

SCHEDULE 4

TRANSITIONAL PROVISIONS AND SAVINGS

PART 3

PROVISIONS COMING INTO FORCE ON 1ST OCTOBER 2008

Requirement to have at least one director who is a natural person (s.155)

46. If on 8th November 2006—

- (a) none of a company's directors were natural persons, and
- (b) section 282 of the 1985 Act or Article 290 of the 1986 Order (requirement as to number of directors) was complied with in relation to the company,

section 155 of the Companies Act 2006 (companies required to have at least one director who is a natural person) does not apply to the company until 1st October 2010.

Duty of directors to avoid conflicts of interest (s.175)

47.—(1) Section 175 of the Companies Act 2006 (duty to avoid conflicts of interest) applies where the situation described in subsection (1) of that section arises on or after 1st October 2008.

(2) The law that applied before that date continues to apply to such a situation that arose before that date.

(3) Section 175(5)(a) of that Act (private companies: authorisation by directors) applies—

- (a) to companies incorporated on or after 1st October 2008, and
- (b) to companies incorporated before that date where the members of the company have resolved (before, on or after 1st October 2008) that authorisation may be given in accordance with that provision.

(4) Chapter 3 of Part 3 of the Companies Act 2006 (resolutions and agreements affecting a company's constitution) applies to any such resolution.

(5) For the purposes of section 30 of that Act (copies of resolutions to be forwarded to registrar) such a resolution passed before 1st October 2008 is treated as if passed on that date.

Declaration by directors of interest in proposed transaction or arrangement (s.177)

48.—(1) Section 177(1) of the Companies Act 2006 (duty of director to declare interest in proposed transaction or arrangement) applies where the duty to declare an interest arises on or after 1st October 2008.

(2) Section 317 of the 1985 Act or Article 325 of the 1986 Order continues to apply in relation to a duty arising before that date.

(3) For the purposes of section 177(3) of the Companies Act 2006 (previous declaration under that section proving or becoming inadequate), a declaration of interest in relation to a proposed transaction or arrangement made before 1st October 2008 under section 317 of the 1985 Act or Article 325 of the 1986 Order is treated on and after that date as if made under section 177 of the Companies Act 2006.

General duties of directors: approval by members (s.180(2))

49. The reference in section 180(2) of the Companies Act 2006 (exclusion of general duties where approval of members given) to approval given under Chapter 4 of Part 10 of that Act (transactions requiring approval of members) includes approval given by a resolution passed before 1st October 2007 that is effective by virtue of paragraph 6(2), 7(2), 8(2) or 12(2) of Schedule 3 to the Companies Act 2006 (Commencement No. 3, Consequential Amendments, Transitional Provisions and Savings) Order 2007.

Declaration of interest in existing transaction or arrangement (ss.182 to 187)

50.—(1) Sections 182 to 187 of the Companies Act 2006 (declaration by director of interest in existing transaction or arrangement) apply in relation to transactions or arrangements entered into by a company on or after 1st October 2008.

(2) Section 317 of the 1985 Act or Article 325 of the 1986 Order continues to apply in relation to transactions or arrangements entered into before that date.

(3) For the purposes of section 182(1) of the Companies Act 2006 (declaration of interest in existing transaction not previously declared under section 177), a declaration of interest made before 1st October 2008 under section 317 of the 1985 Act or Article 325 of the 1986 Order is treated on and after that date as if made under section 177.

(4) For the purposes of section 182(3) of the Companies Act 2006 (previous declaration under that section proving or becoming inadequate), a declaration of interest made before 1st October 2008 under section 317 of the 1985 Act or Article 325 of the 1986 Order is treated on and after that date as if made under section 182.

Repeal of prohibition on private companies giving financial assistance for acquisition of shares

51.—(1) The repeal by this Order of sections 151 to 153 and 155 to 158 of the Companies Act 1985 or Articles 161 to 163 and 165 to 168 of the Companies (Northern Ireland) Order 1986 (financial assistance for acquisition of shares), to the extent specified in article 5(2) of this Order, applies in relation to financial assistance given on or after 1st October 2008.

(2) This is so, in a case within section 151(2) or Article 161(2), even if the shares in question were acquired, and the liability in question incurred, before that date.

52.—(1) This paragraph applies to anything that would have been unlawful by reason of any rule of law if that rule had not ceased to have effect, or been modified, as a consequence of the enactment of—

- (a) any provision contained in section 151 to 153 or 155 to 158 of the 1985 Act or Article 161 to 163 or 165 to 168 of the 1986 Order (prohibition of financial assistance for acquisition of shares), or
- (b) any former statutory provision substantially similar in effect to any such provision.

(2) The repeal by this Order of those sections or Articles shall not cause anything to which this paragraph applies to be rendered unlawful by reason of any rule of law that had so ceased to have effect or been modified.