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PART 3

SHARE CAPITAL, SHARES AND CERTAIN OTHER INSTRUMENTS

CHAPTER 1

*Preliminary and interpretation***Interpretation (Part 3)****64.** (1) In this Part—

“capital conversion reserve fund”, in relation to a company, means the amount equivalent to the aggregate diminution in share capital consequential upon renominatisation of share capital under section 26 of the Economic and Monetary Union Act 1998;

“cash” includes funds in any currency or currencies;

“company capital”, in relation to a company, means—

(a) the aggregate value, expressed as a currency amount, of the consideration received by the company in respect of the allotment of shares of the company; and

(b) that part of the company’s undenominated capital constituted by the transfer of sums referred to in *sections 106(4) and 108(3)*,

and *subsection (2)* supplements this definition;

“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 in, or debentures of, 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;

“nominal value”, in relation to a share, means a monetary amount, expressed as an amount, multiple, fraction or percentage of any currency or currencies or combination thereof;

“parent public company” means a public limited company which has one or more private limited subsidiaries;

“private limited subsidiary” means a subsidiary that is a private company limited by shares but, for the purposes of this definition, a company shall not be regarded as a subsidiary if it is such only by virtue of *section 7(2)(a)(ii) or (e)*;

“redeemable shares” includes shares which are liable at the option of the company or the shareholder to be redeemed;

“securities” means—

(a) shares in a company;

- (b) debentures of a company, including debenture stock, bonds and any other debt instruments of a company whether constituting a charge on the assets of the company or not;
- (c) those classes of securities which are negotiable on the capital market, such as:
 - (i) shares in bodies corporate and other securities equivalent to shares in bodies corporate, partnerships or other entities, and depositary receipts in respect of shares;
 - (ii) bonds or other forms of securitised debt, including depositary receipts in respect of such securities;
 - (iii) any other securities giving the right to acquire or sell any such transferable securities or giving rise to a cash settlement determined by reference to transferable securities, currencies, interest rates or yields, commodities or other indices or measures with the exception of instruments of payment;

“share capital”, in relation to a company, means the aggregate amount or value of the nominal value of shares of the company;

“undenominated capital”, in relation to a company, means the amount of the company capital from time to time which is in excess of the nominal value of its issued shares and shall be deemed to include any sum transferred as referred to in *sections 106(4) and 108(3)*.

- (2) There is included in the definition of “company capital” in *subsection (1)* any amounts standing, immediately before the commencement of this section, to the credit of—
 - (a) the company’s share premium account (within the meaning of the prior Companies Acts);
 - (b) its capital redemption reserve fund (within the meaning of those Acts); and
 - (c) its capital conversion reserve fund.
- (3) For the purposes of this Part 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—
 - (a) cash received by the company; or
 - (b) a cheque received by the company in good faith which the directors have no reason for suspecting will not be paid; or
 - (c) the release of a liability of the company for a liquidated sum; or
 - (d) an undertaking to pay cash to the company on demand or at an identified or identifiable future date which the directors have no reason for suspecting will not be complied with.
- (4) In relation to the allotment or payment up of any shares in a company, references in this Act, other than in *section 69(12)(c)*, 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.

Powers to convert shares into stock, etc.

- 65.** (1) Each provision of this section applies save to the extent that the company's constitution provides otherwise.
- (2) A company may, by ordinary resolution—
- (a) convert any of its paid up shares into stock; and
 - (b) reconvert any stock into paid up shares of any denomination.
- (3) Subject to *subsection (4)*, the holders of stock may transfer the stock, or any part of it, in the same manner and subject to the same regulations as, and subject to which the shares from which the stock arose might, previously to conversion, have been transferred, or as near thereto as circumstances admit.
- (4) The directors of a company may from time to time fix the minimum amount of stock that is capable of being transferred but any such minimum so fixed shall not exceed the nominal amount of each share from which the stock arose.
- (5) Subject to *subsection (6)*, the holders of stock shall, according to the amount of stock held by them, have the same rights, privileges and advantages in relation to dividends, voting at meetings of the company and other matters as if they held the shares from which the stock arose.
- (6) No such right, privilege or advantage (except participation in the dividends and profits of the company and in the assets on winding up) shall be conferred by an amount of stock which would not, if existing in shares, have conferred that right, privilege or advantage.
- (7) Such of the regulations of a company as are applicable to paid up shares shall apply to stock of the company, and the words “share” and “shareholder” in those regulations shall be read as including “stock” and “stockholder”, respectively.

Shares

- 66.** (1) Shares in the capital of a company shall have a nominal value.
- (2) A company may allot shares—
- (a) of different nominal values;
 - (b) of different currencies;
 - (c) with different amounts payable on them; or
 - (d) with a combination of 2 or more of the foregoing characteristics.
- (3) Without prejudice to any special rights previously conferred on the holders of any existing shares or class of shares, any share in a company may be issued with such preferred, deferred or other special rights or such restrictions, whether in regard to

dividend, voting, return of capital or otherwise, as the company may from time to time by ordinary resolution determine.

- (4) Save to the extent that its constitution provides otherwise, a company may allot shares that are redeemable (which shall be known, and are referred to in this Act, as “redeemable shares”).
- (5) The shares or other interest of any member in a company shall be personal estate and shall not be of the nature of real estate.
- (6) Except as required by law, no person shall be recognised by a company as holding any share upon any trust and the company shall not be bound by or be compelled in any way to recognise (even when having notice of it)—
 - (a) any equitable, contingent, future or partial interest in any share or any interest in any fractional part of a share; or
 - (b) save only as this Act or other law otherwise provides, any other rights in respect of any share, except an absolute right to the entirety of it in the registered holder.
- (7) *Subsection (6)* shall not preclude the company from requiring a member or a transferee of shares to furnish the company with information as to the beneficial ownership of any share when such information is reasonably required by the company.
- (8) In *subsections (9) and (10)* “bearer instrument” means an instrument, in relation to shares of a company, which entitles or purports to entitle the bearer thereof to transfer the shares that are specified in the instrument by delivery of the instrument.
- (9) A company shall not have power to issue any bearer instrument.
- (10) If a company purports to issue a bearer instrument, the shares that are specified in the instrument shall be deemed not to have been allotted or issued, and the amount subscribed therefor (and in the case of a non-cash asset subscribed therefor, the cash value of that asset) shall be due as a debt of the company to the purported subscriber thereof.

Numbering of shares

- 67.** (1) Subject to *subsections (2) and (3)*, each share in a company shall be distinguished by its appropriate number.
- (2) If at any time, all the issued shares in a company or all the issued shares in it of a particular class are fully paid up and rank *pari passu* for all purposes, none of those shares need thereafter have a distinguishing number, so long as it—
 - (a) remains fully paid up; and
 - (b) ranks *pari passu* for all purposes with all shares of the same class for the time being issued and fully paid up.
 - (3) Where new shares are issued by a company on the terms that, within a period not exceeding 12 months, they will rank *pari passu* for all purposes with all the existing shares, or with all the existing shares of a particular class in the company, neither the

new shares nor the corresponding existing shares need have distinguishing numbers so long as all of them are fully paid up and rank *pari passu*.

- (4) However, in the circumstances mentioned in *subsection (3)*, the share certificates of the new shares shall, if not numbered, be appropriately worded or en faced.

CHAPTER 2

Offers of securities to the public

Limitation on offers of securities to the public

68. (1) Subject to the provisions of this section, a company shall not—

(a) make—

(i) any invitation to the public to subscribe for; or

(ii) any offer to the public of,

any shares, debentures or other securities of the company; or

(b) allot, or agree 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 or being the subject of an invitation to the public to subscribe for them.

(2) A company shall—

(a) neither apply to have securities (or interests in them) admitted to trading or to be listed on; nor

(b) have securities (or interests in them) admitted to trading or listed on, any market, whether a regulated market or not, in the State or elsewhere.

(3) *Subsection (1)* shall not apply to any of the following offers or allotments of debentures by a company (wherever they may be made)—

(a) an offer of debentures addressed solely to qualified investors;

(b) an offer of debentures addressed to fewer than 150 persons, other than qualified investors;

(c) an offer of debentures addressed to investors who acquire securities for a total consideration of at least €100,000 per investor, for each separate offer;

(d) an offer of debentures whose denomination per unit amounts to at least €100,000;

(e) an offer of debentures with a total consideration in the European Union less than €100,000, which shall be calculated over a period of 12 months;

(f) an allotment of debentures, or an agreement to make such an allotment, with a view to those debentures being the subject of any one or more of the offers referred to in *paragraphs (a) to (e)*,

and the reference in this subsection to an offer of debentures includes an invitation to

subscribe for them.

- (4) *Subsection (1)* shall not apply to—
- (a) an offer of shares by a company (of any amount or wherever it may be made), being an offer addressed to—
 - (i) qualified investors; or
 - (ii) 149 or fewer persons; or
 - (iii) both qualified investors and 149 or fewer other persons;
 - or
 - (b) an allotment of shares, or an agreement to make such an allotment, with a view to those shares being the subject of an offer referred to in *paragraph (a)*,
- and the reference in this subsection to an offer of shares includes an invitation to subscribe for them.
- (5) *Subsection (1)* shall not apply to an offer by a company of those classes of instruments which are normally dealt in on the money market (such as treasury bills, certificates of deposit and commercial papers) having a maturity of less than 12 months, and the reference in this subsection to an offer of instruments includes an invitation to subscribe for them.
- (6) A word or expression that is used in this section and is also used in the Prospectus (Directive 2003/71/EC) Regulations 2005 (S.I. No. 324 of 2005) shall have in this section the same meaning as it has in those Regulations.
- (7) For the purposes of *subsection (6)*, the Regulations referred to in that subsection shall have effect as if Regulation 8 were omitted therefrom.
- (8) Nothing in this section shall affect the validity of any allotment or sale of securities or of any agreement to allot or sell securities.
- (9) If a company contravenes *subsection (1)* or (2), the company and any officer of it who is in default shall be guilty of a category 2 offence.

CHAPTER 3

Allotment of shares

Allotment of shares

- 69.** (1) No shares may be allotted by a company unless the allotment is authorised, either specifically or pursuant to a general authority, by ordinary resolution or by the constitution of the company.
- (2) Without prejudice to *subsection (1)*, in the case of a company whose constitution states an authorised share capital, no shares may be allotted by the company unless those shares are comprised in the authorised but unissued share capital of the company.

- (3) An authorisation for the purposes of *subsection (1)* (whether conferred by an ordinary resolution or the constitution) may stipulate a period during which the allotment may occur; if it so stipulates, then allotments occurring outside that period are not authorised by it.
- (4) Save to the extent that the constitution of the company provides otherwise— (a) shares of a company may only be allotted by the directors of the company;
- (b) the directors of a company may allot, grant options over or otherwise dispose of shares 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.
- (5) Any director of a company who knowingly contravenes, or knowingly permits or authorises a contravention of, a preceding provision of this section shall be guilty of a category 3 offence.
- (6) Subject to *subsections (8) and (12)* and *section 70*, a company proposing to allot any shares—
- (a) shall not allot any of those shares, on any terms—
- (i) to any non-member, unless it has made an offer to each person who holds relevant shares, of the class concerned, in the company to allot to him or her, on the same or more favourable terms, a proportion of those relevant shares which is, as nearly as practicable, equal to the proportion in nominal value held by him or her of the aggregate of the shares of that class; or
- (ii) to any person who holds shares in the company, unless it has made an offer to each person who holds relevant shares, of the class concerned, in the company to allot to him or her, on the same terms, a proportion of those shares which is, as nearly as practicable, equal to the proportion in nominal value held by him or her of the aggregate of the relevant shares of that class;
- and
- (b) shall not allot any of those shares to any person unless the period during which any such offer may be accepted (not being less than 14 days) has expired or the company has received notice of the acceptance or refusal of every offer so made.
- (7) In—
- (a) *subsection (6)* “relevant shares”, in relation to a company, means shares in the company other than shares which as respects dividends and capital carry a right to participate only to a specified amount in a distribution;
- (b) *subsection (6)(a)(ii)* “non-member” means a person who is not a holder of shares (as that expression is to be read by virtue of *section 70(4)*) in the company.
- (8) Where a company’s constitution contains provisions which—
- (a) require that the company, when proposing to allot shares of a particular class, shall not allot those shares unless it makes an offer of those shares to existing holders of shares of that class; and

- (b) specify that the minimum period during which that offer may be accepted is not less than 14 days,
- then *subsection (6)* shall not apply to any allotments made in compliance with such provisions.
- (9) An offer which is required by—
- (a) *subsection (6)*; or
 - (b) the provisions of the company's constitution referred to in *subsection (8)*,
- to be made to any person shall be made by serving it on him or her in the same manner in which notices are authorised to be given by *sections 180, 181 and 218*.
- (10) Any such offer as is mentioned in *subsection (6)* or *(8)* shall not be withdrawn before the end of the period that the offer referred to in *subsection (6)* or, as the case may be, the provisions of the company's constitution referred to in *subsection (8)* specify as the period within which it may be accepted.
- (11) Nothing in *subsection (6)(b), (9)* or *(10)* shall invalidate provisions of the company's constitution referred to in *subsection (8)* by reason that those provisions require or authorise an offer thereunder to be made in contravention of one or more of those subsections, but, to the extent that those provisions require or authorise such an offer to be so made, they shall be of no effect.
- (12) *Subsection (6)* shall not apply—
- (a) to the extent that—
 - (i) the constitution of the company,
 - (ii) a special resolution, or
 - (iii) the terms of issue of already allotted shares,provides or provide (either generally or in respect of a particular allotment or class of allotments), to the extent so provided;
 - (b) to allotments of shares for a consideration wholly or partly paid for, otherwise than in cash;
 - (c) to allotments of shares to the subscriber or subscribers to the company's constitution upon the company's incorporation, being the shares taken by that subscriber or those subscribers before such incorporation;
 - (d) to allotments of shares to persons in pursuance of the terms of an employees' share scheme established by the company;
 - (e) to allotments of bonus shares.

Supplemental and additional provisions as regards allotments

- 70.** (1) Shares which a company has offered to allot to a holder of shares in the company may be allotted to that holder or anyone in whose favour that holder has renounced his or her right to their allotment without contravening *section 69(6)(b)*.

- (2) Notwithstanding that any authorisation conferred by a resolution or the constitution such as is mentioned in *section 69(1)* has expired, the directors of a company may allot shares in pursuance of an offer or agreement previously made by the company, if that authorisation enabled the company to make an offer or agreement which would or might require shares to be allotted after the authorisation's expiry.
- (3) For the purposes of *section 69* and this section—
- (a) “allot” includes “agreement to allot” (other than an agreement made subject to the passing of an ordinary or special resolution);
- (b) “shares” includes a right to subscribe for shares or to convert securities into shares,
- and with the effect that—
- (i) in the case of *paragraph (a)*, if an agreement to allot shares is entered into in compliance with *section 69, subsections (3), (4) and (6)* of that section shall not apply to an allotment of shares pursuant to that agreement; and
- (ii) in the case of *paragraph (b)*, if a right to subscribe for shares, or to convert securities into shares, is granted in compliance with *section 69, subsections (3), (4) and (6)* of that section shall not apply to an allotment of shares pursuant to the exercise of that right.
- (4) References in *section 69* and this section (however expressed) to the holder of shares or the holder of shares of any class shall be read as including references to any person who held shares or, as the case may be, shares of that class on any day within the period of 28 days ending with the day immediately preceding the date of the offer which is specified by the directors of the company concerned as being the record date for the purposes of the offer.
- (5) A resolution of a company to give, vary, revoke or renew an authority for the purposes of *section 69(1)* may, notwithstanding that it alters the company's constitution, be an ordinary resolution.
- (6) Where a company allots shares, the shares shall be taken, for the purposes of this Act, 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.
- (7) Where a company allots shares, it shall, within 30 days after the date of allotment, deliver particulars of the allotment in the prescribed form to the Registrar.
- (8) If a company fails to comply with *subsection (7)*, the company and any officer of it who is in default shall be guilty of a category 4 offence.
- (9) Nothing in *section 69* or this section shall affect the validity of any allotment of shares.
- (10) Where there is a contravention of *section 69(6)*, 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 *section 69(6)* for any loss, damage, costs or expenses which that person

has sustained or incurred by reason of the contravention.

- (11) No proceedings to recover any such loss, damage, costs or expenses shall be commenced after the expiration of 2 years after the date of the delivery to the Registrar of the return of allotments in question or, where shares are agreed to be allotted, the agreement.
- (12) If, before the commencement of *section 69*, the directors of a company have been granted authority, pursuant to section 20 of the Act of 1983, to allot relevant securities (within the meaning of that section 20) and that authority is in force immediately before that commencement—
- (a) neither *section 69* nor this section shall apply to the allotment, after that commencement, of relevant securities by the directors pursuant to that authority (which authority shall, in accordance with its terms, be taken to remain in force); and
- (b) section 20 (other than subsections (4) and (9) thereof), and sections 23 and 24, of the Act of 1983 shall apply to that authority and any allotment of relevant securities on foot thereof,

but, on the expiry of that authority, *section 69* and this section shall apply to any allotment thereafter of shares in the company (or the grant of any right to subscribe for shares in the company or to convert securities into such shares).

- (13) For the purposes of *subsection (12)*—
- (a) “Act of 1983” means the Companies (Amendment) Act 1983;
- (b) the reference to the grant of an authority includes a reference to the conferral, by the articles of the company, of an authority; and
- (c) the exclusion of the application of section 20(4) of the Act of 1983 by *paragraph (b)* of *subsection (12)* shall not be taken as preventing the renewal of the authority concerned under *section 69* and this section, but if that authority is so renewed, *section 69* and this section shall apply to any allotment, or the grant of any right, as mentioned in *subsection (12)*, that occurs after that renewal of authority on foot thereof.

Payment of shares

- 71.** (1) Shares may be paid up in money or money’s worth (including goodwill and expertise).
- (2) Shares of a company shall not be allotted at a discount to their nominal value.
- (3) Where shares are allotted in contravention of *subsection (2)*, the allottee shall be liable to pay the company concerned an amount equal to the amount of the discount and interest thereon at the appropriate rate.
- (4) *Subsections (1)* and *(2)* shall not prevent a company from allotting bonus shares as provided by this Part.
- (5) Subject to *sections 72, 73* and *75*, any value received in respect of the allotment of a share in excess of its nominal value shall be credited to and form part of

undenominated capital of the company and, for that purpose, shall be transferred to an account which shall be known, and in this Act is referred to, as the “share premium account”.

- (6) 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,
- the first-mentioned person in this subsection also shall be liable to pay that amount (jointly and severally with any other person so liable) unless either that first-mentioned person is a purchaser for value and, at the time of the purchase, he or she did not have actual notice of the contravention or he or she derived title to the shares (directly or indirectly) from a person who became a holder of them after the contravention and was not so liable.
- (7) Where a company contravenes any of the provisions of this section, the company and any officer of it who is in default shall be guilty of a category 3 offence.

Restriction of *section 71(5)* in the case of mergers

- 72.** (1) This section applies where the issuing company has secured at least a 90 per cent equity share capital holding in another company in pursuance of an arrangement providing for the allotment of equity share capital in the issuing company, on terms that the consideration for the shares allotted is to be provided—
- (a) by the issue or transfer to the issuing company of equity shares in the other company; or
 - (b) by the cancellation of any such shares not held by the issuing company.
- (2) If the equity shares in the issuing company, allotted in pursuance of the arrangement in consideration for the acquisition or cancellation of equity shares in the other company, are issued at a premium *section 71(5)* does not apply to the premiums on those shares.
- (3) Where the arrangement also provides for the allotment of any shares in the issuing company on terms that the consideration for those shares is to be provided by the issue or transfer to the issuing company of non-equity shares in the other company or by the cancellation of any such shares in that company not held by the issuing company, the restriction on the application of *section 71(5)* provided by *subsection (2)* extends to any shares in the issuing company allotted on those terms in pursuance of the arrangement.
- (4) Subject to *subsection (5)*, the issuing company (“company X”) is to be regarded for purposes of this section as having secured at least a 90 per cent equity share capital holding in another company (“company Y”) in pursuance of such an arrangement as is mentioned in *subsection (1)* if in consequence of an acquisition or cancellation of equity shares in company Y (in pursuance of that arrangement)—
- (a) company X holds equity shares in company Y (whether all or any of those shares

- were acquired in pursuance of that arrangement, or not); and
- (b) the aggregate nominal value of the equity shares so held by company X equals 90 per cent or more of the nominal value of company Y's equity share capital (excluding any shares in company Y held as treasury shares).
- (5) Where the equity share capital of the other company is divided into different classes of shares, this section does not apply unless the requirements of *subsection (1)* are satisfied in relation to each of those classes of shares taken separately.
 - (6) Shares held by a company which is the issuing company's holding company or subsidiary, or a subsidiary of the issuing company's holding company, or by its or their nominees, are to be regarded for purposes of this section as held by the issuing company.
 - (7) In relation to a company and its shares and capital, the following definitions apply for purposes of this section—
 - (a) "equity share capital" means the company's issued share capital excluding any part of it which, neither as respects dividends nor as respects capital, carries any right to participate beyond a specified amount in a distribution;
 - (b) "equity shares" means shares comprised in the company's equity share capital; and
 - (c) "non-equity shares" means shares (of any class) not so comprised,and "arrangement" means any agreement, scheme or arrangement (including an arrangement sanctioned under *section 453* or *601*).
 - (8) This section does not apply if the issue of shares took place before the commencement of this section.

Restriction of *section 71(5)* in the case of group reconstructions

- 73.** (1) This section applies where the issuing company—
- (a) is a wholly-owned subsidiary of a body corporate (the "holding company"); and
 - (b) allots shares to the holding company or to another wholly-owned subsidiary of the holding company in consideration for the transfer to the issuing company of assets other than cash, being assets of any body corporate (the "transferor") which is a member of the group which comprises the holding company and all its wholly-owned subsidiaries.
- (2) Where the shares in the issuing company, allotted in consideration for the transfer, are issued at a premium, the issuing company is not required by *section 71(5)* to credit to undenominated capital any amount in excess of the minimum premium value.
 - (3) In *subsection (2)* the "minimum premium value" means the amount (if any) by which the base value of the consideration for the shares allotted exceeds the aggregate nominal value of those shares.
 - (4) For the purposes of *subsection (3)*, the base value of the consideration for the shares

allotted is the amount by which the base value of the assets transferred exceeds the base value of any liabilities of the transferor assumed by the issuing company as part of the consideration for the assets transferred.

- (5) For the purposes of *subsection (4)*—
- (a) the base value of assets transferred is to be taken as—
 - (i) the cost of those assets to the transferor; or
 - (ii) the amount at which those assets are stated in the transferor’s accounting records immediately before the transfer, whichever is the less,and
 - (b) the base value of the liabilities assumed is to be taken as the amount at which they are stated in the transferor’s accounting records immediately before the transfer.
- (6) *Section 72* shall not apply to a case falling within this section.

Supplementary provisions in relation to *sections 72 and 73*

- 74.** (1) An amount corresponding to one representing the premiums or part of the premiums on shares issued by an issuing company which, by virtue of *section 72* or *73*, is not included in the issuing company’s undenominated capital may also be disregarded in determining the amount at which any shares or other consideration provided for the shares issued is to be included in the company’s balance sheet.
- (2) References in *sections 72* and *73* (however expressed) to—
- (a) the acquisition by a company of shares in a body corporate; and
 - (b) the issue or allotment of shares to, or the transfer of shares to or by, a company or other body corporate,
- include (respectively) the acquisition of any of those shares by, and the issue or allotment or (as the case may be) the transfer of any of those shares to or by, nominees of that company or body corporate; and the reference in *section 72* to the company transferring the shares is to be read accordingly.
- (3) References in *sections 72* and *73* to the transfer of shares in a body corporate include the transfer of a right to be included in the body corporate’s register of members in respect of those shares.

Restriction of *section 71(5)* in the case of shares allotted in return for acquisition of issued shares of body corporate

- 75.** (1) This section applies where—
- (a) a company (the “issuer”) allots and issues shares to the shareholders of a body corporate in consideration for the acquisition by the issuer of all of the issued shares in the body corporate (the “acquired shares”) such that the body corporate becomes the wholly-owned subsidiary of the issuer;

- (b) the consolidated assets and liabilities of the issuer immediately after those shares are issued are exactly, except for any permitted cash payments, the same as—
 - (i) if the body corporate was itself a holding company, the consolidated assets and liabilities of the body corporate immediately before those shares were issued, or
 - (ii) if the body corporate was not a holding company, the assets and liabilities of the body corporate immediately before those shares were issued;
 - (c) the absolute and relative interests that the shareholders in the body corporate have in the consolidated assets and liabilities of the issuer are in proportion to (or as nearly as may be in proportion to) the interest they had in—
 - (i) if the body corporate was itself a holding company, the consolidated assets and liabilities of the body corporate immediately before the shares were issued;
 - (ii) if the body corporate was not a holding company, the assets and liabilities of the body corporate immediately before the shares were issued;
- and
- (d) the issuer does not account for its investment in the body corporate at fair value in the issuer's entity financial statements.
- (2) Where the shares in the issuer allotted in consideration for the acquisition of the acquired shares are issued at a premium, the issuer—
- (a) is not required by *section 71(5)* to credit to undenominated capital any amount in excess of the minimum premium value; and
 - (b) may disregard any such amount in determining the amount at which the shares or other consideration provided for the acquired shares is to be included in the issuer's entity financial statements and, if such are prepared, group financial statements.
- (3) Nothing in this section shall permit any share in the issuer to be issued at a discount to the share's nominal value.
- (4) In this section—
- “base value of the consideration”, in relation to shares allotted by an issuer, means the carrying value of the assets and liabilities that would be shown in the balance sheet of the body corporate if that body corporate were to prepare entity financial statements in accordance with *Part 6* immediately before the issue of the shares;
- “consolidated assets and liabilities”, in relation to a holding company, means the assets and liabilities included in the group financial statements of the holding company prepared under *section 293*;
- “minimum premium value”, in relation to shares allotted, means the amount (if any) by which the base value of the consideration for the acquisition of the acquired shares exceeds the aggregate nominal value of the shares issued;

“permitted cash payments” means—

- (a) cash payments to shareholders of the body corporate in relation to fractional share entitlements in the body corporate that are not being replicated in the issuer, whether on account of different nominal values of shares or otherwise;
- (b) such cash payments as may be ordered or permitted by the court, including by reason of the imposition on the issuer of disproportionate expense arising from compliance with requirements with respect to a prospectus or similar requirements.

Treatment of premiums paid on shares issued before a certain date

- 76.** (1) Where before 1 April 1964 a company had issued any shares at a premium, *section 71(5)* (and the exceptions to that provision in *sections 72 to 75*) shall apply as if the shares had been issued after that date, but this is subject to *subsection (2)*.
- (2) Where any part of a premium referred to in *subsection (1)* had been applied as mentioned in *section 62(2)* of the Act of 1963 such that it did not, on 1 April 1964, form an identifiable part of the company’s reserves (within the meaning of the Sixth Schedule to the Act of 1963) then that part shall continue to be disregarded in determining the sum to be included in the share premium account.

Calls on shares

- 77.** (1) Each provision of this section and of *section 78* applies save to the extent that the company’s constitution provides otherwise.
- (2) Subject to *subsection (3)*, the directors of a company may from time to time make calls upon the members in respect of any moneys unpaid on their shares (whether on account of the nominal value of the shares or by way of premium).
- (3) *Subsection (2)* does not apply to shares where the conditions of allotment of them provide for the payment of moneys in respect of them at fixed times.
- (4) Each member shall (subject to receiving at least 30 days’ notice specifying the time or times and place of payment) pay to the company, at the time or times and place so specified, the amount called on the shares.
- (5) A call may be revoked or postponed, as the directors of the company may determine.
- (6) A call shall be deemed to have been made at the time when the resolution of the directors authorising the call was passed and may be required to be paid by instalments.
- (7) The joint holders of a share shall be jointly and severally liable to pay all calls in respect of it.
- (8) If a sum called in respect of a share is not paid before or on the day appointed for payment of it, the person from whom the sum is due shall pay interest on the sum from the day appointed for payment of it to the time of actual payment of such rate, not exceeding the appropriate rate, as the directors of the company may determine,

but the directors may waive payment of such interest wholly or in part.

Supplemental provisions in relation to calls

- 78.** (1) Any sum which, by the terms of issue of a share, becomes payable on allotment or at any fixed date (whether on account of the nominal value of the share or by way of premium) shall, for the purposes of this Act, be deemed to be a call duly made and payable on the date on which, by the terms of issue, that sum becomes payable.
- (2) In case of non payment of such a sum, all the relevant provisions of this Act as to payment of interest and expenses, forfeiture or otherwise, shall apply as if such sum had become payable by virtue of a call duly made and notified.
- (3) The directors of a company may, on the issue of shares, differentiate between the holders of different classes as to the amount of calls to be paid and the times of payment.
- (4) The directors of a company may, if they think fit—
- (a) receive from any member willing to advance such moneys, all or any part of the moneys uncalled and unpaid upon any shares held by him or her; and
- (b) pay, upon all or any of the money so advanced (until the amount concerned would, but for such advance, become payable) interest at such rate (not exceeding, unless the company in a general meeting otherwise directs, the appropriate rate) as may be agreed upon between the directors and the member paying such moneys in advance.

Further provisions about calls (different times and amounts of calls)

- 79.** Save to the extent that the company's constitution provides otherwise, a company may—
- (a) make arrangements on the issue of shares for a difference between the shareholders in the amounts and times of payment of calls on their shares;
- (b) accept from any member the whole or a part of the amount remaining unpaid on any shares held by him or her, although no part of that amount has been called up;
- (c) pay a dividend in proportion to the amount paid up on each share where a larger amount is paid up on some shares than on others; and
- (d) by special resolution determine that any portion of its share capital which has not been already called up shall not be capable of being called up except in the event and for the purposes of the company being wound up; upon the company doing so, that portion of its share capital shall not be capable of being called up except in that event and for those purposes.

Lien

- 80.** (1) Each provision of this section applies save to the extent that the company's constitution provides otherwise.
- (2) A company shall have a first and paramount lien on every share (not being a fully paid

- share) for all moneys (whether immediately payable or not) called, or payable at a fixed time, in respect of that share.
- (3) The directors of a company may at any time declare any share in the company to be wholly or in part exempt from *subsection (2)*.
 - (4) A company's lien on a share shall extend to all dividends payable on it.
 - (5) A company may sell, in such manner as the directors of the company think fit, any shares on which the company has a lien, but no sale shall be made unless—
 - (a) a sum in respect of which the lien exists is immediately payable; and
 - (b) the following conditions are satisfied.
 - (6) Those conditions are—
 - (a) a notice in writing, stating and demanding payment of such part of the amount in respect of which the lien exists as is immediately payable, has been given to the registered holder for the time being of the share, or the person entitled thereto by reason of his or her death or bankruptcy; and
 - (b) a period of 14 days after the date of giving of that notice has expired.
 - (7) The following provisions apply in relation to a sale referred to in *subsection (5)*—
 - (a) to give effect to any such sale, the directors may authorise some person to transfer the shares sold to the purchaser of them;
 - (b) the purchaser shall be registered as the holder of the shares comprised in any such transfer;
 - (c) the purchaser shall not be bound to see to the application of the purchase money, nor shall his or her title to the shares be affected by any irregularity or invalidity in the proceedings in reference to the sale; and
 - (d) the proceeds of the sale shall be received by the company and applied in payment of such part of the amount in respect of which the lien exists as is immediately payable, and the residue, if any, shall (subject to a like lien for sums not immediately payable as existed upon the shares before the sale) be paid to the person entitled to the shares at the date of the sale.

Forfeiture of shares

- 81.** (1) Each provision of this section applies save to the extent that the company's constitution provides otherwise.
- (2) If a member of a company fails to pay any call or instalment of a call on the day appointed for payment of it, the directors of the company may, at any time thereafter during such time as any part of the call or instalment remains unpaid, serve a notice on the member requiring payment of so much of the call or instalment as is unpaid, together with any interest which may have accrued.
 - (3) That notice shall—

- (a) specify a further day (not earlier than the expiration of 14 days after the date of service of the notice) on or before which the payment required by the notice is to be made; and
 - (b) state that, if the amount concerned is not paid by the day so specified, the shares in respect of which the call was made will be liable to be forfeited.
- (4) If the requirements of that notice are not complied with, any share in respect of which the notice has been served may at any time after the day so specified (but before, should it occur, the payment required by the notice has been made) be forfeited by a resolution of the directors of the company to that effect.
- (5) A forfeited share may be sold or otherwise disposed of on such terms and in such manner as the directors of the company think fit, and at any time before a sale or disposition the forfeiture may be cancelled on such terms as the directors think fit.
- (6) A person whose shares have been forfeited shall cease to be a member of the company in respect of the forfeited shares, but shall, notwithstanding, remain liable to pay to the company all moneys which, at the date of forfeiture, were payable by him or her to the company in respect of the shares, but his or her liability shall cease if and when the company shall have received payment in full of all such moneys in respect of the shares.
- (7) A statement in writing that the maker of the statement is a director or the secretary of the company, and that a share in the company has been duly forfeited on a date stated in the statement, shall be conclusive evidence of the facts stated in it as against all persons claiming to be entitled to the share.
- (8) The following provisions apply in relation to a sale or other disposition of a share referred to in *subsection (5)*:
- (a) the company may receive the consideration, if any, given for the share on the sale or other disposition of it and may execute a transfer of the share in favour of the person to whom the share is sold or otherwise disposed of (the “disponee”);
 - (b) upon such execution, the disponee shall be registered as the holder of the share; (c) the disponee shall not be bound to see to the application of the purchase money, if any, nor shall his or her title to the share be affected by any irregularity or invalidity in the proceedings in reference to the forfeiture, sale or disposal of the share.

Financial assistance for acquisition of shares

- 82.** (1) In *subsection (2)* “acquisition”, in relation to shares, means acquisition by subscription, purchase, exchange or otherwise.
- (2) It shall not be lawful for a company to give any financial assistance for the purpose of an acquisition made or to be made by any person of any shares in the company, or, where the company is a subsidiary, in its holding company.
- (3) *Subsection (2)* is subject to *subsections (5) and (6)*.

- (4) The prohibition in *subsection (2)* applies whether the financial assistance is given—
- (a) directly or indirectly; or
 - (b) by means of a loan or guarantee, the provision of security or otherwise.
- (5) *Subsection (2)* does not prohibit the giving of financial assistance in relation to the acquisition of shares in a company or its holding company if—
- (a) the company's principal purpose in giving the assistance is not to give it for the purpose of any such acquisition; or
 - (b) the giving of the assistance for that purpose is only an incidental part of some larger purpose of the company,
- and the assistance is given in good faith in the interests of the company.
- (6) Without prejudice to the generality of *subsection (5)*, *subsection (2)* does not prohibit—
- (a) the giving of financial assistance in accordance with the Summary Approval Procedure;
 - (b) the payment by a company of a dividend or making by it of any distribution out of profits of the company available for distribution;
 - (c) the discharge by a company of a liability lawfully incurred by it;
 - (d) the—
 - (i) purchase under *section 105*; or
 - (ii) redemption under *section 105* or *108*,of own shares or the giving of financial assistance, by means of a loan or guarantee, the provision of security or otherwise, for the purpose of such purchase or redemption;
 - (e) where the lending of money is part of the ordinary business of the company, the lending of money by a company in the ordinary course of its business;
 - (f) the provision by a company, in accordance with any scheme for the time being in force, of money for the purchase of, or subscription for, fully paid shares in the company or its holding company, being a purchase or subscription of or for shares to be held 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;
 - (g) the making by a company of loans to persons, other than directors, *bona fide* in the employment of the company or any subsidiary of the company with a view to enabling those persons to purchase or subscribe for fully paid shares in the company or its holding company to be held by themselves as beneficial owners thereof;
 - (h) the giving of financial assistance—

- (i) by means of a loan or guarantee, the provision of security or otherwise to discharge the liability under, or effect that which is commonly known as a refinancing of, any arrangement or transaction that gave rise to the provision of financial assistance, being financial assistance referred to in *subsection (2)* that has already been given by the company in accordance with the Summary Approval Procedure or section 60(2) of the Act of 1963; or
- (ii) by means of any subsequent loan or guarantee, provision of security or otherwise to effect a refinancing of—
 - (I) refinancing referred to *subparagraph (i)*; or
 - (II) refinancing referred to in this subparagraph that has been previously effected (and this subparagraph shall be read as permitting the giving of financial assistance to effect such subsequent refinancing any number of times);
- (i) the making or giving by a company of one or more representations, warranties or indemnities to a person (or any affiliate of, or person otherwise connected with, the first-mentioned person or a director of such an affiliate or connected person that is a body corporate) who has purchased or subscribed for, or proposes to purchase or subscribe for, shares in the company or its holding company for the purpose of or in connection with that purchase or subscription;
- (j) the payment by a company of fees and expenses of—
 - (i) the advisers to any subscriber for, or purchaser of, shares in the company that are incurred in connection with his or her subscription for, or purchase of, such shares; or
 - (ii) the advisers to the company or its holding company that are incurred in connection with that subscription or purchase;
- (k) the incurring of any expense by a company in order to facilitate the admission to, or the continuance of, a trading facility of securities of its holding company on a stock exchange or securities market, including the expenses associated with the preparation and filing of documents required under the laws of any jurisdiction in which the securities in question are admitted to trading or are afforded a trading facility;
- (l) the incurring of any expenses by a company in order to ensure compliance by the company or its holding company with the Irish Takeover Panel Act 1997 or an instrument thereunder or any measures for the time being adopted by the State to implement Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids;
- (m) the reimbursement by a private limited subsidiary of an offeree (within the meaning of the Irish Takeover Panel Act 1997) of expenses of an offeror (within the meaning of that Act) pursuant to an agreement approved by, or on terms approved by, the Irish Takeover Panel;
- (n) in connection with an allotment of shares by a parent public company, the

payment by a private limited subsidiary of that company of commissions, not exceeding 10 per cent of the money received in respect of such allotment, to intermediaries, and the payment by that subsidiary of professional fees;

- (o) to the extent that provision of this kind is not authorised by *paragraph (f) or (g)*, the provision of financial assistance by a holding company or a subsidiary of it in connection with the holding company or subsidiary purchasing or subscribing for shares in the holding company on behalf of—
 - (i) the present or former employees of the holding company or any subsidiary of it;
 - (ii) an employees' share scheme; or
 - (iii) an employee share ownership trust referred to in section 519 of the Taxes Consolidation Act 1997.
- (7) Subject to *subsection (8)*, a private limited subsidiary shall not provide financial assistance in accordance with the Summary Approval Procedure for the purpose of the acquisition of shares in its parent public company.
- (8) The Minister may, by regulations, specify circumstances in which a private limited subsidiary, in cases falling within *subsection (7)*, may avail itself of the Summary Approval Procedure.
- (9) Any transaction in contravention of this section shall be voidable at the instance of the company against any person (whether a party to the transaction or not) who had notice of the facts which constitute such contravention.
- (10) Nothing in this section shall affect the operation of *sections 84 to 87*.
- (11) If a company contravenes this section, the company and any officer of it who is in default shall be guilty of a category 2 offence.

CHAPTER 4

Variation in capital

Variation of company capital

- 83.** (1) Save to the extent that its constitution otherwise provides, a company may, by ordinary resolution, do any one or more of the following, from time to time—
- (a) consolidate and divide all or any of its shares into shares of a larger nominal value than its existing shares;
 - (b) subdivide its shares, or any of them, into shares of a smaller nominal value, so however, that in the subdivision the proportion between the amount paid and the amount, if any, unpaid on each reduced share shall be the same as it was in the case of the share from which the reduced share is derived;
 - (c) increase the nominal value of any of its shares by the addition to them of any undenominated capital;

- (d) reduce the nominal value of any of its shares by the deduction from them of any part of that value, subject to the crediting of the amount of the deduction to undenominated capital, other than the share premium account;
 - (e) convert any undenominated capital into shares for allotment as bonus shares to holders of existing shares;
 - (f) in the case of a company whose constitution states an authorised share capital (in addition to its power to do any of the foregoing things)—
 - (i) increase its share capital by new shares of such amount as it thinks expedient; or
 - (ii) cancel shares of its share capital which, at the date of the passing of the resolution, have not been taken or agreed to be taken by any person, and diminish the amount of its share capital by the amount of the shares so cancelled.
- (2) A cancellation of share capital under *subsection (1)(f)(ii)* shall be deemed not to be a reduction of company capital within the meaning of this Act.
- (3) Save to the extent that its constitution otherwise provides, a company may, by special resolution, and subject to the provisions of this Act governing the variation of rights attached to classes of shares and the amendment of a company's constitution, convert any of its shares into redeemable shares.
- (4) Such a conversion shall not have effect with respect to any shares, the holder of which notifies the company, before the date of conversion, of his or her unwillingness to have his or her shares converted but, subject to that and the other provisions of this section, the conversion shall have effect according to its terms.
- (5) *Subsection (4)* shall not, where a shareholder objects to a conversion, prejudice any right he or she may have under this Act or otherwise to invoke the jurisdiction of the court to set aside the conversion or otherwise provide relief in respect of it.
- (6) A company shall deliver particulars, in the prescribed form, of any resolution referred to in *subsection (1)* to the Registrar within 30 days after the date of its being passed by the company.
- (7) If a company contravenes *subsection (6)*, the company and any officer of it who is in default shall be guilty of a category 3 offence.

Reduction in company capital

- 84.** (1) Save to the extent that its constitution otherwise provides, a company may, subject to the provisions of this section and *sections 85 to 87*, reduce its company capital in any way it thinks expedient and, without prejudice to the generality of the foregoing, may thereby—
- (a) extinguish or reduce the liability on any of its shares in respect of share capital not paid up;
 - (b) either with or without extinguishing or reducing liability on any of its shares,

cancel any paid up company capital which is lost or unrepresented by available assets; or

- (c) either with or without extinguishing or reducing liability on any of its shares, pay off any paid up company capital which is in excess of the wants of the company.
- (2) A reduction of company capital under this section shall be effected either by the company—
- (a) employing the Summary Approval Procedure; or
 - (b) passing a special resolution that is confirmed by the court.
- (3) Where the reduction has been approved by the Summary Approval Procedure, the reduction shall take effect—
- (a) if no date is specified in that behalf in the special resolution referred to in *section 202(1)(a)(i)*, on the expiry of 12 months after the date of the passing of the special resolution; or
 - (b) if such a date is so specified, on that date.
- (4) A company shall not purport to reduce its company capital otherwise than as provided for by this section.
- (5) Any transaction in contravention of this section shall be voidable at the instance of the company against any person (whether a party to the transaction or not) who had actual notice of the facts which constitute such contravention.
- (6) If a company contravenes this section, the company and any officer of it who is in default shall be guilty of a category 3 offence.

Application to court for confirming order, objections by creditors and settlement of list of such creditors

- 85.** (1) Where a company has passed a special resolution under *section 84(2)(b)* for reducing its company capital it may apply to the court for an order confirming the resolution.
- (2) A company which proposes to apply to the court for such an order shall cause notice of the passing of the resolution—
- (a) to be advertised once at least in one daily newspaper circulating in the district where the registered office or principal place of business of the company is situated; and
 - (b) to be notified by ordinary post to all creditors of the company who are resident, or have their principal place of business, outside the State,
- and no further advertisement of the passing of the resolution shall be required.
- (3) In determining any preliminary application for directions as to the hearing of an application under this section, the court shall have regard to compliance by the company with the requirements of *subsection (2)*.
- (4) Where the proposed reduction of the company's company capital involves either

diminution of liability in respect of unpaid company capital, or the payment to any shareholder of any paid up company capital, and in any other case if the court so directs, the following provisions shall have effect (but subject to *subsection (5)*)—

- (a) every creditor of the company who—
 - (i) at the date fixed by the court, is entitled to a debt or claim that, if that date were the commencement of the winding up of the company, would be admissible in proof against the company; and
 - (ii) can credibly demonstrate that the proposed reduction in company capital would be likely to put the satisfaction of that debt or claim at risk, and that no adequate safeguards have been obtained from the company,is entitled to object to the reduction,
- (b) the court shall settle a list of creditors entitled to object, and for that purpose may publish notices fixing a day or days within which creditors are to claim to be entered on the list or are to be excluded from the right of objecting to the reduction of company capital, and
- (c) where a creditor entered on the list whose debt or claim is not discharged or has not terminated does not consent to the confirmation, the court may, if it thinks fit, dispense with the consent of that creditor, on the company securing payment of his or her debt or claim by appropriating, as the court may direct, the following amount—
 - (i) if the company admits the full amount of the debt or claim, or, though not admitting it, is willing to provide for it, then the full amount of the debt or claim;
 - (ii) if the company does not admit and is not willing to provide for the full amount of the debt or claim, or, if the amount is contingent or not ascertained, then an amount fixed by the court after the like inquiry and adjudication as if the company were being wound up by the court.
- (5) Where a proposed reduction of company capital involves either the diminution of any liability in respect of unpaid company capital or the payment to any shareholder of any paid up company capital, the court may, if, having regard to any special circumstances of the case, it thinks proper so to do, direct that *subsection (4)* shall not apply as regards any class or any classes of creditors.
- (6) If satisfied that the following requirement is satisfied, the court may make an order confirming the resolution on such terms and conditions as it thinks fit.
- (7) That requirement is that, in relation to every creditor of the company who, under this section is entitled to object to the confirmation, either—
 - (a) the creditor's consent to the confirmation has been obtained, or
 - (b) the creditor's debt or claim has been discharged or has terminated, or has been secured.
- (8) Where the court makes an order confirming the resolution, it may make an order

requiring the company to publish, as the court directs, the reasons for reduction of its company capital or such other information in regard thereto as the court may think expedient, with a view to giving proper information to the public, and if the court thinks fit, the causes which led to that reduction.

- (9) References in this section to a debt or claim having terminated are references to the debt or claim ceasing to be enforceable or to its otherwise determining.

Registration of order and minute of reduction

86. (1) On the doing of both of the following—

- (a) the production to the Registrar of an order of the court under *section 85* confirming the resolution of the company with respect to reduction of its company capital; and
- (b) the delivery to the Registrar of a copy of the order and of a minute approved by the court showing, with respect to the company capital of the company as altered by the order—
 - (i) the amount of the share capital;
 - (ii) the number of shares into which it is to be divided and the amount of each share; and
 - (iii) the amount, if any, at the date of the registration deemed to be paid up on each share,

the Registrar shall register the order and minute.

- (2) On the registration of the order and minute and not before, the resolution for reducing company capital as confirmed by the order so registered shall take effect.
- (3) Notice of the registration of the order and minute shall be published in such manner as the court may direct.
- (4) The Registrar shall issue a certificate with respect to the registration of the order and minute, and that certificate shall be conclusive evidence that all the requirements of this Act relating to reduction of company capital have been complied with, and that the share capital of the company is such as is stated in the minute.
- (5) The minute, when registered, shall be deemed to be substituted for the corresponding part of the constitution of the company and shall be valid and capable of amendment as if it had been originally contained in it.
- (6) The substitution of any such minute for part of the constitution of the company shall be deemed to be an amendment of the constitution within the meaning of *section 37(2)*.

Liability of members in respect of reduced calls

87. (1) In this section—

“confirmation” means confirmation by the court under *section 85* of a resolution for

reduction of company capital;

“minute” means the minute referred to in *section 86(1)(b)*.

- (2) Subject to *subsection (3)*, in the case of a reduction of company capital where future calls have been reduced, a member of the company, past or present, shall not be liable in respect of any share to any call or contribution exceeding in amount the difference, if any, between the amount of the share, as fixed by the minute and the amount paid, or the reduced amount, if any, which is to be deemed to have been paid, on the share, as the case may be.
- (3) If any creditor entitled, in respect of any debt or claim, to object to the confirmation, is, by reason of his or her not being aware of the proceedings for the confirmation or of their nature and effect with respect to his or her debt or claim, not entered on the list of creditors, and, after the reduction, the company is unable, within the meaning of the provisions of this Act relating to winding up by the court, to pay the amount of his or her debt or claim, then—
 - (a) every person who was a member of the company at the date of the delivery for registration of the order in respect of the confirmation and the minute, shall be liable to contribute for the payment of that debt or claim an amount not exceeding the amount which he or she would have been liable to contribute if the company had commenced to be wound up on the day before that date; and
 - (b) if the company is wound up, the court, on the application of any such creditor and proof of his or her not being aware as mentioned in this subsection may, if it thinks fit, settle accordingly a list of persons so liable to contribute, and make and enforce calls and orders on the contributories settled on the list, as if they were ordinary contributories in a winding up.
- (4) Nothing in this section shall affect the rights of the contributories among themselves.
- (5) If any officer of the company—
 - (a) intentionally conceals the name of any creditor entitled to object to the confirmation; or
 - (b) intentionally misrepresents the nature or amount of the debt or claim of any creditor,

he or she shall be guilty of a category 2 offence.

Variation of rights attached to special classes of shares

- 88.** (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, whether or not the company is being wound up.
- (2) Where the rights are attached to a class of shares in the company otherwise than by the constitution, and the constitution does not contain provisions with respect to the variation of the rights, those rights may be varied if, but only if—
 - (a) the holders of 75 per cent, 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 (however it is imposed) in relation to the variation of those rights is complied with, to the extent that it is not comprised in the requirements in *paragraphs (a) and (b)*.

- (3) Where—

- (a) the rights are attached to a class of shares in the company by the constitution or otherwise;
- (b) the constitution contains 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 69(1)* or with a reduction of the company's company capital by either of the means referred to in *section 84*,

those rights shall not be varied unless—

- (i) the requirement in *subsection (2)(a) or (b)* is satisfied; and
- (ii) any requirement of the constitution in relation to the variation of rights of that class is complied with to the extent that it is not comprised in the requirement in *subsection (2)(a) or (b)*.

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

- (a) where they are so attached by the constitution, it contains provision with respect to their variation which had been included in the constitution at the time of the company's original incorporation; or
- (b) where they are so attached otherwise, the constitution contains 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 constitution.

- (5) Where the rights are attached to a class of shares in the company by the constitution and it does not contain provisions 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) Where a resolution referred to in any of the preceding subsections is to be proposed at a meeting of members holding a particular class of shares—

- (a) the necessary quorum at any such meeting, other than an adjourned meeting, shall be 2 persons holding or representing by proxy at least one-third in nominal value of the issued shares of the class in question and at an adjourned meeting one person holding shares of the class in question or his or her proxy;
- (b) any holder of shares of the class in question present in person or by proxy may demand a poll.

- (7) Any amendment of a provision contained in the constitution 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 constitution shall itself be treated as a variation of those rights.
- (8) References to the variation of the rights attached to a class of shares in—
 - (a) this section; and
 - (b) 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 constitution, shall include references to their abrogation.
- (9) Nothing in *subsections (2) to (5)* shall be read as derogating from the powers of the court under *sections 212, 451 and 455*.
- (10) Save where the company's constitution provides otherwise, the rights conferred upon the holders of the shares of any class issued by a company with preferred or other rights shall not, unless otherwise expressly provided by the terms of issue of the shares of that class, be deemed to be varied by the creation or issue of further shares ranking *pari passu* therewith.

Rights of holders of special classes of shares

- 89.** (1) If in the case of a company, the share capital of which is divided into different classes of shares, the rights attached to any such class of shares are at any time varied pursuant to *section 88*, one or more members who hold, or together hold, not less than 10 per cent of the issued shares of that class, being members who did not consent to or vote in favour of the resolution for the variation, may apply to the court to have the variation cancelled.
- (2) Where any such application is made, the variation shall not have effect unless and until it is confirmed by the court.
 - (3) An application under this section shall be made within 28 days (or such longer period as the court, on application made to it by any member before the expiry of the first mentioned 28 days, may allow) after the date on which the consent was given or the resolution was passed, as the case may be, and may be made on behalf of the members entitled to make the application by such one or more of their number as they may appoint in writing for the purpose.
 - (4) On any such application the court, after hearing the applicant and any other persons who apply to the court to be heard and appear to the court to be interested in the application, may, if it is satisfied having regard to all the circumstances of the case that the variation would unfairly prejudice the shareholders of the class represented by the applicant, disallow the variation and shall, if not so satisfied, confirm the variation.
 - (5) The decision of the court on any such application shall be final but an appeal shall lie to the Supreme Court from the determination of the court on a question of law.
 - (6) The company shall, within 21 days after the date on which an order is made by the

court on any such application, deliver a certified copy of the order to the Registrar.

- (7) If a company contravenes *subsection (6)*, the company and any officer of it who is in default shall be guilty of a category 4 offence.
- (8) In this section “variation” includes abrogation, and “varied” shall be read accordingly.

Registration of particulars of special rights

- 90.** (1) Where a company allots shares with rights which are not stated in its constitution or in any resolution or agreement to which *section 198* applies, the company shall, unless the shares are in all respects uniform with shares previously allotted, deliver to the Registrar, within 30 days after the date of allotting the shares, a statement in the prescribed form containing particulars of those rights.
- (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 12 months after the date of the former’s allotment.
- (3) Where the rights attached to any shares of a company are varied otherwise than by an amendment of the company’s constitution or by resolution or agreement to which *section 198* applies, the company shall within 30 days after the date on which the variation is made, deliver to the Registrar a statement in the prescribed form containing particulars of the variation.
- (4) Where a company (otherwise than by any such amendment, resolution or agreement as is mentioned in *subsection (3)*) assigns a name or other designation, or a new name or other designation, to any class of its shares it shall, within 30 days after the date of doing so, deliver to the Registrar a notice in the prescribed form giving particulars thereof.
- (5) If a company contravenes this section, the company and any officer of it who is in default shall be guilty of a category 4 offence.

Variation of company capital on reorganisation

- 91.** (1) Subject to *subsection (3)*, a company (the “relevant company”) may for any purpose (with the result that its company capital is thereby re-organised) transfer or dispose of—
- (a) one or more assets;
 - (b) an undertaking or part of an undertaking; or
 - (c) a combination of assets and liabilities,
- to a body corporate, on the terms that the consideration (or part of the consideration) therefor is as follows.
- (2) That consideration (or part of consideration) is one comprising shares or other securities of that body corporate paid (by the allotment of them) to the members of the relevant company or of its holding company rather than to the relevant company.

- (3) *Subsection (2)* applies whether or not the terms of the transfer or disposal referred to in *subsection (1)* also involve the payment of cash to the members of the relevant company or of its holding company or the relevant company.
- (4) A transaction to which *subsection (1)* applies shall not be undertaken unless it is—
 - (a) approved by the relevant company by employing the Summary Approval Procedure; or
 - (b) approved by special resolution passed by the relevant company that is confirmed by the court under *section 85* as if that resolution were providing for a reduction of the company's company capital (and the provisions of *sections 84* to *87* shall apply accordingly with the necessary modifications).
- (5) Where such a transaction is so approved or confirmed by order of the court under *section 85*, there shall be deducted from such of the relevant company's reserves and company capital as the relevant company shall, by ordinary resolution, resolve an amount equivalent to the value (as stated in, or ascertainable from, the accounting records of the company immediately before the transfer or disposal) of the transferred or disposed asset or assets, undertaking or part of an undertaking mentioned in *subsection (1)*.
- (6) Any transaction in contravention of this section shall be voidable at the instance of the relevant company against any person (whether a party to the transaction or not) who had notice of the facts which constitute such contravention.

Notice to Registrar of certain alterations of share capital

- 92.** (1) If a company has—
- (a) consolidated and divided its share capital into shares of larger amount than its existing shares; or
 - (b) converted any shares into stock; or
 - (c) reconverted stock into shares; or
 - (d) subdivided its shares or any of them; or
 - (e) redeemed any redeemable shares; or
 - (f) redeemed any preference shares; or
 - (g) cancelled any shares, otherwise than in connection with a reduction of company capital referred to in *section 84*,
- it shall, within 30 days after the date of so doing, give notice thereof to the Registrar specifying, as the case may be, the shares consolidated, divided, converted, subdivided, redeemed or cancelled, or the stock reconverted.
- (2) If a company contravenes this section, the company and any officer of it who is in default shall be guilty of a category 3 offence.

Notice of increase of share capital

- 93.** (1) This section applies to a company whose constitution states an authorised share capital.
- (2) If a company, whether its shares have or have not been converted into stock, has increased its share capital above the registered capital, it shall, within 30 days after the date on which it passes the resolution increasing its share capital, give to the Registrar notice of the increase and the Registrar shall record the increase.
- (3) That notice shall include such particulars as may be prescribed with respect to the classes of shares affected, and the conditions subject to which the new shares have been or are to be issued.
- (4) If a company contravenes this section, the company and any officer of it who is in default shall be guilty of a category 3 offence.

CHAPTER 5

*Transfer of shares***Transfer of shares and debentures**

- 94.** (1) Subject to any restrictions in the company's constitution and this section, a member may transfer all or any of his or her shares in the company by instrument in writing in any usual or common form or any other form which the directors of the company may approve.
- (2) The instrument of transfer of any share shall be executed by or on behalf of the transferor, save that if the share concerned (or one or more of the shares concerned) is not fully paid, the instrument shall be executed by or on behalf of the transferor and the transferee.
- (3) The transferor shall be deemed to remain the holder of the share until the name of the transferee is entered in the register in respect thereof.
- (4) A company shall not register a transfer of shares in or debentures of the company unless a proper instrument of transfer has been delivered to the company.
- (5) Nothing in *subsection (4)* shall prejudice any power of the company to register as shareholder or debenture holder, any person to whom the right to any shares in, or debentures of the company, has been transmitted by operation of law.
- (6) A transfer of the share or other interest of a deceased member of a company made by his or her personal representative shall, although the personal representative is not himself or herself a member of the company, be as valid as if the personal representative had been such a member at the time of the execution of the instrument of transfer.
- (7) On application of the transferor of any share or interest in a company, the company shall enter in its register of members, the name of the transferee in the same manner and subject to the same conditions as if the application for the entry were made by the transferee.

- (8) Save to the extent that a company's constitution regulates the execution of instruments by any particular company or other body corporate, this section is without prejudice to the Stock Transfer Act 1963.

Restrictions on transfer

95. (1) Save where the constitution of the company provides otherwise—
- (a) the directors of a company may in their absolute discretion and without assigning any reason for doing so, decline to register the transfer of any share;
 - (b) the directors' power to decline to register a transfer of shares (other than on account of a matter specified in *subsection (2)*) shall cease to be exercisable on the expiry of 2 months after the date of delivery to the company of the instrument of transfer of the share.
- (2) The directors of a company may decline to register any instrument of transfer unless—
- (a) a fee of €10.00 or such lesser sum as the directors may from time to time require, is paid to the company in respect of it;
 - (b) the instrument of transfer is accompanied by the certificate of the shares to which it relates and such other evidence as the directors may reasonably require to show the right of the transferor to make the transfer; and
 - (c) the instrument of transfer is in respect of one class of share only.
- (3) If the directors refuse to register a transfer they shall, within 2 months after the date on which the transfer was lodged with the company, send to the transferee notice of the refusal.
- (4) The registration of transfers of shares in a company may be suspended at such times and for such periods, not exceeding in the whole 30 days in each year, as the directors of the company may from time to time determine.

Transmission of shares

96. (1) *Subsections (2) to (11)* apply save to the extent that the company's constitution provides otherwise.
- (2) In the case of the death of a member, the survivor or survivors where the deceased was a joint holder, and the personal representatives of the deceased where he or she was a sole holder, shall be the only persons recognised by the company as having any title to his or her interest in the shares.
 - (3) Nothing in *subsection (2)* shall release the estate of a deceased joint holder from any liability in respect of any share which had been jointly held by him or her with other persons.
 - (4) Any person becoming entitled to a share in consequence of the death or bankruptcy of a member may, upon such evidence being produced as may from time to time properly be required by the directors of the company and subject to *subsection (5)*, elect

either—

- (a) to be registered himself or herself as holder of the share; or
 - (b) to have some person nominated by him or her (being a person who consents to being so registered) registered as the transferee thereof.
- (5) The directors of the company shall, in either of those cases, have the same right to decline or suspend registration as they would have had in the case of a transfer of the share by that member before his or her death or bankruptcy, as the case may be.
- (6) If the person becoming entitled as mentioned in *subsection (4)*—
- (a) elects to be registered himself or herself, the person shall furnish to the company a notice in writing signed by him or her stating that he or she so elects; or
 - (b) elects to have another person registered, the person shall testify his or her election by executing to that other person a transfer of the share.
- (7) All the limitations, restrictions and provisions of this Chapter relating to the right to transfer and the registration of a transfer of a share shall be applicable to a notice or transfer referred to in *subsection (6)* as if the death or bankruptcy of the member concerned had not occurred and the notice or transfer were a transfer signed by that member.
- (8) Subject to *subsections (9) and (10)*, a person becoming entitled to a share by reason of the death or bankruptcy of the holder shall be entitled to the same dividends and other advantages to which he or she would be entitled if he or she were the registered holder of the share.
- (9) Such a person shall not, before being registered as a member in respect of the share, be entitled in respect of it to exercise any right conferred by membership in relation to meetings of the company.
- (10) The directors of the company may at any time serve a notice on any such person requiring the person to make the election provided for by *subsection (4)* and, if the person does not make that election (and proceed to do, consequent on that election, whichever of the things mentioned in *subsection (6)* is appropriate) within 90 days after the date of service of the notice, the directors may thereupon withhold payment of all dividends, bonuses or other moneys payable in respect of the share until the requirements of the notice have been complied with.
- (11) The company may charge a fee not exceeding €1000 on the registration of every probate, letters of administration, certificate of death, power of attorney, notice as to stock or other instrument or order.
- (12) The production to a company of any document which is by law sufficient evidence of probate of the will or letters of administration of the estate of a deceased person having been granted to some person shall be accepted by the company, notwithstanding anything in its constitution, as sufficient evidence of the grant.

Transmission of shares in special circumstances (including cases of mergers)

97. (1) The Minister may prescribe procedures whereby the registration of shares in a company may be validly effected in the following cases:

- (a) cases of a death of the sole member of a single-member company where that member had been the only director of the company;
- (b) other cases of difficulty in effecting such registration.

(2) Without prejudice to this matter being provided for by the exercise of the Minister's powers under *subsection (1)* (and subject, in that eventuality, to any regulations made in pursuance thereof), nothing in *section 96* prejudices the adoption of alternative procedures to those specified in that section with respect to the registering of a transfer of shares in a company held by another company that are transmitted by operation of law in consequence of a merger between those companies.

(3) Save to the extent that the constitution of the second-mentioned company in *subsection (2)* provides otherwise and subject—

- (a) as mentioned in *subsection (2)*; and
- (b) in every case (that is to say, irrespective of what that constitution or those regulations provide), to any order made by the court in respect of the matter concerned under *Part 9*,

those alternative procedures shall be such as the directors of that second-mentioned company determine.

Certification of shares

98. (1) The certification by a company of any instrument of transfer of shares in, or debentures of, the company shall be taken as a representation by the company to any person acting on the faith of the certification that there have been produced to the company such documents as on the face of them show a *prima facie* title to the shares or debentures in the transferor named in the instrument of transfer, but not as a representation that the transferor has any title to the shares or debentures.

(2) Where any person acts on the faith of a false certification by a company made negligently, the company shall be under the same liability to him or her as if the certification had been made fraudulently.

(3) For the purposes of this section—

- (a) an instrument of transfer shall be deemed to be certificated if it bears the words “certificate lodged” or words to the like effect;
- (b) the certification of an instrument of transfer shall be deemed to be made by a company if—
 - (i) the person issuing the instrument is a person authorised to issue certificated instruments of transfer on the company's behalf; and
 - (ii) the certification is signed by a person authorised to certificate transfers on

the company's behalf or by any officer or employee either of the company or of a body corporate so authorised;

- (c) a certification shall be deemed to be signed by any person if—
 - (i) it purports to be authenticated by his or her signature or initials (whether handwritten or not); and
 - (ii) it is not shown that the signature or initials was or were placed there neither by himself or herself nor by any person authorised to use the signature or initials for the purpose of certificating transfers on the company's behalf.

Share certificates

- 99.** (1) A certificate under the common seal of the company specifying any shares held by any member shall be *prima facie* evidence of the title of the member to the shares.
- (2) A company shall, within 2 months after the date—
- (a) of allotment of any of its shares or debentures; or
 - (b) on which a transfer of any such shares or debentures is lodged with the company, complete and have ready for delivery the certificates of all shares and debentures allotted or, as the case may be, transferred, unless the conditions of issue of the shares or debentures otherwise provide.
- (3) In *subsection (2)* “transfer” means a transfer that is (where appropriate) duly stamped and is otherwise valid and does not include such a transfer as the company is, for any reason, entitled to refuse to register and does not register.
- (4) If any company on which a notice has been served requiring the company to make good any default in complying with the provisions of *subsection (2)*, fails to make good the default within 10 days after the date of service of the notice, the person entitled to have the certificates or the debentures delivered to him or her may apply to the court for, and the court on such an application may grant, the following order.
- (5) That order is one directing the company and any officer of the company specified in the order to make good the default within such time as may be specified in the order, and any such order may provide that all costs of and incidental to the application shall be borne by the company or by any officer of it responsible for the default.
- (6) If a share certificate is defaced, lost or destroyed, it may be renewed on payment of €10.00 or such lesser sum and on such terms (if any) as to evidence and indemnity and the payment of out-of-pocket expenses of the company of investigating evidence as the directors of the company think fit.
- (7) If a member of a company so requests, the member shall be entitled to receive from the company one or more certificates for one or more shares held by the member upon payment, in respect of each certificate, of €10.00 or such lesser sum as the directors of the company think fit.
- (8) In respect of a share or shares in a company held jointly by several persons—

- (a) the company shall not be bound to issue more than one certificate; and
 - (b) delivery by the company of a certificate for a share to one of several joint holders shall be sufficient delivery to all such holders.
- (9) If a company contravenes *subsection (2)*, the company and any officer of it who is in default shall be guilty of a category 4 offence.

Rectification of dealings in shares

100. (1) If—

- (a) a company has created, allotted, acquired or cancelled any of its shares; and
- (b) there is reason to apprehend that such shares were invalidly created, allotted, acquired or cancelled,

the court may, on the application of any of the following persons, declare that such creation, allotment, acquisition or cancellation shall be valid for all purposes if the court is satisfied that it would be just and equitable to do so.

(2) The persons who may make such an application are—

- (a) the company;
- (b) any holder or former holder of such shares;
- (c) any member or former member or creditor of the company;
- (d) the liquidator of the company.

(3) Where such a declaration is made, the shares shall from the creation, allotment, acquisition or cancellation thereof, as the case may be, be deemed to have been validly created, allotted, acquired or cancelled.

(4) The grant of relief by the court under this section shall, if the court so directs, not have the effect of relieving the company or its officers of any liability incurred under this Act.

(5) In this section “acquired”, in relation to shares, means acquired by redemption, purchase, surrender, forfeiture or other means.

Personation of shareholder: offence

101. If any person falsely and deceitfully personates any owner of any share or interest in a company and thereby—

- (a) obtains or endeavours to obtain any such share or interest;
- (b) receives or endeavours to receive any money due to any such owner; or
- (c) votes at any meeting as if the person were the true and lawful owner,

he or she shall be guilty of a category 2 offence.

CHAPTER 6

*Acquisition of own shares***Company acquiring its own shares, etc. — permissible circumstances and prohibitions**

- 102.** (1) Subject to the provisions of this Chapter, a company may acquire its own fully paid shares—
- (a) by transfer or surrender to the company otherwise than for valuable consideration;
 - (b) by cancellation pursuant to a reduction of company capital by either of the means referred to in *section 84*;
 - (c) pursuant to an order of the court under *section 212*;
 - (d) where those shares are redeemable shares, by redemption or purchase under *section 105*;
 - (e) by purchase under *section 105*;
 - (f) where those shares are preference shares referred to in *section 108*, by redemption under that section; or
 - (g) pursuant to a merger or division under *Chapter 3 or 4 of Part 9*.
- (2) Without prejudice to the powers of a company with respect to forfeiture of its own shares as provided by this Part or to accept any of its own shares surrendered in lieu for failure to pay any sum payable in respect of those shares, a company may not acquire any of its own shares otherwise than as described in the preceding subsection, but nothing in that subsection or any other provision of this section affects the lawfulness of a merger effected in accordance with *Chapter 3 of Part 9* or a scheme of arrangement sanctioned under that Part.
- (3) If a company purports to act in contravention of *subsection (2)*, the company and any officer of it who is in default shall be guilty of a category 2 offence and the purported acquisition is void.
- (4) Subject to *section 103*, a private limited subsidiary shall not—
- (a) subscribe for the shares of its parent public company; or
 - (b) purchase shares in its parent public company which are not fully paid.
- (5) If a private limited subsidiary purports to act in contravention of *subsection (4)(a)*, that subsidiary and any officer of it who is in default shall be guilty of a category 2 offence and the purported subscription is void.
- (6) Where shares in a parent public company are subscribed for by a nominee of a private limited subsidiary, then for all purposes the shares shall be treated as held by the nominee on his or her own account and the private limited subsidiary shall be regarded as having no beneficial interest in them, and the provisions of *section 104* shall, with any necessary modifications, apply.

- (7) Without prejudice to any other requirements contained in or penalties imposed by this Act, where a private limited subsidiary purchases, subscribes for or holds shares in its parent public company, and—
- (a) in the case of a purchase, the shares were not fully paid when they were purchased; or
 - (b) the authorisation required by *section 114(3)* has not been obtained; or
 - (c) by virtue of their being treated (under *subsection (2)* of *section 109*) as shares held as treasury shares by the parent public company for the purposes of the limit provided by *subsection (1)* of that section, that limit is exceeded by the parent public company; or
 - (d) the purchase or subscription was in contravention of *section 82(7)*,
- then, unless the shares or any interest of the private limited subsidiary in them are previously disposed of, the provisions of *sections 1040* and *1041* shall apply to the private limited subsidiary in respect of such shares, with the modification that the “relevant period” (as that expression is used in those sections) in relation to any shares shall be 12 months and with any other necessary modifications.

Supplemental provisions in relation to *section 102*

103. (1) *Section 102* shall not affect or prohibit—

- (a) subject to *subsection (2)*, the subscription for, acquisition or holding of shares in its parent public company by a private limited subsidiary where the private limited subsidiary is concerned as personal representative or where it is concerned as trustee;
 - (b) without prejudice to *subsection (3)*, the allotment to, or holding by, a private limited subsidiary of shares in its parent public company in the circumstances set out in *section 113(6)*;
 - (c) the subscription, acquisition or holding of shares in its parent public company by a private limited subsidiary where the subscription, acquisition or holding is effected on behalf of a person other than the person subscribing, acquiring or holding the shares, who is neither the parent public company itself nor a subsidiary of that parent public company; or
 - (d) the subscription, acquisition or holding of shares in its parent public company by a private limited subsidiary which is a member of an authorised market operator acting in its capacity as a professional dealer in securities in the normal course of its business.
- (2) The restriction on the application of *section 102* by *subsection (1)(a)* does not have effect (in the case of a trust) if the parent public company or a subsidiary of it is beneficially interested under the trust and is not so interested only by way of security for the purposes of a transaction entered into by it in the ordinary course of a business which includes the lending of money.
- (3) Where shares in a parent public company—

- (a) are allotted to, or held by, a private limited subsidiary as mentioned in *subsection (1)(b)*; and
- (b) by virtue of their being treated (under *subsection (2) of section 109*) as shares held as treasury shares by the parent public company for the purposes of the limit provided by *subsection (1) of that section*, that limit is exceeded by the parent public company,

then, unless the shares or any interest of the private limited subsidiary in them are previously disposed of, the provisions of *sections 1040 and 1041* shall apply to the private limited subsidiary in respect of such shares, with the modification that the “relevant period” (as that expression is used in those sections) in relation to any shares shall be 3 years and with any other necessary modifications.

Shares of a company held by a nominee of a company

104. (1) Subject to *subsection (5)*, where shares in a company are issued to a nominee of the company or are acquired by a nominee of the 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 or her own account and the company shall be regarded as having no beneficial interest in them.

- (2) If a person is called on to pay any amount for the purpose of paying up, or paying any premium on, any shares in a company which were issued to him or her, or which he or she otherwise acquired, as the nominee of the company and he or she fails to pay that amount within 21 days after the date on which he or she is called on to do so, then—

- (a) if the shares were issued to him or her as a subscriber to the constitution by virtue of an undertaking of his or hers in the constitution, the other subscribers, if any, to the constitution; or
- (b) if the shares were otherwise issued to or acquired by him or her, the directors of the company at the time of the issue or acquisition,

shall be jointly and severally liable with him or her 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 or she is or may be liable to pay that amount, but that he or she has acted honestly and reasonably and that, having regard to all the circumstances of the case, he or she ought fairly to be excused from liability, the court may relieve him or her, either wholly or partly, from his or her 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 or her, he or she may apply to the court for relief and on the application the court shall have the same power to relieve him or her as it would have had in proceedings for the recovery of that amount.
- (5) *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 for them before 13 October 1983 or transferred in pursuance of an agreement to acquire them made before that date.

Acquisition of own shares

105. (1) A company may acquire its own shares by purchase, or in the case of redeemable shares, by redemption or purchase.

- (2) Any such acquisition is subject to payment in respect of the shares' acquisition being made out of—

- (a) profits available for distribution; or
- (b) where the company proposes to cancel, pursuant to *section 106*, shares on their acquisition, the proceeds of a fresh issue of shares made for the purposes of the acquisition, but subject to the restriction contained in *subsection (3)* as respects such proceeds being used to pay a premium there referred to.

- (3) Where the shares being acquired were issued at a premium, some or all of the premium payable on their acquisition (being an acquisition to which *subsection (2)(b)* applies) may be paid out of the proceeds of a fresh issue of shares made for the purposes of the acquisition, up to an amount equal to—

- (a) the aggregate of the premiums received by the company on the issue of the shares acquired; or
- (b) the current amount of the company's undenominated capital (including any sum transferred to its share premium account in respect of premiums on the new shares),

whichever is less, and in any such case the amount of the company's share premium account or other undenominated capital shall be reduced by a sum corresponding (or by sums in the aggregate corresponding) to the amount of any payment made by virtue of this subsection out of the proceeds of the issue of the new shares.

- (4) Subject to this Part, the acquisition by a company of its own shares shall be authorised by—

- (a) the constitution of the company;
- (b) the rights attaching to the shares in question; or
- (c) a special resolution.

- (5) A special resolution under *subsection (4)* shall not be effective for the purposes of this section if any member of the company holding shares to which the resolution relates exercises the voting rights carried by any of those shares in voting on the resolution and the resolution would not have been passed if he or she had not done so.

- (6) With respect to *subsection (4)* and the matter of passing a special resolution for the purpose thereof by the written means provided for under this Act—
- (a) the procedure under *section 193* (unanimous written resolutions) is not available for that purpose;
 - (b) if a resolution referred to in *section 194* (majority written resolutions) for the purpose of *subsection (4)* is signed by a member of the company who holds shares to which the resolution relates, then, in determining whether the requirement under *section 194(4)(a)(ii)* — that the resolution be signed by the requisite majority — has been fulfilled, no account shall be taken of the percentage of voting rights conferred by the foregoing shares of that member.
- (7) Notwithstanding anything contained in *section 189* or in the company’s constitution, any member holding one or more shares in the company conferring the right to vote at the meeting concerned may demand a poll on a special resolution under *subsection(4)*.
- (8) Where a purchase of shares is proposed to be authorised by special resolution—
- (a) the proposed contract of purchase or, if the contract is not in writing, a written memorandum of its terms shall be furnished to the members of the company on request or made available for inspection by the members at the registered office of the company from the date of the notice of the meeting at which the resolution is to be proposed and at the meeting itself;
 - (b) any memorandum of the terms of the contract of purchase made available for the purposes of *paragraph (a)* shall include the names of any members holding shares to which the contract relates, and any copy of the contract made available for those purposes shall have annexed to it a written memorandum specifying any such names which do not appear in the contract itself.
- (9) With respect to the proposed authorisation of a purchase of shares by a resolution referred to in *section 194*, the requirements of *subsection (8)* shall also apply but with the modification that in *paragraph (a)* of that subsection “during the period of 21 days before the date of the signing of the resolution by the last member to sign” shall be substituted for “from the date of the notice of the meeting at which the resolution is to be proposed and at the meeting itself”.
- (10) A company may agree to a variation of an existing contract of purchase authorised pursuant to a special resolution under this section only if the variation is authorised by special resolution of the company before it is agreed to, and *subsections (5) to (9)* shall apply in relation to that authority, save that a copy or memorandum (as the case may require) of the existing contract shall also be available for inspection in accordance with *subsection (8)*.
- (11) A company shall only make a purchase of its own shares in pursuance of an option if the terms of the option have been authorised by a special resolution of the company in accordance with *subsections (5) to (9)* and, for the purposes of this subsection, *subsection (8)* shall have effect as if the references in it to the contract of purchase were references to the contract under which the option arises.

- (12) In *subsection (11)* “option” means an entitlement of the company, or an obligation on the part of the company, to purchase any of its shares that may arise under a contract entered into, being a contract that does not amount to a contract to purchase those shares.

Supplemental provisions in relation to *section 105*

- 106.** (1) Shares acquired by a company under *section 105*, or otherwise acquired by it under *section 102(1)(a)*, shall be cancelled or held by it (as “treasury shares”).
- (2) Where a company—
- (a) has acquired, under *section 105*, shares and cancelled them; or
- (b) is about to so acquire shares and cancel them upon their acquisition,
- it shall have power to issue shares up to the nominal amount of the shares so acquired, or to be so acquired, as if those shares had never been issued.
- (3) No cancellation of shares under *subsection (1)* shall be taken as reducing the amount of the company’s authorised share capital (if any).
- (4) Where the shares are—
- (a) under *section 105*, acquired wholly out of the profits available for distribution; or
- (b) under *section 105*, acquired wholly or partly out of the proceeds of a fresh issue and the aggregate amount of those proceeds (disregarding any part of those proceeds used to pay any premium on the acquisition) is less than the aggregate nominal value of the shares acquired (the “aggregable difference”),
- then a sum equal to, in the case of *paragraph (a)*, the nominal value of the shares acquired and, in the case of *paragraph (b)*, the aggregable difference shall be transferred to undenominated capital of the company, other than its share premium account.
- (5) The amount by which the consideration paid for the acquisition of redeemable preference shares allotted before 1 February 1990 exceeds the consideration received by the company on the issue of those shares may be paid from undenominated capital.
- (6) *Section 105* shall not apply to the redemption of preference shares referred to in *section 108* and no such shares may be the subject of purchase under *section 105*.

Assignment or release of company’s right to purchase own shares

- 107.** (1) Any purported assignment of the rights of a company under any contract authorised under *section 105* shall be void.
- (2) Nothing in *subsection (1)* shall prevent a company from releasing its right under any contract authorised under *section 105* provided that the release has been authorised by special resolution of the company before the release is entered into, and any such purported release by a company which has not been authorised in that manner shall be void.

- (3) *Subsections (5) to (9) of section 105 shall apply to a resolution under subsection (2) and, for the purposes of this subsection, subsection (8) of section 105 shall have effect as if the references in it to the contract of purchase were references to the release concerned.*

Power to redeem preference shares issued before 5 May 1959

- 108.** (1) Subject to the provisions of this section, a company may, if so authorised by its constitution, redeem any preference shares issued by it before 5 May 1959 provided that—
- (a) no such shares shall be redeemed except out of profits of the company which would otherwise be available for distribution or out of the proceeds of a fresh issue of shares made for the purposes of the redemption;
 - (b) no such shares shall be redeemed at a sum greater than the issue price of such shares;
 - (c) the redemption of such shares and the terms and the manner of the redemption shall have been authorised by a special resolution of the company;
 - (d) notice of the meeting at which the special resolution referred to in *paragraph (c)* is to be proposed and a copy of that resolution shall be published in *Iris Oifigiúil* and in at least one daily newspaper circulating in the district in which the registered office of the company is situated not less than 14 days and not more than 30 days before the date of the meeting;
 - (e) no holder of such shares shall be obliged to accept redemption of them;
 - (f) the redemption shall have been sanctioned by the court.
- (2) The powers conferred by this section may be availed of only by means of an offer made to all the holders of the preference shares concerned.
- (3) Where any such shares are redeemed otherwise than out of the proceeds of a fresh issue, there shall, out of profits which would otherwise have been available for distribution be transferred to undenominated capital, other than the share premium account a sum equal to the nominal amount of the shares redeemed.
- (4) Subject to the provisions of this section, the redemption of preference shares under this section may be effected on such terms and in such manner as may be provided by the special resolution referred to in *subsection (1)(c)*.
- (5) The redemption of preference shares under this section by a company shall not be taken as reducing the amount of the company's authorised share capital (if any).
- (6) Where in pursuance of this section a company has redeemed or is about to redeem any preference shares, it shall have power to issue shares up to the nominal amount of the shares redeemed or to be redeemed as if those shares had never been issued.

Treasury shares

- 109.** (1) The nominal value of treasury shares held by a company may not, at any one time,

exceed 10 per cent of its company capital.

- (2) For the purposes of *subsection (1)*, the following shall also be deemed to be treasury shares held by the company—
 - (a) shares held in the company by any subsidiary in pursuance of *section 114*;
 - (b) shares held in the company by any person acting in his or her own name but on the company's behalf.
- (3) For the purposes of *subsection (1)*, shares of the company acquired by it otherwise than for valuable consideration shall not be deemed to be treasury shares.
- (4) For so long as the company holds shares as treasury shares—
 - (a) the company shall not exercise any voting rights in respect of those shares and any purported exercise of those rights shall be void; and
 - (b) no dividend or other payment (including any payment in a winding up of the company) shall be payable to the company in respect of those shares.
- (5) The manner in which shares held by a company as treasury shares are to be treated in the company's entity financial statements is provided for in *section 320(1)* (which also contains provision restricting the profits available for distribution by reference to the accounting treatment of such shares there provided).
- (6) Treasury shares may either be—
 - (a) cancelled by the company in which case *section 106* shall apply as if the shares had been cancelled on their acquisition; or
 - (b) subject to *subsections (7) to (9)*, re-issued as shares of any class or classes.
- (7) A re-issue of shares under this section shall be deemed for all the purposes of this Act to be an issue of shares but the issued share capital of the company shall not be regarded for any purpose as having been increased by the re-issue of the shares.
- (8) Unless the case falls within *subsection (9)*, the maximum and minimum prices at which treasury shares may be re-allotted (the "re-allotment price range") shall be determined by special resolution of the company passed before any contract for the re-allotment of the shares is entered into.
- (9) In a case where the whole or a part of the treasury shares to be re-allotted are derived from shares acquired by the company under this Part on foot of the authority of a special resolution of the company, the re-allotment price range of the whole or such part (as the case may be) of those shares shall be determined by special resolution of the company passed at the meeting at which the first-mentioned resolution in this subsection has been passed.
- (10) Any determination referred to in *subsection (8) or (9)*—
 - (a) may fix different maximum and minimum prices for different shares; and
 - (b) shall, for the purposes of *subsection (8) or (9)*, as the case may be, remain effective with respect to those shares for the requisite period.

- (11) The company may from time to time, by special resolution, vary or renew a determination of re-allotment price range under *subsection (8) or (9)* with respect to particular treasury shares before any contract for re-allotment of those shares is entered into and any such variation or renewal shall, for the purposes of this subsection, remain effective as a determination of the re-allotment price range of those shares for the requisite period.
- (12) A re-allotment by a company of treasury shares in contravention of *subsection (8), (9), (10) or (11)* shall be unlawful.
- (13) In this section “requisite period” means the period of 18 months after the date of the passing of the resolution determining the re-allotment price range or varying or renewing (as the case may be) such determination or such lesser period as the resolution may specify.

Incidental payments with respect to acquisition of own shares

110. (1) Any payment made by a company in consideration of—

- (a) acquiring any right with respect to the purchase of its own shares in pursuance of a contract authorised under *section 105*;
- (b) the variation of a contract authorised under *section 105*; or
- (c) the release of any of the company’s obligations with respect to the purchase of any of its own shares under a contract authorised under *section 105*,

shall be unlawful if any such payment is made otherwise than out of distributable profits of the company or, in the circumstances in which the proceeds of such an issue are permitted to be used by this Part for the purpose of the purchase of the shares, the proceeds of a new issue of shares.

(2) If the requirements of *subsection (1)* are not satisfied in relation to a contract—

- (a) in a case to which *paragraph (a)* of that subsection applies, no purchase by the company of its own shares in pursuance of that contract shall be lawful under this Part;
- (b) in a case to which *paragraph (b)* of that subsection applies, no such purchase following the variation shall be lawful under this Part; and
- (c) in a case to which *paragraph (c)* of that subsection applies, the purported release shall be void.

Effect of company’s failure to redeem or purchase

111. (1) This section applies to—

- (a) redeemable shares issued after 1 February 1991;
- (b) shares which have been converted into redeemable shares; and
- (c) shares which a company has agreed to purchase pursuant to *section 105*.

- (2) Without prejudice to any other right of the holder of any shares to which this section applies, a company shall not be liable in damages in respect of any failure on its part to redeem or purchase any such shares.
- (3) Neither the High Court nor the Circuit Court shall grant an order for specific performance of the terms of redemption or purchase of the shares to which this section applies if the company shows that it is unable to meet the cost of redeeming or purchasing the shares out of profits available for distribution.
- (4) Where, at the commencement of the winding up of a company, any shares to which this section applies have not been redeemed or purchased then, subject to *subsections (5), (6) and (7)*, the terms of redemption or purchase may be enforced against the company and the shares when so redeemed or purchased under this subsection shall be treated as cancelled.
- (5) *Subsection (4)* shall not apply if—
 - (a) the terms of redemption or purchase provided for the redemption or purchase to take place at a date later than that of the commencement of the winding up; or
 - (b) during the period beginning with the date on which the redemption or purchase was to have taken place and ending with the commencement of the winding up, the company could not at any time have lawfully made a distribution equal in value to the price at which the shares were to have been redeemed or purchased.
- (6) There shall be paid in priority to any amount for which the company is liable by virtue of *subsection (4)* to pay in respect of any shares—
 - (a) all other debts and liabilities of the company other than any due to members in their capacity as such; and
 - (b) if other shares carry rights, whether as to capital or to income, which are preferred to the rights as to capital attaching to the first-mentioned shares, any amount due in satisfaction of those preferred rights, but subject to that, any such amount shall be paid in priority to any amounts due to members in satisfaction of their rights (whether as to capital or income) as members.
- (7) Where, by virtue of the application by *section 619* of the rules of bankruptcy in the winding up of insolvent companies, a creditor of a company is entitled to payment of any interest only after payment of all other debts of the company, the company's debts and liabilities shall for the purposes of *subsection (6)* include the liability to pay that interest.

Retention and inspection of documents

- 112.** (1) A company which enters into a contract under *section 105* shall, until the expiration of 10 years after the date on which the contract has been fully performed, keep at its registered office a copy of that contract or, if it is not in writing, a memorandum of its terms.
- (2) Every document required to be kept under *subsection (1)* shall during business hours be open to the inspection of any member.

- (3) In the case of a refusal of an inspection of a document required under *subsection (2)*, the court may, on the application of a person who has requested an inspection and has been refused, by order require the company to allow the inspection of that document.
- (4) *Section 127(1)* (access to documents during business hours) shall apply in relation to *subsection (2)* as it applies in relation to the relevant provisions of *Part 4*.
- (5) If a company contravenes this section, the company and any officer of it who is in default shall be guilty of a category 3 offence.

Membership of holding company

- 113.** (1) Subject to *section 114* and the other provisions of this Act, a company cannot be a member of a company which is its holding company, and any allotment or transfer of shares in a company to its subsidiary shall be void.
- (2) Nothing in this section shall apply where the subsidiary is concerned as personal representative, or where it is concerned as trustee, unless the holding company or a subsidiary of it is beneficially interested under the trust and is not so interested only by way of security for the purposes of a transaction entered into by it in the ordinary course of a business which includes the lending of money.
 - (3) This section shall not prevent a subsidiary which on 5 May 1959 was a member of its holding company from continuing to be a member.
 - (4) This section shall not prevent a company which, at the date on which it becomes a subsidiary of another company is a member of that other company, from continuing to be a member.
 - (5) This section shall not prevent the subscription, acquisition or holding of shares in its parent public company by a company which is a member of an authorised market operator acting in its capacity as a professional dealer in securities in the normal course of its business.
 - (6) This section shall not prevent a subsidiary which is a member of its holding company from accepting and holding further shares in the capital of its holding company if—
 - (a) such further shares are allotted to it in consequence of a capitalisation by such holding company; and
 - (b) the terms of such capitalisation are such that the subsidiary is not thereby involved in any obligation to make any payment or to give other consideration for such further shares.
 - (7) Subject to *subsection (2)*, a subsidiary which is a member of its holding company shall have no right to vote at meetings of the holding company or any class of members of it.
 - (8) The manner in which shares held (in the circumstances permitted by this section) in a holding company by the subsidiary are to be treated in—
 - (a) the subsidiary's entity financial statements is provided for in *section 320(2)* (which also contains provision restricting the profits available for distribution by

reference to the accounting treatment of such shares there provided); and

- (b) the group financial statements, if any, of the holding company is provided for in *section 320(3)*.
- (9) Subject to *subsection (2)*, this section shall apply in relation to a nominee for the company firstly referred to in *subsection (1)*, as if references in this section to such a company included references to a nominee for it.
- (10) Where a holding company makes an offer of shares to its members, it may sell, on behalf of a subsidiary, any such shares which the subsidiary could, but for this section, have taken by virtue of shares already held by it in the holding company and pay the proceeds of sale to the subsidiary.

Holding by subsidiary of shares in its holding company

- 114.** (1) Notwithstanding *section 82* or *113*, a company may, subject to the provisions of this section, acquire and hold shares in a company which is its holding company.
- (2) The acquisition and holding by a subsidiary under *subsection (1)* of shares in its holding company shall be subject to the following conditions—
- (a) the consideration for the acquisition of such shares shall be provided for out of the profits of the subsidiary available for distribution;
 - (b) upon the acquisition of such shares and for so long as the shares are held by the subsidiary—
 - (i) the subsidiary shall not exercise any voting rights in respect of the shares and any purported exercise of those rights shall be void;
 - (ii) the manner in which shares so held by the subsidiary are to be treated in—
 - (I) the subsidiary's entity financial statements is provided for in *section 320(2)* (which also contains provision restricting the profits available for distribution by reference to the accounting treatment of such shares there provided); and
 - (II) the group financial statements, if any, of the holding company is provided for in *section 320(3)*.
- (3) A contract for the acquisition (whether by allotment or transfer) by a subsidiary of shares in its holding company shall not be entered into without being authorised in advance both by the subsidiary and its holding company and the provisions of *sections 105* and *107* shall apply, with the necessary modifications, to the granting, variation, revocation and release of such authority.
- (4) For the purposes of this section and *section 320*, a subsidiary's profits available for distribution shall not include the profits attributable to any shares in the subsidiary for the time being held by the subsidiary's holding company, so far as they are profits for the period before the date on or from which the shares were acquired by the holding company.
- (5) This section shall not apply to shares held by a subsidiary in its holding company in

the circumstances permitted by *section 113*.

- (6) No authorisation is required to be given under *subsection (3)* by any body corporate unless it is a company formed and registered under this Act or an existing company.
- (7) Nothing in this section limits the operation of *section 102(4)*.

Civil liability for improper purchase in holding company

115. (1) This section applies where—

- (a) the winding up of a company which has acquired shares in its holding company in accordance with *section 114* commences within 6 months after the date of such acquisition; and
 - (b) the company is, at the time of the commencement of the winding up, unable to pay its debts (taking into account the contingent and prospective liabilities).
- (2) Where this section applies the court, on the application of a liquidator, creditor, employee or contributory of the company, may, subject to *subsection (3)*, declare that the directors of the company shall be jointly and severally liable to repay to the company the total amount paid by the company for the shares.
 - (3) Where it appears to the court that any person in respect of whom a declaration has been sought under *subsection (2)* believed on reasonable grounds that the acquisition referred to in *subsection (1)* was in the best interests of the company, the court may relieve him or her, either wholly or in part, from personal liability on such terms as it may think fit.

Return to be made to Registrar

- 116.** (1) A company which has acquired shares pursuant to this Part shall, within 30 days after the date of delivery to the company of those shares, deliver to the Registrar a return in the prescribed form stating, with respect to shares of each class acquired, the number and nominal value of those shares and the date on which they were delivered to the company.
- (2) Particulars of shares delivered to the company on different dates and under different contracts may be included in a single return to the Registrar.
 - (3) If a company contravenes this section, the company and any officer of it who is in default shall be guilty of a category 3 offence.

CHAPTER 7

Distributions

Profits available for distribution

- 117.** (1) A company shall not make a distribution except out of profits available for the purpose.

- (2) For the purposes of this Part, 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)*—
 - (a) where the company prepares Companies Act entity financial statements, any provision (within the meaning of *Schedule 3*) shall be treated as a realised loss other than such a provision 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 (and this qualification is referred to in *subsections (5) and (6)* as “the exception to *subsection (4)(a)*”); and
 - (b) where the company prepares IFRS entity financial statements, a provision of any kind shall be treated as a realised loss.
- (5) Subject to *section 121(6)* and the next subsection, 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 to *subsection (4)(a)*, has taken place at that time.
- (6) However where any such assets which have not actually been revalued are treated as revalued for those purposes by virtue of the preceding subsection, the exception to *subsection (4)(a)* shall only apply if the directors are satisfied that the aggregate value of those assets 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 Companies Act entity financial statements.
- (7) 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.
- (8) Where there is no record of the original cost of an asset of a company 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.
- (9) Notwithstanding anything in the preceding subsections of this section, but without prejudice to any contrary provision of—
 - (a) an order of, or undertaking given to, the court;
 - (b) the resolution for, or any other resolution relevant to, the reduction of company

capital; or

(c) the company's constitution,

a reserve arising from the reduction of a company's company capital is to be treated, both for the purposes of this section and for purposes otherwise, as a realised profit.

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

Prohibition on pre-acquisition profits or losses being treated in holding company's financial statements as profits available for distribution

118. (1) Subject to *subsections (3) and (4)*, any amount of the accumulated profits or losses attributable to any shares in a subsidiary for the time being held by a holding company or any other of its subsidiaries shall not, for any purpose, be treated in the holding company's financial statements as profits available for distribution so far as that amount relates to accumulated profits or losses for the period before the date on or as from which the shares were acquired by the company or any of its subsidiaries (which period is referred to in *subsection (2)* as the "pre-acquisition period").

(2) For the purpose of determining whether any profits or losses are to be treated as profits or losses for the pre-acquisition period, the profit or loss for any financial year of the subsidiary may, if it is not practicable to apportion it with reasonable accuracy by reference to the facts, be treated as accruing from day to day during that year and be apportioned accordingly.

(3) If the Summary Approval Procedure is followed in respect of such treatment, *subsection (1)* does not prohibit—

(a) the whole of the amount referred to in that subsection; or

(b) such proportion of that amount as is specified in the declaration referred to in *section 205*,

being treated as profits available for distribution by the holding company for the period, and the period only, referred to in *section 202(1)(a)* (as that provision applies by virtue of *section 202(2) and (3)*).

(4) *Subsection (1)* does not apply to the profits or losses attributable to shares in a subsidiary held by a holding company where those shares were acquired in a transaction to which *section 72, 73 or 75* applies.

Distributions in kind: determination of amount

119. (1) This section applies for determining the amount of a distribution consisting of or including, or treated as arising in consequence of, the sale, transfer or other disposition by a company of a non-cash asset where—

(a) at the time of the distribution the company has profits available for distribution; and

(b) if the amount of the distribution were to be determined in accordance with this section, the company could make the distribution without contravening this Part.

- (2) The amount of the distribution (or the relevant part of it) is taken to be—
 - (a) in a case where the amount or value of the consideration for the disposition is not less than the book value of the asset, zero;
 - (b) in any other case, the amount by which the book value of the asset exceeds the amount or value of any consideration for the disposition.
- (3) For the purposes of *subsection (1)(a)*, the company's profits available for distribution are treated as increased by the amount (if any) by which the amount or value of any consideration for the disposition exceeds the book value of the asset.
- (4) In this section "book value", in relation to an asset, means—
 - (a) the amount at which the asset is stated in the relevant financial statements referred to in *section 121*; or
 - (b) where the asset is not stated in those financial statements at any amount, zero.
- (5) The provisions of *section 121* shall have effect subject to this section.

Development costs shown as asset of company to be set off against company's distribution profits

- 120.** (1) Subject to the following provisions of this section, where development costs are shown as an asset in a company's financial statements, any amount shown in respect of those costs shall be treated for the purposes of *section 117* as a realised loss.
- (2) *Subsection (1)* shall not apply to any part of the amount referred to in that subsection representing an unrealised profit made on revaluation of the costs so referred to.
 - (3) *Subsection (1)* shall not apply if—
 - (a) there are special circumstances justifying the directors of the company concerned in deciding that the amount mentioned in respect of development costs in the company's financial statements shall not be treated as required by that subsection; and
 - (b) it is stated—
 - (i) where the company prepares Companies Act entity financial statements, in the note to the statements required by *paragraph 23(2)* of *Schedule 3*; or
 - (ii) where the company prepares IFRS entity financial statements, in any note to those statements,

that that amount is not to be so treated, and the note explains the circumstances relied upon to justify the decision of the directors to that effect.

The relevant financial statements

- 121.** (1) Subject to the following provisions of this section, the question whether a distribution may be made by a company without contravening *section 117* 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 entity financial statements, and *section 117* shall be treated as contravened in the case of a distribution unless the requirements of this section in relation to those statements are complied with in the case of that distribution.

- (2) The relevant entity financial statements for any company in the case of any particular distribution are—
 - (a) except in a case falling within *paragraph (b)* or *(c)*, the last entity financial statements, that is to say, the statutory financial statements, respecting the company alone, prepared in accordance with the requirements of *Part 6* (and, where applicable, in accordance with the requirements of Article 4 of the IAS Regulation (within the meaning of that Part)) which were laid in respect of the last preceding financial year in respect of which statutory financial statements so prepared were laid;
 - (b) if that distribution would be found to contravene *section 117* if reference were made only to the last statutory financial statements, such financial statements (“interim financial statements”), respecting the company alone, as are necessary to enable a reasonable judgement 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 statutory financial statements are laid in respect of that financial year, such financial statements (“initial financial statements”), respecting the company alone, as are necessary as mentioned in *paragraph (b)*.
- (3) The following requirements apply where the last financial statements of a company constitute the only relevant entity financial statements in the case of any distribution, that is to say—
 - (a) those financial statements shall 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 statements, whether that distribution would be in contravention of *section 117*;
 - (b) unless the company is entitled to and has availed itself of the audit exemption under *section 360* or *365*, the statutory auditors of the company shall have made a report under *section 391* in respect of those financial statements;
 - (c) if, by virtue of anything referred to in that report, the report is not an unqualified report, the statutory auditors shall 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 financial statements, whether that distribution would be in contravention of *section 117*; and
 - (d) a copy of any such statement shall have been laid before the company in general meeting.
- (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.

- (5) For the purpose of determining by reference to particular financial statements 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 financial statements, as if the amount of the proposed distribution was increased by the amount of the distributions so made.
- (6) Where *subsection (3)(a)* applies to the relevant entity financial statements, *section 117(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 statements has taken place, unless it is stated in a note to those statements—
- (a) that the directors have considered the value at any time of any fixed assets of the company without actually revaluing those assets;
 - (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 statutory financial statements; and
 - (c) that the relevant items affected are accordingly stated in the relevant financial statements on the basis that a revaluation of the company's fixed assets that, by virtue of *section 117(5)*, is deemed to have included a revaluation of the assets in question, took place at that time.

- (7) In this section—

“properly prepared” means, in relation to any financial statements of a company, that they have been properly prepared in accordance with the provisions of *Part 6*;

“relevant item” means any of the following, that is to say profits, losses, assets, liabilities, provisions (within the meaning of *Schedule 3*), share capital and reserves;

“reserves” includes undistributable reserves, that is to say—

- (a) the company's undenominated capital;
- (b) 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
- (c) any other reserve which the company is prohibited from distributing by any enactment, other than one contained in this Part, or by its constitution.

“unqualified report”, in relation to any financial statements of a company, means a report without qualification, to the effect that, in the opinion of the person making the report, the financial statements have been properly prepared, and for the purposes of this section, financial statements are laid if *section 290* has been complied with in relation to those statements.

Consequences of making unlawful distribution

- 122.** (1) Where a distribution or part of one, made by a company to one of its members, is made in contravention of any provision of this Part and, at the time of the distribution, he or she knows or has reasonable grounds for believing that it is so made, he or she 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 a sum equal to the value of the distribution or part at that time.
- (2) This section is without prejudice to any obligation imposed apart from this section on a member of a company to repay a distribution unlawfully made to him or her.

Meaning of “distribution”, “capitalisation”, etc., and supplemental provisions

- 123.** (1) In this Part “distribution” means every description of distribution 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 pursuant to *section 108* out of the proceeds of a fresh issue of shares made for the purposes of redemption;
 - (c) the redemption or purchase of shares pursuant to *section 105* and the other relevant provisions of this Part out of the proceeds of a fresh issue of shares made for the purposes of the redemption or purchase;
 - (d) the payment pursuant to *section 106(5)* of any premium out of the company’s undenominated capital on a redemption referred to in that provision; and
 - (e) a distribution of assets to members of the company on its winding up.
- (2) In this Part “capitalisation”, in relation to any profits of a company, means any of the following operations, 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 undenominated capital.
- (3) In this Part references to profits and losses of any description are references respectively to profits and losses of that description made at any time and, except where the context otherwise requires, are references respectively to revenue and capital profits and revenue and capital losses.
- (4) The provisions of this Part are without prejudice to any enactment or rule of law or any provision of a company’s constitution restricting the sums out of which, or the cases in which, a distribution may be made.
- (5) Where a company makes a distribution of or including a non-cash asset and any part of the amount at which that asset is stated in the financial statements relevant for the purposes of the distribution in accordance with this Chapter represents an unrealised profit, that profit is to be treated as a realised profit—
- (a) for the purpose of determining the lawfulness of the distribution in accordance with this Chapter (whether before or after the distribution takes place); and

- (b) for the purpose of the application of *paragraphs 14(a) and 37(3) of Schedule 3* (only realised profits to be included in or transferred to the profit and loss account) in relation to anything done with a view to or in connection with the making of that distribution.

Procedures for declarations, payments, etc., of dividends and other things

124. (1) Each provision of this section and *section 125* applies save to the extent that the company's constitution provides otherwise.

- (2) A company may, by ordinary resolution, declare dividends but no dividend shall exceed the amount recommended by the directors of the company.
- (3) The directors of a company may from time to time—
 - (a) pay to the members such interim dividends as appear to the directors to be justified by the profits of the company, subject to *section 117*;
 - (b) before recommending any dividend, set aside out of the profits of the company such sums as they think proper as a reserve or reserves which shall, at the discretion of the directors, be applicable for any purpose to which the profits of the company may be properly applied, and pending such application may, at the like discretion either be employed in the business of the company or be invested in such investments as the directors may lawfully determine;
 - (c) without placing the profits of the company to reserve, carry forward any profits which they may think prudent not to distribute.
- (4) Subject to the rights of persons, if any, entitled to shares with special rights as to dividend, all dividends shall be declared and paid according to the amounts paid or credited as paid on the shares in respect of which the dividend is paid.
- (5) However no amount paid or credited as paid on a share in advance of calls shall be treated for the purposes of this section as paid on the share.
- (6) All dividends shall be apportioned and paid proportionally to the amounts paid or credited as paid on the shares during any portion or portions of the period in respect of which the dividend is paid, but if any share is issued on terms providing that it shall rank for a dividend as from a particular date, such share shall rank for dividend accordingly.
- (7) The directors may deduct from any dividend payable to any member, all sums of money (if any) immediately payable by him or her to the company on account of calls or otherwise in relation to the shares of the company.

Supplemental provisions in relation to *section 124*

125. (1) A general meeting of a company declaring a dividend or bonus may direct payment of such dividend or bonus wholly or partly by the distribution of specific assets and, in particular, paid up shares, debentures or debenture stock of any other company or in any one or more of such ways.

- (2) The directors of the company shall give effect to such resolution, and where any difficulty arises in regard to such distribution, the directors may settle the matter as they think expedient and, in particular, may—
 - (a) issue fractional certificates and fix the value for distribution of such specific assets or any part of them;
 - (b) determine that cash payments shall be made to any members upon the footing of the value so fixed, in order to adjust the rights of all the parties; and
 - (c) vest any such specific assets in trustees as may seem expedient to the directors.
- (3) Any dividend, interest or other moneys payable in cash in respect of any shares may be paid—
 - (a) by cheque or negotiable instrument sent by post directed to or otherwise delivered to the registered address of the holder, or where there are joint holders, to the registered address of that one of the joint holders who is first named on the register or to such person and to such address as the holder or the joint holders may in writing direct; or
 - (b) by agreement with the payee (which may either be a general agreement or one confined to specific payments), by direct transfer to a bank account nominated by the payee.
- (4) Any such cheque or negotiable instrument shall be made payable to the order of the person to whom it is sent.
- (5) Any one of two or more joint holders may give valid receipts for any dividends, bonuses or other moneys payable in respect of the shares held by them as joint holders, whether paid by cheque or negotiable instrument or direct transfer.
- (6) No dividend shall bear interest against the company.

Bonus issues

- 126.** (1) Each provision of this section applies save where the company's constitution provides otherwise.
- (2) In *subsections (3) and (4)* "relevant sum" means—
 - (a) any sum for the time being standing to the credit of the company's undenominated capital;
 - (b) any of the company's profits available for distribution; or
 - (c) any sum representing unrealised revaluation reserves.
 - (3) The company in general meeting may, on the recommendation of the directors, resolve that any relevant sum be capitalised and applied on behalf of the members who would have been entitled to receive that sum if it had been distributed by way of dividend and in the same proportions in or towards paying up in full unissued shares of the company of a nominal value equal to the relevant sum capitalised (such shares to be allotted and distributed credited as fully paid up to and amongst such holders

and in the proportions as aforementioned).

- (4) The company in general meeting may, on the recommendation of the directors, resolve that it is desirable to capitalise any part of a relevant sum 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).
- (5) The directors of the company shall give effect to any resolution under *subsection (3)* or *(4)*.
- (6) For that purpose the directors shall make—
 - (a) all appropriations and applications of the undivided profits resolved to be capitalised by the resolution; and
 - (b) all allotments and issues of fully paid shares, if any, and generally shall do all acts and things required to give effect to the resolution.
- (7) Without limiting the foregoing, the directors may—
 - (a) make such provision as they think fit for the case of shares becoming distributable in fractions (and, again, without limiting the foregoing, may sell the shares represented by such fractions and distribute the net proceeds of such sale amongst the members otherwise entitled to such fractions in due proportions); and
 - (b) authorise any person to enter, on behalf of all the members concerned, into an agreement with the company providing for the allotment to them, respectively credited as fully paid up, of any further shares to which they may become entitled on the capitalisation concerned or, as the case may require, for the payment by the application thereto of their respective proportions of the profits resolved to be capitalised of the amounts remaining unpaid on their existing shares.
- (8) Any agreement made under such authority shall be effective and binding on all the members concerned.
- (9) Where the directors of a company have resolved to approve a *bona fide* revaluation of all the fixed assets of the company, the net capital surplus in excess of the previous book value of the assets arising from such revaluation may be—
 - (a) credited by the directors to undenominated capital, other than the share premium account; or
 - (b) used in paying up unissued shares of the company to be issued to members as fully paid bonus shares.