

## SCHEDULE 8

Regulation 121.

### CONSEQUENTIAL AND FURTHER PROVISIONS

#### **Entitlement as an interest in a share**

1. For the purposes of the following provisions of the 1985 Act, the interest an account holder has in an entitlement to a share (that is to say the right, under these Regulations, to enforce the performance of the controller's duties in connection with the entitlement) shall be treated as an interest in the share itself:

- (a) Part VI; and
- (b) sections 324 to 326, 328 and 346, together with Schedule 13.

#### **References to instruments of transfer and their execution**

2. References in any enactment or instrument:

- (a) to an instrument of transfer with respect to any units of securities shall include a reference to an instruction to a controller holding entitlements to the units under regulation 33 or any other instruction required from the transferor, under these Regulations, in order that a unit of a security be transferred; and
- (b) to the execution of such an instrument shall include a reference to the transferor of a unit of a security giving such an instruction.

#### **Contents of annual return**

3. Section 364A of the 1985 Act shall apply to a company any of whose shares are uncertificated with the following modifications:

- (a) in place of the information required by sub-section (4)(b), the annual return of the company shall contain a list of the names and addresses of every person who has appeared on the register of members of the company at some point in the period since the date to which the last annual return was made up (or, in the case of the first return, since the incorporation of the company) and who is not a member of the company on the date to which the return is made up; and
- (b) in place of the information required by sub-section (5)(b), the annual return of the company shall state the number of shares (if any) by which the holding of each member and each person referred to in sub-paragraph (a) has increased or diminished at each periodic update of the register of members since the date to which the last annual return was made up (or, in the case of the first return, since the incorporation of the company) and the date of each update concerned.

#### **Share warrants to bearer**

4.—(1) For the purposes of these Regulations as they apply to shares of a company, any share warrants to bearer issued under section 188 of the 1985 Act shall be regarded as forming a separate class of certificated shares.

(2) Accordingly shares of a class in respect of which such warrants are in issue are to be converted by a resolution of the holders of the registered shares only and not the holders of any warrants in issue.

(3) A company may continue to issue such warrants notwithstanding that the shares concerned are uncertificated, but only where the entitlement to the share in respect of which the warrant is proposed to be issued is held by a primary company controller.

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Section 355 of the 1985 Act shall continue to apply.

(4) Upon the issue of such a warrant with respect to a share the company shall instruct the primary company controller to cease to hold the relevant entitlement for the account holder and the company shall strike the relevant entitlement from its record of entitlements.

Paragraph 8 of this Schedule shall apply with any necessary modifications.

(5) Upon the surrender of a warrant with respect to a share the company shall instruct the primary company controller to hold an entitlement to the share concerned for the person registered as its holder and the company shall credit the entitlement to the share concerned to the controller in its record of entitlements.

Regulation 82(1) shall apply with any necessary modifications,

### **Overseas brand registers**

5.—(1) For the purposes of these Regulations as they apply to shares of a company, any share registered in an overseas branch register to which section 362 of the 1985 Act applies shall be regarded as forming a separate class of certificated shares.

(2) Accordingly shares of a class in respect of which such shares are in issue are to be converted by a resolution of the holders of the shares registered on the register maintained by the company under section 352 of the 1985 Act (“the principal register”) only and not the holders of shares registered on the overseas branch register.

(3) Paragraph 2(2) of Schedule 14 to the 1985 Act shall apply in such a case as if the principal register were maintained only in accordance with the 1985 Act and not in accordance with these Regulations.

(4) A company may only transfer the registration of a share between an overseas branch register and the principal register where the entitlement to the share is or will be held by a primary company controller.

(5) Upon the transfer of a share to an overseas branch register the company shall instruct the primary company controller concerned to cease to hold an entitlement for the relevant account holder and the company shall strike the entitlement from its record of entitlements.

Paragraph 8 of this Schedule shall apply with any necessary modifications.

(6) Upon the transfer of a share to the principal register the company shall instruct a primary company controller to hold an entitlement to the share for the person registered or to be registered as its holder and the company shall credit the entitlement to the share concerned to the controller in its record of entitlements.

Regulation 82(1) shall apply with any necessary modifications.

### **Requirements to deliver up certificate**

6.—(1) A provision of any enactment or instrument which requires, for any purpose, a certificate to be delivered up for cancellation or inspection shall be construed, in connection with a unit of an uncertificated security, as requiring a statement from the controller holding the entitlement to the unit, certified by him or it to be a true statement, that he or it holds the entitlement for the person registered as the holder as at the date on which the certificate is to be delivered up (specifying it) and that he has no reason to believe that the entitlement is to a restricted unit within the meaning of regulation 53.

It is the duty of a controller:

- (a) to provide such a statement upon the request of an account holder, provided he or it has received such information as he or it may reasonably require that the statement is required; and

(b) to ensure that the statement is accurate.

(2) If a certified statement has been issued by a controller under this paragraph, he or it shall not consent to the transfer of, or act upon any instruction under regulation 33 in relation to, an entitlement covered by the statement, unless the statement is returned to the controller for cancellation.

(3) A certified statement given under this paragraph shall be prima facie evidence, and in Scotland sufficient evidence unless the contrary is shown, of the fact that the entitlement is held for the person concerned as at the date specified.

### **Registration of controller's default nominee**

7.—(1) This paragraph applies where, by virtue of any provision of these Regulations (other than regulation 38 as it applies with respect to a refusal of registration under regulation 21), a controller's default nominee is registered in that capacity as the holder of any unit of a security.

(2) Unless otherwise provided (in the case of shares) in a company's articles of association or (in the case of any security) in the terms of issue of such security, a period during which an account holder of a controller is omitted from the appropriate register for an uncertificated security as a consequence of the registration of that controller's default nominee shall be treated, for the purposes of any qualifying period for any benefit or the exercise of any right conferred by the articles or (as the case may be) the terms of issue, as a period during which the account holder was registered as holder of the relevant number of units.

For this purpose the relevant number of units are those units which the account holder was registered with (on the instructions of the controller concerned) immediately prior to the registration of the default nominee.

### **Cancellation &c of a unit of a security**

8.—(1) Where for any reason a unit of a security ceases to be in issue, the entitlement to that unit shall cease to exist.

(2) Where any units of a security are consolidated into one unit or a unit is subdivided, the entitlements to those units shall be consolidated into one entitlement or (as the case may be) be subdivided into entitlements to the subdivided units.

### **Modifications of Part XIII A of the 1985 Act**

9.—(1) Where an offeror (as defined in section 428 of the 1985 Act) proposes to give a notice to any holder of uncertificated shares under section 429 or section 430A(3) of the 1985 Act it shall inform the company of that fact and the company shall, within 2 working days, issue a general call for instructions, specifying such date (being a date which may be the subject of a general call for instructions) as the offeror shall request as the date by reference to which the register of members is to be updated (save that such a general call shall not be issued if the date requested is a fixed register date with respect to the shares).

(2) Within 3 working days of receipt of proper instructions to register received in response to the general call, the company shall update its register of members and supply a copy of the same to the offeror.

(3) The offeror shall be entitled to rely on that copy of the register of members for the purposes of sending out any notice under the provisions of Part XIII A notwithstanding the fact that such a register may include the name of any controller's default nominee.

(4) Section 430(6) of the 1985 Act shall not apply in the case of a takeover offer (as defined in section 428 of the 1985 Act) in relation to uncertificated shares.

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(5) Section 430(5) shall be construed in the case of a takeover offer for uncertificated shares (or such part of a takeover offer as relates to uncertificated shares) as requiring the notice referred to in that subsection to be sent to the Operator and the company.

(6) In addition to sending the notice referred to in section 430(5) of the 1985 Act the offeror shall notify the Operator and the company of the name of the controller which is to hold the entitlements to the shares to which the notice relates (“the offeror’s controller”).

(7) The receipt of the notices under paragraphs (5) and (6) by the Operator has the same effect as if the Operator had:

- (a) received a notification of a transaction under which the entitlements to the shares to which the notice relates are to be transferred to the offeror’s controller; and
- (b) obtained the consent to the transfer of those entitlements from any controller concerned.

(8) Where the offeror’s controller is a primary company controller, the company shall send any notice received by it under paragraphs (5) and (6) to such controller and, if it has more than one, to each of its primary company controllers and the receipt of the notice:

- (a) by the company, where the company has more than one such controller, has the same effect as if it had:
  - (i) received a notification of a transaction under which any entitlements to the shares to which the notice relates which are held by another primary company controller are to be transferred to the offeror’s controller; and
  - (ii) obtained the consent to the transfer of those entitlements from any controller concerned; and
- (b) by the offeror’s controller has the same effect as if it had received an instruction under regulation 33 under which any entitlements to the shares to which the notice relates which are held by it are to be held for the offeror.

(9) In the case of uncertificated shares, any communication referred to in sections 430(3)(a), 430A(1) or 430A(2) may be made, where the entitlements concerned are held by a commercial controller, by means of the Operator’s part of the system instead of in writing.

#### **Relationship of Regulations to 1985 Act**

**10.** In sections 704(5), 706(1), 707(1), 707A(1), 708(1)(a) and (4), 709(1) and (3) of the 1985 Act, references to the Companies Acts shall include these Regulations (“Regulations” here excluding any rules made under regulation 112).