



**BILLE NA gCUIDEACHTAÍ (LEASÚ), 1982
COMPANIES (AMENDMENT) BILL, 1982**

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As initiated*

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BILLE NA gCUIDEACHTAÍ (LEASÚ), 1982
COMPANIES (AMENDMENT) BILL, 1982

BILL

entitled

5 AN ACT TO AMEND THE LAW RELATING TO COMPANIES.

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

PART I

PRELIMINARY

1.—(1) This Act may be cited as the Companies (Amendment)
10 (No. 2) Act, 1982.

Short title,
collective citation
and
commencement.

(2) The collective citation “the Companies Acts, 1963 to 1982”
shall include this Act.

(3) This Act shall come into operation on such day as the Minister
may appoint by order.

15 2.—(1) In this Act unless the context otherwise requires—

Interpretation.

“the appointed day” means the day appointed by the Minister under
section 1(3) for the coming into operation of this Act;

32 “the appropriate rate”, in relation to interest, means five per cent.
per annum or such other rate as may be specified by order made by
20 the Minister under subsection (7);

40 “the authorised minimum” has the meaning assigned to it by section
19;

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

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

ment of those shares, and "uncalled share capital" shall be construed accordingly;

"the Companies Acts" means the Acts which by virtue of subsection (5) shall be construed as one Act;

"employees' share scheme" means any scheme for the time being in force, in accordance with which a company encourages or facilitates the holding of shares or debentures in the company or its holding company by or for the benefit of employees or former employees of the company or of any subsidiary of the company including any person who is or was a director holding a salaried employment or office in the company or any subsidiary of the company;

"equity security" has the meaning assigned to it by section 23(13);

"the general transitional period" means the period of 18 months commencing on the appointed day;

"hire-purchase agreement" has the same meaning as in the Hire-Purchase Act, 1946;

"the Minister" means the Minister for Trade, Commerce and Tourism;

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

"old public limited company" has the meaning assigned to it by section 12(1);

"the Principal Act" means the Companies Act, 1963;

"public company" means a company which is not a private company;

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

(a) the memorandum of which states that the company is to be a public limited company; and

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

"the re-registration period" has the meaning assigned to it by section 13(1);

"the transitional period for share capital" means the period of 3 years commencing on the appointed day.

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

(3) For the purposes of the Companies Acts—

(a) a share in a company shall be taken to have been paid up (as to its nominal value or any premium on it) in cash or allotted for cash if the consideration for the allotment or the payment up is cash received by the company or is a

5 cheque received by the company in good faith which the directors have no reason for suspecting will not be paid or is the release of a liability of the company for a liquidated sum or is an undertaking to pay cash to the company at a future date; and

10 (b) in relation to the allotment or payment up of any shares in a company, references in the Companies Acts, except in section 23, to consideration other than cash and to the payment up of shares and premiums on shares otherwise than in cash include references to the payment of, or an undertaking to pay, cash to any person other than the company;

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

15 (4) For the purposes of this Act—

(a) any reference to a balance sheet or to a profit and loss account shall include a reference to any notes thereon or document annexed thereto giving information which is required by the Companies Acts and is thereby allowed to be so given;

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

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

30 and in paragraph (c) "liabilities" includes any provision (within the meaning of the Sixth Schedule to the Principal Act) except to the extent that that provision is taken into account in calculating the value of any asset of the company.

35 (5) The Companies Act, 1963, the Companies (Amendment) Act, 1977, the Companies (Amendment) Act, 1982, and this Act shall be construed together as one Act.

(6) In this Act—

40 (a) a reference to a Part, section or Schedule is to a Part, section or Schedule of this Act unless it is indicated that a reference to some other enactment is intended;

(b) a reference to a subsection, paragraph or subparagraph is to the subsection, paragraph or subparagraph of the provision in which the reference occurs, unless it is indicated that reference to some other provision is intended; and

45 (c) a reference to any other enactment shall, unless the context otherwise requires, be construed as a reference to that enactment as amended by or under any other enactment, including this Act.

(7) The Minister may by order specify that the appropriate rate of interest for the purposes of this Act shall be a rate other than five per cent. per annum.

Amendments,
repeals and savings.

3.—(1) The provisions of the Principal Act specified in the *First Schedule* are hereby amended to the extent specified in that Schedule.

(2) The provisions of the Principal Act and the Companies (Amendment) Act, 1982, specified in the *first column* of the *Third Schedule* are hereby repealed to the extent specified in the *second column* of that Schedule.

(3) Paragraphs 23 and 24 of the *First Schedule* (which amend Table A and *Tábla A* respectively in the *First Schedule* to the Principal Act) and any repeal specified in the *Third Schedule* of anything contained in the said Table A and the said *Tábla A* shall not affect any company registered before the appointed day.

(4) In the Principal Act, a reference to a company registered under any specified enactment shall continue to have effect as a reference to a company registered under that enactment, notwithstanding that it has subsequently been re-registered under this Act.

PART II

NAME OF PUBLIC LIMITED COMPANY, REGISTRATION AND RE-REGISTRATION OF COMPANIES.

Name of a public
limited company.

4.—(1) The name of a public limited company must end with the words “public limited company” or “*cuideachta phoiblí theoranta*” which may be abbreviated to “p.l.c.” or “c.p.t.” respectively and those words or abbreviations may not be preceded by the word “limited” or its abbreviation “ltd.” or “*teoranta*” or its abbreviation “*teo.*”.

(2) Subject to subsection (1), a resolution in accordance with section 12 that a company be re-registered as a public limited company may change the name of the company by deleting—

(a) the word “company” or the words “and company”; or

(b) the word “*cuideachta*” or the words “*agus cuideachta*”,

including any abbreviation of them, and no fee shall be payable in respect of any change of name mentioned in this subsection.

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

Registration of
companies.

5.—(1) Where any memorandum is delivered for registration under section 17 of the Principal Act, the registrar shall not register the memorandum unless he is satisfied that all the requirements of the Companies Acts in respect of registration and of matters precedent and incidental thereto have been complied with.

(2) Where a memorandum which is so delivered states that the association to be registered is to be a public limited company, the amount of the share capital stated in the memorandum to be that with

which the company proposes to be registered must not be less than the authorised minimum.

(3) Where the registrar registers an association's memorandum which states that the association is to be a public limited company, the certificate of incorporation given in respect of that association under section 18 of the Principal Act shall contain a statement that the company is a public limited company.

(4) A certificate of incorporation given under that section in respect of any association shall be sufficient evidence until the contrary is shown—

(a) that the requirements mentioned in *subsection (1)* have been complied with, and that the association is a company authorised to be registered and is duly registered under the Principal Act; and

(b) if the certificate contains a statement that the company is a public limited company, that the company is such a company.

(5) A statutory declaration in the prescribed form by a solicitor engaged in the formation of a company, or by a person named as a director or secretary of the company in the statement delivered under section 3 of the Companies (Amendment) Act, 1982 that the requirements mentioned in *subsection (1)* have been complied with shall be delivered to the registrar, and the registrar may accept such a declaration as sufficient evidence of compliance.

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

Restriction on commencement of business by a public limited company.

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

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

(a) that the nominal value of the company's allotted share capital is not less than the authorised minimum;

(b) the amount paid up, at the time of the application, on the allotted share capital of the company;

(c) the amount, or estimated amount, of the preliminary expenses of the company and the persons by whom any of those expenses have been paid or are payable; and

(d) any amount or benefit paid or given or intended to be paid or given to any promoter of the company, and the consideration for the payment or benefit.

(4) For the purposes of *subsection (2)*, a share allotted in pursuance of an employees' share scheme may not be taken into account in

determining the nominal value of the company's allotted share capital unless it is paid up at least as to one-quarter of the nominal value of the share and the whole of any premium on the share.

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

(6) A certificate under this section in respect of any public limited company shall be sufficient evidence until the contrary is shown that the company is entitled to do business and exercise any borrowing powers. 10

(7) If a public limited company does business or exercises borrowing powers in contravention of this section, the company and any officer of the company who is in default shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £500. 15

(8) The provisions of this section are without prejudice to the validity of any transaction entered into by a public limited company; but if a public limited company enters into a transaction in contravention of those provisions and fails to comply with its obligations in connection therewith within 21 days from being called upon to do so, the directors of the company shall be jointly and severally liable to indemnify the other party to the transaction in respect of any loss or damage suffered by him by reason of the failure of the company to comply with those obligations. 20

Name of a public
limited company.

Prohibition on
formation of public
company limited by
guarantee and
having a share
capital.

7.—On or after the appointed day, no company shall be formed as, or become, a public company limited by guarantee and having a share capital. 25

Power of registrar
to strike public
limited company off
register.

8.—(1) Where a public limited company registered as such on its original incorporation has not been issued with a certificate under *section 6* within one year from the date on which it was registered, the registrar may send to the company, by registered post, a letter stating that a notice will be published in *Iris Oifigiúil* with a view to striking the name of that public limited company off the register unless such a certificate has been issued to the company within one month from the date of that letter. 30 35

(2) Where a certificate referred to in *section 6* has not been issued within one month from the date of the letter referred to in *subsection (1)*, the registrar may publish such notice and may proceed to strike the name of the public limited company off the register in accordance with *section 311 (5)* of the Principal Act. 40

(3) *Section 311 (6), (7) and (8)* of the Principal Act shall apply to a public limited company the name of which has been struck off the register in accordance with *subsection (2)* as those subsections apply for the purposes of the said *section 311*. 40

Registration of
companies.

Re-registration of
private company as
public limited
company.

9.—(1) Subject to *section 11*, a private company may be re-registered as a public limited company if— 45

(a) a special resolution, complying with *subsection (2)* that it should be so re-registered is passed; and 45

(b) an application for the purpose, in the prescribed form and

- signed by a director or secretary of the company, is delivered to the registrar together with the documents mentioned in *subsection (3)*; and
- (c) the conditions specified in *subsection (5)(a)* and *(b)* (where applicable) and *section 10(1)(a)* to *(d)* are satisfied in relation to the company.
- (2) The special resolution must—
- (a) alter the company's memorandum so that it states that the company is to be a public limited company;
- (b) make such other alterations in the memorandum as are necessary to bring it in substance and in form into conformity with the requirements of this Act with respect to the memorandum of a public limited company; and
- (c) make such alterations in the company's articles as are requisite in the circumstances.
- (3) The documents referred to in *subsection (1)* are—
- (a) a printed copy of the memorandum and articles as altered in pursuance of the resolution;
- (b) a copy of a written statement by the auditors of the company that in their opinion the relevant balance sheet shows that at the balance sheet date the amount of the company's net assets was not less than the aggregate of its called-up share capital and undistributable reserves;
- (c) a copy of the relevant balance sheet, together with a copy of an unqualified report by the company's auditors in relation to that balance sheet;
- (d) a copy of any report prepared under *subsection (5)(b)*; and
- (e) a statutory declaration in the prescribed form by a director or secretary of the company—
- (i) that the special resolution mentioned in *subsection (1)(a)* has been passed and that the conditions specified in *subsection (1)(c)* have been satisfied; and
- (ii) that, between the balance sheet date and the application of the company for re-registration, there has been no change in the financial position of the company that has resulted in the amount of the company's net assets becoming less than the aggregate of its called-up share capital and undistributable reserves.
- (4) The registrar may accept a statutory declaration under *subsection (3)(e)* as sufficient evidence that the special resolution has been passed and the said conditions have been satisfied.
- (5) Where shares are allotted by the company between the balance sheet date and the passing of the special resolution as fully or partly paid up as to their nominal value or any premium on them otherwise than in cash, the company shall not make an application for re-registration under this section unless before the making of the application—

(a) the consideration for that allotment has been valued in accordance with the provisions of *section 30* applied by this subsection and *section 31*; and

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

and *subsections (2) to (8) and (12) to (14) of section 30* shall apply for the purposes of this subsection as they apply for the purposes of that section and as if the references to *subsection (1) of section 30* were references to this subsection.

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

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

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

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

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

(a) the company shall by virtue of the issue of that certificate become a public limited company; and

(b) any alterations in the memorandum and articles set out in the resolution shall take effect accordingly.

(9) A certificate of incorporation issued to a company under *subsection (6)* shall be sufficient evidence until the contrary is shown—

(a) that the requirements of this Act in respect of re-registration and of matters precedent and incidental thereto have been complied with; and

(b) that the company is a public limited company.

(10) The re-registration of a private company as a public limited company pursuant to this Act shall not affect any rights or obligations of the company or render defective any legal proceedings by or against the company, and any legal proceedings which might have been continued or commenced against it in its former status may be continued or commenced against it in its new status.

(11) A qualification shall be treated for the purposes of the definition of an unqualified report in *subsection (13)* as being not material in relation to any balance sheet if, but only if, the person making the report states in writing that the thing giving rise to the qualification is not material for the purposes of determining, by reference to that balance sheet, whether at the balance sheet date the amount of the company's net assets was not less than the aggregate of its called-up share capital and undistributable reserves.

(12) For the purposes of the making, in relation to the balance sheet of a company, of a report falling within the definition in subsection (13) of an unqualified report, section 149 of and the Sixth Schedule to the Principal Act shall be deemed to have effect in relation to that balance sheet with such modifications as are necessary by reason of the fact that that balance sheet is prepared otherwise than in respect of a financial year.

(13) In this section—

“undistributable reserves” has the same meaning as in section 46 (2);

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

“unqualified report” means, in relation to the balance sheet of a company, a report stating without material qualification—

15 (a) that, in the opinion of the person making the report, the balance sheet complies with the requirements of sections 149 and 156 of the Principal Act; and

20 (b) without prejudice to paragraph (a) that, except where the company is entitled to avail itself, and has availed itself, of the benefit of any of the provisions of Part III of the Sixth Schedule to the Principal Act, in the opinion of that person, the balance sheet gives a true and fair view of the state of the company’s affairs as at the balance sheet date.

25 10.—(1) Subject to subsection (2), a private company shall not be re-registered under section 9 as a public limited company unless, at the time the special resolution referred to in that section is passed—

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

30 (a) the nominal value of the company’s allotted share capital is not less than the authorised minimum;

35 (b) each of its allotted shares is paid up at least as to one-quarter of the nominal value of that share and the whole of any premium on it;

40 (c) where any share in the company or any premium payable on it has been fully or partly paid up by an undertaking given by any person that he or another should do work or perform services for the company or another, the undertaking has been performed or otherwise discharged; and

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

(i) that undertaking has been performed or otherwise discharged; or

(ii) there is a contract between the company and any person pursuant to which that undertaking must be performed within five years from that time.

(2) Subject to *subsection (3)*, any share allotted by the company—

(a) which was allotted before the end of the general transitional period; or

(b) which was allotted in pursuance of an employees' share scheme and by reason of which the company would, but for this subsection, be precluded under *subsection (1) (b)*, but not otherwise, from being re-registered as a public limited company,

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

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

Re-registration of unlimited company as public limited company.

11.—(1) An unlimited company may be re-registered as a public limited company and for the purposes of such re-registration *sections 9 and 53 (6) and (7)* shall have effect subject to the modifications contained in this section.

(2) The special resolution required by *section 9 (1)* must, in addition to the matters mentioned in *section 9 (2)*—

(a) state that the liability of the members is to be limited by shares and what the share capital of the company is to be; and

(b) make such alterations in the company's memorandum as are necessary to bring it in substance and in form into conformity with the requirements of the Companies Acts with respect to the memorandum of a company limited by shares.

(3) The certificate of incorporation issued under *section 9 (6)* shall, in addition to containing the statement required by *paragraph (b)* of that subsection, state that the company has been incorporated as a company limited by shares and—

(a) the company shall by virtue of the issue of that certificate become a public limited company so limited; and

(b) the certificate shall be sufficient evidence until the contrary is shown of the fact that it is such a public limited company.

(4) *Section 53 (6) and (7)* shall have effect as if any reference to the re-registration of a company in pursuance of that section included a reference to the re-registration of an unlimited company as a public limited company in accordance with *subsection (1)*, but except as aforesaid the said *section 53* shall not apply in relation to the re-registration of an unlimited company as a public limited company.

Old public limited companies.

12.—(1) In this Act "old public limited company" means a public company limited by shares or a public company limited by guarantee

and having a share capital in respect of which the following conditions are satisfied, that is to say—

(a) the company either existed on the appointed day or was incorporated after that day pursuant to an application made before that day; and

(b) the company has not since the appointed day or the day of the company's incorporation, as the case may be, either been re-registered as a public limited company or become another form of company.

(2) The references in the Principal Act to a company other than a private company and, after the end of the general transitional period, in this Act other than this Part to a public limited company shall, unless the context otherwise requires, include references to an old public limited company.

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

(a) the directors pass a resolution, complying with subsection (4), that it should be so re-registered; and

(b) an application for the purpose in the prescribed form and signed by a director or secretary of the company is delivered to the registrar, together with the documents mentioned in subsection (5); and

(c) at the time of the resolution, the conditions specified in subsection (9) are satisfied.

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

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

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

(b) a statutory declaration in the prescribed form by a director or secretary of the company that the resolution mentioned in subsection (3) (a) has been passed and that the conditions specified in subsection (9) were satisfied at the time of the resolution.

(6) The registrar may accept a declaration under subsection (5) (b) as sufficient evidence that the said resolution has been passed and that the said conditions were so satisfied.

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

(8) If an old public limited company applies for re-registration as a public limited company in accordance with subsection (3) and at the

time of making that application delivers to the registrar a statutory declaration in the prescribed form by a director or secretary of the company that the company does not at the time of the declaration satisfy the conditions specified in *subsection (9)*, the registrar shall re-register the company as a public limited company but shall notify it that if, within the transitional period for share capital, it has not satisfied the aforesaid conditions it must re-register as another form of company or wind up voluntarily under section 251 of the Principal Act. Failure so to re-register or wind up shall constitute grounds for a winding-up by the court under section 213(i) of the Principal Act.

(9) The conditions referred to in *subsections (3)(c)* and (8) are that, at the time of the resolution, the nominal value of the company's allotted share capital is not less than the authorised minimum and that in the case of all the shares of the company or all those of its shares which are comprised in a portion of that capital which satisfies that condition—

(a) each share is paid up at least as to one-quarter of the nominal value of that share and the whole of any premium on it;

(b) where any of the shares in question or any premium payable on them has been fully or partly paid up by an undertaking given by any person that he or another should do work or perform services for the company or another, the undertaking has been performed or otherwise discharged; and

(c) where any of the shares in question has been allotted as fully or partly paid up as to its nominal value or any premium payable on it otherwise than in cash and the consideration for the allotment consists of or includes an undertaking (other than one to which *paragraph (b)* applies) to the company, either—

(i) that undertaking has been performed or otherwise discharged; or

(ii) there is a contract between the company and any person pursuant to which that undertaking must be performed within five years from the time of the resolution.

(10) The re-registration of an old public limited company as a public limited company pursuant to this Act shall not affect any rights or obligations of the company or render defective any legal proceedings by or against the company, and any legal proceedings which might have been continued or commenced against it in its former status may be continued or commenced against it in its new status.

Failure by an old public limited company to re-register as public limited company.

13.—(1) If, at any time after the end of the period of fifteen months from the appointed day (in this Act referred to as “the re-registration period”), a company which is an old public limited company has not re-registered as a public limited company under *section 12*, the company and any officer of the company who is in default shall be guilty of an offence unless at that time the company—

(a) has applied to be re-registered under *section 12* and the application has not been refused or withdrawn; or

(b) has applied to be re-registered as another form of company.

(2) A person guilty of an offence under *subsection (1)* shall be

liable on summary conviction to a fine not exceeding £250 together with, in the case of a continuing offence, a fine not exceeding £25 for every day on which the offence continues, but not exceeding £500 in total.

5 14.—(1) A public limited company may be re-registered as a private company if—

Re-registration of public limited company as private company.

10 (a) a special resolution complying with *subsection (2)* that it should be so re-registered is passed and has not been cancelled by the court under *section 15(6)*;

15 (b) an application for the purpose in the prescribed form and signed by a director or secretary of the company is delivered to the registrar, together with a printed copy of the memorandum and articles of the company as altered by the resolution; and

20 (c) the period during which an application for the cancellation of the resolution under *section 15(2)* may be made has expired without any such application having been made; or

25 (d) where such an application has been made, the application has been withdrawn or an order has been made under *section 15(6)* confirming the resolution and a copy of that order has been delivered to the registrar.

30 (2) The resolution must—

35 (a) alter the company's memorandum so that it no longer states that the company is to be a public limited company and must make such other alterations in the company's memorandum as are requisite in the circumstances; and

40 (b) make such alterations in the company's articles as are requisite in the circumstances and in such a manner that they include the provisions which, under *section 33* of the Principal Act, are required to be included in the articles of a company in order to constitute it a private company.

45 (3) If the registrar is satisfied that a public limited company may be re-registered under *subsection (1)*, he shall—

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

55 (b) issue the company with a certificate of incorporation appropriate to a private company.

60 (4) Upon the issue of a certificate of incorporation under *subsection (3)*—

65 (a) the company shall by virtue of the issue of that certificate become a private company; and

70 (b) the alterations in the memorandum and articles set out in the resolution shall take effect accordingly.

75 (5) A certificate of incorporation issued to a company under *subsection (3)* shall be sufficient evidence until the contrary is shown—

(a) that the requirements of this section in respect of re-registration and of matters precedent and incidental thereto have been complied with; and

(b) that the company is a private company.

(6) The re-registration of a public limited company as a private company pursuant to this Act shall not affect any rights or obligations of the company or render defective any legal proceedings by or against the company, and any legal proceedings which might have been continued or commenced against it in its former status may be continued or commenced against it in its new status.

15.—(1) This section applies to a special resolution by a public limited company to be re-registered under section 14 as a private company.

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

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

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

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

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

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

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

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

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

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

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

(a) may make that order on such terms and conditions as it thinks fit, and may, if it thinks fit, adjourn the proceedings in order that an arrangement may be made to the satisfaction of the court for the purchase of the interests of dissentient members; and

(b) may give such directions and make such orders as it thinks

expedient for facilitating or carrying into effect any such arrangement.

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

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

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

(10) A company which fails to comply with *subsection (5)* and any officer of the company who is in default shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £250 together with, in the case of a continuing offence, a fine not exceeding £25 for every day on which the offence continues, but not exceeding £500 in total.

16.—(1) Where an old public limited company has within the re-registration period applied for re-registration as a form of company other than a public limited company, and the registrar has notified the company that it has failed to fulfil the requirements for such re-registration, the company and any officer of the company who is in default shall be guilty of an offence unless within a period of 12 months from the end of the re-registration period—

Failure by old public limited company to re-register as another form of company.

(a) those requirements have been fulfilled and the re-registration has taken place; or

(b) the company has been re-registered in a form other than that for which application was made; or

(c) the company has been wound up voluntarily under section 251 of the Principal Act.

(2) A person guilty of an offence under *subsection (1)* shall be liable on summary conviction to a fine not exceeding £250 together with, in the case of a continuing offence, a fine not exceeding £25 for every day on which the offence continues, but not exceeding £500 in total.

17.—(1) Subject to *subsections (2) and (3)*, a public limited company may not reduce its allotted share capital below the authorised minimum and section 72(1) of the Principal Act shall be construed accordingly.

Limitation on reduction by a public limited company of its allotted share capital.

(2) *Subsection (1)* shall not apply to an old public limited company which has been re-registered as a public limited company until expiry of the transitional period for share capital.

(3) Where the court makes an order confirming a reduction of the capital of a public limited company which has the effect of bringing the nominal value of the company's allotted share capital below the authorised minimum, the registrar shall not register the order under section 75(1) of the Principal Act unless the court otherwise directs or the company is first re-registered as another form of company. 5

(4) A court making any such order in respect of a public limited company may authorise the company to be re-registered as another form of company without its having passed a special resolution and, where the court so authorises a public limited company, the court shall specify in the order the alterations in the company's memorandum and articles to be made in connection with that re-registration. 10

Provisions
supplementary to
section 14.

(5) In its application to a public limited company that applies to be re-registered as a private company in pursuance of an authority given under subsection (4), section 14 shall have effect with the following modifications— 15

(a) references to the special resolution of the company shall have effect as references to the order of the court under the said subsection (4);

(b) section 14(1) (a), (c) and (d) and (2) shall not apply; and 20

(c) section 14(3) shall be read as if the words— "If the registrar is satisfied that a public limited company may be re-registered under subsection (1) he shall" were deleted and the following words substituted therefor "On receipt of an application for re-registration under this section made in pursuance of an order of the court under section 17, the registrar shall". 25

Registration of joint
stock companies.

18.—(1) A joint stock company (within the meaning of section 329 of the Principal Act) applying to be registered in pursuance of Part IX of that Act as a company limited by shares may, subject to satisfying the conditions specified in section 9(5) (a) and (b) (where applicable) and section 10 (1) (a) to (d), as applied by this section, and to complying with the requirements of subsection (4), apply to be so registered as a public limited company. 30

(2) The said sections 9(5) and 10 shall apply to a joint stock company applying to register under the said Part IX as they apply to a private company applying to be re-registered under section 9, but as if any reference to the special resolution referred to in section 9 were a reference to the resolution referred to in subsection (4) (a). 35

(3) In the following provisions of this section an application by a company made in pursuance of the said Part IX to register as a public company limited by shares is referred to as a relevant application. 40

(4) A relevant application shall be made in the prescribed form and shall be delivered to the registrar together with the following documents (as well as with the documents referred to in section 330 of the Principal Act), namely— 45

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

(b) a copy of a written statement by a person, who would be qualified under section 162 of the Principal Act for appointment as auditor of the company if it were a com- 50

pany registered under that Act, that in his opinion a relevant balance sheet shows that at the balance sheet date the amount of the company's net assets was not less than the aggregate of the called-up share capital of the company and its undistributable reserves;

(c) a copy of the relevant balance sheet together with a copy of an unqualified report by such a person in relation to that balance sheet;

(d) a copy of any report prepared under *section 9 (5) (b)* as applied by this section; and

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

(i) that the conditions specified in *section 9 (5) (a)* and *(b)* (where applicable) and *section 10(1) (a)* to *(d)* have been satisfied; and

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

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

(6) Where on a relevant application the registrar is satisfied that the company may be registered as a public company limited by shares, the certificate of incorporation given by him under *section 336* of the Principal Act shall state that the company is a public limited company; and such a statement shall be sufficient evidence until the contrary is shown that the requirements of this section have been complied with and that the company is a public company so limited.

(7) The registration of a joint stock company as a public limited company shall not affect any rights or obligations of the company or render defective any legal proceedings by or against the company, and any legal proceedings which might have been continued or commenced against it in its former status may be continued or commenced against it in its new status.

(8) In this section—

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

“undistributable reserves” has the same meaning as in *section 46 (2)*; and

“unqualified report” has the same meaning as in *section 9 (13)*;

and *section 9 (11)* applies to the making in pursuance of this section of an unqualified report such as is mentioned in that subsection as it applies to the making of such a report in pursuance of the said *section 9*.

PART III

THE CAPITAL OF A COMPANY

Authorised share capital and the issue of share capital

Meaning of
"authorised
minimum".

19.—(1) In this Act "the authorised minimum" means £30,000 or such other sum as may be specified by order made by the Minister under subsection (2).

(2) The Minister may by order specify that the authorised minimum for the purposes of this Act shall be an amount other than £30,000 and such an order may—

(a) require any public limited company having an allotted share capital of which the nominal value is less than the amount specified in the order as the authorised minimum to increase that value to not less than that amount or make an application to be re-registered as another form of company;

(b) make, in connection with any such requirement, provision for any of the matters for which provision is made by any enactment in the Companies Acts relating to a company's registration, re-registration or change of name, to payment for any share comprised in a company's capital and to offers of shares in or debentures of a company to the public, including provision as to the consequences (whether in criminal law or otherwise) of a failure to comply with any requirement of the order; and

(c) contain such supplemental and transitional provision as the Minister thinks appropriate, make different provision for different cases and, in particular, provide for any provision of the order to come into operation on different days for different purposes.

Registration of joint
stock companies.

Authority of
company required
for allotment of
certain securities by
directors.

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

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

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

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

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

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

(4) Any such authority (whether or not it has been previously renewed under this subsection) may be renewed by the company in general meeting for a further period not exceeding five years; but the resolution must state (or restate) the amount of relevant securities which may be allotted under the authority or, as the case may be, the amount remaining to be allotted thereunder, and must specify the date on which the renewed authority will expire.

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

(6) A resolution of a company to give, vary, revoke or renew such an authority may, notwithstanding that it alters the articles of the company, be an ordinary resolution but section 143 of the Principal Act shall apply to it.

(7) Any director who knowingly and wilfully contravenes, or permits or authorises a contravention of, this section shall be guilty of an offence.

(8) Nothing in this section shall effect the validity of any allotment of relevant securities.

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

(10) In this section "relevant securities" means, in relation to a company,—

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

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

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

21.—(1) A private company and any officer of the company who is in default shall be guilty of an offence if the company—

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

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

(b) allots, or agrees to allot, (whether for cash or otherwise) any shares in or debentures of the company with a view to all or any of those shares or debentures being offered for sale to the public.

(2) Sections 51(2) and 61 of the Principal Act shall apply for the purposes of this section as they apply for the purposes of that Act.

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

(4) A person guilty of an offence under *subsection (1)* shall be liable on summary conviction to a fine not exceeding £500.

22.—(1) Without prejudice to section 53 of the Principal Act no allotment shall be made of any share capital of a public limited 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 *paragraph (b)* unless those conditions are satisfied.

(2) Section 53 (4) and section 55 of the Principal Act shall apply where shares are prohibited from being allotted by *subsection (1)* as they apply where the conditions mentioned in subsection (1) of the said section 53 are not complied with; and subsection (5) of the said section 53 shall apply to this section as it applies to that section.

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

(a) in *subsection (1)*, the word “subscribed” shall be construed accordingly; and

(b) in the said section 53 (4), as it applies by virtue of *subsection (2)* to the former case, references to the repayment of money received from applicants for shares shall include references to the return of any other consideration so received (including, if the case so requires, the release of the applicant from any undertaking) or, if it is not reasonably practicable to return the consideration, the payment of money equal to the value of the consideration at the time it was so received, and references to interest shall have effect accordingly.

Pre-emption rights

Pre-emption rights.

23.—(1) Subject to the following provisions of this section and sections 24 and 25, a company proposing to allot any equity securities—

- (a) shall not allot any of those securities on any terms to any person unless it has made an offer to each person who holds relevant shares or relevant employee shares to allot to him on the same or more favourable terms a proportion of those securities which is as nearly as practicable equal to the proportion in nominal value held by him of the aggregate of relevant shares and relevant employee shares; and
- 5 (b) shall not allot any of those securities to any person unless the period during which any such offer may be accepted has expired or the company has received notice of the acceptance or refusal of every offer so made.
- 10 (2) Subsection (3) applies to any provision of the memorandum or articles of a company which requires the company, when proposing to allot equity securities consisting of relevant shares of any particular class, not to allot those securities on any terms unless it has complied with the condition that it makes such an offer as is described in subsection (1) to each person who holds relevant shares or relevant employee shares of that class.
- 15 (3) If, in accordance with a provision to which this subsection applies—
- 20 (a) a company makes an offer to allot any securities to such a holder; and
- (b) he or anyone in whose favour he has renounced his right to their allotment accepts the offer,
- 25 subsection (1) shall not apply to the allotment of those securities and the company may allot them accordingly; but this subsection is without prejudice to the application of subsection (1) in any other case.
- (4) Subsection (1) shall not apply in relation to a particular allotment of equity securities if the securities are, or are to be, wholly or partly paid up otherwise than in cash.
- 30 (5) 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 subsection (1) (b).
- 35 (6) Subsection (1) shall not apply in relation to the allotment of any securities which would apart from a renunciation or assignment of the right to their allotment be held under an employees' share scheme.
- 40 (7) An offer which is required by subsection (1) or by any provision to which subsection (3) applies to be made to any person shall be made by serving it on him in the manner in which notices are authorised to be given by regulations 133, 134 and 135 of Table A; but where he is the holder of a share warrant the offer may instead be made by causing the offer, or a notice specifying where a copy of the offer can be obtained or inspected, to be published in *Iris Oifigiúil*.
- 45 (8) Any such offer as is mentioned in subsection (7) must state a period of not less than 21 days during which the offer may be accepted; and the offer shall not be withdrawn before the end of that period.
- 50 (9) Subsections (7) and (8) shall not invalidate a provision to which subsection (3) applies by reason that that provision requires or author-

ises an offer thereunder to be made in contravention of one or both of those subsections, but, to the extent that the provision requires or authorises such an offer to be so made, it shall be of no effect.

(10) Subsection (1), (7) or (8) may, in its application in relation to allotments by a private company of equity securities or to such allotments of a particular description, be excluded by a provision contained in the memorandum or articles of that company; and a requirement or authority contained in the memorandum or articles of a private company shall, if it is inconsistent with any of those subsections, have effect as a provision excluding that subsection, but a provision to which subsection (3) applies shall not be treated as being inconsistent with subsection (1).

(11) Where there is a contravention of subsections (1), (7) or (8) or of a provision to which subsection (3) applies, the company, and every officer of the company who knowingly authorised or permitted the contravention, shall be jointly and severally liable to compensate any person to whom an offer should have been made under the subsection or provision contravened for any loss, damage, costs or expenses which that person has sustained or incurred by reason of the contravention; but no proceedings to recover any such loss, damage, costs or expenses shall be commenced after the expiration of two years from the delivery to the registrar of companies of the return of allotments in question or, where equity securities other than shares are granted, from the date of the grant.

(12) In relation to any offer to allot any securities required by subsection (1) or by any provision to which subsection (3) applies, references in this section (however expressed) to the holder of shares of any description shall be read as including references to any person who held shares of that description on any day within the period of twenty-eight days ending with the day immediately preceding the date of the offer.

(13) In this section and sections 24 and 25—

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

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

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

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

(b) shares 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;

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

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

(a) *section 23 (1)* did not apply to the allotment;

or

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

and where the directors make an allotment under this subsection, the said *section 23* shall have effect accordingly.

(2) Where the directors of a company are authorised for the purposes of *section 20* (whether generally or otherwise), the company may by special resolution resolve either—

(a) that *section 23 (1)* shall not apply to a specified allotment of equity securities to be made pursuant to that authority; or

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

and where such a resolution is passed the said *section 23* shall have effect accordingly.

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

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

(5) A special resolution under *subsection (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

Subscription of
share capital.

Further provisions
relating to pre-
emption rights.

Prohibition on
allotment of shares
at a discount.

Transitional provisions relating to pre-emption rights.

- (c) the directors' justification of that amount.
- (6) A person who knowingly or recklessly authorises or permits the inclusion in a statement circulated under *subsection (5)* of any matter which is misleading, false or deceptive in a material particular shall be guilty of an offence. 5
- 25.—(1) *Sections 23 and 24 shall not apply—*
 - (a) to any allotment of equity securities made by a company, other than a public limited company registered as such on its original incorporation, before the date on which the earlier of the following events occurs, that is to say, the holding of the first general meeting of the company after its re-registration or registration as a public limited company and the end of the general transitional period; or 10
 - (b) where *subsection (2)* applies, to an allotment of the equity securities which are subject to the requirement mentioned in that subsection. 15
- (2) This subsection applies where any company which is re-registered or registered as a public limited company is or, but for the provisions of this Act, would be subject at the time of re-registration or, as the case may be, registration to a requirement imposed (whether by the company's memorandum or articles or otherwise) before the relevant time by virtue of which it must, when making an allotment of equity securities, make an offer to allot those securities or some of them in a manner which (otherwise than by virtue of its involving a contravention of *section 23 (7) or (8)*) is inconsistent with *section 23*. 20 25
- (3) Any requirement which—
 - (a) is imposed on a private company before the relevant time otherwise than by the company's memorandum or articles; and 25
 - (b) if contained in the memorandum or articles of the company, would have effect by virtue of *section 23 (10)* to the exclusion of any provision of that section, 30
 shall have effect, so long as the company remains a private company, as if it were contained in the memorandum or articles of the company. 35
- (4) If at the relevant time a company, other than a public limited company registered as such on its original incorporation, is subject to a requirement such as is mentioned in *section 23 (2)* and which was imposed otherwise than by the company's memorandum or articles, the requirement shall be treated for the purposes of that section as if it were contained in the company's memorandum or articles. 40
- (5) In this section "the relevant time" means—
 - (a) except in a case falling within *paragraph (b)*, the end of the general transitional period; 45
 - and
 - (b) in the case of a company which is re-registered or registered as a public limited company in pursuance of an application made before the end of that period, the time at which the application is made. 45

Payment for share capital

Subscription of
share capital.

26.—(1) Subject to the following provisions of this Part, shares allotted by a company and any premium payable on them may be paid up in money or money's worth (including goodwill and expertise).

5 (2) A public limited 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.

10 (3) Where a public limited company accepts such an undertaking as payment up of its shares or any premium payable on them, the holder of the shares when they or the premium are treated as paid up, in whole or in part, by the undertaking—

15 (a) shall be liable to pay the company in respect of those shares an amount equal to their nominal value, together with the whole of any premium or, if the case so requires, such proportion of that amount as is treated as paid up by the undertaking; and

20 (b) shall be liable to pay interest at the appropriate rate on the amount payable under *paragraph (a)*.

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

(a) there has been a contravention of this section; and

(b) by virtue of that contravention, another is liable to pay any amount under this section,

25 that person also shall be liable to pay that amount (jointly and severally with any other person so liable) unless either he is a purchaser for value and, at the time of the purchase, he did not have actual notice of the contravention or he derived title to the shares (directly or indirectly) from a person who became a holder of them after the
30 contravention and was not so liable.

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

(6) References in this section to a holder, in relation to any shares in a company, include references to any person who has an unconditional right to be included in the company's register of members in respect of those shares or to have an instrument of transfer of the
40 shares executed in his favour.

27.—(1) Subject to *subsection (4)* the shares of a company shall not be allotted at a discount.

Prohibition on
allotment of shares
at a discount.

(2) Where shares are allotted in contravention of *subsection (1)*, the allottee shall be liable to pay the company an amount equal to the
45 amount of the discount and shall be liable to pay interest thereon at the appropriate rate.

(3) *Section 26(4)* shall apply for the purposes of this section as it applies for the purposes of that section.

(4) The repeal of section 63 of the Principal Act effected by *section 3(2)* shall not affect an application for an order sanctioning the issue of shares at a discount which has been made to the court under that section and which has not been withdrawn or disposed of before the appointed day, or an order made on or after that day in pursuance of any such application, and—

(a) any such application may be proceeded with and any such order, if not made before the appointed day, may be made as if that section had not been repealed; and

(b) shares may be allotted at a discount in accordance with any such order (whether made, before, on or after the appointed day) accordingly.

Payment for allotted shares.

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

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

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

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

(5) *Section 26(4)* shall apply for the purposes of this section as it applies for the purposes of that section.

Payment of non-cash consideration.

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

(2) Where a public limited company allots shares in contravention of *subsection (1)*, the allottee of the shares shall be liable to pay the company an amount equal to their nominal value, together with the whole of any premium, or, if the case so requires, such proportion of that amount as is treated as paid up by the undertaking and shall be liable to pay interest at the appropriate rate on the amount payable under this subsection.

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

(4) *Subsection (3)* shall apply to the variation by a public limited company of the terms of a contract entered into before the company was registered or re-registered as a public limited company.

(5) Where a public limited company allots shares for a consideration which consists of or includes (in accordance with *subsection (1)*) an undertaking which is to be performed within five years of the allotment but that undertaking is not performed within the period allowed by the contract for the allotment of the shares, the allottee of the shares in question shall be liable to pay the company at the end of that period an amount equal to the nominal value of the shares, together with the whole of any premium, or, if the case so requires, such proportion of that amount as is treated as paid up by the undertaking, together with interest at the appropriate rate on the amount payable under this subsection.

(6) *Section 26 (4)* shall apply in relation to a contravention of this section and to a failure to carry out a term of a contract as mentioned in *subsection (5)* as it applies in relation to a contravention of that section.

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

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

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

(a) the consideration for the allotment has been valued in accordance with the following provisions of this section;

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

(c) a copy of the report has been sent to the proposed allottee of the shares.

(2) Subject to *subsection (3)*, *subsection (1)* shall not apply to the allotment of shares by a company in connection with—

(a) 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); or

(b) a proposed merger of that company with another company.

(3) *Subsection (2) (a)* does not exclude the application of *subsection (1)* to the allotment of shares by a company in connection with any such arrangement as is there mentioned unless 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 shares in that other company 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 proposing to allot the 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, shall be disregarded.

(4) For the purposes of *subsection (2) (b)* there is a proposed merger of two companies when one of them proposes to acquire all the assets and liabilities of the other in exchange for the issue of shares or other securities in that one to shareholders of the other, with or without any cash payment to those shareholders. 5

(5) The valuation and report required by *subsection (1)* shall be made by an independent person, that is to say, a person qualified at the time of the report to be appointed or to continue to be auditor of the company, except that where it appears to him to be reasonable for the valuation of the consideration, or a valuation of part of the consideration, to be made, or to accept such a valuation made, by any person who— 15

(a) appears to him to have the requisite knowledge and experience to value the consideration or that part of the consideration; and

(b) is not an officer or servant of the company or any other body corporate which is that company's subsidiary or holding company or a subsidiary of that company's holding company or a partner or employee of such an officer or servant, that independent person may arrange for or accept such a valuation, together with a report which will enable him to make his own report under that subsection and provide a note in accordance with *subsection (8)*. 20 25

(6) The independent person's report under *subsection (1)* shall state—

(a) the nominal value of the shares to be wholly or partly paid for by the consideration in question; 30

(b) the amount of any premium payable on those shares;

(c) the description of the consideration and, as respects so much of the consideration as he himself has valued, a description of that part of the consideration, the method used to value it and the date of the valuation; and 35

(d) the extent to which the nominal value of the shares and any premium are to be treated as paid up— 35

(i) by the consideration;

(ii) in cash. 40

(7) Where any consideration is valued under this section by a person other than the independent person, the latter's report under *subsection (1)* shall state that fact and shall also—

(a) state the former's name and what knowledge and experience he has to carry out the valuation; and 45

(b) describe so much of the consideration as was valued by that other person, the method used to value it and state the date of valuation. 50

(8) The report of the independent person made under *subsection (1)* shall contain or be accompanied by a note by him—

5 (a) in the case of a valuation made by another person, that it appeared to the independent person reasonable to arrange for it to be so made, or to accept a valuation so made;

(b) whoever made the valuation, that the method of valuation was reasonable in all the circumstances;

10 (c) that it appears to the independent person that there has been no material change in the value of the consideration in question since the valuation; and

15 (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.

(9) *Subsection (10)* applies where a public limited company allots any share in contravention of *subsection (1)* and either—

20 (a) the allottee has not received a report under this section; or

(b) there has been some other contravention of this section and the allottee knew or ought to have known that it amounted to a contravention.

25 (10) Where this subsection applies, the allottee shall be liable to pay the company an amount equal to the nominal value of the shares, together with the whole of any premium or, if the case so requires, such proportion of that amount as is treated as paid up by the consideration, and shall be liable to pay interest at the appropriate rate on the amount payable under this subsection.

30 (11) *Section 26 (4)* shall apply for the purposes of this section as it applies for the purposes of that section.

35 (12) Where the consideration is accepted partly in payment up of the nominal value of the shares and any premium and partly for some other consideration given by the company, the provisions of this section shall apply as if references to the consideration accepted by the company included references to the proportion of that consideration which is properly attributable to the payment up of that value and any premium; and

40 (a) the independent person shall carry out or arrange for such other valuations as will enable him to determine that proportion; and

45 (b) his report under *subsection (1)* shall state what valuations have been made by virtue of this subsection and also the reason for and method and date of any such valuation and any other matters which may be relevant to that determination.

(13) It is hereby declared for the avoidance of doubt that *subsection (1)* does not apply by reference to the application of an amount for the time being standing to the credit of any of the company's reserve accounts or to the credit of its profit and loss account in paying up (to

any extent) any shares allotted to members of the company or any premiums on any shares so allotted; and in relation to any such allotment references in this section to the consideration for the allotment do not include any such amount so applied.

(14) In this section—

(a) “arrangement” means any agreement, scheme or arrangement (including an arrangement sanctioned in accordance with section 201 or 260 of the Principal Act);

(b) any reference to a company, except where it is or is to be construed as a reference to a public limited company, includes a reference to any body corporate and any body to which letters patent have been issued under the Chartered Companies Act, 1837; and

(c) any reference to an officer or servant shall not include a reference to an auditor.

Experts' reports:
supplementary.

31.—(1) Any person carrying out a valuation or making a report under section 30 with respect to any consideration proposed to be accepted or given by a company shall be entitled to require from the officers of the company such information and explanation as he thinks necessary to enable him to carry out the valuation or to make the report and provide a note, under that section.

(2) A company to which such a report is made as to the value of any consideration for which, or partly for which, it proposes to allot shares shall deliver a copy of the report to the registrar of companies for registration at the same time that it files the return of the allotments of those shares under section 58 of the Principal Act, and subsections (3) and (4) of that section shall apply to a default in complying with this subsection as they apply to a default in complying with that section.

(3) Any person who knowingly or recklessly makes a statement which—

(a) is misleading, false or deceptive in a material particular, and

(b) is a statement to which this subsection applies,

shall be guilty of an offence.

(4) Subsection (3) applies to any statement made (whether orally or in writing) to any person carrying out a valuation or making a report under section 30, being a statement which conveys or purports to convey any information or explanation which that person requires, or is entitled to require, under subsection (1).

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

32.—(1) A public limited company, other than a company registered under section 12, shall not, unless the conditions mentioned in subsection (3) have been complied with, enter into an agreement with a relevant person for the transfer by him during the initial period of one or more non-cash assets to the company or another for a consideration to be given by the company equal in value at the time of the agreement to at least one-tenth of the nominal value of the company's share capital issued at that time.

(2) In this section—

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

10 (b) in relation to a company re-registered, or registered in accordance with *section 18*, as a public limited company, “relevant person” means any person who was a member of the company on the date of the re-registration or registration and “initial period” means the period of two years beginning with that date.

(3) The conditions referred to in *subsection (1)* are that—

15 (a) the consideration to be received by the company (that is to say, the asset to be transferred to the company or the advantage to the company of its transfer to another person) and any consideration other than cash to be given by the company have been valued under the following provisions of this section (without prejudice to any requirement to value any consideration under *section 30*);

20 (b) a report with respect to the consideration to be so received and given has been made to the company in accordance with those provisions during the six months immediately preceding the date of the agreement;

25 (c) the terms of the agreement have been approved by an ordinary resolution of the company; and

30 (d) not later than the giving of the notice of the meeting at which the resolution is proposed, copies of the resolution and report have been circulated to the members of the company entitled to receive that notice and, if the relevant person is not then such a member, to that person.

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

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

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

45 (5) *Section 30 (5)* and (7) shall apply to a valuation and report of any consideration under this section as those subsections apply to a valuation of and report on any consideration under *subsection (1)* of that section.

50 (6) The report of the independent person under this section 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; 5
- (c) contain or be accompanied by a note as to the matters mentioned in *section 30 (8) (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 10 to be given by it.

(7) If a public limited company enters into an agreement with any relevant person in contravention of *subsection (1)* and either he has not received a report under this section or there has been some other contravention of this section or *section 30 (5) or (7)* which he knew or ought to have known amounted to a contravention, then, subject to *subsection (8)*— 15

- (a) the company shall be entitled to recover from the relevant person any consideration given by the company under the agreement or an amount equivalent to its value at the time 20 of the agreement; and
- (b) the agreement, so far as not carried out, shall be void.

(8) Where a company enters into an agreement in contravention of *subsection (1)* and that agreement is or includes an agreement for the allotment of shares in that company, then, whether or not the agreement also contravenes *section 30*— 25

- (a) *subsection (7)* shall not apply to the agreement insofar as it is an agreement for the allotment of shares; and
- (b) *section 26 (4)* and *section 30 (10)* shall apply in relation to the shares as if they had been allotted in contravention of *section 30*. 30

Provisions supplementary to *section 32*.

33.—(1) Any person carrying out a valuation or making a report under *section 32* shall be entitled to require from the officers of the company such information and explanation as he thinks necessary to enable him to carry out the valuation or make the report and provide the note required by that section; and *section 31(3)* shall apply in relation to any such valuation and report as it applies in relation to a valuation and report under *section 30 (1)* with the substitution of a reference to this subsection for the reference in *section 31(4)* to *section 31 (1)*. 35 40

(2) A company which has passed a resolution under *section 32* with respect to the transfer of an asset shall, within 15 days of the passing of the resolution, deliver to the registrar of companies a copy of the resolution together with the report required by that section and, if it fails to do so, the company and every officer of the company who is in default shall be liable on summary conviction to a fine not exceeding £250 together with, in the case of a continuing offence, a fine not exceeding £25 for every day on which the offence continues, but not exceeding £500 in total. 45 50

(3) Any reference in *section 32* or this section to consideration given for the transfer of an asset includes a reference to consideration given partly for its transfer but—

(a) the value of any consideration partly so given shall be taken to be the proportion of that consideration properly attributable to its transfer;

(b) the independent person shall carry out or arrange for such valuations of anything else as will enable him to determine that proportion; and

(c) his report under that section shall state what valuation has been made by virtue of this paragraph and also the reason for and method and date of any such valuation and any other matters which may be relevant to that determination.

34.—(1) Where any person is liable to a company under *section 26*, *29*, *30* or *32* in relation to payment in respect of any shares in the company or is liable by virtue of any undertaking given to the company in, or in connection with, payment for any such shares, the person so liable may make an application to the court under this subsection to be exempted in whole or in part from that liability.

Relief.

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

(a) if and to the extent that it appears to the court just and equitable to do so having regard to the following, namely—

(i) whether the applicant has paid, or is liable to pay, any amount in respect of any other liability arising in relation to those shares under any of those sections or of any liability arising by virtue of any undertaking given in or in connection with payment for those shares;

(ii) whether any person other than the applicant has paid or is likely to pay (whether in pursuance of an order of the court or otherwise) any such amount; and

(iii) whether the applicant or any other person has performed, in whole or in part, or is likely so to perform any such undertaking or has done or is likely to do any other thing in payment or part payment in respect of those shares;

(b) if and to the extent that it appears to the court just and equitable to do so in respect of any interest which he is liable to pay to the company under any of those sections.

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

(a) whether the applicant has paid or is liable to pay any amount

in respect of any liability arising in relation to those shares under *section 26, 29, 30 or 32*; and

- (b) whether any person other than the applicant has paid or is likely to pay (whether in pursuance of an order of the court or otherwise) any such amount.

(4) In determining in pursuance of an application under *subsection (1)* whether it should exempt the applicant in whole or in part from any liability, the court shall have regard to the following overriding principles, namely—

- (a) that a company which has allotted shares should receive money or money's worth at least equal in value to the aggregate of the nominal value of those shares and the whole of any premium or, if the case so requires, so much of that aggregate as is treated as paid up; and

- (b) subject to *paragraph (a)*, that where such a company would, if the court did not grant that exemption, have more than one remedy against a particular person, it should be for the company to decide which remedy it should remain entitled to pursue.

(5) Where a person brings any proceedings against another ("the contributor") for a contribution in respect of any liability to a company arising under any of *sections 26 to 30 and 32* and it appears to the court that the contributor is liable to make such a contribution, the court may, if and to the extent that it appears to the court, having regard to the respective culpability in respect of the liability to the company of the contributor and the person bringing the proceedings, that it is just and equitable to do so—

- (a) exempt the contributor in whole or in part from his liability to make such a contribution; or

- (b) order the contributor to make a larger contribution than, but for this subsection, he would be liable to make.

(6) Where a person is liable to a company by virtue of *section 32(7)(a)*, the court may, on an application under this subsection, exempt that person in whole or in part from that liability if and to the extent that it appears to the court just and equitable to do so having regard to any benefit accruing to the company by virtue of anything done by that person towards the carrying out of the agreement mentioned in that subsection.

Special provisions as to issue of shares to subscribers.

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

Contravention of *sections 26 to 35*.

36.—(1) Where a company contravenes any of the provisions of *sections 26 to 30, 32 and 35*, the company and any officer of the company who is in default shall be guilty of an offence.

(2) Subject to *section 34*, an undertaking given by any person in or in connection with payment for shares in a company to do work or perform services or to do any other thing shall, if it is enforceable by the company apart from this Act, be so enforceable notwithstanding that there has been a contravention in relation thereto of *section 26, 29 or 30* and where such an undertaking is given in contravention of

section 32 in respect of the allotment of any shares it shall be so enforceable notwithstanding that contravention.

37.—(1) Subject to subsection (2), sections 26, 28 to 31 and 34 to 36 shall apply—

Application of sections 26 to 36 in special cases.

- (a) to a company which has passed and not revoked a special resolution to be re-registered under section 9 or section 11;
- (b) to a company whose directors have passed and not revoked a resolution to be re-registered under section 12; and
- (c) to a joint stock company (within the meaning of section 329 of the Principal Act) which has passed and not revoked a resolution that the company be a public limited company;

as those sections apply to a public limited company.

(2) Section 26 and sections 28 to 31 shall not apply to the allotment of shares by a company, other than a public limited company registered as such on its original incorporation, where the contract for their allotment was entered into—

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

Class rights

38.—(1) This section shall have effect with respect to the variation of the rights attached to any class of shares in a company whose share capital is divided into shares of different classes.

Variation of rights attached to special classes of shares.

(2) Where the rights are attached to a class of shares in the company otherwise than by the memorandum, and the articles of the company do not contain provision with respect to the variation of the rights, those rights may be varied if, but only if—

- (a) the holders of three-quarters in nominal value of the issued shares of that class consent in writing to the variation; or
 - (b) a special resolution passed at a separate general meeting of the holders of that class sanctions the variation;
- and any requirement (howsoever imposed) in relation to the variation of those rights is complied with to the extent that it is not comprised in paragraphs (a) and (b).

(3) Where—

- (a) the rights are attached to a class of shares in the company by the memorandum or otherwise;
- (b) the memorandum or articles contain provision for the variation of those rights; and

(c) the variation of those rights is connected with the giving, variation, revocation or renewal of an authority for the purposes of *section 20* or with a reduction of the company's share capital under *section 72* of the Principal Act,

those rights shall not be varied unless—

(i) the condition mentioned in *subsection (2) (a)* or *(b)* is satisfied; and

(ii) any requirement of the memorandum or articles in relation to the variation of rights of that class is complied with to the extent that it is not comprised in the condition in *subparagraph (i)*.

(4) Where the rights are attached to a class of shares in the company by the memorandum or otherwise and—

(a) where they are so attached by the memorandum, the articles contain provision with respect to their variation which had been included in the articles at the time of the company's original incorporation; or

(b) where they are so attached otherwise, the articles contain such provision (whenever first so included);

and in either case the variation is not connected as mentioned in *subsection (3) (c)*, those rights may only be varied in accordance with that provision of the articles.

(5) Where the rights are attached to a class of shares in the company by the memorandum and the memorandum and articles do not contain provision with respect to the variation of the rights, those rights may be varied if all the members of the company agree to the variation.

(6) The provisions of *sections 133* and *134* of the Principal Act and the provisions of the articles relating to general meetings shall, so far as applicable, apply in relation to any meeting of shareholders required by this section or otherwise to take place in connection with the variation of the rights attached to a class of shares, and shall so apply with the necessary modifications and subject to the following provisions, namely—

(a) the necessary quorum at any such meeting other than an adjourned meeting shall be two persons holding or representing by proxy at least one-third in nominal value of the issued shares of the class in question and at an adjourned meeting one person holding shares of the class in question or his proxy;

(b) any holder of shares of the class in question present in person or by proxy may demand a poll.

(7) Any alteration of a provision contained in the articles of a company for the variation of the rights attached to a class of shares or the insertion of any such provision into the company's articles shall itself be treated as a variation of those rights.

(8) *Section 78* of the Principal Act shall apply in relation to *subsection (2)* as it applies in relation to a provision of the memorandum or articles of a company to the like effect.

(9) In this section and, except where the context otherwise requires,

in any provision for the variation of the rights attached to a class of shares contained in the company's memorandum or articles references to the variation of those rights shall include references to their abrogation.

5 (10) Nothing in *subsections* (2) to (5) shall be construed as derogating from the powers of the court under *section 15* or any of the following sections of the Principal Act, that is to say, sections 10, 201, 203 and 205.

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

15 39.—(1) Where a company allots shares with rights which are not stated in its memorandum or articles or in any resolution or agreement to which *section 143* of the Principal Act applies, the company shall, unless the shares are in all respects uniform with shares previously allotted, deliver to the registrar of companies within one month from
20 allotting the shares a statement in the prescribed form containing particulars of those rights.

Registration of particulars of special rights.

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

30 (3) Where the rights attached to any shares of a company are varied otherwise than by an amendment of the company's memorandum or articles or by resolution or agreement to which the said *section 143* applies, the company shall within one month from the date on which the variation is made deliver to the registrar of companies a statement in the prescribed form containing particulars of the variation.

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

40 (5) If a company fails to comply with this section, the company and every officer of the company who is in default shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £250 together with, in the case of a continuing offence, a fine not exceeding £25 for every day on which the offence continues but not exceeding £500 in total.

Treatment of shares held by or on behalf of a public limited company.

45 Maintenance of capital

40 40.—(1) Subject to *subsection (4)*, where the net assets of a company are half or less of the amount of the company's called-up share capital, the directors of the company shall, not later than 28 days from the earliest day on which that fact is known to a director of the
50 company, duly convene an extraordinary general meeting of the company for a date not later than 56 days from that day for the

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

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

purpose of considering whether any, and if so what, measures should be taken to deal with the situation.

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

(a) knowingly and wilfully authorises or permits that failure; or

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

shall be guilty of an offence.

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

(4) This section shall not apply where the day mentioned in *subsection (1)* is before the appointed day.

Restriction on
company acquiring
its own shares.

41.—(1) Subject to the following provisions of this section, no company limited by shares or limited by guarantee and having a share capital shall acquire its own shares (whether by purchase, subscription or otherwise).

(2) A company limited by shares may acquire any of its own fully paid shares otherwise than for valuable consideration.

(3) If a company purports to act in contravention of this section the company and every officer of the company who is in default shall be guilty of an offence and the purported acquisition shall be void.

(4) *Subsection (1)* shall not apply in relation to—

(a) the redemption of preference shares in pursuance of the articles;

(b) the acquisition of any shares in a reduction of capital duly made;

(c) the purchase of any shares in pursuance of an order of the court under *section 15* or under *section 10* or *section 205* of the Principal Act; or

(d) the forfeiture of any shares, or the acceptance of any shares surrendered in lieu, in pursuance of the articles for failure to pay any sum payable in respect of those shares.

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

42.—(1) Subject to *subsections (5) and (6)*, where shares are issued to a nominee of a company referred to in *section 41 (1)* or are acquired by a nominee of such a company from a third party as partly paid up, then, for all purposes the shares shall be treated as held by the nominee on his own account and the company shall be regarded as having no beneficial interest in them.

(2) Subject to *subsection (6)*, if a person is called on to pay any amount for the purpose of paying up, or paying any premium on, any shares in any such company which were issued to him, or which he

otherwise acquired, as the nominee of the company and he fails to pay that amount within 21 days from being called on to do so, then—

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

(b) if the shares were otherwise issued to or acquired by him, the directors of the company at the time of the issue or acquisition,

shall be jointly and severally liable with him to pay that amount.

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

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

(5) *Subsection (1)* shall not apply to shares acquired otherwise than by subscription by a nominee of a public limited company in a case falling within *section 43 (1) (d)*.

(6) *Subsections (1) and (2)* shall not apply—

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

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

43.—(1) Subject to *subsections (12) and (15)*, this section applies to a public limited company—

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

(b) where shares in the company are acquired by the company otherwise than by any of the methods mentioned in *section 41 (4)* and the company has a beneficial interest in those shares;

(c) where the nominee of the company acquires shares in the company from a third person without financial assistance being given directly or indirectly by the company and the company has a beneficial interest in those shares; or

Treatment of shares held by or on behalf of a public limited company.

(d) where any person acquires shares in the company with financial assistance given to him directly or indirectly by the company for the purpose of or in connection with the acquisition and the company has a beneficial interest in those shares. 5

(2) In determining for the purposes of *subsection (1) (b) and (c)* whether a company has a beneficial interest in any shares, there shall be disregarded, in any case where the company is a trustee (whether as personal representative or otherwise), any right of the company (as trustee) to recover its expenses or be remunerated out of the trust property. 10

(3) Unless the shares or any interest of the company in them are previously disposed of, the company must not later than the end of the relevant period from their forfeiture or surrender or, in a case to which *subsection (1) (b), (c) or (d)* applies, their acquisition— 15

(a) cancel them and reduce the amount of the share capital by the nominal value of the shares; and

(b) where the effect of cancelling the shares will be that the nominal value of the company's allotted share capital is brought below the authorised minimum, apply for re-registration as another form of company, stating the effect of the cancellation, 20

and the directors may take such steps as are requisite to enable the company to carry out its obligations under this subsection without complying with sections 72 and 73 of the Principal Act, including passing a resolution in accordance with *subsection (5)*. 25

(4) The company and, in a case falling within *subsection (1) (c) or (d)*, the company's nominee or, as the case may be, the other shareholder must not exercise any voting rights in respect of the shares and any purported exercise of those rights shall be void. 30

(5) The resolution authorised by *subsection (3)* may alter the company's memorandum so that it no longer states that the company is to be a public limited company and may make such other alterations in the memorandum and articles as are requisite in the circumstances. 35

(6) The application for re-registration required by *subsection (3)(b)* must be in the prescribed form and signed by a director or secretary of the company and must be delivered to the registrar together with a printed copy of the memorandum and articles of the company as altered by the resolution. 40

(7) If a public limited company required to apply to be re-registered as another form of company under this section fails to do so before the end of the relevant period, *section 21* shall apply to it as if it were a private company such as is mentioned in that section, but, except as aforesaid, the company shall continue to be treated for the purposes of the Companies Acts as a public limited company until it is re-registered as another form of company. 45

(8) If a company when required to do so by *subsection (3)* fails to cancel any shares in accordance with *paragraph (a)* of that subsection or to make an application for re-registration in accordance with *paragraph (b)* of that subsection, the company and every officer of the company who is in default shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £250 together with, in the case of a continuing offence, a fine not exceeding £25 for 50

every day on which the offence continues, but not exceeding £500 in total.

(9) If the registrar is satisfied that a company may be re-registered in accordance with this section he shall—

5 (a) retain the application and other documents delivered to him under *subsection (6)*; and

(b) issue the company with an appropriate certificate of incorporation.

10 (10) Upon the issue of a certificate of incorporation under *subsection (9)*—

(a) the company shall by virtue of the issue of that certificate become the form of company stated in the certificate; and

(b) the alterations in the memorandum and articles set out in the resolution shall take effect accordingly.

15 (11) A certificate of incorporation issued to a company under *subsection (9)* shall be sufficient evidence until the contrary is shown—

(a) that the requirements of this section in respect of re-registration and of matters precedent and incidental thereto have been complied with; and

20 (b) that the company is the form of company stated in the certificate.

(12) Where, after shares in a company—

25 (a) are forfeited in pursuance of the articles of the company or are surrendered to the company in lieu of forfeiture or are otherwise acquired by the company;

30 (b) are acquired by a nominee of the company in the circumstances mentioned in *subsection (1) (c)*; or

35 (c) are acquired by any person in the circumstances mentioned in *subsection (1) (d)*,

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

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

(14) In this section “relevant period”, in relation to any shares, means—

(a) in the case of shares forfeited or surrendered to the company

in lieu of forfeiture or acquired as mentioned in *subsection (1) (b) or (c)*, three years;

(b) in the case of shares acquired as mentioned in *subsection (1)(d)*, one year.

(15) Notwithstanding anything in *section 12 (2)*, a reference in this section to a public limited company does not include a reference to an old public limited company.

Charges taken by public limited companies on own shares.

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

(2) The following are permitted charges, that is to say—

(a) in the case of every description of company, a charge on its own shares (not being fully paid) for any amount payable in respect of the shares;

(b) in the case of a public limited company whose ordinary business includes the lending of money or consists of the provision of credit or the bailment or hiring of goods under a hire-purchase agreement, or both, a charge of the company on its own shares (whether fully paid or not) which arises in connection with a transaction entered into by the company in the ordinary course of its business;

(c) in the case of a company (other than a company in relation to which *paragraph (d)* applies) which is re-registered or is registered under *section 18* as a public limited company, a charge on its own shares which was in existence immediately before its application for re-registration or, as the case may be, registration;

(d) in the case of any company which after the end of the re-registration period remains or remained an old public limited company and did not before the end of that period apply to be re-registered under *section 12* as a public limited company, any charge on its own shares which was in existence immediately before the end of that period.

PART IV

RESTRICTIONS ON DISTRIBUTION OF PROFITS AND ASSETS.

Profits available for distribution.

45.—(1) A company shall not make a distribution (as defined by *section 51*) except out of profits available for the purpose.

(2) For the purposes of this Part, but subject to *section 47(1)*, a company's profits available for distribution are its accumulated, realised profits, so far as not previously utilised by distribution or capitalisation, less its accumulated, realised losses, so far as not previously written off in a reduction or reorganisation of capital duly made.

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

(4) For the purposes of *subsections (2) and (3)* any provision (within the meaning of the Sixth Schedule to the Principal Act) other than one in respect of any diminution in value of a fixed asset appearing on

a revaluation of all the fixed assets or of all the fixed assets other than goodwill of the company, shall be treated as a realised loss.

(5) Subject to *section 49(8)*, any consideration by the directors of a company of the value at any particular time of any fixed asset of the company shall be treated as a revaluation of that asset for the purposes of determining whether any such revaluation of the company's fixed assets as is required for the purposes of the exception from *subsection (4)* has taken place at that time; but where any such assets which have not actually been revalued are treated as revalued for those purposes by virtue of this subsection that exception shall only apply if the directors are satisfied that their aggregate value at the time in question is not less than the aggregate amount at which they are for the time being stated in the company's accounts.

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

(7) Where there is no record of the original cost of an asset of a company (whether acquired before, on or after the appointed day) or any such record cannot be obtained without unreasonable expense or delay, then, for the purposes of determining whether the company has made a profit or loss in respect of that asset, the cost of the asset shall be taken to be the value ascribed to it in the earliest available record of its value made on or after its acquisition by the company.

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

(9) In this section "fixed asset" includes any other asset which is not a current asset.

46.—(1) Subject to *section 47*, a public limited company may only make a distribution at any time—

Restriction on distribution of assets.

(a) if at that time the amount of its net assets is not less than the aggregate of the company's called-up share capital and its undistributable reserves; and

(b) if, and to the extent that, the distribution does not reduce the amount of those assets to less than that aggregate.

(2) For the purposes of this section the undistributable reserves of a public limited company are—

(a) the share premium account;

(b) the capital redemption reserve fund;

(c) the amount by which the company's accumulated, unrealised profits, so far as not previously utilised by any capitalisation, exceed its accumulated, unrealised losses, so far as

not previously written off in a reduction or reorganisation of capital duly made; and

(d) any other reserve which the company is prohibited from distributing by any enactment, other than one contained in this Part, or by its memorandum or articles.

(3) Subsections (4) to (8) of section 45 shall apply for the purposes of this section as they apply for the purposes of that section.

(4) A public limited company shall not include any uncalled share capital as an asset in any account relevant for the purposes of this section.

Charges taken by public limited companies on own shares.

Other distributions of investment companies.

47.—(1) Subject to the following provisions of this section, an investment company may also make a distribution at any time out of its accumulated, realised revenue profits, so far as not previously utilised by distribution or capitalisation, less its accumulated revenue losses (whether realised or unrealised), so far as not previously written off in a reduction or reorganisation of capital duly made—

(a) if at that time the amount of its assets is at least equal to one and a half times the aggregate of its liabilities; and

(b) if, and to the extent that, the distribution does not reduce that amount to less than one and a half times that aggregate.

(2) In subsection (1) “liabilities” includes any provision (within the meaning of the Sixth Schedule to the Principal Act) except to the extent that that provision is taken into account for the purposes of that subsection in calculating the value of any asset of the company in question, and subsection (4) of section 46 shall apply for those purposes as it applies for the purposes of that section.

(3) In this Part “investment company” means a public limited company which has given notice in writing (which has not been revoked) to the registrar of its intention to carry on business as an investment company (the “requisite notice”) and has since the date of that notice complied with the requirements set out in subsection (4).

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

(a) that the business of the company consists of investing its funds mainly in securities, with the aim of spreading investment risk and giving members of the company the benefit of the results of the management of its funds;

(b) that none of the company’s holdings in companies other than companies which are for the time being investment companies represents more than 15 per cent. by value of the investing company’s investment;

(c) that distribution of the company’s capital profits is prohibited by its memorandum or articles of association;

(d) that the company has not retained, otherwise than in compliance with this Part in respect of any financial year more than 15 per cent. of the income it derives from securities.

(5) An investment company may not make a distribution by virtue of subsection (1) unless its shares are listed on a recognised stock

exchange and, during the period beginning with the first day of the financial year immediately preceding the financial year in which the proposed distribution is to be made or, where the distribution is proposed to be made during the company's first financial year, the first day of that financial year and ending with the date of the distribution (whether or not any part of those financial years falls before the appointed day), it has not—

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

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

- (a) before the beginning of the appropriate period referred to in *subsection (5)*; or
- (b) where that period began before the appointed day, as soon as may be reasonably practicable after the appointed day; or
- (c) where the company was incorporated on or after the appointed day, as soon as may be reasonably practicable after the date of its incorporation.

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

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

(9) An investment company shall include the expression “investment company” on its letters and order forms.

(10) Where a company fails to comply with *subsection (9)*, the company and every officer of the company who is in default shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £250.

(11) Proceedings in relation to an offence under this section may be brought and prosecuted by the registrar of companies.

(12) For the purposes of *paragraph (b)* of *subsection (4)*—

- (a) “holding” means the shares or securities (whether of one class or more than one class) held in any one company;
- (b) holdings in companies which are members of a group (whether or not including the investing company) and are not excluded from the said *paragraph (b)* shall be treated as holdings in a single company;
- (c) where the investing company is a member of a group, money owed to it by another member of the group shall be treated as a security of the latter held by the investing company and accordingly as, or as part of, the holding of the investing company in the company owing the money,

and for the purposes of this subsection "group" means a company and all companies which are its subsidiaries within the meaning of section 155 of the Principal Act.

Realised profits of
assurance
companies.

48.—(1) In the case of an assurance company carrying on life assurance business, or industrial assurance business or both, any amount properly transferred to the profit and loss account of the company from a surplus in the fund or funds maintained by it in respect of that business and any deficit in that fund or those funds shall be respectively treated for the purposes of this Part as a realised profit and a realised loss, and, subject to the foregoing, any profit or loss arising on the fund or funds maintained by it in respect of that business shall be left out of account for those purposes.

Other distributions
of investment
companies.

(2) In subsection (1)—

(a) the reference to a surplus in any fund or funds of an assurance company is a reference to an excess of the assets representing that fund or those funds over the liabilities of the company attributable to its life assurance or industrial assurance business, as shown by an actuarial investigation; and

(b) the reference to a deficit in any such fund or funds is a reference to the excess of those liabilities over those assets, as so shown.

(3) In this section—

"actuarial investigation" means an investigation to which section 5 of the Assurance Companies Act, 1909 applies;

"life assurance business" and "industrial assurance business" have the same meanings as in section 3 of the Insurance Act, 1936.

The relevant
accounts.

49.—(1) Subject to the following provisions of this section, the question whether a distribution may be made by a company without contravening section 45, 46 or 47 (the relevant section) and the amount of any distribution which may be so made shall be determined by reference to the relevant items as stated in the relevant accounts, and the relevant section shall be treated as contravened in the case of a distribution unless the requirements of this section about those accounts are complied with in the case of that distribution.

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

(a) except in a case falling within paragraph (b) or (c), the last annual accounts that is to say, the accounts prepared in accordance with the requirements of the Principal Act which were laid in respect of the last preceding financial year in respect of which accounts so prepared were laid;

(b) if that distribution would be found to contravene the relevant section if reference were made only to the last annual accounts, such accounts (interim accounts) as are necessary to enable a reasonable judgment to be made as to the amounts of any of the relevant items;

(c) if that distribution is proposed to be declared during the company's first financial year or before any accounts are laid in respect of that financial year, such accounts (initial accounts) as are necessary as aforesaid.

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

10 (a) those accounts must have been properly prepared or have been so prepared subject only to matters which are not material for the purpose of determining, by reference to the relevant items as stated in those accounts, whether that distribution would be in contravention of the relevant section;

15 (b) the auditors of the company must have made a report under section 163 of the Principal Act in respect of those accounts;

20 (c) if, by virtue of anything referred to in that report, the report is not an unqualified report, the auditors must also have stated in writing (either at the time the report was made or subsequently) whether, in their opinion, that thing is material for the purpose of determining, by reference to the relevant items as stated in those accounts, whether that distribution would be in contravention of the relevant section; and

25 (d) a copy of any such statement must have been laid before the company in general meeting.

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

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

40 (a) the accounts must have been properly prepared or have been so prepared subject only to matters which are not material for the purpose of determining, by reference to the relevant items as stated in those accounts, whether that distribution would be in contravention of the relevant section;

(b) a copy of those accounts must have been delivered to the registrar of companies;

45 (c) if the accounts are in a language other than the English or Irish language, a translation into English or Irish of the accounts which has been certified in the prescribed manner to be a correct translation must also have been delivered to the registrar.

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

(a) those accounts must have been properly prepared or have been so prepared subject only to matters which are not material for the purpose of determining, by reference to

the relevant items as stated in those accounts, whether that distribution would be in contravention of the relevant section;

(b) the auditors of the company must have made a report stating whether in their opinion the accounts have been properly prepared; 5

(c) if, by virtue of anything referred to in that report, the report is not an unqualified report, the auditors must also have stated in writing whether, in their opinion, that thing is material for the purpose of determining, by reference to the relevant items as stated in those accounts, whether that distribution would be in contravention of the relevant section; 10

(d) a copy of those accounts, of the report made under paragraph (b) and of any such statement must have been delivered to the registrar of companies; and 15

(e) if the accounts are, or that report or statement is, in a language other than the English or Irish language, a translation into English or Irish of the accounts, the report or statement, as the case may be, which has been certified in the prescribed manner to be a correct translation, must also have been delivered to the registrar. 20

(7) For the purpose of determining by reference to particular accounts whether a proposed distribution may be made by a company, this section shall have effect, in any case where one or more distributions have already been made in pursuance of determinations made by reference to those same accounts, as if the amount of the proposed distribution was increased by the amount of the distributions so made. 25

(8) Where subsection (3) (a), (5) (a) or (6) (a) applies to the relevant accounts, section 45 (5) shall not apply for the purposes of determining whether any revaluation of the company's fixed assets affecting the amount of the relevant items as stated in those accounts has taken place, unless it is stated in a note to those accounts— 30

(a) that the directors have considered the value at any time of any fixed assets of the company without actually revaluing those assets; 35

(b) that they are satisfied that the aggregate value of those assets at the time in question is or was not less than the aggregate amount at which they are or were for the time being stated in the company's accounts; and 40

(c) that the relevant items affected are accordingly stated in the relevant accounts on the basis that a revaluation of the company's fixed assets which by virtue of section 45 (5) included the assets in question took place at that time. 40

(9) In this section— 45

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

(a) in the case of annual accounts, that they have been properly prepared in accordance with the provisions of the Principal Act; 50

(b) in the case of interim or initial accounts, that they

comply with the requirements of section 149 of the Principal Act and any balance sheet comprised in those accounts has been signed in accordance with section 156 of the Principal Act; and

5 (c) in either case, without prejudice to the foregoing, that, except where the company is entitled to avail itself, and has availed itself, of any of the provisions of Part III of the Sixth Schedule to the Principal Act—

10 (i) so much of the accounts as consists of a balance sheet gives a true and fair view of the state of the company's affairs as at the balance sheet date; and

15 (ii) so much of those accounts as consists of a profit and loss account gives a true and fair view of the company's profit or loss for the period in respect of which the accounts were prepared;

20 "relevant item" means any of the following, that is to say profits, losses, assets, liabilities, provisions (within the meaning of the Sixth Schedule to the Principal Act), share capital and reserves;

"reserves" includes undistributable reserves within the meaning of section 46(2);

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

and for the purposes of this section, accounts are laid if section 148 of the Principal Act has been complied with in relation to those accounts.

30 (10) For the purpose of paragraph (b) of the definition of "properly prepared" in subsection (9), section 149 of, and the Sixth Schedule to, the Principal Act shall be deemed to have effect in relation to interim and initial accounts with such modifications as are necessary by reason of the fact that the accounts are prepared otherwise than in respect of a financial year.

35 50.—(1) Where a distribution, or part of one, made by a company to one of its members is made in contravention of the provisions of this Part and, at the time of the distribution, he knows or has reasonable grounds for believing that it is so made, he shall be liable to repay it or that part, as the case may be, to the company or (in the case of a distribution made otherwise than in cash) to pay the company 40 a sum equal to the value of the distribution or part at that time.

Consequences of making unlawful distribution.

40 (2) The provisions of this section are without prejudice to any obligation imposed apart from this section on a member of a company to repay a distribution unlawfully made to him.

45 51.—(1) Where immediately before the appointed day a company is authorised by any provision of its articles to apply its unrealised profits in paying up in full or in part unissued shares to be allotted to members of the company as fully or partly paid bonus shares, that provision shall, subject to any subsequent alteration of the articles, continue to be construed as authorising those profits to be so applied 50 after the appointed day.

Ancillary provisions.

50 (2) In this Part "distribution" means every description of distri-

bution of a company's assets to members of the company, whether in cash or otherwise, except distributions made by way of—

- (a) an issue of shares as fully or partly paid bonus shares;
- (b) the redemption of preference shares out of the proceeds of a fresh issue of shares made for the purposes of the redemption and the payment of any premium on their redemption out of the company's share premium account;
- (c) the reduction of share capital by extinguishing or reducing the liability of any of the members on any of its shares in respect of share capital not paid up or by paying off paid up share capital; and
- (d) a distribution of assets to members of the company on its winding up.

(3) In this Part "capitalisation", in relation to any profits of a company, means any of the following operations, whether carried out before, on or after the appointed day, that is to say, applying the profits in wholly or partly paying up unissued shares in the company to be allotted to members of the company as fully or partly paid bonus shares or transferring the profits to the capital redemption reserve fund.

(4) In this Part reference to profits and losses of any description are references respectively to profits and losses of that description made at any time, whether before, on, or after the appointed day and, except where the context otherwise requires, are references respectively to revenue and capital profits and revenue and capital losses.

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

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

PART V

CHANGE OF STATUS OF CERTAIN COMPANIES

Re-registration of limited company as unlimited.

52.—(1) A company which, on the appointed day, is registered as limited or thereafter is so registered (otherwise than in pursuance of section 53) may be re-registered under the Principal Act as unlimited in pursuance of an application in that behalf complying with the requirements of subsection (2), made in the prescribed form and signed by a director or by the secretary of the company and delivered to the registrar together with the documents mentioned in subsection (3).

(2) The requirements referred to in subsection (1) are that the application must—

- (a) set out such alterations in the company's memorandum as—

- 5 (i) if it is to have a share capital, are requisite to bring it, both in substance and in form into conformity with the requirements imposed by the Principal Act with respect to the memorandum of a company to be formed under that Act as an unlimited company having a share capital; or
- (ii) if it is not to have a share capital, are requisite in the circumstances; and
- 10 (b) if articles have been registered, set out such alterations therein and additions thereto as—
- (i) if it is to have a share capital, are requisite to bring them, both in substance and in form, into conformity with the requirements imposed by the Principal Act with respect to the articles of a company to be formed under that Act as an unlimited company having a share capital; or
- 15 (ii) if it is not to have a share capital, are requisite in the circumstances; and
- (c) if articles have not been registered—
- 20 (i) have annexed thereto, and request the registration of, printed articles, bearing the same stamp as if they were contained in a deed, being, if the company is to have a share capital, articles complying with the said requirements; or
- 25 (ii) if it is not to have a share capital, articles appropriate to the circumstances.
- (3) The documents referred to in *subsection (1)* are—
- 30 (a) the prescribed form of assent to the company's being registered as unlimited subscribed by or on behalf of all members of the company;
- (b) a statutory declaration made by the directors of the company that the persons by whom or on whose behalf the form of assent is subscribed constitute the whole membership of the company, and, 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 so to do;
- 35 (c) a printed copy of the memorandum incorporating the alterations therein set out in the application; and
- 40 (d) if articles have been registered, a printed copy thereof incorporating the alterations therein and additions thereto set out in the application.
- 45 (4) The registrar shall retain the application and other documents delivered to him under *subsection (1)*, shall, if articles are annexed to the application, register them and shall issue to the company a certificate of incorporation appropriate to the status to be assumed by the company by virtue of this section, and upon the issue of the
- 50 certificate—

- (a) the status of the company shall, by virtue of the issue, be changed from limited to unlimited; and
- (b) the alterations in the memorandum set out in the application and (if articles have been previously registered) any alterations and additions to the articles so set out shall, notwithstanding anything in the Principal Act, take effect as if duly made by resolution of the company and the provisions of the Principal Act shall apply to the memorandum and articles as altered or added to by virtue of this section accordingly.

(5) A certificate of incorporation issued by virtue of this section shall be sufficient evidence until the contrary is shown that the requirements of this section with respect to re-registration and of matters precedent and incidental thereto have been complied with, and that the company was authorised to be re-registered under the Principal Act in pursuance of this section and was duly so re-registered.

(6) Where a company is re-registered in pursuance of this section a person who, at the time when the application for it to be re-registered was delivered to the registrar, was a past member of the company and did not thereafter again become a member thereof shall not, in the event of the company's being wound up, be liable to contribute to the assets of the company more than he would have been liable to contribute thereto had it not been so re-registered.

(7) The re-registration of a limited company as an unlimited company pursuant to this Act shall not affect any rights or obligations of the company, or render defective any legal proceedings by or against the company, and any legal proceedings which might have been continued or commenced against it in its former status may be continued or commenced against it in its new status.

(8) For the purposes of this section—

- (a) subscription to a form of assent by the legal personal representative of a deceased member of a company shall be deemed to be subscription by him;
- (b) a trustee in bankruptcy of a person who is a member of a company shall, to the exclusion of that person, be deemed to be a member of the company.

Re-registration of unlimited company as limited.

53.—(1) A company which, on the appointed day, is registered as unlimited or thereafter is so registered (otherwise than by virtue of section 52) may be re-registered under the Principal Act as limited if a special resolution that it should be so re-registered (complying with the requirements of subsection (2)) is passed and an application in that behalf, made in the prescribed form and signed by a director or by the secretary of the company, is delivered to the registrar, together with the documents mentioned in subsection (3) not earlier than the day on which the copy of the resolution forwarded to him in pursuance of section 143 of the Principal Act is received by him.

(2) The said requirements are that the resolution must state whether the company is to be limited by shares or by guarantee and—

- (a) if it is to be limited by shares, must state what the share capital is to be and provide for the making of such alterations in the memorandum as are necessary to bring it,

both in substance and in form, into conformity with the requirements of the Companies Acts with respect to the memorandum of a company so limited, and such alterations in the articles as are requisite in the circumstances;

5 (b) if it is to be limited by guarantee, must provide for the making of such alterations in its memorandum and articles as are necessary to bring them, both in substance and in form, into conformity with the requirements of the Principal Act with respect to the memorandum and articles of a company so limited.

10 (3) The documents referred to in subsection (1) are a printed copy of the memorandum as altered in pursuance of the resolution and a printed copy of the articles as so altered.

15 (4) The registrar shall retain the application and other documents delivered to him under subsection (1) and shall issue to the company a certificate of incorporation appropriate to the status to be assumed by the company by virtue of this section; and upon the issue of the certificate—

20 (a) the status of the company shall, by virtue of the issue, be changed from unlimited to limited; and

(b) the alterations in the memorandum specified in the resolution and the alterations in, and additions to, the articles so specified shall, notwithstanding anything in the Principal Act, take effect.

25 (5) A certificate of incorporation issued by virtue of this section shall be sufficient evidence until the contrary is shown that the requirements of this section with respect to re-registration and of matters precedent and incidental thereto have been complied with, and that the company was authorised to be re-registered under the Principal Act in pursuance of this section and was duly so re-registered.

30 (6) Section 71 of the Principal Act shall have effect as if, for the reference to its resolution for registration as a limited company in pursuance of that Act, there were substituted a reference to its resolution for registration as a limited company in pursuance of that Act or re-registration as a limited company in pursuance of this section.

35 (7) In the event of the winding-up of a company re-registered in pursuance of this section, the following provisions shall have effect—

40 (a) notwithstanding paragraph (a) of subsection (1) of section 207 of the Principal Act, a past member of the company who was a member thereof at the time of re-registration shall, if the winding-up commences within the period of three years beginning with the day on which the company

45 is re-registered, be liable to contribute to the assets of the company in respect of its debts and liabilities contracted before that time;

(b) where no persons who were members of the company at that time are existing members of the company, a person who, at that time, was a present or past member thereof shall, subject to paragraph (a) of the said subsection (1) and to paragraph (a) of this subsection, but notwithstanding paragraph (c) of the said subsection (1), be liable to contribute

as aforesaid notwithstanding that the existing members have satisfied the contributions required to be made by them in pursuance of the Principal Act;

(c) notwithstanding paragraphs (d) and (e) of the said subsection (1), there shall be no limit on the amount which a person who, at that time, was a past or present member of the company is liable to contribute as aforesaid. 5

(8) The re-registration of an unlimited company as a limited company pursuant to this Act shall not affect any rights or obligations of the company, or render defective any legal proceedings by or against the company, and any legal proceedings which might have been continued or commenced against it in its former status may be continued or commenced against it in its new status. 10

Cesser of section 20 of Principal Act.

54.—No company shall register or re-register in pursuance of section 20 (1) of the Principal Act after the appointed day except upon an application in that behalf made before that day. 15

PART VI

MISCELLANEOUS

Public limited company to publish certain matters in *Iris Oifigiúil*.

55.—(1) A public limited company shall publish in *Iris Oifigiúil* notice of the delivery to the registrar of companies of the following documents— 20

(a) a statutory declaration under section 6 (2);

(b) a copy of a resolution which gives, varies, revokes or renews an authority for the purposes of section 20;

(c) a copy of a special resolution under section 24 (1), (2) or (3); 25

(d) any expert's valuation report on a non-cash consideration under section 31 (2);

(e) any expert's valuation report on a non-cash asset acquired from a subscriber under section 33 (2);

(f) any statement or notice under section 39 (1), (3) or (4); 30

(g) any return of allotments under section 58 (1) of the Principal Act;

(h) any notification of the redemption of preference shares under section 69 (1) of the Principal Act;

(i) a copy of a special resolution to reduce its share capital under section 72 (2) of the Principal Act; 35

(j) a copy of any resolution or agreement to which section 143 of the Principal Act applies and which—

(i) states the rights attached to any shares in the company, other than shares which are, in all respects, uniform (for the purposes of section 39 (1)) with shares previously allotted; 40

(ii) varies rights attached to any shares in the company; or

Re-registration of unlimited company as limited.

(iii) assigns a name or other designation, or a new name or other designation, to any class of shares in the company.

(2) The notice mentioned in *subsection (1)* shall be published within six weeks of the relevant delivery.

(3) Where a company fails to comply with this section, the company and every officer of the company who is in default shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £250.

(4) Proceedings in relation to an offence under this section may be brought and prosecuted by the registrar of companies.

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

(2) A public limited company other than an old public limited company shall be guilty of an offence if, in circumstances in which the fact that it is a public limited 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 company other than a public limited company.

(3) Where, within the re-registration period, an old public limited company applies to be re-registered under *section 12* as a public limited company, then—

(a) during the twelve months following the re-registration, any provision of *section 114 (1) (b) or (c)* of the Principal Act; and

(b) during the three years following the re-registration, *section 114 (1) (a)* of the Principal Act or any provision of any other Act or statutory instrument requiring or authorising the name of the company to be shown on any document or other object,

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

(4) A person guilty of an offence under *subsection (1) or (2)* and, if that person is a company, any officer of the company who is in default shall be liable on summary conviction to a fine not exceeding £500 together with, in the case of a continuing offence, a fine not exceeding £50 for every day on which the offence continues, but not exceeding £1,000 in total.

57.—(1) A company or other person guilty of an offence under *section 20 or 36* shall be liable, on conviction on indictment, to a fine not exceeding £2,500.

(2) A company or other person guilty of an offence under *section 24, 40 or 41* shall be liable, on conviction on indictment—

- (a) in the case of a company, to a fine not exceeding £2,500;
- (b) in the case of a person other than a company, to a fine not exceeding £2,500 or, at the discretion of the court, to imprisonment for a term not exceeding 2 years or to both the fine and the imprisonment.

(3) Any person guilty of an offence under *section 31* shall be liable on conviction on indictment to a fine not exceeding £5,000 or, at the discretion of the court, to imprisonment for a term not exceeding 3 years or to both the fine and the imprisonment.

(4) A Justice of the District Court shall have jurisdiction to try summarily an offence under *section 20, 24, 31, 36, 40 or 41* if—

- (a) the Justice is of the opinion that the facts proved or alleged against the defendant charged with any such offence constitute a minor offence fit to be tried summarily;
- (b) the Director of Public Prosecutions consents; and
- (c) the defendant (on being informed by the Justice of his right to be tried by a jury) does not object to being tried summarily,

and, upon conviction under this subsection the said defendant shall be liable—

- (i) in the case where the defendant is guilty of an offence under *section 20 or 36*, to a fine not exceeding £500;
- (ii) in the case where the defendant is guilty of an offence under *section 24, 31, 40 or 41*—

(I) in the case of a company, to a fine not exceeding £500;

(II) in the case of a person other than a company, to a fine not exceeding £500 or, at the discretion of the Court, to imprisonment for a term not exceeding 6 months or to both the fine and the imprisonment.

(5) Section 13 of the Criminal Procedure Act, 1967, shall apply in relation to an offence under the said *section 20, 24, 31, 36, 40 and 41* as if, in lieu of the penalties specified in subsection (3) of the said section 13, there were specified therein the penalty provided for by subsection (4) of this section, and the reference in subsection 2 (a) of the said section 13 to the penalties provided for in subsection (3) of the said section 13 shall be construed and have effect accordingly.

58.—(1) No licence under section 24 of the Principal Act shall be granted in respect of a public limited company or an association about to be formed into a public limited company or have effect in respect of such a company.

(2) Any such licence already granted to a company shall cease to have effect if, after the appointed day, the company is registered or re-registered as a public limited company.

Revocation of power under section 24 of Principal Act to dispense with "limited" in name of public limited companies.

59.—(1) The Minister may by order prescribe forms to be used in connection with any of the provisions of this Act.

Power by order to prescribe forms and to revoke and amend orders.

(2) The Minister may by order revoke or amend an order (other than an order made under section 1 (3)) made under this Act.

5 60.—Every order made under this Act shall be laid before each House of the Oireachtas as soon as may be after it is made and if a resolution annulling the order is passed by either House within the next 21 days on which that House has sat after the order is laid before it, the order shall be annulled accordingly but without prejudice to
10 the validity of anything previously done thereunder.

Laying of orders before Houses of Oireachtas.

61.—The expenses incurred in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Finance, be paid out of moneys provided by the Oireachtas.

Expenses.

FIRST SCHEDULE

Section 3.

15 MINOR AND CONSEQUENTIAL AMENDMENTS TO THE COMPANIES ACT, 1963.

1. Section 6 of the Principal Act is hereby amended by substituting the following subsection for subsection (1)—

“(1) The memorandum of every company must state—

20 (a) in the case of a public limited company, the name of the company, with ‘public limited company’ or ‘cuideachta phoiblí teoranta’ as the last words of the name;

25 (b) in the case of a company (other than a public limited company) which is limited by shares or by guarantee, the name of the company, with ‘limited’ or ‘teoranta’ as the last word of the name;

(c) the objects of the company.”.

2. Section 10 of the Principal Act is hereby amended—

30 (a) in subsection (6) by deleting “so, however, that no part of the capital of that company shall be expended in any such purchase.”; and

(b) by inserting after subsection (6) the following new subsections—

35 “(6A) An order under this section may, if the court thinks fit, provide for the purchase by the company of the shares of any members of the company and for the reduction accordingly of the company’s capital and may make such alterations in the memorandum and articles of the company as may be required in consequence of that provision.

40 (6B) Where an order under this section requires the company not to make any, or any specified, alteration in its memorandum or articles, then, notwithstanding anything in the Companies Acts, 1963 to 1982, the

company shall not have power without the leave of the court to make any such alteration in breach of that requirement.

(6C) Any alteration in the memorandum or articles of a company made by virtue of an order under this section, other than one made by resolution of the company, shall be of the same effect as if duly made by resolution of the company, and the provisions of the Companies Acts, 1963 to 1982 shall apply to the memorandum or articles as so altered accordingly.”

3. Section 22 of the Principal Act is hereby amended by substituting the following subsection for subsection (2)—

“(2) The use of the abbreviation ‘Ltd.’ for ‘Limited’ or ‘Teo.’ for ‘Teoranta’ or ‘p.l.c.’ for ‘public limited company’ or ‘c.p.t.’ for ‘cuideachta phoiblí theoranta’ shall not of itself render such registration necessary.”

4. Section 28 of the Principal Act is hereby amended in subsection (4) by inserting after “(6),”, the following— “(6A), (6B), (6C),”.

5. The Principal Act is hereby amended by substituting the following section for section 35—

“35.—(1) Subject to subsection (2), if a company, being a private company, alters its articles in such a manner that they no longer include the provisions which, under section 33, are required to be included in the articles of a company in order to constitute it a private company, the company shall cease to be a private company.

(2) The alteration referred to in subsection (1) shall not take effect unless the company has been re-registered as a public limited company in accordance with *section 9 of the Companies (Amendment) (No. 2) Act, 1982* or as an unlimited public company in accordance with *section 52 of that Act*.

(3) Where an application is made to re-register a private company as an unlimited public company, there shall be delivered with the application for re-registration a statement in lieu of prospectus in the form and containing the particulars set out in Part I of the Second Schedule, and, in the cases mentioned in Part II of that Schedule, setting out the reports specified therein, and the said Parts I and II shall have effect subject to the provisions contained in Part III of that Schedule.

(4) A statement in lieu of prospectus need not be delivered under subsection (3) if a prospectus relating to the company which complies, or is deemed by virtue of a certificate of exemption under section 45 to comply, with the Third Schedule, is issued and is delivered to the registrar of companies as required by section 47.

(5) Every statement in lieu of prospectus delivered under subsection (3) shall, where the persons making any such report as referred to in that subsection have made therein or have, without giving the reasons, indicated therein any such adjustments as are mentioned in paragraph 5 of Part III of the Second Schedule, have endorsed thereon or attached thereto a written statement signed by those persons, setting out the adjustments and giving the reasons therefor.

(6) If default is made in complying with subsection (2), (3) or (5), the company and every officer of the company who is in default shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £500.

(7) Where a statement in lieu of prospectus, delivered to the registrar under subsection (3) includes any untrue statement, any person who authorised the delivery of the statement in lieu of prospectus for registration shall be guilty of an offence and shall be liable—

(a) on conviction on indictment, to imprisonment for a term not exceeding 2 years or a fine not exceeding £2,500, or both, or

(b) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding £500 or both;

unless he proves either that the untrue statement was immaterial or that he had reasonable ground to believe and did, up to the time of the delivery for registration of the statement in lieu of prospectus, believe that the untrue statement was true.

(8) For the purposes of this section—

(a) a statement included in a statement in lieu of prospectus shall be deemed to be untrue if it is misleading in the form and context in which it is included, and

(b) a statement shall be deemed to be included in a statement in lieu of prospectus if it is contained therein or in any report or memorandum appearing on the face thereof, or by reference incorporated therein.”.

6. Section 53 of the Principal Act is hereby amended in subsection (3) by substituting “Except in the case of a public limited company the amount payable” for “The amount payable”.

7. Section 54 of the Principal Act is hereby amended by substituting the following subsection for subsection (3)—

“(3) This section shall not apply to—

(a) a private company; or

(b) a public limited company within the meaning of the *Companies (Amendment) (No. 2) Act, 1982*.”.

8. Section 55 of the Principal Act is hereby amended by substituting the following subsection for subsection (1)—

“(1) An allotment made by a company to an applicant in contravention of section 53 or 54 shall be voidable at the instance of the applicant within one month after the date of the allotment, and not later, and shall be so voidable notwithstanding that the company is in the course of being wound up.”.

9. Section 60 of the Principal Act is hereby amended by inserting after subsection (15) the following new subsections—

“(15A) Subsections (2) to (11) shall not apply to a public limited company originally incorporated as such or to a company registered or re-registered as a public limited company under the *Companies (Amendment) (No. 2) Act, 1982* unless a special resolution as provided under subsection (2) was passed before the company’s application for registration or re-registration.

(15B) A public limited company may, in accordance with subsection (13), give financial assistance to any person only if the company’s net assets are not thereby reduced or, to the extent that those assets are thereby reduced, if the financial assistance is provided out of profits which are available for dividend.

(15C) In this section “net assets” means the aggregate of the company’s assets less the aggregate of its liabilities; and “liabilities” includes any provision (within the meaning of the Sixth Schedule) except to the extent that that provision is taken into account in calculating the value of any asset to the company.”.

10. Section 62(2) of the Principal Act is hereby amended by substituting “to be allotted” for “to be issued”.

11. Section 64 of the Principal Act is hereby amended—

(a) in subsection (1) by substituting the following paragraph for paragraph (c)—

“(c) the premium, if any, payable on redemption must have been provided for out of the profits of the company which would otherwise be available for dividend or out of the company’s share premium account before the shares are redeemed;”;

and

(b) in subsection (6) by substituting “to be allotted” for “to be issued”.

12. Section 114 of the Principal Act is hereby amended by substituting the following subsection for subsection (5)—

“(5) The use of the abbreviation ‘Ltd.’ for ‘Limited’ or ‘Teo.’ for ‘Teoranta’ or ‘p.l.c.’ for ‘public limited company’ or ‘c.p.t.’ for ‘cuideachta phoiblí teoranta’ shall not be a breach of the provisions of this section.”.

13. Section 115 of the Principal Act is hereby amended in subsection (7) by inserting after paragraph (c) the following—

, or

(d) a public limited company registered as such on its original incorporation under the *Companies (Amendment) (No. 2) Act, 1982*.”.

14. Section 143 of the Principal Act is hereby amended in subsection (4) (as amended by the *Companies (Amendment) Act, 1982*) by inserting after paragraph (i) the following new paragraph—

“(j) resolutions of the directors of a company passed by virtue of sections 12(3) (a) and 43(3) of the *Companies (Amendment) (No. 2) Act, 1982*.”.

15. Section 200 of the Principal Act is hereby amended in paragraph (b) by inserting after "section 391" the following—

"or section 42 of the *Companies (Amendment) (No. 2) Act, 1982*".

16. Section 213 of the Principal Act is hereby amended by inserting after paragraph (g) the following paragraphs—

"(h) after the end of the general transitional period, within the meaning of the *Companies (Amendment) (No. 2) Act, 1982*, the company is an old public limited company within the meaning of that Act;

(i) after the end of the transitional period for share capital, the company has not complied with the conditions specified in section 12(9) of that Act."

17. Section 215 of the Principal Act is hereby amended by adding after paragraph (e) the following—

"and

(f) a petition for winding up on the grounds mentioned in section 213(h) or (i), may be presented by the registrar of companies."

18. Section 330(c) of the Principal Act is hereby amended by substituting the following subparagraph for subparagraph (iii)—

"(iii) the name of the company with the addition of the word 'limited' or 'teoranta' as the last word thereof or, in the case of a public limited company, with the addition of the words 'public limited company' or 'cuideachta phoiblí teoranta' as the last words thereof; and"

19. Section 335 of the Principal Act is hereby amended by substituting the following subsection for subsection (1)—

"(1) Subject to subsection (2), when a company registers in pursuance of this Part with limited liability, the word 'limited' or 'teoranta' or in the case of a public limited company the words 'public limited company' or 'cuideachta phoiblí teoranta' shall form and be part of its name."

20. Section 336 of the Principal Act is hereby amended—

(a) by being renumbered as subsection (1) thereof; and

(b) by inserting the following new subsection—

"(2) A certificate given under this section in respect of a company shall be sufficient evidence until the contrary is shown that the requirements of this Part in respect of registration and of matters precedent and incidental thereto have been complied with."

21. Section 340 of the Principal Act is hereby amended in subsection (2) by inserting after "the amount of the guarantee" the following—

"and including any statement under section 330(c)".

22. Section 395 of the Principal Act is hereby amended by substituting the following subsection for subsection (2)—

“(2) The Minister may by order—

(a) alter Table A, Tábla A and the Third, Seventh and Eighth Schedules; 5

(b) alter or add to Tables B, C, D and E in the First Schedule and the form in Part II of the Fifth Schedule; and

(c) alter the forms set out in the Second Schedule to the *Companies (Amendment) (No. 2) Act, 1982*; 10

but no alteration made by the Minister in Table A or in Tábla A shall affect any company registered before the alteration, or repeal in relation to that company any portion of Table A or Tábla A.”

23. The First Schedule to the Principal Act is hereby amended in Part I of Table A— 15

(a) by substituting the following regulation for regulation 3—

“3. If at any time the share capital is divided into different classes of shares, the rights attached to any class may, whether or not the company is being wound up, be varied or abrogated with the consent in writing of the holders of three-fourths of the issued shares of that class, or with the sanction of a special resolution passed at a separate general meeting of the holders of the shares of the class.”; 20 25

(b) by substituting the following regulation for regulation 5—

“5. Subject to the provisions of these regulations relating to new shares, the shares shall be at the disposal of the directors, and they may (subject to the provisions of the Companies Acts, 1963 to 1982) allot, grant options over or otherwise dispose of them to such persons, on such terms and conditions and at such times as they may consider to be in the best interests of the company and its shareholders, but so that no share shall be issued at a discount and so that, in the case of shares offered to the public for subscription by a public limited company, the amount payable on application on each share shall not be less than one-quarter of the nominal amount of the share and the whole of any premium thereon.”; 30 35 40

(c) in regulation 79 by inserting after “or any part thereof, and” the following “, subject to section 20 of the *Companies (Amendment) (No. 2) Act, 1982*”;

(d) in regulation 80 by substituting “the Companies Acts, 1963 to 1982” for “the Act”; 45

(e) by substituting the following regulation for regulation 118—

“118. No dividend or interim dividend shall be paid otherwise than in accordance with the provisions of Part

IV of the *Companies (Amendment) (No. 2) Act, 1982* which apply to the company.”;

(f) by inserting after regulation 130 the following new regulation—

5 “130A. The company in general meeting may on the recommendation of the directors resolve that it is desirable to capitalise any part of the amount for the time being standing to the credit of any of the company’s reserve accounts or to the credit of the profit and loss account which is not available for distribution by applying such sum in paying up in full unissued shares to be allotted as fully paid bonus shares to those members of the company who would have been entitled to that sum if it were distributed by way of dividend (and in the same proportions), and the directors shall give effect to such resolution.”;

10 (g) in regulation 131 by substituting “Whenever a resolution is passed in pursuance of regulation 130 or 130A” for “Whenever such a resolution as aforesaid shall have been passed”.

20 24. The First Schedule to the Principal Act is hereby amended in Part I of Tábla A—

(a) by substituting the following regulation for regulation 3—

25 “3. Más rud é tráth ar bith go roinnfear an scairchaipiteal ina scaireanna de chineálacha éagsúla, féadfar na cearta a ghabhfaidh le haon chineál, cibé acu a bheidh an chuideachta á foirceannadh nó nach mbeidh, a athrú nó a aisghairm le toiliú i scríbhinn ó shealbhóirí trí cheathrú de na scaireanna eisithe den chineál sin, nó le ceadú faoi rún speisialta a ritheadh ag cruinniú ginearálta ar leith de shealbhóirí na scaireanna den chineál sin.”;

(b) by substituting the following regulation for regulation 5—

35 “5. Faoi réir na bhforálacha de na rialacháin seo a bhaineann le scaireanna nua, beidh na scaireanna ar a n-urláimh ag na stiúrthóirí, agus féadfaidh siad (faoi réir fhorálacha Achtanna na gCuideachtaí, 1963 go 1982) iad a leithroinnt ar cibé daoine, nó roghanna orthu a dheonú dóibh, nó iad a dhiúscairt chuchu i slí eile, ar cibé téarmaí agus coinníollacha, agus cibé tráthanna, is dóigh leo is fearr a bheadh le leas na cuideachta agus a scairshealbhóirí, ach sa dóigh nach n-eiseofar aon scair faoi lascaine agus sa dóigh, i gcás scaireanna a thairgfídh cuideachta phoiblí theoranta don phobal lena suibscríobh, nach mbeidh an tsuim is infíoctha tráth an iarratais ar gach scair faoi bhun an ceathrú cuid de mhéid ainmniúil na scaire agus iomlán aon phréimhe uirthi.”;

50 (c) in regulation 79 by inserting after “a mhorgáistiú nó a mhui-rearú, agus,” the following: “faoi réir alt 19 d’Acht na gCuideachtaí (*Leasú*) (*Uimh. 2*), 1982”;

(d) in regulation 80 by substituting “le hAchtanna na gCuideachtaí, 1963 go 1982” for “leis an Acht” and “faoi réir fhorálacha Achtanna na gCuideachtaí, 1963 go 1982” for “faoi réir forálacha an Achta”;

(e) by substituting the following regulation for regulation 118—

“118. Ní íocfar díbhinn ná díbhinn eatramhach ar bith seachas de réir na bhforálacha de *Chuid IV d’Acht na gCuideachtaí (Leasú) (Uimh. 2), 1982* a bhfuil feidhm acu maidir leis an gcuideachta.”;

(f) by inserting after regulation 130 the following new regulation—

“130A. Féadfaidh an chuideachta, i gcruinniú gin-earáilta, ar mholadh na stiúrthóirí, a bheartú gur inmhiannaithe aon chuid den méid a bheidh de thuras na huaire i gcreidiúint d’aon cheann de chúlchuntais na cuideachta nó i gcreidiúint don chuntas sochair agus dochair nach mbeidh ar fáil chun a dháilte a chaipitliú tríd an tsuim sin a chur chun feidhme do láníoc scaireanna neamheisithe a bheidh le leithroinnt mar scaireanna bónaís láníoctha ar na comhaltaí sin den chuideachta a bheadh i dteideal na suime sin dá ndéanfaí í a dháileadh i modh díbhinne (agus sna cionúireachtaí céanna) agus tabharfaidh na stiúrthóirí éifeacht don rún sin.”;

(g) in regulation 131 by substituting “Aon uair a rithfear rún de bhun rialachán 130 nó 130A” for “Aon uair a rithfear rún mar a dúradh”.

25. The Second Schedule to the Principal Act is hereby amended in the heading thereof by substituting “AN UNLIMITED PUBLIC COMPANY” for “A PUBLIC COMPANY”.

26. The Sixth Schedule to the Principal Act is hereby amended in paragraph 11 by inserting after subparagraph (2) the following new subparagraphs—

“(2A) Where shares in a public limited company, other than an old public limited company within the meaning of the *Companies (Amendment) (No. 2) Act, 1982* are acquired by the company by forfeiture or surrender in lieu of forfeiture, or in pursuance of *section 41* of that Act, or are acquired by another person in circumstances where *paragraph (c) or (d) of section 43(1)* of that Act applies or are made subject to a lien or charge taken (whether expressly or otherwise) by the company and permitted by *section 44 (2) (a), (c) or (d)* of that Act—

(a) the number and nominal value of the shares so acquired by the company, acquired by another person in such circumstances and so charged respectively during the financial year;

(b) the maximum number and nominal value of shares which, having been so acquired by the company, acquired by another person in such circumstances or so charged (whether or not during the financial year) are held at any time by the company or that other person during that year;

5 (c) the number and nominal value of the shares so acquired by the company, acquired by another person in such circumstances or so charged (whether or not during that year) which are disposed of by the company or that other person or cancelled by the company during that year;

2 (d) where the number and nominal value of the shares of any particular description are stated in pursuance of any of the preceding paragraphs, the percentage of the called-up share capital which shares of that description represent;

10 (e) where any of the shares have been so charged, the amount of the charge in each case; and

15 (f) where any of the shares have been disposed of by the company or the person who acquired them in such circumstances for money or money's worth, the amount or value of the consideration in each case.

20 (2B) Any distribution by an investment company within the meaning of *Part IV* of the *Companies (Amendment) (No. 2) Act, 1982*, which reduces the amount of its net assets to less than the aggregate of its called-up share capital and undistributable reserves. In this subparagraph 'net assets' and 'called up share capital' have the same meanings as in *section 2* of the *Companies (Amendment) (No. 2) Act, 1982* and 'undistributable reserves' has the same meaning as in *section 46 (2)* of that Act."

25 27. The Ninth Schedule to the Principal Act is hereby amended by inserting—

(a) in the first column after "Register of directors and secretaries" the following: "Particulars relating to directors to be shown on all business letters of the company"; and

30 (b) in the second column after "Section 195" the following: "Section 196".

28. The Tenth Schedule to the Principal Act is hereby amended by deleting from the first and second columns thereof the following—

"130 Statutory meeting and statutory report."

SECOND SCHEDULE

Section 4.

35 FORMS OF MEMORANDUM OF ASSOCIATION OF A PUBLIC LIMITED COMPANY

PART I

A PUBLIC COMPANY LIMITED BY SHARES.

40 1. The name of the company is "The Northern Mining, public limited company".

2. The company is to be a public limited company.

3. The objects for which the company is established are the mining

of minerals of all kinds and the doing of all such other things as are incidental or conducive to the attainment of the above object.

4. The liability of the members is limited.

5. The share capital of the company is £30,000, divided into 30,000 shares of £1 each.

5

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

Names, Addresses and Descriptions of Subscribers	Number of Shares taken by each Subscriber
1. James Maher of in the County of Solicitor	5
2. John O'Brien of in the County of Engineer	375
3. Michael Nolan of in the County of Engineer	225
4. Patrick Hayes of in the County of Geologist	55
5. Paul McCarthy of in the County of Geologist	10
6. Thomas Kennedy of in the County of Accountant	30
7. Joseph O'Meara of in the County of Solicitor	15
Total Shares taken	715

Dated the day of, 19..... by another 10

Witness to the above signatures:

Name:

Address:

PART II

A PUBLIC COMPANY LIMITED BY GUARANTEE AND HAVING A SHARE 15
CAPITAL.

1. The name of the company is "The Southern Counties Tourist Development, public limited company".

2. The company is to be a public limited company.

3. The objects for which the company is established are the promotion of tourism in the southern counties of Ireland by providing facilities for tourists, and the doing of all such other things as are incidental or conducive to the attainment of the above object.

5 4. The liability of the members is limited.

5. Every member of the company undertakes to contribute to the assets of the company in the event of its being wound up while he is a member, or within one year afterwards, for payment of the debts and liabilities of the company contracted before he ceases to be a member, and the costs, charges and expenses of winding up, and for the adjustment of the rights of the contributories among themselves, such amount as may be required, not exceeding £25.

6. The share capital of the company shall consist of £30,000 divided into 30,000 shares of £1 each.

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

Names, Addresses and Descriptions of Subscribers	Number of Shares taken by each Subscriber
1. John Boland of	
in the County of	5
Solicitor	
2. Martin Cullen of	
in the County of	375
Hotel Proprietor	
3. Sean Keogh of	
in the County of	225
Engineer	
4. James Mangan of	
in the County of	55
Travel Agent	
5. Paul Roche of	
in the County of	10
Farmer	
6. Kevin O'Sullivan of	
in the County of	30
Architect	
7. Teresa O'Connor of	
in the County of	15
Housewife	
Total Shares taken	715

Dated the day of, 19.....

20 Witness to the above signatures:

Name:

Address:

THIRD SCHEDULE

REPEALS

PART I

Provisions of the Companies Act, 1963	Extent of repeal
Section 2(1) (General provision as to interpretation)	Definitions of "statutory meeting" and "statutory report".
Section 19 (Conclusiveness of certificate of incorporation)	Entire section
Section 48 (Restriction on alteration of terms mentioned in prospectus or statement in lieu of prospectus)	Entire section.
Section 63 (Power to issue shares at a discount)	Entire section
Section 130 (Statutory meeting and statutory report)	Entire section
Section 149 (Contents and form of accounts; computation and treatment of profits and losses)	Subsection (6)
Section 213 (Circumstances in which a company may be wound up by the court)	Paragraph (b)
Section 215 (Provisions as to applications for winding up)	Paragraph (b).
Section 216 (Powers of court on hearing petition)	Subsection (2).
First Schedule, Table A, Part I	In regulation 11 the words " , and the company shall also have a first and paramount lien on all shares (other than fully paid shares) standing registered in the name of a single person for all moneys immediately payable by him or his estate to the company".
First Schedule, Tábla A, Part I	In regulation 11 the words " , agus beidh túslian ceannasach ag an gcuideachta freisin ar gach scair (seachas scaireanna láníochta) a bheidh cláraithe in ainm duine aonair le haghaidh an airgid uile is infíochta láithreach aige féin, nó ag a eastát, leis an gcuideachta".
First Schedule, Table D	Part II

PART II

Provisions of the Companies (Amendment) Act, 1982	Extent of repeal
Section 3 (Particulars to be delivered with memorandum)	Subsection (6)

BILLE NA gCUIDEACHTAÍ (LEASÚ), 1982

COMPANIES (AMENDMENT) BILL, 1982

PART I

Provisions of the Companies Act, 1963

Extent of repeal

Section 2(1) (General provision as to prospectus or statement in lieu of prospectus)

Definitions of "statutory meeting" and "statutory statement"

Section 19 (Conclusiveness of certificate of incorporation)

Entire section

Section 45 (Restriction on alteration of terms of prospectus or statement in lieu of prospectus)

Entire section

Section 46 (Power to issue shares at a discount)

Entire section

Section 130 (Statutory meeting and statutory statement)

Entire section

Section 149 (Contents and form of accounts; computation and treatment of profits and losses)

Subsection (6)

Section 213 (Circumstances in which a company may be wound up by the court)

Paragraph (b)

Section 215 (Provisions as to applications for winding up)

Paragraph (b)

Section 216 (Powers of court on hearing application for winding up)

Subsection (2)

An Seanadóir Eoin Ó Riain a thíolaic,
10 Meitheamh, 1982Presented by Senator Eoin Ryan,
10th June, 1982

First Schedule, Table A, Part I

In regulation 11 of the words "and the company shall also have a first and paramount lien on all shares (other than fully paid shares) standing registered in the name of a single person for all moneys immediately payable by him or his estate to the company"

First Schedule, Table D

Part II

PART II

Provisions of the Companies (Amendment) Act, 1982

Extent of repeal

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