becomes—

- (a) a member of the company,
- (b) an employee of the company,
- (c) a creditor of the company,
- (d) <sup>F669</sup> a director of the company,
- (e) a manager or trustee of any pension fund established for the benefit of employees of the company, or
- (f) a person of a description specified for the purposes of this sub-paragraph by regulations made by the Department,

shall secure that a copy of the application is given to that person within 7 days from that day.

(3) The duty imposed by paragraph (2) shall cease to apply if the application is finally dealt with or withdrawn before the end of the period for giving the copy application.

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(4) Paragraph (5) applies where, at any time on or after the day on which a company makes an application under Article 603A and before the day on which the application is finally dealt with or withdrawn—

- (a) the company—
  - (i) changes its name,
  - (ii) trades or otherwise carries on business,
  - (iii) makes a disposal for value of any property or rights other than those which it was necessary or expedient for it to hold for the purpose of making, or proceeding with, an application under Article 603A, or
  - (iv) engages in any other activity, except one to which paragraph (6) applies;
- (b) an application is made to the court under Article 418 on behalf of the company for the sanctioning of a compromise or arrangement;
- (c) a voluntary arrangement in relation to the company is proposed under Part II of the Insolvency (Northern Ireland) Order 1989;
- [<sup>F670</sup>(d) an application to the court for an administration order in respect of the company is made under paragraph 13 of Schedule B1 to that Order;
- (da) an administrator is appointed in respect of the company under paragraph 15 or 23 of that Schedule;
- (db) a copy of notice of intention to appoint an administrator of the company under paragraph 15 or 23 of that Schedule is filed with the court;]
- (e) there arise any of the circumstances in which, under Article 70(1) of that Order, the company may be voluntarily wound up;
- (f) a petition is presented for the winding up of the company by the court under Part V of that Order; or
- (g) a receiver or manager of the company's property is appointed.

(5) <sup>F669</sup> A person who, at the end of a day on which an event mentioned in any of sub-paragraphs (a) to (g) of paragraph (4) occurs, is a director of the company shall secure that the company's application is withdrawn forthwith.

- (6) This paragraph applies to any activity which is—
- (a) necessary or expedient for the purpose of making, or proceeding with, an application under Article 603A,
  - (b) necessary or expedient for the purpose of concluding affairs of the company which are outstanding because of what has been necessary or expedient for the purpose of making, or proceeding with, such an application,
  - (c) necessary or expedient for the purpose of complying with any statutory requirement, or
  - (d) <sup>F669</sup> specified for the purposes of this paragraph by the Department by order made subject to negative resolution.

(7) For the purposes of paragraph (4)(a), a company shall not be treated as trading or otherwise carrying on business by virtue only of the fact that it makes a payment in respect of a liability incurred in the course of trading or otherwise carrying on business.

**F669** mod. by SR 2004/307

**F670** Art. 603C(4)(d)-(db) substituted (27.3.2006) for art. 603C(4)(d) by [Insolvency \(Northern Ireland\) Order 2005 \(S.I. 2005/1455 \(N.I. 10\)\)](#), arts. 1(3), 3(3), Sch. 2 para. 17; S.R. 2006/21, [art. 2](#) (with S.R. 2006/22, arts. 2-7)



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### **Articles 603B and 603C: supplementary provisions**

**603D**<sup>F671</sup>.—(1) For the purposes of section 24 of the Interpretation Act (Northern Ireland) 1954 (which relates to the service of documents by post) in its application to a document required to be given to any person under Article 603B(6) or 603C(2), the principal office of a body corporate or partnership which—

- (a) is incorporated or formed under the law of a country or territory outside the United Kingdom, and
- (b) has a place of business in the United Kingdom,

shall be taken to be its principal office in the United Kingdom.

(2) Where a creditor of the company has more than one place of business, section 24(2) of the Act of 1954 shall have effect, so far as concerns the giving of a document to him under Article 603B(6) or 603C(2), as if for paragraphs (b) and (c) there were substituted—

- “(b) it is left, or sent by post to him in accordance with subsection (1), at each place of business of his with which the company has had dealings in relation to a matter by virtue of which he is a creditor of the company.”

(3) An order or regulations under Article 603B or 603C may make such transitional provisions as the Department considers appropriate.

(4) For the purposes of Articles 603B and 603C, an application under Article 603A is withdrawn if notice of withdrawal in the prescribed form is given to the registrar.

(5) In Articles 603B and 603C, "disposal" includes part disposal.

(6) In Articles 603B and 603C and this Article, "creditor" includes a contingent or prospective creditor.

F671 mod. by SR 2004/307

### **Articles 603B and 603C: enforcement**

**603E**<sup>F672</sup>.—(1) A person who breaches or fails to perform a duty imposed on him by Article 603B or 603C is guilty of an offence and liable to a fine.

(2) A person who fails to perform a duty imposed on him by Article 603B(6) or 603C(2) with the intention of concealing the making of the application in question from the person concerned is guilty of an offence and liable to imprisonment or a fine, or both.

(3) In any proceedings for an offence under paragraph (1) consisting of breach of a duty imposed by Article 603B(1) or (3), it shall be a defence for the accused to prove that he did not know, and could not reasonably have known, of the existence of the facts which led to the breach.

(4) In any proceedings for an offence under paragraph (1) consisting of failure to perform the duty imposed by Article 603B(6), it shall be a defence for the accused to prove that he took all reasonable steps to perform the duty.

(5) In any proceedings for an offence under paragraph (1) consisting of failure to perform a duty imposed by Article 603C(2) or (5) it shall be a defence for the accused to prove—

- (a) that at the time of the failure he was not aware of the fact that the company had made an application under Article 603A, or
- (b) that he took all reasonable steps to perform the duty.

F672 mod. by SR 2004/307

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### **Other offences connected with Article 603A**

**603F**<sup>F673</sup>.—(1) Where a company makes an application under Article 603A, any person who, in connection with the application, knowingly or recklessly furnishes any information to the registrar which is false or misleading in a material particular is guilty of an offence and liable to a fine.

(2) Any person who knowingly or recklessly makes an application to the registrar which purports to be an application under Article 603A, but which is not, is guilty of an offence and liable to a fine.

**F673** mod. by SR 2004/307

### **Objection to striking off by person aggrieved**

**604**<sup>F674</sup>.—(1) This Article applies if a company or any member or creditor of it feels aggrieved by the company having been struck off the register.

(2) The court, on an application by the company or the member or creditor made before the expiration of 20 years from publication in the Belfast Gazette of notice under Article 603, may, if satisfied that the company was at the time of the striking off carrying on business or in operation, or otherwise that it is just that the company be restored to the register, order the company's name to be restored.

[<sup>F675</sup>(2A) Paragraphs (2B) and (2D) apply if a company has been struck off the register under Article 603A.

(2B) The court, on an application by a notifiable person made before the expiration of 20 years from publication in the Belfast Gazette of notice under Article 603A(4), may, if satisfied—

- (a) that any duty under Article 603B or 603C with respect to the giving to that person of a copy of the company's application under Article 603A was not performed,
- (b) that the making of the company's application under Article 603A involved a breach of duty under Article 603B(1) or (3), or
- (c) that it is for some other reason just to do so,

order the company's name to be restored to the register.

(2C) In paragraph (2B), “notifiable person” means a person to whom a copy of the company's application under Article 603A was required to be given under Article 603B or 603C.

(2D) The court, on an application by the Department made before the expiration of 20 years from publication in the Belfast Gazette of notice under Article 603A(4), may, if satisfied that it is in the public interest to do so, order the company's name to be restored.]

(3) On an office copy of [<sup>F675</sup> an order under paragraph (2), (2B) or (2D)] being delivered to the registrar for registration the company [<sup>F675</sup> to which the order relates] is deemed to have continued in existence as if its name had not been struck off; and the court may by the order give such directions and make such provisions as seem just for placing the company and all other persons in the same position (as nearly as may be) as if the company's name had not been struck off.

**F674** mod. by SR 2004/307

**F675** 1994 c. 40

### **Property of dissolved company to be a bona vacantia**

**605**<sup>F676</sup>.—<sup>F677F678</sup>(1) When a company is dissolved, all property and rights whatsoever vested in or held on trust for the company immediately before its dissolution (including leasehold property,

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but not including property held by the company on trust for any other person) are deemed to be bona vacantia and—

- (a) accordingly belong to the Crown, and
- (b) vest and may be dealt with in the same manner as other bona vacantia accruing to the Crown.

(2) Except as provided by Article 606, the foregoing provisions of this Article have effect subject and without prejudice to any order made by the court under Article 602 or 604.

**F676** mod. 1986 c. 53

**F677** mod. prosp. by 1992 c. 40

**F678** mod. by SR 2004/307

### ***Effect on Article 605 of company's revival after dissolution***

**606** <sup>F679</sup>—<sup>F680F681</sup>(1) The Crown, in whom any property or right is vested by Article 605, may dispose of, or an interest in, that property or right notwithstanding that an order may be made under Article 602 or 604.

- (2) Where such an order is made—
  - (a) it does not affect the disposition (but without prejudice to the order so far as it relates to any other property or right previously vested in or held on trust for the company), and
  - (b) the Crown shall pay to the company an amount equal to—
    - (i) the amount of any consideration received for the property or right, or interest therein, or
    - (ii) the value of any such consideration at the time of the disposition,

or if no consideration was received, an amount equal to the value of the property, right or interest disposed of, as at the date of the disposition.

(3) This Article applies in relation to the disposition of any property, right or interest on or after 1st July 1983, whether the company concerned was dissolved before, on or after that day.

**F679** mod. 1986 c. 53

**F680** mod. prosp. by 1992 c. 40

**F681** mod. by SR 2004/307

### ***Crown disclaimer of property vesting as bona vacantia***

**607** <sup>F682</sup>—<sup>F683F684</sup>(1) Where any property vests in the Crown under Article 605 the Crown's title to it under that Article may be disclaimed by a notice signed by the Treasury Solicitor.

(2) The right to execute a notice of disclaimer under this Article may be waived by or on behalf of the Crown either expressly or by taking possession or other act evincing that intention.

- (3) A notice of disclaimer under this Article is of no effect unless it is executed—
  - (a) within 12 months of the date on which the vesting of the property under Article 605 came to the notice of the Treasury Solicitor, or
  - (b) if an application in writing is made to the Treasury Solicitor by any person interested in the property requiring him to decide whether he will or will not disclaim, within a period of 3 months after the receipt of the application or such further period as may be allowed by the court.

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(4) A statement in a notice of disclaimer of any property under this Article that the vesting of it came to the notice of the Treasury Solicitor on a specified date, or that no such application as is mentioned in paragraph (3)(b) was received by him with respect to the property before a specified date, is sufficient evidence of the fact stated, until the contrary is proved.

(5) A notice of disclaimer under this Article shall be delivered to the registrar for registration; and copies of it shall be published in the Belfast Gazette and sent to any persons who have given the Treasury Solicitor notice that they claim to be interested in the property.

**F682** mod. 1986 c. 53

**F683** mod. prosp. by 1992 c. 40

**F684** mod. by SR 2004/307

#### ***Effect of Crown disclaimer under Article 607***

**608** <sup>F685</sup> <sup>F686F687</sup> Where notice of disclaimer is executed under Article 607 as respects any property, that property is deemed not to have vested in the Crown under Article 605 and as regards that property, [<sup>F688</sup> Article 152(3) and Articles 153 to 156 of the Insolvency Order shall apply] as if the property had been disclaimed by the liquidator under [<sup>F688</sup> that Article 152] immediately before the dissolution of the company.

**F685** mod. 1986 c. 53

**F686** mod. prosp. by 1992 c. 40

**F687** mod. by SR 2004/307

**F688** 1989 NI 19

#### ***Liability for rentcharge on company's land after dissolution***

**609** <sup>F689</sup> .—<sup>F690F691</sup>(1) [<sup>F692</sup> Article 154 of the Insolvency Order shall apply] to land which by operation of law vests subject to a rentcharge in the Crown or any other person on the dissolution of a company as it applies to land so vesting on a disclaimer under [<sup>F692</sup> that Article].

(2) In this Article “company” includes any body corporate.

**F689** mod. 1986 c. 53

**F690** mod. prosp. by 1992 c. 40

**F691** mod. by SR 2004/307

**F692** 1989 NI 19

*Arts. 610-624 rep. by 1989 NI 19*

CHAPTER VII - rep. by 1989 NI 19

PART XXI rep. by 1989 NI 19

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## PART XXII

### BODIES CORPORATE SUBJECT, OR BECOMING SUBJECT, TO THIS ORDER (OTHERWISE THAN BY ORIGINAL FORMATION UNDER PART II)

#### CHAPTER I

##### COMPANIES FORMED OR REGISTERED UNDER FORMER COMPANIES ACTS

###### *Companies formed and registered under former Companies Acts*

**625.**—(1) In its application to existing companies, this Order applies in the same manner—

- (a) in the case of a limited company (other than a company limited by guarantee) as if the company had been formed and registered under Part II as a company limited by shares,
- (b) in the case of a company limited by guarantee, as if the company had been formed and registered under that Part as a company limited by guarantee, and
- (c) in the case of a company other than a limited company, as if the company had been formed and registered under that Part as an unlimited company.

(2) But reference, express or implied, to the date of registration is to be read as the date at which the company was registered under the former Companies Acts.

###### *Companies registered but not formed under former Companies Acts*

**626.**—(1) This Order applies to every company registered but not formed under the former Companies Acts, in the same manner as it is in Chapter II declared to apply to companies registered but not formed under this Order.

(2) But reference, express or implied, to the date of registration is to be read as referring to the date at which the company was registered under the former Companies Acts.

###### *Companies re-registered with altered status under former Companies Acts*

**627.**—(1) This Order applies to every unlimited company registered or re-registered as limited in pursuance of the Companies Act 1879, section 57 of the Companies (Consolidation) Act 1908, section 16 of the Companies Act (Northern Ireland) 1932, section 16 of the Act of 1960 or Article 119 of the Order of 1978 as it (this Order) applies to an unlimited company re-registered as limited in pursuance of Part III.

(2) But reference, express or implied, to the date of registration or re-registration is to be read as referring to the date at which the company was registered or re-registered as a limited company under the relevant statutory provision.

###### *Companies registered under Joint Stock Companies Acts*

**628.**—(1) A company registered under the Joint Stock Companies Acts may cause its shares to be transferred in manner hitherto in use, or in such other manner as the company may direct.

(2) The power of altering a company's articles under Article 20 extends, in the case of an unlimited company formed and registered under the Joint Stock Companies Acts, to altering any regulations relating to the amount of capital or to its distribution into shares, notwithstanding that those regulations are contained in the memorandum.

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## CHAPTER II

### COMPANIES NOT FORMED UNDER COMPANIES LEGISLATION, BUT AUTHORISED TO REGISTER

#### *Companies capable of being registered under this Chapter*

**629.**—(1) With the exceptions and subject to the provisions contained in this Article and Article 630—

- (a) any company consisting of 2 or more members, which was in existence on 2nd November 1862, including any company registered under the Joint Stock Companies Acts, and
- (b) any company formed after that date (whether before or after the commencement of this Order), in pursuance of any statutory provision (other than this Order), or of letters patent, or being otherwise duly constituted according to law, and consisting of 2 or more members,

may at any time, on making application in the prescribed form, register under this Order as an unlimited company, or as a company limited by shares, or as a company limited by guarantee; and the registration is not invalid by reason that it has taken place with a view to the company's being wound up.

[<sup>F693</sup>(1A) A company shall not be prevented from registering under this Order as a private company limited by shares or by guarantee solely because it has only one member.]

(2) A company registered under the Companies Act 1862, the Companies (Consolidation) Act 1908, the Companies Act (Northern Ireland) 1932 or the Act of 1960 shall not register under this Article.

(3) A company having the liability of its members limited by a statutory provision or letters patent, and not being a joint stock company, shall not register under this Article.

(4) A company having the liability of its members limited by a statutory provision or letters patent shall not register under this Article as an unlimited company or as a company limited by guarantee.

(5) A company that is not a joint stock company shall not register under this Article as a company limited by shares.

**F693** SR 1992/405

#### *Procedural requirements for registration*

**630.**—(1) A company shall not register under Article 629 without the assent of a majority of such of its members as are present in person or by proxy (in cases where proxies are allowed) at a general meeting summoned for the purpose.

(2) Where a company not having the liability of its members limited by a statutory provision or letters patent is about to register as a limited company, the majority required to assent as required by paragraph (1) shall consist of not less than three-fourths of the members present in person or by proxy at the meeting.

(3) In computing any majority under this Article when a poll is demanded, regard is to be had to the number of votes to which each member is entitled according to the company's regulations.

(4) Where a company is about to register (under Article 629) as a company limited by guarantee, the assent to its being so registered shall be accompanied by a resolution declaring that each member undertakes to contribute to the company's assets, in the event of its being wound up, while he is a member, or within one year after he ceases to be a member, for payment of the company's debts and liabilities contracted before he ceased to be a member, and of the costs and expenses of winding up

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and for the adjustment of the rights of the contributories among themselves, such amount as may be required, not exceeding a specified amount.

(5) Before a company is registered under Article 629, it shall deliver to the registrar a statement in the prescribed form—

- (a) that the registered office of the company is to be situated in Northern Ireland, and
- (b) specifying the intended situation of the company's registered office after registration.

### ***Change of name on registration***

**631.**—(1) Where the name of a company seeking registration under Article 629 is a name by which it is precluded from registration by Article 36, either because it falls within paragraph (1) of that Article or, if it falls within paragraph (2) of that Article, because the Department would not approve the company being registered with that name, the company may change its name with effect from the date on which it is registered under this Chapter.

(2) A change of name under this Article requires the like assent of the company's members as is required by Article 630 for registration.

### ***Definition of “joint stock company”***

**632.**—(1) For the purposes of this Chapter as far as relates to registration of companies as companies limited by shares, “joint stock company” means a company—

- (a) having a permanent paid-up or nominal share capital of fixed amount divided into shares, also of fixed amount, or held and transferable as stock, or divided and held partly in one way and partly in the other, and
- (b) formed on the principle of having for its members the holders of those shares or that stock, and no other persons.

(2) Such a company when registered with limited liability under this Order is deemed a company limited by shares.

### ***Requirements for registration by joint stock companies***

**633.**—(1) Before the registration under Article 629 of a joint stock company, there shall be delivered to the registrar the following documents—

- (a) a statement in the prescribed form specifying the name with which the company is proposed to be registered;
- (b) a list in the prescribed form showing the names and addresses of all persons who on a day named in the list<sup>F694</sup> not more than 28 clear days before the day of registration] were members of the company, with the addition of the shares or stock held by them respectively (distinguishing in cases, where the shares are numbered, each share by its number), and
- (c) a copy of any statutory provision, royal charter, letters patent, deed of settlement, contract of copartnership, or other instrument constituting or regulating the company.

(2) If the company is intended to be registered as a limited company, there shall also be delivered to the registrar a statement in the prescribed form specifying the following particulars—

- (a) the nominal share capital of the company and the number of shares into which it is divided, or the amount of stock of which it consists, and
- (b) the number of shares taken and the amount paid on each share.

**F694** 1990 NI 10

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### **Registration of joint stock company as public company**

**634.**—(1) A joint stock company applying to be registered under Article 629 as a company limited by shares may, subject to—

- (a) satisfying the conditions set out in Article 54(2)(a) and (b) (where applicable) and Article 55(2) to (4) as applied by this Article, and
- (b) complying with paragraph (4),

apply to be so registered as a public company.

(2) Articles 54 and 55 apply for this purpose as in the case of a private company applying to be re-registered under Article 53, but as if a reference to the special resolution required by Article 53 were to the joint stock company's resolution that it be a public company.

(3) The resolution may change the company's name by deleting the word “company” or the words “and company”, including any abbreviation of them.

(4) The joint stock company's application shall be made in the form prescribed for the purpose, and shall be delivered to the registrar together with the following documents (as well as those required by Article 633), namely—

- (a) a copy of the resolution that the company be a public company,
- (b) a copy of a written statement by an accountant with the appropriate qualifications that in his opinion a relevant balance sheet shows that at the balance sheet date the amount of the company's net assets was not less than the aggregate of its called-up share capital and undistributable reserves,
- (c) a copy of the relevant balance sheet, together with a copy of an unqualified report (by an accountant with such qualifications) in relation to that balance sheet,
- (d) a copy of any valuation report prepared under Article 54(2)(b) as applied by this Article, and
- (e) [<sup>F695</sup>subject to paragraph (4A),] a statutory declaration in the prescribed form by a director or secretary of the company—
  - (i) that the conditions set out in Article 54(2)(a) and (b) (where applicable) and Article 55(2) to (4) have been satisfied, and
  - (ii) that, between the balance sheet date referred to in sub-paragraph (b) and the joint stock company's application, there has been no change in the company's financial position that has resulted in the amount of its net assets becoming less than the aggregate of its called-up share capital and undistributable reserves.

[<sup>F695</sup>(4A) In place of the statutory declaration referred to in sub-paragraph (e) of paragraph (4), there may be delivered to the registrar using electronic communications a statement made by a director or secretary of the company as to the matters set out in heads (i) and (ii) of that sub-paragraph.]

(5) The registrar may accept a declaration under paragraph (4)(e)[<sup>F695</sup> or statement under paragraph (4A)] as sufficient evidence that the conditions referred to in that paragraph have been satisfied.

(6) In this Article—

“accountant with the appropriate qualifications” means [<sup>F696</sup> a person who would be eligible] for appointment as the company's auditor, if it were a company registered under this Order,

“relevant balance sheet” means a balance sheet prepared as at a date not more than 7 months before the joint stock company's application to be registered as a public company limited by shares, and



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“undistributable reserves” has the meaning gives by <sup>F697</sup>section 831(4) of the Companies Act 2006];

and Article 56 applies (with the necessary modifications) for the interpretation of the reference in paragraph (4)(c) to an unqualified report by the accountant.

<sup>F695</sup>(7) Any person who makes a false statement under paragraph (4A) which he knows to be false or does not believe to be true is liable to imprisonment or a fine, or both.]

**F695** SR 2003/3

**F696** SR 1993/67

**F697** Words in [art. 634\(6\)](#) in definition of "undistributable reserves" substituted (6.4.2008) by [Companies Act 2006 \(Consequential Amendments etc\) Order 2008 \(S.I. 2008/948\)](#), arts. 2(2), 3(1)(b), [Sch. 1 para. 142](#) (with arts. 6, 11, 12)

### **Other requirements for registration**

**635.**—(1) Before the registration in pursuance of this Chapter of any company (not being a joint stock company), there shall be delivered to the registrar—

(a) a statement in the prescribed form specifying the name with which the company is proposed to be registered,

<sup>F698</sup>(b) a list showing with respect to each director or manager of the company—

(i) in the case of an individual, his name, address, occupation and date of birth,

(ii) in the case of a corporation or Scottish firm, its corporate or firm name and registered or principal office,]

(c) a copy of any statutory provision, letters patent, deed of settlement, contract of copartnership, or other instrument constituting or regulating the company, and

(d) in the case of a company intended to be registered as a company limited by guarantee, a copy of the resolution declaring the amount of the guarantee.

<sup>F698</sup>(1A) For the purposes of paragraph (1)(b)(i) a person's “name” means his Christian name (or other forename) and surname, except that in the case of a peer, or an individual usually known by a title, the title may be stated instead of his Christian name (or other forename) and surname or in addition to either or both of them.]

(2) <sup>F699</sup>Subject to paragraph (2A), the lists] of members and directors and any other particulars relating to the company which are required by this Chapter to be delivered to the registrar shall be verified by a statutory declaration in the prescribed form made by any 2 or more directors or other principal officers of the company.

<sup>F699</sup>(2A) In place of the statutory declaration referred to in paragraph (2), there may be delivered to the registrar using electronic communications a statement made by any two or more directors or other principal officers of the company verifying the matters set out in that paragraph.]

(3) The registrar may require such evidence as he thinks necessary for the purpose of satisfying himself whether a company proposing to be registered is or is not a joint stock company as defined by Article 632.

<sup>F699</sup>(4) Any person who makes a false statement under paragraph (2A) which he knows to be false or does not believe to be true is liable to imprisonment or a fine, or both.]

**F698** [1990 NI 10](#)

**F699** SR 2003/3

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### ***Name of company registering***

**636.**—(1) This Article applies with respect to a company registering under this Chapter (whether a joint stock company or not).

(2) If the company is to be registered as a public company, its name must end with the words “public limited company”; and those words may not be preceded by the words “limited”.

(3) In the case of a company limited by shares or by guarantee (not being a public company), the name must have “limited” as its last word but this is subject to Article 40 (exempting a company, in certain circumstances, from having “limited” as part of its name).

(4) If the company is registered with limited liability, then any additions to the company's name set out in the statements delivered under Article 633(1)(a) or 635(1)(a) shall form and be registered as the last part of the company's name.

### ***Certificate of registration under this Chapter***

**637.**—(1) On compliance with the requirements of this Chapter with respect to registration, the registrar shall certify under his hand that the company applying for registration is incorporated as a company under this Order and, in the case of a limited company, that it is limited.

(2) On the issue of the certificate, the company shall be so incorporated.

(3) The certificate is conclusive evidence that the requirements of this Chapter in respect of registration, and of matters precedent and incidental to it, have been complied with.

(4) Where on an application by a joint stock company to register as a public company limited by shares the registrar is satisfied that the company may be registered as a public company so limited, the certificate of incorporation given under this Article shall state that the company is a public company; and that statement is conclusive evidence that the requirements of Article 634 have been complied with and that the company is a public company so limited.

### ***Effect of registration***

**638.** Schedule 20 has effect with respect to the consequences of registration under this Chapter, the vesting of property, savings for existing liabilities, continuation of existing actions, status of the company following registration, and other connected matters.

### ***Power to substitute memorandum and articles for deed of settlement***

**639.**—(1) Subject as follows, a company registered in pursuance of this Chapter may by special resolution alter the form of its constitution by substituting a memorandum and articles for a deed of settlement.

(2) The provisions of Articles 15 to 17 with respect to applications to the court for cancellation of alterations of the objects of a company and matters consequential on the passing of resolutions for such alterations (so far as applicable) apply, but with the following modifications—

(a) there is substituted for the printed copy of the altered memorandum required to be delivered to the registrar a printed copy of the substituted memorandum and articles, and

(b) on the delivery to the registrar of the substituted memorandum and articles or the date when the alteration is no longer liable to be cancelled by order of the court (whichever is the later)—

(i) the substituted memorandum and articles apply to the company in the same manner as if it were a company registered under Part II with that memorandum and those articles, and

(ii) the company's deed of settlement ceases to apply to the company.

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(3) An alteration under this Article may be made either with or without alteration of the company's objects.

(4) In this Article “deed of settlement” includes any contract of copartnership or other instrument constituting or regulating the company, not being a statutory provision, a royal charter or letters patent.

## PART XXIII

### COMPANIES INCORPORATED OUTSIDE NORTHERN IRELAND CARRYING ON BUSINESS IN NORTHERN IRELAND

#### CHAPTER I

#### REGISTRATION, ETC.

##### *Application of this Part*

**640.**—(1) This Part applies to—

- (a) a company incorporated outside Northern Ireland which after the commencement of this Order, establishes a place of business in Northern Ireland, and
- (b) a company so incorporated which has, before the commencement of this Order, established a place of business in Northern Ireland and continues to have an established place of business in Northern Ireland at the commencement of this Order.

(2) A company to which this Part applies is in this Order referred to as a “Part XXIII company”.

##### *[<sup>F700</sup> Branch registration under the Eleventh Company Law Directive (89/666/EEC)*

**640A.**—(1) This Article applies to any limited company which—

- (a) is incorporated outside the United Kingdom and Gibraltar, and
- (b) has a branch in Northern Ireland.

(2) Schedule 20A (branch registration under the Eleventh Company Law Directive (89/666/EEC) shall have effect in relation to any company to which this Article applies.]

**F700** SR 1993/198

##### *[<sup>F701</sup> Scope of Articles 641 and 642*

**640B.** Article 641 and 642 shall not apply to any limited company which—

- (a) is incorporated outside the United Kingdom and Gibraltar, and
- (b) has a branch in the United Kingdom.]

**F701** SR 1993/198

##### *Documents to be delivered to registrar*

**641.**—(1) When a company incorporated outside Northern Ireland establishes a place of business in Northern Ireland, it shall within one month of doing so deliver to the registrar for registration—

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- (a) a certified copy of the charter, statutes or memorandum and articles of the company or other instrument constituting or defining the company's constitution, and, if the instrument is not written in the English language, a certified translation of it; and
  - (b) a return in the prescribed form containing—
    - (i) a list of the company's directors and secretary, containing the particulars specified in paragraph (2),
    - (ii) a list of the names and addresses of some one or more persons resident in Northern Ireland authorised to accept on the company's behalf service of process and any notices required to be served on it,
    - (iii) a list of the documents delivered in compliance with sub-paragraph (a), and
    - (iv) [<sup>F702</sup>subject to paragraph (3A),] a statutory declaration (made by a director or secretary of the company or by any person whose name and address are given in the list required by head (ii)), stating the date on which the company's place of business in Northern Ireland was established.
- [<sup>F703</sup>(2) The list referred to in paragraph (1)(b)(i) shall contain the following particulars with respect to each director—
- (a) in the case of an individual—
    - (i) his name,
    - (ii) any former name,
    - (iii) his usual residential address,
    - (iv) his nationality,
    - (v) his business occupation (if any),
    - (vi) if he has no business occupation but holds other directorships, particulars of them, and
    - (vii) his date of birth;
  - (b) in the case of a corporation or Scottish firm, its corporate or firm name and registered or principal office.
- (3) The list referred to in paragraph (1)(b)(i) shall contain the following particulars with respect to the secretary (or, where there are joint secretaries, with respect to each of them)—
- (a) in the case of an individual, his name, any former name and his usual residential address;
  - (b) in the case of a corporation or Scottish firm, its corporate or firm name and registered or principal office.

Where all the partners in a firm are joint secretaries of the company, the name and principal office of the firm may be stated instead of the particulars required by sub-paragraph (a).

[<sup>F702</sup>(3A) In place of the statutory declaration referred to in head (iv) of sub-paragraph (b) of paragraph (1), there may be delivered to the registrar using electronic communications a statement made by any person by whom the declaration could have been made stating the date on which the company's place of business in Northern Ireland was established.]

- (4) In paragraphs (2)(a) and (3)(a)—
  - (a) “name” means a person's Christian name (or other forename) and surname, except that in case of a peer, or an individual usually known by a title, the title may be stated instead of his Christian name (or other forename) and surname, or in addition to either or both of them; and
  - (b) the reference to a former name does not include—

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- (i) in the case of a peer, or an individual normally known by a British title, the name by which he was known previous to the adoption of or succession to the title, or
- (ii) in the case of any person, a former name which was changed or disused before he attained the age of 18 years or which has been changed or disused for 20 years or more, or
- (iii) in the case of a married woman, the name by which she was known previous to the marriage.

<sup>F702</sup> (5) Any person who makes a false statement under paragraph (3A) which he knows to be false or does not believe to be true is liable to imprisonment or a fine, or both.]]

**F702** SR 2003/3  
**F703** 1990 NI 10

### **Registration of altered particulars**

**642.**—(1) If any alteration is made in—

- (a) the charter, statutes, or memorandum and articles of a Part XXIII company or any such instrument as is mentioned in Article 641, or
- (b) the directors or secretary of a Part XXIII company or the particulars contained in the list of the directors and secretary, or
- (c) the names or addresses of the persons authorised to accept service on behalf of a Part XXIII company,

the company shall, within the time specified in paragraph (3), deliver to the registrar for registration a return containing the prescribed particulars of the alteration.

(2) If any change is made in the corporate name of a Part XXIII company, the company shall within the time specified in paragraph (3) deliver to the registrar for registration a return containing the prescribed particulars of the change.

(3) The time for delivery of the returns required by paragraphs (1) and (2) is—

- (a) in the case of an alteration to which paragraph (1)(c) applies, 21 days after the making of the alteration, and
- (b) otherwise, 21 days after the date on which notice of the alteration or change in question could have been received in Northern Ireland in due course of post (if despatched with due diligence).

### **<sup>F704</sup>Change in registration regime**

**642A.**—(1) Where a company ceases to be a company to which Article 640A applies and, immediately after ceasing to be such a company—

- (a) continues to have in Northern Ireland a place of business which it had immediately before ceasing to be such a company, and
- (b) does not have a branch in Great Britain,

it shall be treated for the purposes of Article 641 as having established the place of business on the date when it ceased to be a company to which Article 640A applies.

(2) Where a limited company incorporated outside the United Kingdom and Gibraltar—

- (a) ceases to have a branch in Great Britain, and

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- (b) both immediately before and immediately after ceasing to do so, has a place of business, but not a branch, in Northern Ireland,

it shall be treated for the purposes of Article 641 as having established the place of business on the date when it ceased to have a branch in Great Britain.

(3) Schedule 20B (transitional provisions in relation to change in registration regime) shall have effect.]

**F704** SR 1993/198

### ***Obligation to state name and other particulars***

**643.**—(1 <sup>F705</sup> Every Part XXIII company shall—  
Sub#para. (a) rep. by 1986 c. 60

- (b) conspicuously exhibit on every place where it carries on business in Northern Ireland the company's name and the country in which it is incorporated.
- (c) cause the company's name and the country in which it is incorporated to be stated in legible characters in all bill-heads and letter paper, and in all notices and other official publications of the company,
- (d) if the liability of the members of the company is limited, cause notice of that fact to be stated in legible characters<sup>F706</sup> . . . in all bill-heads, letter paper, notices and other official publications of the company in Northern Ireland, and to be affixed on every place where it carries on its business.

(2) Paragraph (1)(b) and (c) does not apply to a company incorporated in Great Britain.

[<sup>F707</sup>(3 <sup>F705</sup> Every company to which Article 640A applies shall, in the case of each branch of the company registered under paragraph 1 of Schedule 20A, cause the following particulars to be stated in legible characters in all letter paper and order forms used in carrying on the business of the branch—

- (a) the place of registration of the branch, and  
(b) the registered number of the branch.

(4 <sup>F705</sup> Every company to which Article 640A applies, which is not incorporated in a Member State and which is required by the law of the country in which it is incorporated to be registered under paragraph 1 of Schedule 20A, cause the following particulars to be stated in legible characters in all letter paper and order forms used in carrying on the business of the branch—

- (a) the identity of the registry in which the company is registered in its country of incorporation, and  
(b) the number with which it is registered.

(5 <sup>F705</sup> Every company to which Article 640A applies and which is not incorporated in a Member State shall, in the case of each branch of the company registered under paragraph 1 of Schedule 20A, cause the following particulars to be stated in legible character in all letter paper and order forms used in carrying on the business of the branch—

- (a) the legal form of the company,  
(b) the location of its head office,  
(c) if applicable, the fact that it is being wound up.]

**F705** mod. by SR 2004/307

**F706** 1986 c. 60

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F707 SR 1993/198

### **Regulation of Part XXIII companies in respect of their names**

**644.**—(1) If it appears to the Department that the corporate name of a Part XXIII company is a name by which the company, had it been formed under this Order, would on the relevant date<sup>F708</sup> (determined in accordance with paragraphs (3A) and (3B)) have been precluded from being registered by Article 36 either—

- (a) because it falls within paragraph (1) of that Article, or
- (b) if it falls within paragraph (2) of that Article, because the Department would not approve the company's being registered by that name,

the Department may serve a notice on the company, stating why the name would not have been registered.

(2) If the corporate name of a Part XXIII company is in the Department's opinion too like a name appearing on the relevant date in the index of names kept by the registrar under Article 663 or which should have appeared in that index on that date, or is the same as a name which should have so appeared, the Department may serve a notice on the company specifying the name in the index which the company's name is too like or which is the same as the company's name.

(3) No notice shall be served on a company under paragraph (1) or (2) later than 12 months after the relevant date,<sup>F708</sup> . . .

<sup>F708</sup>(3A) For the purposes of paragraphs (1) to (3), the relevant date, in relation to a company, is the date on which it has complied with paragraph 1 of Schedule 20A or Article 641(1) or, if there is more than one such date, the first date on which it has complied with either of those provisions since becoming a Part XXIII company.

(3B) But where the company's corporate name has changed since the date ascertained in accordance with paragraph (3A), the relevant date is the date on which the company has, in respect of the change or, if more than one, the latest change, complied with paragraph 7(1) of Schedule 20A or Article 642(2), as the case may be.]

(4) A Part XXIII company on which a notice is served under paragraph (1) or (2)—

- (a) may deliver to the registrar for registration a statement in the prescribed form specifying a name approved by the Department other than its corporate name under which it proposes to carry on business in Northern Ireland, and
- (b) may, after that name has been registered, at any time deliver to the registrar for registration a statement in the prescribed form specifying a name approved by the Department (other than its corporate name) in substitution for the name previously registered.

(5) The name by which a Part XXIII company is for the time being registered under paragraph (4) is, for all purposes of the law applying in Northern Ireland (including this Order and the Business (Northern Ireland) Order 1986), deemed to be the company's corporate name; but—

- (a) this does not affect references to the corporate name in this Article, or any rights or obligations of the company, or render defective any legal proceedings by or against the company, and
- (b) any legal proceedings that might have been continued or commenced against the company by its corporate name or its name previously registered under this Article may be continued or commenced against it by its name for the time being so registered.

(6) A Part XXIII company on which a notice is served under paragraph (1) or (2) shall not at any time after the expiration of 2 months from the service of that notice (or such longer period as may be specified in that notice) carry on business in Northern Ireland under its corporate name.

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Nothing in this paragraph, or in Article 647(2) (which imposes penalties for its contravention) invalidates any transaction entered into by the company.

(7) The Department may withdraw a notice served under paragraph (1) or (2) at any time before the end of the period mentioned in paragraph (6); and that paragraph does not apply to a company served with a notice which has been withdrawn.

**F708** SR 1993/198

***Service of documents: companies to which Article 640A applies***

**644A.**—(1) This Article applies to any company to which Article 640A applies.

(2) Any process or notice required to be served on a company to which this Article applies in respect of the carrying on of the business of a branch registered by it under paragraph 1 of Schedule 20A is sufficiently served if—

- (a) addressed to any person whose name has, in respect of the branch, been delivered to the registrar as a person falling within paragraph 3(e) of that Schedule, and
- (b) left at or sent by post to the address for that person which has been so delivered.

(3) Where—

- (a) a company to which this Article applies makes default, in respect of a branch, in delivering to the registrar the particulars mentioned in paragraph 3(e) of Schedule 20A, or
- (b) all the persons whose names have, in respect of a branch, been delivered to the registrar under paragraph 1 of that Schedule as persons falling within paragraph 3(e) are dead or have ceased to reside in Northern Ireland, or refuse to accept service on the company's behalf, or for any reason cannot be served,

a document may be served on the company in respect of the carrying on of the business of the branch by leaving it at, or sending it by post to, any place of business established by the company in Northern Ireland.

(4) Where a company to which this Article applies has more than one branch in Northern Ireland, any notice or process required to be served on the company which is not required to be served in respect of the carrying on of the business of one branch rather than another shall be treated for the purposes of this Article as required to be served in respect of the carrying on of the business of each of its branches.

***Service of documents on a Part XXIII company***

**645.**—(1) Any process or notice required to be served on a Part XXIII company<sup>[F709]</sup> to which Article 641 applies] is sufficiently served if addressed to any person whose name has been delivered to the registrar under the foregoing provisions of this Part and left at or sent by post to the address which has been so delivered.

(2) However—

- (a) where such a company makes default in delivering to the registrar the name and address of a person resident in Northern Ireland who is authorised to accept on behalf of the company service of process or notices, or
- (b) if at any time all the persons whose names and addresses have been so delivered are dead or have ceased so to reside, or refuse to accept service on the company's behalf, or for any reason cannot be served,

a document may be served on the company by leaving it at, or sending it by post to, any place of business established by the company in Northern Ireland.



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**F709** SR 1993/198

***Documents to be filed on cessation of business: companies to which Article 640A applies***

**645A.** If a company to which Article 640A applies closes a branch in Northern Ireland, it shall forthwith give notice of that fact to the registrar; and from the date on which notice is so given it is no longer obliged to deliver documents to the registrar in respect of that branch.

***Documents to be filed on cessation of business***

**646.** If a Part XXIII company<sup>[F710]</sup> to which Article 641 applies] ceases to have a place of business in Northern Ireland, it shall forthwith give notice of that fact to the registrar; and as from the date on which notice is so given the obligation of the company to deliver any document to the registrar ceases.

**F710** SR 1993/198

***Penalties for non-compliance***

**647.—**(1) If a Part XXIII company fails to comply with any of Articles 641 to 643 and 646 the company, and every officer or agent of the company who knowingly and wilfully authorises or permits the default, is liable to a fine and, in the case of a continuing offence, to a daily default fine for continued contravention.

(2) If a Part XXIII company contravenes Article 644(6), the company and every officer or agent of it who knowingly and wilfully authorises or permits the contravention is guilty of an offence and liable to a fine and, for continued contravention, to a daily default fine.

<sup>[F711]</sup>(3) If a Part XXIII company fails to comply with Article 645A or Schedule 20A, the company and every officer or agent of the company who knowingly and wilfully authorises or permits the default is liable to a fine, and in the case of a continuing offence, to a daily default fine for continued contravention.]

**F711** SR 1993/198

***Interpretation***<sup>F712</sup>. . .

**648.—**<sup>[F712]</sup>(1) For the purposes of this Chapter—

“certified” means certified in the prescribed manner to be a true copy or a correct translation;

“director”, in relation to a Part XXIII company, includes a shadow director; and

“secretary” includes any person occupying the position of secretary by whatever name called.

<sup>[F712]</sup>(2) For the purposes of this Part (except Article 648A and Schedule 20C):

(a) where a branch comprises places of business in more than one part of the United Kingdom the branch shall be treated as being situated in that part of the United Kingdom where its principal place of business is situated; and

(b) “branch” means a branch within the meaning of the Council Directive concerning disclosure requirements in respect of branches opened in a Member State by certain types of company governed by the law of another State (the Eleventh Company Law Directive, [89/666/EEC](#)).]

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F712 SR 1993/198

[<sup>F713</sup>CHAPTER II]

[<sup>F713</sup>DELIVERY OF ACCOUNTS AND REPORTS]

F713 1990 NI 5

[<sup>F714</sup>*Credit and financial institutions to which the Bank Branches Directive (89/117/EEC) applies*

**648A.**—(1) This Article applies to any credit or financial institution—

- (a) which is incorporated or otherwise formed outside the United Kingdom and Gibraltar,
- (b) whose head office is outside the United Kingdom and Gibraltar, and
- (c) which has a branch in Northern Ireland.

(2) Schedule 20C (delivery of accounts and reports) shall have effect in relation to any institution to which this Article applies.

(3) In this Article—

“branch,” in relation to a credit or financial institution, means a place of business which forms a legally dependent part of the institution and which conducts directly all or some of the operations inherent in its business;

“credit institution” means a credit institution as defined in Article 1 of the First Council Directive on the coordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of credit institutions (77/780/EEC), that is to say an undertaking whose business is to receive deposits or other repayable funds from the public and to grant credits for its own account;

“financial institution” means a financial institution within the meaning of Article 1 of the Council Directive on the obligations of branches established in a Member State of credit and financial institutions having their head offices outside that Member State regarding the publication of annual accounting documents (the Bank Branches Directive, 89/117/EEC); and

“undertaking” has the same meaning as in Part VIII.]

F714 SR 1993/198, reg. 2(1)

[<sup>F715</sup>*Companies to which the Eleventh Company Law Directive applies*

**648AA.**—(1) This Article applies to any limited company which—

- (a) is incorporated outside the United Kingdom and Gibraltar,
- (b) has a branch in Northern Ireland, and
- (c) is not an institution to which Article 648A applies.

(2) Schedule 20D (delivery of accounts and reports) shall have effect in relation to any company to which this Article applies.]

F715 SR 1993/198, reg. 15

*Status: Point in time view as at 06/04/2008. This version of this Order contains provisions that are not valid for this point in time.*

*Changes to legislation: The Companies (Northern Ireland) Order 1986 (revoked) is up to date with all changes known to be in force on or before 09 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

### <sup>F716</sup> **Scope of Articles 649 to 652**

**648B.** Articles 649 to 652 shall not apply to any institution to which Article 648A applies<sup>F717</sup> or to any limited company which is incorporated outside the United Kingdom and Gibraltar and has a branch in the United Kingdom.]

**F716** SR 1993/198, reg. 2(1)

**F717** SR 1993/198

### **Preparation of accounts and reports by Part XXIII companies**

**649.**—(1) Every Part XXIII company shall in respect in each financial year of the company prepare the like accounts and directors' report, and cause to be prepared such an auditors' report, as would be required if the company were formed and registered under this Order.

(2) The Department may by order—

- (a) modify the requirements referred to in paragraph (1) for the purpose of their application to Part XXIII companies;
- (b) exempt a Part XXIII company from those requirements or from such of them as may be specified in the order.

(3) An order may contain such incidental and supplementary provisions as the Department thinks fit.

(4) An order under this Article shall be subject to negative resolution.

### **Part XXIII company's financial year and accounting reference periods**

**650.**—(1) [<sup>F718</sup>Sections 390 to 392 of the Companies Act 2006] (financial year and accounting reference periods) apply to a Part XXIII company, subject to the following modifications.

(2) For the references to the incorporation of the company substitute references to the company establishing a place of business in Northern Ireland.

(3) Omit [<sup>F719</sup>section 392(3)] (restriction on frequency with which current accounting reference period may be extended).

**F718** Words in art. 650(1) substituted (6.4.2008) by Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2008/948), arts. 2(2), 3(1)(b), **Sch. 1 para. 143(a)** (with arts. 6, 11, 12)

**F719** Words in art. 650(3) substituted (6.4.2008) by Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2008/948), arts. 2(2), 3(1)(b), **Sch. 1 para. 143(b)** (with arts. 6, 11, 12)

### **Delivery to registrar of accounts and reports of Part XXIII company**

**651.**—(1) A Part XXIII company shall in respect of each financial year of the company deliver to the registrar copies of the accounts and reports prepared in accordance with Article 649. If any document comprised in those accounts or reports is in a language other than English, the directors shall annex to the copy delivered a translation of it into English, certified in the prescribed manner to be a correct translation.

(2) In relation to a Part XXIII company the period allowed for delivering accounts and reports is 13 months after the end of the relevant accounting reference period. This is subject to the following provisions of this Article.

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(3) If the relevant accounting reference period is the company's first and is a period of more than 12 months, the period allowed is 13 months from the first anniversary of the company's establishing a place of business in Northern Ireland.

(4) If the relevant accounting period is treated as shortened by virtue of a notice given by the company under [<sup>F720</sup>section 392 of the Companies Act 2006] (alteration of accounting reference date), the period allowed is that applicable in accordance with the above provisions or 3 months from the date of the notice under that Article, whichever last expires.

(5) If for any special reason the Department thinks fit it may, on an application made before the expiry of the period otherwise allowed, by notice in writing to a Part XXIII company extend that period by such further period as may be specified in the notice.

(6) In this Article “the relevant accounting reference period” means the accounting reference period by reference to which the financial year for the accounts in question was determined.

**F720** Words in art. 651(4) substituted (6.4.2008) by Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2008/948), arts. 2(2), 3(1)(b), **Sch. 1 para. 144** (with arts. 6, 11, 12)

### **Penalty for non-compliance**

**652.**—(1) If the requirements of Article 651(1) are complied with before the end of the period allowed for delivering accounts and reports, or if the accounts and reports delivered do not comply with the requirements of this Order, the company and every person who immediately before the end of that period was a director of the company is guilty of an offence and liable to a fine and, for continued contravention, to a daily default fine.

(2) It is defence for a person charged with such an offence to prove that he took all reasonable steps for securing that the requirements in question would be complied with.

(3) It is not a defence in relation to a failure to deliver copies to the registrar to prove that the documents in question were not in fact prepared as required by this Order.

F721

**F721** prosp. insertion by 1990 NI 10

## CHAPTER III

### REGISTRATION OF CHARGES

*{prosp insertion of arts. 652A-652M by 1990 NI 10}*

**652A-652M**<sup>F722</sup>

**F722** prosp insertion of Chpt. III (arts. 652A-652M) by 1990 NI 10, arts. 28(b), 41, **Sch. 1**

[<sup>F723</sup>CHAPTER IV]

[<sup>F723</sup>WINDING UP, ETC.]

**F723** SR 1993/198

*Status: Point in time view as at 06/04/2008. This version of this Order contains provisions that are not valid for this point in time.*

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## ***[<sup>F724</sup>Scope of Chapter***

**652N.** This Chapter applies to any company to which Article 640A applies.]

**F724** SR 1993/198

## ***[<sup>F725</sup>Particulars to be delivered to the registrar: winding up***

**652O.**—(1) Subject to paragraph (8), where a company to which this Chapter applies is being wound up, it shall deliver to the registrar for registration a return in the prescribed form containing the following particulars—

- (a) the name of the company;
- (b) whether the company is being wound up by an order of a court and, if so, the name and address of the court and the date of the order;
- (c) if the company is not being so wound up, as a result of what action the winding up has commenced;
- (d) whether the winding up has been instigated by:
  - (i) the company's members;
  - (ii) the company's creditors; or
  - (iii) some other person or persons,and, in the case of (iii) the identity of that person or those persons shall be given; and
- (e) the date on which the winding up became or will become effective.

(2) The period allowed for delivery of a return under paragraph (1) is 14 days from the date on which the winding up begins.

(3) Subject to paragraph (8), a person appointed to be the liquidator of a company to which this Chapter applies shall deliver to the registrar for registration a return in the prescribed form containing the following particulars—

- (a) his name and address,
- (b) the date of his appointment, and
- (c) a description of such of his powers, if any, as are derived otherwise than from the general law of the company's constitution.

(4) The period allowed for delivery of a return under paragraph (3) is 14 days from the date of the liquidator's appointment.

(5) Subject to paragraph (8), the liquidator of a company to which this Chapter applies shall deliver to the registrar for registration a return in the prescribed form upon the occurrence of the following events—

- (a) the termination of the winding up of the company, and
- (b) the company ceasing to be registered, in circumstances where ceasing to be registered is an event of legal significance.

The following particulars shall be given:

- (i) in the case of (a), the name of the company and the date on which the winding up terminated; and
- (ii) in the case of (b), the name of the company and the date on which the company ceased to be registered.

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(6) The period allowed for delivery of a return under paragraph (5) is 14 days from the date of the event concerned.

(7) The obligation to deliver a return under paragraph (1), (3) or (5) shall apply in respect of each branch which the company has in Northern Ireland (though where the company has more than one branch in Northern Ireland a return which gives the branch numbers of two or more such branches is to be regarded as a return in respect of each branch whose number is given).

(8) No return is required under paragraph (1), (3) or (5) in respect of a winding up under Part VI of the Insolvency (Northern Ireland) Order 1989.]

F725 SR 1993/198

*[<sup>F726</sup>Particulars to be delivered to the registrar: insolvency proceedings etc.*

**652P.**—(1) Where a company to which this Chapter applies becomes subject to any of the following proceedings (other than proceedings for the winding up of the company), that is to say, insolvency proceedings or an arrangement or composition or any analogous proceedings, it shall deliver to the registrar for registration a return in the prescribed form containing the following particulars—

- (a) the name of the company;
- (b) whether the proceedings are by order of a court and, if so, the name and address of the court and the date of the order;
- (c) if the proceedings are not by order of a court, as a result of what action the proceedings have been commenced;
- (d) whether the proceedings have been instigated by:
  - (i) the company's members;
  - (ii) the company's creditors; or
  - (iii) some other person or persons,
 and, in the case of (iii) the identity of that person or those persons shall be given; and
- (e) the date on which the proceedings became or will become effective.

(2) Where a company to which this Chapter applies ceases to be subject to any of the proceedings mentioned in paragraph (1) it shall deliver to the registrar for registration a return in the prescribed form containing the following particulars:

- (a) the name of the company; and
- (b) the date on which it ceased to be subject to the proceedings.

(3) The period allowed for delivery of a return under sub-paragraph (1) or (2) is 14 days from the date on which the company becomes subject to the proceedings concerned.

(4) The obligation to deliver a return under this Article shall apply in respect of each branch which the company has in Northern Ireland (though where the company has more than one branch in Northern Ireland a return which gives the branch number of two or more such branches is to be regarded as a return in respect of each branch whose number is given).]

F726 SR 1993/198

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### <sup>[F727]</sup> **Penalty for non-compliance**

**652Q.**—(1) If a company fails to comply with Article 652O(1) or 652P(1) or (2) within the period allowed for compliance, it, and every person who immediately before the end of that period was a director of it, is guilty of an offence and liable to a fine and, for continued contravention, to a daily default fine.

(2) If a liquidator fails to comply with Article 652O(3) or (5) within the period allowed for compliance, he is guilty of an offence and liable to a fine and, for continued contravention, to a daily default fine.

(3) It is a defence for a person charged with an offence under this Article to prove that he took all reasonable steps for securing compliance with the requirements concerned.]

F727 SR 1993/198

## PART XXIV

### THE REGISTRAR OF COMPANIES, HIS FUNCTIONS AND OFFICE

#### **Registration office and registrar**

**653** <sup>F728</sup>.—(1) For the purposes of the registration of companies under the Companies Orders, the Department shall continue to maintain and administer an office of the Department in Northern Ireland at such place as the Department thinks fit.

(2) The Department may for those purposes appoint an officer as registrar of companies and one or more than one officer as assistant registrar of companies.

(3) The Department may direct a seal or seals to be prepared for the authentication of documents required for or in connection with the registration of companies.

<sup>[F729]</sup>(4) Paragraph (5) applies where by virtue of Article 11(1) of the Deregulation and Contracting Out (Northern Ireland) Order 1996 a person is authorised by the registrar to accept delivery of any class of documents which are under any provision of the Companies Orders to be delivered to the registrar.

(5) If—

(a) the registrar directs that documents of that class shall be delivered to a specified address of the authorised person; and

(b) the direction is printed and made available to the public (with or without payment),

any document of that class which is delivered to an address other than the specified address shall be treated for the purposes of those Orders as not having been delivered.]

F728 mod. by SR 2004/307

F729 1996 NI 11

#### **Companies' registered numbers**

**654.**—(1) The registrar shall allocate to every company a number, which shall be known as the company's registered number.

(2) Companies' registered numbers shall be in such form, consisting of one or more sequences of figures or letters, as the registrar may from time to time determine.

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(3) The registrar may upon adopting a new form of registered number make such changes of existing registered numbers as appear to him necessary.

(4) A change of a company's registered number has effect from the date on which the company is notified by the registrar of the change; but for a period of three years beginning with the date on which that notification is sent by the registrar the requirement of Article 359(1)(a) as to the use of the company's registered number on [<sup>F730</sup>business letters, order forms and websites] is satisfied by the use of either the old number or the new.

(5 <sup>F731</sup> In this Article “company” includes—

- [<sup>F732</sup>(za) any Part XXIII company which has complied with paragraph 1 of Schedule 20A other than a company which appears to the registrar not to have a branch in Northern Ireland;]
- (a) any Part XXIII company which has complied with Article 641 (delivery of statutes to registrar, &c.), other than a company which appears to the registrar not to have a place of business in Northern Ireland, and
  - (b) any body to which any provision of this Order applies by virtue of Article 667 (unregistered companies).

**F730** Words in art. 654(4) substituted (1.1.2007) by [Companies \(Registrar, Languages and Trading Disclosures\) Regulations 2006 \(S.I. 2006/3429\)](#), reg. 6(2), **Sch. 2 para. 3**

**F731** mod. by SR 2004/307

**F732** SR 1993/198

### **Registration of branches of Part XXIII companies**

**654A.**—(1) For each company to which Article 640A applies the registrar shall keep, in such form as he thinks fit, a register of the branches registered by the company under paragraph 1 of Schedule 20A.

(2) The registrar shall allocate to every branch registered by him under this Article a number, which shall be known as the branch's registered number.

(3) Branches' registered numbers shall be in such form, consisting of one or more sequences of figures or letters, as the registrar may from time to time determine.

(4) The registrar may upon adopting a new form of registered number make such changes of existing registered numbers as appear to him necessary.

(5) A change of a branch's registered number has effect from the date on which the company is notified by the registrar of the change; but for a period of three years beginning with the date on which that notification is sent by the registrar the requirement of Article 643(3) as to the use of the branch's registered number on business letters and order forms is satisfied by the use of either the old number or the new.

(6) Where a Part XXIII company to which Article 640A applies files particulars, in any circumstances permitted by this Order, by:

- (a) adopting particulars already filed in respect of another branch; or
- (b) including in one document particulars which are to relate to two or more branches,

the registrar shall ensure that the particulars concerned become part of the registered particulars of each branch concerned.

### **[<sup>F733</sup>Delivery to the registrar of documents in legible form**

**655.**—(1) This Article applies to the delivery to the registrar under any provision of the Companies Orders of documents in legible form.



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(2) The document must—

- (a) <sup>F734</sup> state in a prominent position the registered number of the company to which it relates,<sup>[F735</sup> and, if the document is delivered under Article 645A, 652O or 652P or Schedule 20A or 20D, the registered number of the branch to which it relates,]
- (b) satisfy any requirements prescribed by regulations for the purposes of this Article, and
- (c) conform to such requirements as the registrar may specify for the purpose of enabling him to copy the document.

(3) If a document is delivered to the registrar which does not comply with the requirements of this Article, he may serve on the person by whom the document was delivered (or, if there are two or more such persons, on any of them) a notice indicating the respect in which the document does not comply.

(4) Where the registrar serves such a notice, then, unless a replacement document—

- (a) is delivered to him within 14 days after the service of the notice, and
- (b) complies with the requirements of this Article (or Article<sup>[F736</sup> 656B]) or is not rejected by him for failure to comply with those requirements,

the original document shall be deemed not to have been delivered to him.

But for the purposes of any statutory provision imposing a penalty for failure to deliver, so far as it imposes a penalty for continued contravention, no account shall be taken of the period between the delivery of the original document and the end of the period of 14 days after service of the registrar's notice.]

**F733** Art. 655 substituted by 1990 NI 10, art. 59(1)

**F734** mod. by SR 2004/307

**F735** SR 1993/198

**F736** SR 2003/3

*Art. 656 rep. by SR 2003/3*

### The keeping of company records by the registrar

**656A.**—<sup>[F737</sup>(1) The information contained in a document delivered to the registrar under the Companies Orders may be recorded and kept by him in any form he thinks fit, provided it is possible to inspect the information and to produce a copy of it in legible form.

This is sufficient compliance with any duty of his to keep, file or register the document.

(2) The originals of documents delivered to the registrar in legible form shall be kept by him for ten years, after which they may be destroyed.

(3) Where a company has been dissolved, the registrar may, at any time after the expiration of two years from the date of the dissolution, direct that any records in his custody relating to the company may be removed to the Public Record Office of Northern Ireland; and records in respect of which such a direction is given shall be disposed of in accordance with the statutory provisions relating to that Office.

(4) <sup>F738</sup> In paragraph (3) “company” includes a company provisionally or completely registered under the Joint Stock Companies Act 1844.]

**F737** Art. 656A repealed (1.1.2007 for certain purposes, otherwise prosp.) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), Sch. 16; S.I. 2006/3428, art. 7(a), Sch. 2 Pt. 2 (with arts. 6, 8, Sch. 5)

**F738** mod. by SR 2004/307

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### **Delivery to the registrar using electronic communications**

**656B.**—(1) Electronic communications may be used for the delivery of any document to the registrar under any provision of the Companies Orders (including delivery of a document in the prescribed form), provided that such delivery is in such form and manner as is directed by the registrar.

(2) Where the document is required under any provision of the Companies Orders to be signed or sealed, it shall instead be authenticated in such manner as is directed by the registrar.

(3) The document must contain in a prominent position—

- (a) <sup>F739</sup> the name and registered number of the company to which it relates, or
- (b) <sup>F739</sup> if the document is delivered under Part XXIII, the registered number of the branch or place of business of the company to which it relates.

(4) If a document is delivered to the registrar which does not comply with the requirements imposed by or under this Article, he may serve on the person by whom the document was delivered (or, if there are two or more such persons, on any of them) a notice indicating the respect in which the document does not comply.

(5) Where the registrar serves such a notice, then unless a replacement document—

- (a) is delivered to him within 14 days after the service of the notice, and
- (b) complies with the requirements of this Article (or Article 655) or is not rejected by him for failure to comply with those requirements,

the original document shall be deemed not to have been delivered to him.

But for the purposes of any statutory provision imposing a penalty for failure to deliver, so far as it imposes a penalty for continued contravention, no account shall be taken of the period between the delivery of the original document and the end of the period of 14 days after service of the registrar's notice.

(6) In this Article references to the delivery of a document include references to the forwarding, lodging, registering, sending or submission of a document and to the giving of a notice.

**F739** mod. by SR 2004/307

### ***Fees payable to registrar***

**657** <sup>F740</sup>.—(1) The Department may by regulations require the payment to the registrar of such fees as may be specified in the regulations in respect of—

- (a) the performance by the registrar of such functions under the Companies Orders as may be so specified, including the receipt by him of <sup>F741</sup> any document which under those Orders is required to be delivered to him];
- (b) the inspection of documents <sup>F741</sup> . . . kept by him under those Orders.

(2) Regulations made under paragraph (1)(a) requiring the payment of a fee in respect of a matter for which no fee was previously payable or increasing a fee shall be subject to affirmative resolution.

(3) Fees paid to the registrar under the Companies Orders shall be <sup>F742</sup> paid into the Consolidated Fund].

(4) It is hereby declared that the registrar may charge a fee for any services provided by him otherwise than in pursuance of any obligation imposed on him by law.

**F740** mod. by SR 2004/307

**F741** 1990 NI 10

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**F742** 1993 NI 5

### **Inspection, &c. of records kept by the registrar**

**658.** <sup>F743</sup> .....

**F743** Art. 658 repealed (1.1.2007) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), **Sch. 16**; S.I. 2006/3428, **art. 7(a)**, Sch. 2 Pt. 2 (with arts. 6, 8, Sch. 5)

### <sup>F744</sup>**Certificate of incorporation**

**659** <sup>F745</sup>. Any person may require a certificate of the incorporation of a company, signed by the registrar or authenticated by his official seal.

**F744** subst. by 1990 NI 10, **art. 60(2)**

**F745** mod. by SR 2004/307

### <sup>F746</sup>**Provision and authentication by registrar of documents is non-legible form**

**659A** <sup>F747</sup>.—(1) Any requirement of the Companies Orders as to the supply by the registrar of a document may, if the registrar thinks fit, be satisfied by the communication by the registrar of the requisite information in any non-legible form prescribed for the purposes of this Article by regulations or approved by him.

(2) Where the document is required to be signed by him or sealed with his official seal, it shall instead be authenticated in such manner as may be prescribed by regulations or approved by the registrar.

**F746** 1990 NI 10, **art. 60(2)**

**F747** mod. by SR 2004/307

### **Public notice by registrar of receipt or issue of certain documents**

**660.** <sup>F748</sup> .....

**F748** Art. 660 repealed (1.1.2007) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), **Sch. 16**; S.I. 2006/3428, **art. 7(a)**, Sch. 2 Pt. 2 (with arts. 6, 8, Sch. 5)

*Art. 661 rep. by 1990 NI 10*

### **Enforcement of company's duty to make returns**

**662.**—(1) <sup>F749</sup> If a company, having made default in complying with any provision of the Companies Orders which requires it to [<sup>F750</sup> deliver a document to the registrar], or to give notice to him of any matter, fails to make good the default within 14 days after the service of a notice on the company requiring it to do so, the court may, on an application made to it by any member or creditor of the company or by the registrar, make an order directing the company and any officer of it to make good the default within such time as may be specified in the order.

(2) <sup>F749</sup> The court's order may provide that all costs of and incidental to the application shall be borne by the company or by any officers of it responsible for the default.

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(3)<sup>F749</sup> Nothing in this Article prejudices the operation of any statutory provision imposing penalties on a company or its officers in respect of any such default as is mentioned in paragraph (1).

**F749** mod. by SR 2004/307

**F750** 1990 NI 10

**Modifications etc. (not altering text)**

**C9** Art. 662 applied (temp.) (15.12.2007) by Companies (Cross-Border Mergers) Regulations 2007 (S.I. 2007/2974), reg. 4, Sch. 1 para. 2

**Registrar's index of company and corporate names**

**663**<sup>F751</sup>.—(1) The registrar shall keep an index of the names of the following bodies—

- (a) companies as defined by this Order,
- [<sup>F752</sup>(aa) companies incorporated outside the United Kingdom and Gibraltar which have complied with paragraph 1 of Schedule 20A and which do not appear to the registrar not to have a branch in Northern Ireland,]
- (b) companies incorporated outside Northern Ireland which have complied with Article 641 and which do not appear to the registrar not to have a place of business in Northern Ireland,
- (c) incorporated and unincorporated bodies to which any provision of this Order applies by virtue of Article 667 (unregistered companies),
- (d) limited partnerships registered under the Limited Partnerships Act 1907,
- [<sup>F753</sup>(da) limited liability partnerships incorporated under the Limited Liability Partnerships Act (Northern Ireland) 2002,]
- (e) companies within the meaning of the Companies Act 1985,
- (f) companies incorporated outside Great Britain which have complied with section 691 of the Companies Act 1985 (which corresponds with Article 641 of this Order) and which do not appear to the registrar not to have a place of business in Great Britain, and
- (g) societies registered under the Industrial and Provident Societies Act (Northern Ireland) 1969 or the Industrial and Provident Societies Act 1965.

(2) The Department may by order subject to negative resolution vary paragraph (1) by the addition or deletion of any class of body, except any within paragraph (1)(a) or (b) whether incorporated or unincorporated.

**F751** mod. by SR 2004/307

**F752** SR 1993/198

**F753** 2002 c. 12 (NI)

*Art. 664 rep. by 1990 NI 10*

[<sup>F754</sup>**Interpretation**

**664A**<sup>F755</sup>.—(1) In this Part—

- “document” includes information recorded in any form; and
- “legible”, in the context of documents in legible or non-legible form, means capable of being read with the naked eye.

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(2) References in this Part to delivering a document include sending, forwarding, producing or (in the case of a notice) giving it.]

**F754** Art. 664A inserted by 1990 NI 10, art. 61

**F755** mod. by SR 2004/307

## PART XXV

### MISCELLANEOUS AND SUPPLEMENTARY PROVISIONS

*Arts. 665#666 rep. by 2003 NI 17*

#### *Unregistered companies*

**667.**—(1) The provisions of this Order specified in the first column of Schedule 21 (relating respectively to the matters specified in the second column of the Schedule) apply to all bodies corporate incorporated in and having a principal place of business in Northern Ireland, other than those mentioned in paragraph (2), as if they were companies registered under this Order, but subject to any limitations mentioned in relation to those provisions respectively in the third column and to such adaptations and modifications (if any) as may be specified by regulations made by the Department.

(2) The said provisions do not apply by virtue of this Article to any of the following—

- (a) any body incorporated by or registered under any statutory provision,
- (b) any body not formed for the purpose of carrying on a business which has for its object the acquisition of gain by the body or its individual members,
- (c) any body for the time being exempted by direction of the Department.

[<sup>F756</sup>(d) any open#ended investment company within the meaning of the Open#Ended Investment Companies Regulations (Northern Ireland) 2004.]

(3) Where against any provision of this Order specified in the first column of Schedule 21 there appears in the third column the entry “Subject to Article 667(3)”, it means that the provision is to apply by virtue of this Article so far only as may be specified by regulations made by the Department and to such bodies corporate as may be so specified.

(4) The provisions specified in the first column of the Schedule also apply in like manner in relation to any unincorporated body of persons entitled by virtue of letters patent to any of the privileges conferred by the Chartered Companies Act 1837 and not registered under any other statutory provision, but subject to the like exceptions as are provided for in the case of bodies corporate by paragraph (2)(b) and (c).

(5) This Article does not repeal or revoke in whole or in part any statutory provision, royal charter or other instrument constituting or regulating any body in relation to which the said provisions are applied by virtue of this Article or restrict the power of Her Majesty to grant a charter in lieu of or supplementary to any such charter as aforesaid; but, in relation to any such body, the operation of any such statutory provision, charter or instrument is suspended in so far as it is inconsistent with any of the said provisions as they apply for the time being to that body.

**F756** SR 2004/335

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

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

(2) The power conferred by paragraph (1) is exercisable notwithstanding that its exercise is not in the best interests of the company.

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

- (a) in a case not falling within sub-paragraph (b) or (c), by an ordinary resolution of the company, or
- (b) if so authorised by its memorandum or articles, by a resolution of the directors, or
- (c) if its memorandum or articles require the exercise of the power to be sanctioned by a resolution of the company of some other description for which more than a simple majority of the members voting is necessary, with the sanction of a resolution of that description;

and in any case after compliance with any other requirements of its memorandum or articles applicable to its exercise.

(4) Any payment which may be made by a company under this Article may, if made before the commencement of any winding up of the company, be made out of profits of the company which are available for dividend.

### ***Certain companies to publish periodical statement***

**669.** <sup>F757</sup> .....

**F757** Art. 669 repealed (6.4.2007) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), Sch. 16; S.I. 2006/3428, arts. 4(2)(a), 7(c), Sch. 4 Pt. 2 (subject to art. 5, Sch. 1 and with arts. 6, 8, Sch. 5)

### ***Production and inspection of books where offence suspected***

**670.**—(1) This Article applies if, on an application made in accordance with rules of court to the High Court by the Director of Public Prosecutions for Northern Ireland, the Department or a chief superintendent of the Royal Ulster Constabulary there is shown to be reasonable cause to believe that any person has, while an officer of a company, committed an offence in connection with the management of the company's affairs and that evidence of the commission of the offence is to be found in any books or papers of or under the control of the company.

(2) An order may be made—

- (a) authorising any person named in it to inspect the books or papers in question, or any of them, for the purpose of investigating and obtaining evidence of the offence, or
- (b) <sup>F758</sup> requiring the secretary of the company or such other officer of it as may be named in the order to produce the books or papers (or any of them) to a person named in the order at a place so named.

(3) Paragraph (2) applies also in relation to any books or papers of a person carrying on the business of banking so far as they relate to the company's affairs, as it applies to any books or papers of or under the control of the company, except that no such order as is referred to in paragraph (2) (b) shall be made by virtue of this paragraph.

(4) The decision of the High Court on an application under this Article is not appealable.

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**F758** mod. by SR 2004/307

### ***Form of company registers, etc.***

**671** <sup>F759</sup>.—(1) Any register, index, minute book or accounting records required by the Companies Orders to be kept by a company may be kept either by making entries in bound books or by recording the matters in question in any other manner.

(2) Where any such register, index, minute book or accounting record is not kept by making entries in a bound book, but by some other means, adequate precautions shall be taken for guarding against falsification and facilitating its discovery.

(3) If default is made in complying with paragraph (2), the company and every officer of it who is in default is liable to a fine and, for continued contravention, to a daily default fine.

**F759** mod. by SR 2004/307

### ***Use of computers for company records***

**672.**—(1) The power conferred on a company by Article 671 to keep a register or other record by recording the matters in question otherwise than by making entries in bound books includes power to keep the register or other record by recording those matters otherwise than in a legible form, so long as the recording is capable of being reproduced in a legible form.

(2) <sup>F760</sup> Any provision of an instrument made by a company before 1st January 1982 which requires a register of holders of the company's debentures to be kept in a legible form is to be read as requiring the register to be kept in a legible or non-legible form.

(3) If any such register or other record of a company as is mentioned in Article 671(1), or a register of holders of a company's debentures, is kept by the company by recording the matters in question otherwise than in a legible form, any duty imposed on the company by this Order to allow inspection of, or to furnish a copy of, the register or other record or any part of it is to be treated as a duty to allow inspection of, or to furnish, a reproduction of the recording or of the relevant part of it in a legible form.

(4) The Department may by regulations make such provision in addition to paragraph (3) as it considers appropriate in connection with such registers or other records as are mentioned in that paragraph and are kept as there mentioned; and the regulations may make modifications of provisions of this Order relating to such registers or other records.

**F760** mod. by SR 2004/307

### **[<sup>F761</sup>Obligations of company as to inspection of registers, &c.**

**672A** <sup>F762</sup>.—(1) The Department may make provision by regulations as to the obligations of a company which is required by any provision of this Order—

- (a) to make available for inspection any register, index or document, or
- (b) to provide copies of any such register, index or document, or part of it;

and a company which fails to comply with the regulations shall be deemed to have refused inspection or, as the case may be, to have failed to provide a copy.

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(2) The regulations may make provision as to the time, duration and manner of inspection, including the circumstances in which and extent to which the copying of information is permitted in the course of inspection.

(3) The regulations may define what may be required of the company as regards the nature, extent and manner of extracting or presenting any information for the purposes of inspection or the provision of copies.

(4) Where there is power to charge a fee, the regulations may make provision as to the amount of the fee and the basis of its calculation.

(5) Nothing in any provision of this Order or in the regulations shall be construed as preventing a company from affording more extensive facilities than are required by the regulations or, where a fee may be charged, from charging a lesser fee than that prescribed or no fee at all.]

**F761** Art. 672A inserted 1990 NI 10, art. 77

**F762** mod. by SR 2004/307

### *Service of documents*

**673.** A document may be served on a company by leaving it at, or sending it by post to, the company's registered office.

### *Costs and expenses in actions by certain limited companies*

**674** <sup>F763</sup>. Where a limited company is plaintiff in an action or other legal proceeding, the court having jurisdiction in the matter may, if it appears by credible testimony that there is reason to believe that the company will be unable to pay the defendant's costs if successful in his defence, require sufficient security to be given for those costs, and may stay all proceedings until the security is given.

**F763** mod. by SR 2004/307

### *Power of court to grant relief in certain cases*

**675.**—(1) <sup>F764</sup> If in any proceedings for negligence, default, breach of duty or breach of trust against an officer of a company or a person employed by a company as auditor (whether he is or is not an officer of the company) it appears to the court hearing the case that that officer or person is or may be liable in respect of the negligence, default, breach of duty or breach of trust, but that he has acted honestly and reasonably, and that having regard to all the circumstances of the case (including those connected with his appointment) he ought fairly to be excused for the negligence, default, breach of duty or breach of trust, that court may relieve him, either wholly or partly, from his liability on such terms as it thinks fit.

(2) <sup>F764</sup> If any such officer or person as mentioned in paragraph (1) has reason to apprehend that any claim will or might be made against him in respect of any negligence, default, breach of duty or breach of trust, he may apply to the court for relief; and the court on the application has the same power to relieve him as under this Article it would have had if it had been a court before which proceedings against that person for negligence, default, breach of duty or breach of trust had been brought.

(3) Where the case to which paragraph (1) applies is being tried by a judge with a jury, the judge, after hearing the evidence, may, if he is satisfied that the defendant ought in pursuance of that paragraph to be relieved either in whole or in part from the liability sought to be enforced against him, withdraw the case in whole or in part from the jury and forthwith direct judgement to be entered for the defendant on such terms as to costs or expenses or otherwise as the judge may think proper.



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**F764** mod. by SR 2004/307

### ***Enforcement of High Court orders***

**676** <sup>F765</sup>. Orders made by the High Court under this Order may be enforced in the same manner as orders made in an action pending in that court.

**F765** mod. by SR 2004/307

### ***Annual report by the Department***

**677.** <sup>F766</sup> .....

**F766** Art. 677 repealed (6.4.2007) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), Sch. 16; S.I. 2006/3428, arts. 4(2)(a), 7(c), Sch. 4 Pt. 2 (subject to art. 5, Sch. 1 and with arts. 6, 8, Sch. 5)

### ***Punishment of offences***

**678** <sup>F767</sup>.—(1) Schedule 23 has effect with respect to the way in which offences under this Order are punishable on conviction.

(2) In relation to an offence under a provision of this Order specified in the first column of the Schedule (the general nature of the offence being described in the second column), the third column shows whether the offence is punishable on conviction on indictment, or on summary conviction, or either in the one way or the other.

(3) The fourth column of the Schedule shows, in relation to an offence, the maximum punishment by way of fine or imprisonment under this Order which may be imposed on a person convicted of the offence in the way specified in relation to it in the third column (that is to say, on indictment or summarily), a reference to a period of years or months being to a term of imprisonment of that duration.

(4) The fifth column shows (in relation to an offence for which there is an entry in that column) that a person convicted of the offence after continued contravention is liable to a daily default fine; that is to say, he is liable on a second or subsequent summary conviction of the offence to the fine specified in that column for each day on which the contravention is continued (instead of the penalty specified for the offence in the fourth column of the Schedule).

(5) For the purpose of any provision of the Companies Orders which provides that an officer of a company<sup>F768</sup> or other body] who is in default is liable to a fine or penalty, the expression “officer who is in default” means any officer of the company<sup>F768</sup> or other body] who knowingly and wilfully authorises or permits the default, refusal or contravention mentioned in that provision.

**F767** mod. by SR 2004/307

**F768** 1990 NI 10

#### **Modifications etc. (not altering text)**

**C10** Art. 678(4) applied (temp.) (15.12.2007) by Companies (Cross-Border Mergers) Regulations 2007 (S.I. 2007/2974), reg. 4, Sch. 1 para. 2

**C11** Art. 678(5) applied (temp.) (15.12.2007) by Companies (Cross-Border Mergers) Regulations 2007 (S.I. 2007/2974), reg. 4, Sch. 1 para. 2

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**Summary proceedings**

**679**<sup>F769</sup>.—(1) Summary proceedings for any offence under the Companies Orders may (without prejudice to any jurisdiction exercisable apart from this paragraph) be taken against a body corporate at any place at which the body has a place of business, and against any other person at any place at which he is for the time being.

(2) Notwithstanding anything in Article 19(1)(a) of the Magistrates' Courts (Northern Ireland) Order 1981, a magistrates' court shall have jurisdiction to hear and determine a complaint charging the commission of a summary offence under the Companies Orders provided that the complaint is made within 3 years from the time when the offence was committed and within 12 months from the date on which evidence, sufficient in the opinion of the Director of Public Prosecutions for Northern Ireland or the Department (as the case may be) to justify the proceedings, comes to his or the Department's knowledge.

(3) For the purposes of this Article, a certificate of the Director of Public Prosecutions for Northern Ireland or the Department (as the case may be) as to the date on which such evidence as is referred to in paragraph (2) came to his or its knowledge is conclusive evidence.

**F769** mod. by SR 2004/307

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**Modifications etc. (not altering text)**

**C12** [Art. 679](#) applied (temp.) (15.12.2007) by [Companies \(Cross-Border Mergers\) Regulations 2007 \(S.I. 2007/2974\)](#), [reg. 4](#), [Sch. 1 para. 2](#)

**Prosecution by public authorities**

**680.**<sup>F770</sup> .....

**F770** [Arts. 680-680B](#) repealed (6.4.2008) by [Companies Act 2006 \(c. 46\)](#), [ss. 1284\(2\), 1295, 1300\(2\)](#), [Sch. 16](#); [S.I. 2007/3495](#), [art. 8\(a\)](#), [Sch. 2 Pt. 2](#) (with [arts. 7, 12](#), [Sch. 4 para. 44](#))

**Offences by bodies corporate**

**680A.**<sup>F771</sup> .....

**F771** [Arts. 680-680B](#) repealed (6.4.2008) by [Companies Act 2006 \(c. 46\)](#), [ss. 1284\(2\), 1295, 1300\(2\)](#), [Sch. 16](#); [S.I. 2007/3495](#), [art. 8\(a\)](#), [Sch. 2 Pt. 2](#) (with [arts. 7, 12](#), [Sch. 4 para. 44](#))

**Criminal proceedings against unincorporated bodies**

**680B.**<sup>F772</sup> .....

**F772** [Arts. 680-680B](#) repealed (6.4.2008) by [Companies Act 2006 \(c. 46\)](#), [ss. 1284\(2\), 1295, 1300\(2\)](#), [Sch. 16](#); [S.I. 2007/3495](#), [art. 8\(a\)](#), [Sch. 2 Pt. 2](#) (with [arts. 7, 12](#), [Sch. 4 para. 44](#))

**Regulations**

**681**<sup>F773</sup>.—(1) Subject to paragraph (4), the Department may make regulations for prescribing anything which is authorised or required by the Companies Orders to be prescribed.

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(2) Regulations under those Orders may contain such consequential, incidental or supplementary provisions as the Department thinks appropriate.

(3) Save as otherwise expressly provided by those Orders, all regulations under them shall be subject to negative resolution.

*Para. (4) rep. by 1989 NI 19*

<b>F773</b> mod. by SR 2004/307
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