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# COMPANIES BILL 2012

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*Unofficial version*

As amended in ~~Committee-Report~~ Stage (Seanad)  
on ~~17<sup>th</sup> June~~30<sup>th</sup> September 2014

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**Disclaimer: Whilst every care has been taken in reflecting the changes made at ~~Committee-Report~~ Stage (Seanad) to the Bill as it was passed by the Dáil, Arthur Cox accepts no responsibility or liability for any errors or omissions. Readers are reminded this is an unofficial production which is intended to be no more than an indicative guide to the changes made at ~~Committee-Report~~ Stage (Seanad) and is not intended to be a definitive statement of those changes.**

**Arthur Cox**

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**SCHEDULE 1**

**FORM OF CONSTITUTION OF PRIVATE COMPANY LIMITED BY SHARES**

**CONSTITUTION  
OF  
[ name of company as below ]**

1. The name of the company is: THE SOUTH EASTERN COUNTIES FLOORING AND TILING COMPANY LIMITED.
2. The company is a private company limited by shares, registered under Part 2 of the Companies Act 2012.
3. The liability of the members is limited.
4. The share capital of the company is €50,000 divided into 50,000 shares of €1 each. / The share capital of the company is divided into shares of €1 each.
5. Supplemental Regulations (if any).

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

<i>Names, Addresses and Descriptions of Subscribers</i>	<i>Number of Shares taken by each Subscriber</i>
1. Mary Kelly Address: Description:	2,700
2. Alan Redmond Address: Description:	300
Total shares taken:	3,000

As appropriate :  
signatures in writing of the above subscribers, attested by witness as provided for below; or  
authentication in the manner referred to in *section [888]*.

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_

Witness to the above Signatures:

Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

**SCHEDULE 2**

REPEALS AND REVOCATIONS

PART 1

ACTS OF THE OIREACHTAS REPEALED

<i>Number and Year</i>	<i>Short title</i>	<i>Extent of Repeal</i>
No. 33 of 1963	Companies Act 1963	The whole Act
No. 31 of 1977	Companies (Amendment Act) 1977	The whole Act
No. 10 of 1982	Companies (Amendment) Act 1982	The whole Act
No. 13 of 1983	Companies (Amendment) Act 1983	The whole Act
No. 25 of 1986	Companies (Amendment) Act 1986	The whole Act
No. 27 of 1988	Bankruptcy Act 1988	Section 51(2)
No. 27 of 1990	Companies (Amendment) Act 1990	The whole Act
No. 33 of 1990	Companies Act 1990	The whole Act
No. 8 of 1999	Companies (Amendment) Act 1999	The whole Act
No. 30 of 1999	Companies (Amendment) (No. 2) Act 1999	The whole Act
No. 28 of 2001	Company Law Enforcement Act 2001	The whole Act
No. 44 of 2003	Companies (Auditing and Accounting) Act 2003	The whole Act
No. 12 of 2005	Investment Funds, Companies and Miscellaneous Provisions Act 2005	Parts 3, 4, 5 and 6
No. 41 of 2006	Investment Funds, Companies and Miscellaneous Provisions Act 2006	Parts 2 and 3
No. 20 of 2009	Companies (Amendment) Act 2009	The whole Act
No. 45 of 2009	Companies (Miscellaneous Provisions) Act 2009	Sections 1 to 4
No. 22 of 2012	Companies (Amendment) Act 2012	The whole Act
<del>No. 46 of 2013</del>	<del>Companies (Miscellaneous Provisions) Act 2013</del>	<del>Sections 2 to 7</del> <sup>241</sup>
<a href="#">No. 46 of 2013</a>	<a href="#">Companies (Miscellaneous Provisions) Act 2013</a>	<a href="#">Sections 2 to 8</a> <sup>242</sup>

<sup>241</sup> ~~Inserted by point 272 of Report Amendments.~~

<sup>242</sup> [Substituted by point 166 of Seanad Report Amendments.](#)

## PART 2

## STATUTORY INSTRUMENTS REVOKED

<i>Number and Year</i>	<i>Citation</i>	<i>Extent of Revocation</i>
S.I. No. 163 of 1973	European Communities (Companies) Regulations 1973	The whole Statutory Instrument
[S.I. No. 137 of 1987	European Communities (Mergers and Divisions of Companies) Regulations 1987	The whole Statutory Instrument] <sup>243</sup>
S.I. No. 201 of 1992	European Communities (Companies: Group Accounts) Regulations 1992	The whole Statutory Instrument
S.I. No. 395 of 1993	European Communities (Branch Disclosures) Regulations 1993	The whole Statutory Instrument
S.I. No. 275 of 1994	European Communities (Single Member Private Limited Companies) Regulations 1994	The whole Statutory Instrument
S.I. No. 437 of 2001	European Communities (Single-Member Private Limited Companies Regulations 1994 (Amendment) Regulations 2001	The whole Statutory Instrument
S.I. No. 333 of 2002	European Communities (Corporate Insolvency) Regulations 2002	The whole Statutory Instrument
S.I. No. 765 of 2004	European Communities (Fair Value Accounting) Regulations 2004	The whole Statutory Instrument
S.I. No. 839 of 2004	European Communities (Companies) Regulations 2004	The whole Statutory Instrument
S.I. No. 49 of 2007	European Communities (Companies) (Amendment) Regulations 2007	The whole Statutory Instrument
S.I. No. 450 of 2009	European Communities (Directive 2006/46/EC) Regulations 2009	The whole Statutory Instrument
S.I. No. 83 of 2010	European Communities (Directive 2006/46/EC) (Amendment) Regulations 2010	The whole Statutory Instrument
S.I. No. 306 of 2011	European Communities (Mergers and Divisions of Companies) (Amendment) Regulations 2011	The whole Statutory Instrument
S.I. No. 304 of 2012	European Union (Accounts) Regulations 2012	The whole Statutory Instrument
S.I. No. 308 of 2012	Companies (Amendment) (No.2) Act 1999 (Section 32) Order 2012	The whole Statutory Instrument

<sup>243</sup> Inserted by point 155 of Committee Amendments.

## SCHEDULE 3

### ACCOUNTING PRINCIPLES, FORM AND CONTENT OF ENTITY FINANCIAL STATEMENTS

#### PART I

##### CONSTRUCTION OF REFERENCES TO PROVISIONS OF SCHEDULE

1. (1) Without prejudice to the generality of section 9 of the Interpretation Act 2005 and its application to the body of this Act and to Schedules 1, 2 and 5 to 17 -

- (a) a reference in this Schedule to a paragraph or Part is a reference to a paragraph or Part of this Schedule, unless it is indicated that a reference to some other enactment is intended;
  - (b) a reference in this Schedule to a Section is a reference to the Section of the Part in which the reference occurs, unless it is indicated that a reference to some other enactment is intended; and
  - (c) a reference in this Schedule to a subparagraph or clause is a reference to the subparagraph or clause of the provision in which the reference occurs, unless it is indicated that a reference to some other enactment is intended.
- (2) Provisions providing for the interpretation of certain expressions appearing in this Schedule are contained in *Part VI*.

#### PART II

##### GENERAL RULES AND FORMATS

##### SECTION A

##### GENERAL RULES

2. (1) Subject to the provisions of this Schedule -

- (a) every balance sheet of a company shall show the items listed in either of the balance sheet formats set out in *Section B*;
- and



(b) every profit and loss account of a company shall show the items listed in any one of the profit and loss accounts formats so set out,

in either case in the order and under the headings and sub-headings given in the format adopted.

(2) *Subparagraph (1)* shall not be read as requiring the heading or sub-heading for any item in the balance sheet, or profit and loss account, of a company to be distinguished by any letter or number assigned to that item in the formats set out in *Section B*.

3. (1) Where, in accordance with *paragraph 2(1)*, a company's balance sheet or profit and loss account for any financial year has been prepared by reference to one of the formats set out in *Section B*, the directors of the company shall adopt the same format in preparing the financial statements for subsequent financial years unless, in their opinion, there are special reasons for a change.

(2) Where any change is made in the format adopted in preparing a balance sheet or profit and loss account of a company, the reasons for the change, together with full particulars of the change, shall be given in a note to the financial statements in which the new format is first adopted.

4. (1) Any item required in accordance with *paragraph 2* to be shown in the balance sheet or profit and loss account of a company may be shown in greater detail than that required by the format adopted.

(2) The balance sheet, or profit and loss account, of a company may include an item representing or covering the amount of any asset or liability or income or expenditure not otherwise covered by any of the items listed in the format adopted but the following shall not be treated as assets in the balance sheet of a company—

- (a) preliminary expenses;
- (b) expenses of and commission on any issue of shares or [debentures; and
- (c) costs of research.]<sup>244</sup>

(3) Any items to which an Arabic number is assigned in any of the formats set out in *Section B* may be combined in the financial statements of a company—

(a) in any case where the individual amounts of such items are not material to assessing the financial position or profit or loss of the company for the financial year concerned, or

(b) in any case where the combination of such items facilitates that assessment.

(4) Where items are combined in a company's financial statements pursuant to *subparagraph (3) (b)*, the individual amounts of any items so combined shall be disclosed in a note to the financial statements.

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<sup>244</sup> Substituted by point 273 of Report Amendments.

(5) In preparing the balance sheet, or profit and loss account, of a company, the directors of the company shall adapt the arrangement and headings and sub-headings otherwise required by *paragraph 2* in respect of items to which an Arabic number is assigned in the format adopted, in any case where the special nature of the company's business requires such adaptation.

(6) Every profit and loss account of a company shall show the amount of the profit or loss of the company on ordinary activities before taxation.

5. In respect of every item shown in the balance sheet, or profit and loss account, or notes thereto, of a company, the corresponding amount for the financial year immediately preceding that to which the balance sheet or profit and loss account relates shall also be shown and, if that corresponding amount is not comparable with the amount to be shown for the item in question in respect of the financial year to which the balance sheet or profit and loss account relates, the former amount may be adjusted, and particulars of the adjustment and the reasons therefor shall be given in a note to the financial statements.

6. (1) Subject to *subparagraph (2)*, a heading or sub-heading corresponding to an item listed in the format adopted in preparing the balance sheet or profit and loss account of a company shall not be included in the balance sheet or profit and loss account, as the case may be, if there is no amount to be shown for that item in respect of the financial year to which the balance sheet or profit and loss account relates.

(2) *Subparagraph (1)* shall not apply in any case where an amount can be shown for the item in question in respect of the financial year immediately preceding that to which the balance sheet or profit and loss account relates, and that amount shall be shown under the heading or sub-heading required by the format adopted as aforesaid.

7. Amounts in respect of items representing assets or income may not be set off in the financial statements of a company against amounts in respect of items representing liabilities or expenditure, as the case may be, or *vice versa*.

## SECTION B

### THE REQUIRED FORMATS FOR FINANCIAL STATEMENTS

#### *Preliminary*

8. References in this Part to the items listed in any of the formats set out in this Part are references to those items read together with any notes following the formats which apply to any of those items.

9. A number in brackets following any item in, or any heading to, any of the formats set out in this Part is a reference to the note of that number in the notes following the formats.

10. In the notes following the formats—

- (a) the heading of each note gives the required heading or sub-heading for the item to which it applies and a reference to any letters and numbers assigned to that item in the formats set out in this Part; and
- (b) references to a numbered format are references to the balance sheet format or (as the case may require) to the profit and loss account format of that number set out in this Part.

## BALANCE SHEET FORMATS

### *Format 1*

#### A. Fixed Assets

##### I. Intangible assets

1. Development costs
2. Concessions, patents, licences, trade marks and similar rights and assets (1)
3. Goodwill (2)
4. Payments on account

##### II. Tangible assets

1. Land and buildings
2. Plant and machinery
3. Fixtures, fittings, tools and equipment
4. Payments on account and assets in course of construction

##### III. Financial assets

1. Shares in group undertakings
2. Loans to group undertakings
3. Participating interests
4. Loans to undertakings in which a participating interest is held
5. Other investments other than loans
6. Other loans

#### B. Current Assets

##### I. Stocks

1. Raw materials and consumables
2. Work in progress
3. Finished goods and goods for resale
4. Payments on account

##### II. Debtors (3)

1. Trade debtors
2. Amounts owed by group undertakings
3. Amounts owed by undertakings in which a participating interest is held
4. Other debtors
5. Called up share capital not paid
6. [Prepayments and accrued income]<sup>245</sup>

##### III. Investments

1. Shares in group undertakings

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<sup>245</sup> Substituted by point 274 of Report Amendments.

2. Other investments

IV. Cash at bank and in hand

C. Creditors: amounts falling due within one year

1. Debenture loans (4)
2. Bank loans and overdrafts
3. Called up share capital presented as a liability (8)
4. Payments received on account (5)
5. Trade creditors
6. Bills of exchange payable
7. Amounts owed to group undertakings
8. Amounts owed to undertakings in which a participating interest is held
9. Other creditors including tax and social insurance (6)
10. Accruals (7)
11. Deferred income (7)

D. Net current assets (liabilities)

E. Total assets less current liabilities

F. Creditors: Amounts falling due after more than one year

1. Debenture loans (4)
2. Bank loans and overdrafts
3. Called up share capital presented as a liability (8)
4. Payments received on account (5)
5. Trade creditors
6. Bills of exchange payable
7. Amounts owed to group undertakings
8. Amounts owed to undertakings in which a participating interest is held
9. Other creditors including tax and social insurance (6)
10. Accruals (7)
11. Deferred income (7)

G. Provisions for liabilities

1. Retirement benefit obligations
2. Taxation, including deferred taxation
3. Other provisions for liabilities

H. Capital and reserves

I. Called up share capital presented as equity (8)

II. Share premium account

III. Revaluation reserve

IV. Other reserves

1. Other undenominated capital
2. Reserve for own shares held
3. Reserves provided for by the constitution
4. Other reserves (specified as necessary)

V. Profit and loss account

BALANCE SHEET FORMATS

Format 2

ASSETS

A. Fixed Assets

I. Intangible assets

1. Development costs
2. Concessions, patents, licences, trade marks and similar rights and assets (1)
3. Goodwill (2)
4. Payments on account

II. Tangible assets

1. Land and buildings
2. Plant and machinery
3. Fixtures, fittings, tools and equipment
4. Payments on account and assets in course of construction

III. Financial assets

1. Shares in group undertakings
2. Loans to group undertakings
3. Participating interests
4. Loans to undertakings in which a participating interest is held
5. Other investments other than loans
6. Other loans

B. Current Assets

I. Stocks

1. Raw materials and consumables
2. Work in progress
3. Finished goods and goods for resale
4. Payments on account

II. Debtors (3)

1. Trade debtors
2. Amounts owed by group undertakings
3. Amounts owed by undertakings in which a participating interest is held
4. Other debtors
5. Called up share capital not paid
6. Prepayments and accrued income

III. Investments

1. Shares in group undertakings
2. Other investments

IV. Cash at bank and in hand

LIABILITIES

A. Capital and reserves

I. Called up share capital presented as equity (8)

II. Share premium account

III. Revaluation reserve

IV. Other reserves

1. Other undenominated capital
2. Reserve for own shares held
3. Reserves provided for by the constitution
4. Other reserves (specify as necessary)

V. Profit and loss account

B. Provisions for liabilities

1. Retirement benefit obligations

2. Taxation, including deferred taxation
3. Other provisions for liabilities

C. Creditors (9)

1. Debenture loans (4)
2. Bank loans and overdrafts
3. Called up share capital presented as a liability (8)
4. Payments received on account (5)
5. Trade creditors
6. Bills of exchange payable
7. Amounts owed to group undertakings
8. Amounts owed to undertakings in which a participating interest is held
9. Other creditors including tax and social insurance (6)
10. Accruals (7)
11. Deferred income (7)

NOTES ON THE BALANCE SHEET FORMATS

(1) *Concessions, patents, licences, trade marks and similar rights and assets*

(Formats 1 and 2, items A. I. 2)

Amounts in respect of assets shall only be included in a company's balance sheet under this item if either—

(a) the assets were acquired for valuable consideration and are not required to be shown under goodwill, or

(b) the assets in question were created by the company itself.

(2) *Goodwill*

(Formats 1 and 2, items A. I. 3)

Amounts representing goodwill shall only be included to the extent that the goodwill was acquired for valuable consideration.

(3) *Debtors*

(Formats 1 and 2, items B. II. 1 to 6)

The amount falling due after more than one year shall be shown separately for each item included under debtors.

(4) *Debenture loans*

(Format 1, item C.1 and F.1 and Format 2, item C.1)

The amount of any convertible loans shall be shown separately and the terms and conditions under which those loans are convertible into share capital shall be disclosed in the notes to the financial statements.

(5) *Payments received on account*

*(Format 1, items C.4 and F.4 and Format 2, item C.4)*

Payments received on account of orders shall be shown for each of these items in so far as they are not shown as deductions from stocks.

*(6) Other creditors including tax and social insurance*

*(Format 1, items C.9 and F.9 and Format 2, item C.9)*

The amount for creditors in respect of taxation and social insurance shall be shown separately from the amount for other creditors and in respect of taxation there shall be stated separately the amounts included in respect of income tax payable on emoluments to which Chapter 4 of Part 42 of the Taxes Consolidation Act 1997 applies, any other income tax, corporation tax, capital gains tax, value-added tax and any other tax.

*(7) Accruals and deferred income*

*(Format 1, items C. 10 and 11 and F. 10 and 11 and Format 2, items C.10 and 11)*

The amount in respect of Government grants, that is to say, grants made by or on behalf of the Government, included in this item shall be shown separately in a note to the financial statements unless it is shown separately in the balance sheet.

*(8) Called up share capital*

*(Format 1, item C. 3, F. 3 and H. I, and Format 2, item A. 1 and C. 3)*

In accordance with the accounting principle in *paragraph 17*, called up share capital must be analysed between shares that are presented as liabilities and share capital.

*(9) Creditors*

*(Format 2, items C.1 to 11)*

Amounts falling due within one year and after one year shall be shown separately for each of these items and their aggregate shall be shown separately for all of these items.

## PROFIT AND LOSS ACCOUNT FORMATS

*Format 1 (13)*

1. Turnover
2. Cost of Sales (10)
3. Gross Profit or Loss
4. Distribution costs (10)
5. Administrative expenses (10)

6. Other operating income
7. Income from shares in group undertakings
8. Income from participating interests
9. Income from other financial assets (11)
10. Other interest receivable and similar income (11)
11. Amounts written off financial assets and investments held as current assets
12. Interest payable and similar charges (12)
13. Tax on profit or loss on ordinary activities
14. Profit or loss on ordinary activities after taxation
15. Extraordinary income
16. Extraordinary charges
17. Extraordinary profit or loss
18. Tax on extraordinary profit or loss
19. Other taxes not shown under the above items
20. Profit or loss for the financial year

#### PROFIT AND LOSS ACCOUNT FORMATS

##### *Format 2*

1. Turnover
2. Variation in stocks of finished goods and in work in progress
3. Own work capitalised
4. Other operating income
5.
  - (a) Raw materials and consumables
  - (b) Other external charges
6. Staff costs:
  - (a) Wages and salaries
  - (b) Social insurance costs
  - (c) Other retirement benefit costs
  - (d) Other compensation costs
7.
  - (a) Depreciation and other amounts written off tangible and intangible fixed assets
  - (b) Exceptional amounts written off current assets
8. Other operating charges
9. Income from shares in group undertakings
10. Income from participating interests
11. Income from other financial assets (11)
12. Other interest receivable and similar income (11)
13. Amounts written off financial assets and investments held as current assets
14. Interest payable and similar charges (12)
15. Tax on profit or loss on ordinary activities
16. Profit or loss on ordinary activities after taxation
17. Extraordinary income
18. Extraordinary charges
19. Extraordinary profit or loss
20. Tax on extraordinary profit or loss
21. Other taxes not shown under the above items
22. Profit or loss for the financial year

#### PROFIT AND LOSS ACCOUNT FORMATS

##### *Format 3 (13)*

##### A. Charges



1. Cost of sales (10)
  2. Distribution costs (10)
  3. Administrative expenses (10)
  4. Amounts written off financial assets and investments held as current assets
  5. Interest payable and similar charges (12)
  6. Tax on profit or loss on ordinary activities
  7. Profit or loss on ordinary activities after taxation
  8. Extraordinary charges
  9. Tax on extraordinary profit or loss
  10. Other taxes not shown under the above items
  11. Profit or loss for the financial year
- B. Income
1. Turnover
  2. Other operating income
  3. Income from shares in group undertakings
  4. Income participating interests
  5. Income from other financial assets (11)
  6. Other interest receivable and similar income (11)
    7. Profit or loss on ordinary activities after taxation
  8. Extraordinary income
  9. Profit or loss for the financial year

#### PROFIT AND LOSS ACCOUNT FORMATS

##### *Format 4*

##### A. Charges

1. Reduction in stocks of finished goods and in work in progress
2.
  - (a) Raw materials and consumables
  - (b) Other external charges
3. Staff costs:
  - (a) Wages and salaries
  - (b) Social insurance costs
  - (c) Other retirement benefit costs
  - (d) Other compensation costs
4.
  - (a) Depreciation and other amounts written off tangible and intangible fixed assets
  - (b) Exceptional amounts written off current assets
5. Other operating charges
6. Amounts written off financial assets and investments held as current assets
7. Interest payable and similar charges (12)
8. Tax on profit or loss on ordinary activities
9. Profit or loss on ordinary activities after taxation
10. Extraordinary charges
11. Tax on extraordinary profit or loss
12. Other taxes not shown under the above items
13. Profit or loss for the financial year

##### B. Income

1. Turnover
2. Increase in stocks of finished goods and in work in progress
3. Own work capitalised

4. Other operating income
5. Income from shares in group undertakings
6. Income from participating interests
7. Income from other financial assets (11)
8. Other interest receivable and similar income (11)
9. Profit or loss on ordinary activities after taxation
10. Extraordinary income
11. Profit or loss for the financial year

#### NOTES ON THE PROFIT AND LOSS ACCOUNT FORMATS

(10) *Cost of sales: Distribution costs: Administrative expenses*

(Format 1, items 2, 4 and 5 and Format 3, items A. 1, 2 and 3)

These items shall be stated after taking into account any necessary provisions for depreciation or diminution in value of assets.

(11) *Income from other financial assets: other interest receivable and similar income*

(Format 1, items 9 and 10; Format 2, items 11 and 12; Format 3, items B. 5 and 6; Format 4, items B. 7 and 8)

Income and interest derived from group undertakings shall be shown separately from income and interest derived from other sources.

(12) *Interest payable and similar charges*

(Format 1, item 12; Format 2, item 14; Format 3, item A. 5; Format 4, item A. 7)

The amount payable to group undertakings shall be shown separately.

(13) *Formats 1 and 3*

The amounts of any provisions for depreciation and diminution in value of tangible and intangible fixed assets falling to be shown under items 7 (a) and A. 4 (a), respectively, in Formats 2 and 4 shall be disclosed in a note to the financial statements in any case where the profit and loss account is prepared by reference to Format 1 or Format 3.

### PART III

#### ACCOUNTING PRINCIPLES AND VALUATION RULES

#### SECTION A

#### ACCOUNTING PRINCIPLES

*Preliminary*

**11.** Subject to *paragraph 18*, the amounts to be included in the financial statements of a company in respect of the items shown shall be determined in accordance with the principles set out in *paragraphs 12 to 17*.

*Accounting principles*

**12.** The company shall be presumed to be carrying on business as a going concern.

**13.** Accounting policies shall be applied consistently from one financial year to the next.

**14.** The amount of any item in the financial statements shall be determined on a prudent basis and in particular—

- (a) only profits realised at the financial year end date shall be included in the profit and loss account; and
- (b) all liabilities which have arisen in the course of the financial year to which the financial statements relate or of a previous financial year shall be taken into account, even if such liabilities only become apparent between the financial year end date and the date on which the financial statements are signed under *section [324]*.

**15.** All income and charges relating to the financial year to which the financial statements relate shall be taken into account without regard to the date of receipt or payment.

**16.** In determining the aggregate amount of any item the amount of each individual asset or liability that falls to be taken into account shall be determined separately.

**17.** The presentation of amounts within items in the profit and loss account and balance sheet shall have regard to the substance of the reported transaction or arrangement in accordance with applicable accounting standards.

*Departure from the accounting principles*

**18.** If it appears to the directors of a company that there are special reasons for departing from any of the principles stated above in preparing the company's financial statements in any particular year, they may so depart, but particulars of the departure, the reasons for it and its effect on the balance sheet and profit and loss account of the company shall be stated in a note to the financial statements.

SECTION B

HISTORICAL COST ACCOUNTING RULES

*Preliminary*

**19.** Subject to *Sections C and D*, the amounts to be included in respect of all items shown in a company's financial statements shall be determined in accordance with the rules set out in *paragraphs 20 to 31*.

## FIXED ASSETS

### *General rules*

**20.** Subject to any provision for depreciation or diminution in value made in accordance with *paragraph 21* or *22* the amount to be included in respect of any fixed asset shall be its purchase price or production cost.

### *Rules for depreciation and diminution in value*

**21.** In the case of any fixed asset which has a limited useful economic life, the amount of—

- (a) its purchase price or production cost; or
- (b) where it is estimated that any such asset will have a residual value at the end of the period of its useful economic life, its purchase price or production cost less that estimated residual value,

shall be reduced by provisions for depreciation calculated to write off that amount systematically over the period of the asset's useful economic life.

**22.** (1) Where a financial asset of a description falling to be included under item A. III of either of the balance sheet formats set out in *Part II* has diminished in value, provisions for diminution in value may be made in respect of it and the amount to be included in respect of it may be reduced accordingly; and any such provisions which are not shown separately in the profit and loss account shall be disclosed (either separately or in aggregate) in a note to the financial statements.

(2) Provisions for diminution in value shall be made in respect of any fixed asset which has diminished in value if the reduction in its value is expected to be permanent (whether its useful economic life is limited or not) and the amount to be included in respect of it shall be reduced accordingly; and any such provisions which are not shown separately in the profit and loss account shall be disclosed (either separately or in aggregate) in a note to the financial statements.

(3) Where the reasons for which any provision was made in accordance with *subparagraph (1)* or *(2)* have ceased to apply to any extent, that provision shall be written back to the extent that it is no longer necessary; and any amounts written back in accordance with this subparagraph which are not shown in the profit and loss account shall be disclosed (either separately or in aggregate) in a note to the financial statements.

### *Rules for determining particular fixed asset items*

**23.** (1) Notwithstanding that an item in respect of "development costs" is included under "fixed assets" in the balance sheet formats set out in *Part II*, an amount may only be included in a company's balance sheet in respect of that item in special circumstances.

(2) If an amount is included in a company's balance sheet in respect of development costs, the following information shall be given in a note to the financial statements—

- (a) the period over which the amount of those costs originally capitalised is being or is to be written off, and
- (b) the reasons for capitalising the costs in question.

**24.** (1) The application of *paragraphs 20 to 22* in relation to goodwill (in any case where goodwill is treated as an asset) is subject to the following provisions of this paragraph.

(2) Subject to *subparagraph (3)*, the amount of the consideration for any goodwill acquired by a company shall be reduced by provisions for depreciation calculated to write off that amount systematically over a period chosen by the directors of the company.

(3) The period chosen shall not exceed the useful economic life of the goodwill in question.

(4) In any case where any goodwill acquired by a company is shown or included as an asset in the company's balance sheet, the period chosen for writing off the consideration for that goodwill and the reasons for choosing that period shall be disclosed in a note to the financial statements.

#### CURRENT ASSETS

**25.** Subject to *paragraph 26*, the amount to be included in respect of any current asset shall be its purchase price or production cost.

**26.** (1) If the net realisable value of any current asset is lower than its purchase price or production cost, the amount to be included in respect of that asset shall be the net realisable value.

(2) Where the reasons for which any provision for diminution in value was made under *subparagraph (1)* have ceased to apply to any extent, that provision shall be written back to the extent that it is no longer necessary.

#### MISCELLANEOUS

##### *Excess of money owed over value received as an asset item*

**27.** (1) Where the amount repayable on any debt owed by a company is greater than the value of the consideration received in the transaction giving rise to the debt, the amount of the difference may be treated as an asset.

(2) Where any such amount exists—

- (a) it shall be written off by reasonable amounts each year and shall be completely written off before repayment of the debt; and
- (b) if the amount not written off is not shown as a separate item in the company's balance sheet, it shall be disclosed in a note to the financial statements.

## ASSETS INCLUDED AT A FIXED AMOUNT

**28.** (1) Subject to *subparagraph (2)*, assets which fall to be included—

- (a) amongst the fixed assets of a company under the item “tangible assets”; or
- (b) amongst the current assets of a company under the item “raw materials and consumables”,

may be included at a fixed quantity and value.

(2) *Subparagraph (1)* applies to assets of a kind which are constantly being replaced, where—

- (a) their overall value is not material to assessing the company’s state of affairs; and
- (b) their quantity, value and composition are not subject to material variation.

## DETERMINATION OF PURCHASE PRICE OR PRODUCTION COST

**29.** (1) The purchase price of an asset shall be determined by adding to the actual price paid any expenses incidental to its acquisition.

(2) The production cost of an asset shall be determined by adding to the purchase price of the raw materials and consumables used the amount of the costs incurred by the company which are directly attributable to the production of that asset.

(3) In addition there may be included in the production cost of an asset—

- (a) a reasonable proportion of the costs incurred by the company which are only indirectly attributable to the production of that asset, but only to the extent that they relate to the period of production, and
- (b) interest on capital borrowed to finance the production of that asset, to the extent that it accrues in respect of the period of production,

provided, however, in a case within *clause (b)*, that the inclusion of the interest in determining the cost of that asset and the amount of the interest so included is disclosed in a note to the financial statements.

(4) In the case of current assets, distribution costs may not be included in production costs.

**30.** (1) Subject to the qualification mentioned subsequently in this subparagraph, the purchase price or production cost of—

- (a) any assets which fall to be included under any item shown in a company's balance sheet under the general item "stocks";  
and
- (b) any assets which are fungible assets (including investments),

may be determined by the application of any of the methods mentioned in *subparagraph (2)* in relation to any such assets of the same class.

The method chosen must be one which appears to the directors to be appropriate in the circumstances of the company.

(2) Those methods are —

- (a) the method known as "first in, first out" (FIFO);
- (b) a weighted average price; and
- (c) any other method similar to any of the methods mentioned above.

(3) Where, in the case of any company—

- (a) the purchase price or production cost of assets falling to be included under any item shown in the company's balance sheet has been determined by the application of any method permitted by this paragraph; and
- (b) the amount shown in respect of that item differs materially from the relevant alternative amount given below in this paragraph,

the amount of that difference shall be disclosed in a note to the financial statements.

(4) Subject to *subparagraph (5)*, for the purposes of *subparagraph (3)(b)*, the relevant alternative amount, in relation to any item shown in a company's balance sheet, is the amount which would have been shown in respect of that item if assets of any class included under that item at an amount determined by any method permitted by this paragraph had instead been included at their replacement cost as at the financial year end date.

(5) The relevant alternative amount may be determined by reference to the most recent actual purchase price or production cost before the financial year end date of assets of any class included under the item in question instead of by reference to their replacement cost as at that date, but only if the former appears to the directors of the company to constitute the more appropriate approach in the case of assets of that class.

(6) For the purpose of this paragraph, assets of any description shall be regarded as fungible if assets of that description are substantially indistinguishable from one another.

## SUBSTITUTION OF ORIGINAL STATED AMOUNT WHERE PRICE OR COST UNKNOWN

**31.** Where there is no record of the purchase price or production cost of any asset of a company or of any price, expense or costs relevant for determining its purchase price or production cost in accordance with *paragraph 29* or any such record cannot be obtained without unreasonable expense or delay, its purchase price or production cost shall be taken for the purposes of *paragraphs 20 to 26* to be the value ascribed to it in the earliest available record of its value made on or after its acquisition or production by the company.

### SECTION C

#### ALTERNATIVE ACCOUNTING RULES

##### *Preliminary*

**32.** (1) The rules set out in *Section B* are referred to subsequently in this Schedule as the historical cost accounting rules.

(2) Those rules, with the omission of *paragraphs 19, 24 and 28 to 31*, are referred to subsequently in this Part as the depreciation rules; and references subsequently in this Schedule to the historical cost accounting rules do not include the depreciation rules as they apply by virtue of *paragraph 35*.

**33.** Subject to *paragraphs 35 to 37*, the amounts to be included in respect of assets of any description mentioned in *paragraph 34* may be determined on any basis so mentioned.

##### *Alternative accounting rules*

**34.** (1) Intangible fixed assets, other than goodwill, may be included at their current cost.

(2) Tangible fixed assets may be included at a market value determined as at the date of their last valuation or at their current cost.

(3) Financial fixed assets may be included either—

(a) at a market value determined as at the date of their last valuation; or

(b) at a value determined on any basis which appears to the directors to be appropriate in the circumstances of the company,

but in the latter case particulars of the method of valuation adopted and of the reasons for adopting it shall be disclosed in a note to the financial statements.

(4) Investments of any description falling to be included under item B. III of either of the balance sheet formats set out in *Part II* may be included at their current cost.



(5) Stocks may be included at their current cost.

*Application of depreciation rules*

**35.** (1) Where the value of any asset of a company is determined on any basis mentioned in *paragraph 34*, that value shall be, or (as the case may require) be the starting point for determining, the amount to be included in respect of that asset in the company's financial statements, instead of its purchase price or production cost or any value previously so determined for that asset; and the depreciation rules shall apply accordingly in relation to any such asset with the substitution for any reference to its purchase price or production cost of a reference to the value most recently determined for that asset on any basis mentioned in *paragraph 34*.

(2) The amount of any provision for depreciation required in the case of any fixed asset by *paragraph 21* or *22* as it applies by virtue of *subparagraph (1)* is referred to subsequently in this paragraph as the adjusted amount; and the amount of any provision which would be required by that paragraph in the case of that asset according to the historical cost accounting rules is referred to as the historical cost amount.

(3) Where *subparagraph (1)* applies in the case of any fixed asset, the amount of any provision for depreciation in respect of that asset—

(a) included in any item shown in the profit and loss account in respect of amounts written off assets of the description in question; or

(b) taken into account in stating any item so shown which is required by note (10) of the notes on the profit and loss account formats set out in *Part II* to be stated after taking into account any necessary provisions for depreciation or diminution in value of assets included under it,

may be the historical cost amount instead of the adjusted amount, provided that, if the amount of the provision for depreciation is the historical cost amount, the amount of any difference between the two shall be shown separately in the profit and loss account or in a note to the financial statements.

*Additional information in case of departure from historical cost accounting rules*

**36.** (1) This paragraph applies where the amounts to be included in respect of assets covered by any items shown in a company's financial statements have been determined on any basis mentioned in *paragraph 34*.

(2) The items affected and the basis of valuation adopted in determining the amounts of the assets in question in the case of each such item shall be disclosed in a note to the financial statements.

(3) In the case of each balance sheet item affected (except stocks) either—

(a) the comparable amounts determined according to the historical cost accounting rules; or

(b) the differences between those amounts and the corresponding amounts actually shown in the balance sheet in respect of that item,

shall be shown separately in the balance sheet or in a note to the financial statements.

(4) In *subparagraph (3)*, references in relation to any item to the comparable amounts determined as there mentioned are references to—

(a) the aggregate amount which would be required to be shown in respect of that item if the amounts to be included in respect of all the assets covered by that item were determined according to the historical cost accounting rules; and

(b) the aggregate amount of the cumulative provisions for depreciation or diminution in value which would be permitted or required in determining those amounts according to those rules.

#### *Revaluation Reserve*

37. (1) With respect to any determination of the value of an asset of a company on any basis mentioned in *paragraph 34*, the amount of any profit or loss arising from that determination (after allowing, where appropriate, for any provisions for depreciation or diminution in value made otherwise than by reference to the value so determined and any adjustments of any such provisions made in the light of that determination) shall be credited or (as the case may be) debited to a separate reserve (referred to in this paragraph as the “revaluation reserve”).

(2) The amount of the revaluation reserve shall be shown in the company’s balance sheet under a separate sub-heading in the position given for the item “revaluation reserve” in Format 1 or 2 of the balance sheet formats set out in *Part II*.

(3) An amount may be transferred -

(a) from the revaluation reserve -

(i) to the profit and loss account, if the amount was previously charged to that account, or it represents realised profit; or

(ii) on capitalisation;

(b) to or from the revaluation reserve in respect of the taxation relating to any profit or loss credited or debited to the reserve,

and the revaluation reserve shall be reduced to the extent that the amounts transferred to it are no longer necessary for the purpose of the valuation methods used.

(4) In *subparagraph (3)(a)(ii)* “capitalisation”, in relation to an amount standing to the credit of the revaluation reserve, means applying it in wholly or partly paid up unissued shares in the company to be allotted to members of the company as fully or partly paid shares.

(5) The revaluation reserve shall not be reduced except as mentioned in this paragraph.

(6) The treatment for taxation purposes of amounts credited or debited to the revaluation reserve shall be disclosed in a note to the financial statements.

## SECTION D

### FAIR VALUE ACCOUNTING RULES

#### *Inclusion of financial instruments at fair value*

**38.** (1) Subject to *subparagraphs (2) to (4)* and *paragraph 39*, financial instruments, including derivative financial instruments, may be accounted for at fair value.

(2) Subject to *paragraph 41*, *subparagraph (1)* does not apply to financial instruments which constitute liabilities unless-

(a) they are held as part of a trading portfolio; or

(b) they are derivative financial instruments.

(3) *Subparagraph (1)* does not apply to-

(a) financial instruments (other than derivative financial instruments) held to maturity;

(b) loans and receivables originated by the company and not held for trading purposes;

(c) interests in subsidiary undertakings, associated undertakings and joint ventures;

- (d) equity instruments issued by the company;
- (e) contracts for contingent consideration in a business combination; and
- (f) other financial instruments with such special characteristics that the instruments, according to generally accepted accounting principles or practice, should be accounted for differently from other financial instruments.

(4) If the fair value of a financial instrument cannot be determined reliably by any of the methods described in *paragraph 40, subparagraph (1)* does not apply to that financial instrument and it shall be measured using the accounting rules set out in *Section B* or *C*.

(5) In this paragraph-

“associated undertaking” has the meaning given to it by *paragraph 20 of Schedule 4*;

“joint venture” has the meaning given to it by *paragraph 19 of Schedule 4*.

**39.** (1) Financial instruments which constitute liabilities, other than such instruments referred to in *subparagraphs (2)(a) and (b) of paragraph 38*, may be accounted for by a company at fair value if—

- (a) they are accounted for in accordance with international accounting standards as adopted by the Commission Regulation on or before 5 September 2006; and
- (b) the associated disclosure requirements, provided for in international financial reporting standards, are made.

(2) Financial instruments referred to in *paragraph 38(3)* may be accounted for by a company at fair value if—

- (a) they are accounted for in accordance with international accounting standards as adopted by the Commission Regulation, on or before 5 September 2006; and
- (b) the associated disclosure requirements, provided for in international financial reporting standards, are made.

(3) In this paragraph “Commission Regulation” means Commission Regulation (EC) No. 1725/2003 of 29 September 2003.

#### *Methods for determining fair value*

**40.** (1) The fair value of a financial instrument is its value determined in accordance with this paragraph.

(2) If a reliable market can readily be identified for the financial instrument, its fair value is to be determined by reference to its market value.

(3) If a reliable market cannot readily be identified for the financial instrument but can be identified for its components or for a similar

instrument, its fair value is to be determined by reference to the market value of its components or of the similar instrument.

(3) If neither *subparagraph (2)* nor *(3)* applies, the fair value of the financial instrument is to be a value resulting from generally accepted valuation models and techniques.

(4) Any valuation models and techniques used for the purposes of *subparagraph (4)* shall ensure a reasonable approximation of the market value.

*Inclusion of hedged items at fair value*

**41.** A company may include any assets and liabilities that qualify as hedged items under a fair value hedge accounting system, or identified portions of such assets and liabilities, at the amount required under that system.

*Other assets that may be included at fair value*

**42.** (1) This paragraph applies to -

- (a) investment property; and
- (b) living animals and plants,

that, under relevant international financial reporting standards, may be included in financial statements at fair value.

(2) Such investment property and such living animals and plants may be included at fair value, provided that all such investment property or, as the case may be, all such living animals and plants are so included where their fair value can reliably be determined.

(3) In this paragraph, "fair value" means fair value determined in accordance with relevant international financial reporting standards.

*Accounting for changes in fair value of financial instruments*

**43.** (1) This paragraph applies where a financial instrument is valued at fair value in accordance with *paragraph 38* or *41* or where an asset is valued in accordance with *paragraph 42*.

(2) Notwithstanding *paragraph 14*, but subject to *subparagraphs (3)* and *(4)*, a change in the fair value of the financial instrument or of the investment property or living animal or plant shall be included in the profit and loss account.

(3) Where –

- (a) the financial instrument accounted for is a hedging instrument under a system of hedge accounting that allows some or all of the change in value not to be shown in the profit and loss account; or

- (b) the change in value relates to an exchange difference arising on a monetary item that forms part of a company's net investment in a foreign entity,

the amount of the change in value shall be credited or (as the case may be) debited to a separate reserve to be known as the "fair value reserve".

(4) Where the instrument accounted for-

- (a) is an available for sale financial asset; and
- (b) is not a derivative,

the change in value may be credited or (as the case may be) debited to the fair value reserve.

#### *The fair value reserve*

44. (1) An amount shall be transferred –

- (a) from the fair value reserve to the profit and loss account if the related asset is impaired, transferred or disposed of; or
- (b) from the fair value reserve in respect of tax relating to any amount transferred under *clause (a)*.

(2) The fair value reserve shall be adjusted when amounts therein are no longer necessary for the purposes of *paragraph 43(3)* or (4).

(3) The fair value reserve shall not be reduced except as provided for in this paragraph.

(4) The treatment for taxation purposes of amounts credited or debited to the fair value reserve shall be disclosed in a note to the financial statements.

## PART IV

### INFORMATION REQUIRED BY WAY OF NOTES TO FINANCIAL STATEMENTS

#### *Preliminary*

45. Any information required in the case of any company by the following provisions of this Part shall (if not given in the company's financial statements) be given by way of a note to those financial statements.

*Information supplementing the balance sheet*

**46.** *Paragraphs 47 to 61* require information which either supplements the information given with respect to any particular items shown in the balance sheet or is otherwise relevant to assessing the company's financial position in the light of the information so given.

*Debentures*

**47.** (1) If the company has issued any debentures during the financial year to which the financial statements relate, the following information shall be given—

- (a) the reason for making the issue;
- (b) the classes of debentures issued; and
- (c) in respect of each class of debentures, the amount issued and the consideration received by the company for the issue.

(2) Where any of the company's debentures are held by a nominee of or trustee for the company, the nominal amount of the debentures and the amount at which they are stated in the accounting records kept by the company in accordance with *section [281]* shall be stated.

*Fixed assets*

**48.** (1) In respect of each item which is or would, but for *paragraph 4(3)(b)*, be shown under the general item "fixed assets" in the company's balance sheet, the following information shall be given—

- (a) the appropriate amounts in respect of that item as at the date of the beginning of the financial year and as at the financial year end date respectively;
- (b) the effect on any amount shown in the balance sheet in respect of that item of—
  - (i) any revision of the amount in respect of any assets included under that item made during that year on any basis mentioned in *paragraph 34*;
  - (ii) acquisitions during that year of any assets;
  - (iii) disposals during that year of any assets; and

(iv) any transfers of assets of the company to and from that item during that year.

(2) The reference in *subparagraph (1) (a)* to the appropriate amounts in respect of any item as at any date there mentioned is a reference to amounts representing the aggregate amounts determined, as at that date, in respect of assets falling to be included under that item either—

- (a) on the basis of purchase price or production cost (determined in accordance with *paragraphs 29 and 30*); or
- (b) on any basis mentioned in *paragraph 34*.

(leaving out of account in either case any provisions for depreciation or diminution in value).

(3) In respect of each item within *subparagraph (1)* —

- (a) the cumulative amount of provisions for depreciation or diminution in value of assets included under that item as at each date mentioned in *subparagraph (1)(a)*;
- (b) the amount of any such provisions made in respect of the financial year concerned;
- (c) the amount of any adjustments made in respect of any such provisions during that year in consequence of the disposal of any assets; and
- (d) the amount of any other adjustments made in respect of any such provisions during that year,

shall also be stated.

**49.** Where any fixed assets of the company (other than listed investments) are included under any item shown in the company's balance sheet at an amount determined on any basis mentioned in *paragraph 34*, the following information shall be given—

- (a) the years (so far as they are known to the directors) in which the assets were severally valued and the several values; and
- (b) in the case of assets that have been valued during the financial year, the names of the persons who valued them or particulars of their qualifications for doing so and (in either case) the bases of valuation used by them.

*Financial assets and investments held as current assets*

**50.** (1) In respect of the amount of each item which is or would, but for *paragraph 4(3)(b)*, be shown in the company's balance sheet under the general items "financial assets" or "investments held as current assets" there shall be stated how much of that amount is ascribable to listed investments.



(2) Where the amount of any listed investments is stated for any item in accordance with *subparagraph (1)*, the following amounts shall also be stated—

- (a) the aggregate market value of those investments where it differs from the amount so stated; and
- (b) both the market value and stock exchange value of any investments of which the former value is, for the purposes of the financial statements, taken as being higher than the latter.

*Information about fair valuation of assets and liabilities*

**51.** (1) This paragraph applies where financial instruments have been included at fair value by virtue of *paragraph 38* or *41*.

(2) There shall be stated-

- (a) the significant assumptions underlying the valuation models and techniques where fair values have been determined in accordance with *paragraph 40(4)*;
- (b) for each category of financial instrument the fair value of the financial instruments in that category and the amounts —
  - (i) included in the profit and loss account; and
  - (ii) credited or debited to the fair value reserve,in respect of instruments in that category;
- (c) for each class of derivative financial instrument, the extent and nature of the instruments including significant terms and conditions that may affect the amount, timing and certainty of future cash flows; and
- (d) a table showing movements in the fair value reserve during the financial year.

**52.** Where the company has derivative financial instruments that it has not accounted for at fair value, there shall be stated for each class of such derivatives —

- (a) the fair value of the derivatives in that class, if such a value can be determined in accordance with *paragraph 40*;
- and

(b) the extent and nature of the derivatives.

53. Where -

- (a) a company has financial assets which could be included at fair value by virtue of *paragraph 38*;
- (b) those assets are included in the company's financial statements at an amount in excess of their fair value; and
- (c) the company has not made provision for the diminution in value of those assets in accordance with *paragraph 22(1)*,

there shall be stated –

- (i) the amount at which either the individual assets or appropriate groupings of those assets is stated in the company's financial statements;
- (ii) the fair value of those assets or groupings; and
- (iii) the reasons for not making a provision for diminution in value of those assets, including the nature of the evidence that provides the basis for the belief that the amount at which they are stated in the financial statements will be recovered.

*Information where investment property and living animals and plants included at fair value*

54. (1) This paragraph applies where the amounts to be included in a company's financial statements in respect of investment property or living animals and plants have been determined in accordance with *paragraph 42*.

(2) The balance sheet items affected and the basis of valuation adopted in determining the amounts of the assets concerned in the case of each such item shall be disclosed in a note to the financial statements.

(3) In the case of investment property, for each balance sheet item affected there shall be shown, either separately in the balance sheet or in a note to the financial statements –

- (a) the comparable amounts determined according to the historical cost accounting rules; or
- (b) the differences between those amounts and the corresponding amounts actually shown in the balance sheet in respect of that item.

(4) In *subparagraph (3)*, references in relation to any item to the comparable amounts determined in accordance with that subparagraph are references to –

- (a) the aggregate amount which would be required to be shown in respect of that item if the amounts to be included in respect of all the assets covered by that item were determined according to the historical cost accounting rules; and
- (b) the aggregate amount of the cumulative provisions for depreciation or diminution in value which would be permitted or required in determining those amounts according to those rules.

*Dividends, reserves and provisions for liabilities*

55. (1) The profit and loss account reserve of a company for a financial year shall show—

- (a) the aggregate amount of dividends paid in the financial year (other than dividends for which a liability existed at the immediately preceding financial year end date);
- (b) the aggregate amount of dividends the company is liable to pay at the financial year end date (other than dividends for which a liability existed at the immediately preceding financial year end date);
- (c) separately, any transfer between the profit and loss account reserve and other reserves;
- (d) any other increase or reduction in the balance on the profit and loss account reserve since the immediately preceding financial year end date;
- (e) the profit or loss brought forward at the beginning of the financial year; and
- (f) the profit or loss carried forward at the end of the financial year.

(2) The aggregate amount of dividends proposed by the directors for approval of the members at the next general meeting shall be stated in a note to the financial statements.

56. (1) Where any amount is transferred—

- (a) to or from any reserves; or
- (b) to any provision for liabilities; or
- (c) from any provision for liabilities other than for the purpose for which the provision was established,

and the reserves or provisions for liabilities are or would, but for *paragraph 4(3)(b)*, be shown as separate items in the company's

balance sheet, the information mentioned in *subparagraph (2)* shall be given in respect of each such reserve or provisions for liabilities.

(2) That information is—

- (a) the amount of the reserves or provisions for liabilities as at the date of the beginning of the financial year and as at the financial year end date respectively;
- (b) any amount transferred to or from the reserves or provisions for liabilities during that year; and
- (c) the source and application respectively of any amounts so transferred.

(3) Particulars shall be given of each provision included in the item “other provisions for liabilities” in the company’s balance sheet in any case where the amount of that provision is material.

*Provision for taxation*

57. The amount of any provision for deferred taxation shall be shown separately from the amount of any provision for other taxation.

*Details of indebtedness*

58. (1) In respect of each item shown under “creditors” in the company’s balance sheet there shall be stated—

- (a) the aggregate amount of any debts included under that item which are payable or repayable otherwise than by instalments and fall due for payment or repayment after the end of the period of 5 years beginning with the day next following the end of the financial year; and
- (b) in the case of any debts so included which are payable or repayable by instalments, the amount of any instalments which fall due for payment after the end of that period.

(2) Subject to *subparagraph (3)*, in relation to each debt falling to be taken into account under *subparagraph (1)*, the terms of payment or repayment and the rate of any interest payable on the debt shall be stated.

(3) If the number of debts is such that, in the opinion of the directors, compliance with *subparagraph (2)* would result in a statement of excessive length, it shall be sufficient to give a general indication of the terms of payment or repayment and the rates of any interest payable on the debts.

(4) In respect of each item shown under “creditors” in the company’s balance sheet there shall be stated –

- (a) the aggregate amount of any debts included under that item in respect of which any security has been given; and
- (b) an indication of the nature of the securities so given.

(5) References in *subparagraph (1)* to an item shown under “creditors” in the company’s balance sheet include references, where amounts falling due to creditors within one year and after more than one year are distinguished in the balance sheet—

(a) in a case within *subparagraph (1)*, to an item shown under the latter of those categories, and

(b) in a case within *subparagraph (4)*, to an item shown under either of those categories,

and references to items shown under “creditors” include references to items which would, but for *paragraph 4(3)(b)*, be shown under that heading.

**59.** If any fixed cumulative dividends on the company’s shares are in arrears, there shall be stated, distinguishing between those shares presented as a liability and other shares —

(a) the amount of the arrears; and

(b) the period for which the dividends or, if there is more than one class, each class of them are in arrears.

*Guarantees and other financial commitments*

**60.** (1) Particulars shall be given of any charge on the assets of the company to secure the liabilities of any other person, including, where practicable, the amount secured.

(2) The following information shall be given with respect to any other contingent liability not provided for—

(a) the amount or estimated amount of that liability;

(b) its legal nature; and

(c) whether any valuable security has been provided by the company in connection with that liability and, if so, what.

(3) There shall be stated, where practicable—

(a) the aggregate amount or estimated amount of contracts for capital expenditure, so far as not provided for; and

(b) the aggregate amount or estimated amount of capital expenditure authorised by the directors which has not been contracted for.

(4) Particulars shall be given of:

- (a) any unfunded retirement benefit commitments included under any provision shown in the company's balance sheet; and
- (b) any such commitments for which no provision has been made,

and, where any such commitment relates wholly or partly to retirement benefits payable to past directors of the company, separate particulars shall be given of that commitment so far as it relates to such retirement benefits.

(5) The following information shall also be given:

- (a) the nature of every retirement benefit scheme operated by, or on behalf of, the company including information as to whether or not each scheme is a defined benefit scheme or a defined contribution scheme;
- (b) whether each such scheme is externally funded or internally financed;
- (c) whether any retirement benefit costs and liabilities are assessed in accordance with the advice of a professionally qualified actuary and, if so, the date of the most recent relevant actuarial valuation;
- (d) whether and, if so, where any such actuarial valuation is available for public inspection.

(6) Particulars shall also be given of any other financial commitments which—

- (a) have not been provided for; and
- (b) are relevant to assessing the company's financial position.

*Miscellaneous matters*

**61.** Particulars shall be given of any case where the purchase price or production cost of any asset is for the first time determined under *paragraph 31*.

*Information supplementing the profit and loss account*

**62.** *Paragraphs 63 to 66* require information which either supplements the information given with respect to any particular items shown in the profit and loss account or otherwise provides particulars of income or expenditure of the company or of circumstances affecting the items shown in the profit and loss account.

*Separate statement of certain items of income and expenditure*

**63.** Each of the following amounts shall be stated -

(a) the amount of interest on or any similar charges in respect of—

(i) bank loans and overdrafts made to the company;

(ii) loans to the company from group undertakings;

(iii) loans of any other kind made to the company;

and

(b) the amount of income from listed and unlisted investments.

*Particulars of tax*

**64.** (1) The basis on which the charge for corporation tax, income tax and other taxation on profits (whether payable in or outside the State) is computed shall be stated.

(2) Particulars shall be given of any special circumstances which affect the liability in respect of taxation on profits, income or capital gains for the financial year concerned or the liability in respect of taxation of profits, income or capital gains for succeeding financial years.

(3) The amount of the charge for corporation tax, income tax and other taxation on profits or capital gains, so far as charged to revenue, including taxation payable outside the State on profits (distinguishing where practicable between corporation tax and other taxation) shall be stated.

(4) The amounts referred to in *subparagraph (3)* shall be stated separately in respect of each of the amounts which is or would, but for *paragraph 4(3)(b)*, be shown under the following items in the profit and loss account, that is to say, “tax on profit or loss on ordinary activities” and “tax on extraordinary profit or loss”.

*Particulars of turnover*

**65.** (1) If, in the course of the financial year, the company has carried on business of 2 or more classes which, in the opinion of the directors, differ substantially from each other, there shall be stated in respect of each class (describing it) the amount of the turnover attributable to that class.

(2) If, in the course of the financial year, the company has supplied markets which, in the opinion of the directors, differ substantially from each other, the amount of the turnover attributable to each such market shall also be stated.

(3) In *subparagraph (3)* “market” means a market delimited by geographical bounds.

(4) In analysing for the purposes of this paragraph the source (in terms of business or in terms of market) of turnover, the directors of the company shall have regard to the manner in which the company's activities are organised.

(5) For the purpose of this paragraph—

(a) classes of business which, in the opinion of the directors, do not differ substantially from each other shall be treated as one class; and

(b) markets which, in the opinion of the directors, do not differ substantially from each other shall be treated as one market,

and any amounts properly attributable to one class of business or (as the case may be) to one market which are not material may be included in the amount stated in respect of another.

(6) Where, in the opinion of the directors, the disclosure of any information required by this paragraph would be seriously prejudicial to the interests of the company, that information need not be disclosed, but the fact that any such information has not been disclosed must be stated.

#### *Miscellaneous matters*

**66.** (1) Where any amount relating to any preceding financial year is included in any item in the profit and loss account, the effect shall be stated.

(2) Particulars shall be given of any extraordinary income or charges arising in the financial year.

(3) The effect shall be stated of any transactions that are exceptional by virtue of size or incidence notwithstanding the fact that they fall within the ordinary activities of the company.

(4) Any amount expended on research and development in the financial year, and any amount committed in respect of research and development in subsequent years, shall be stated.

(5) Where, in the opinion of the directors, the disclosure of any information required by *subparagraph (4)* would be prejudicial to the interests of the company, that information need not be disclosed, but the fact that any such information has not been disclosed shall be stated.

#### *Related party transactions*

**67.** (1) Particulars shall be given in the notes to the financial statements of a company of transactions which have been entered into with related parties by the company if such transactions are material and have not been concluded under normal market conditions and the particulars shall include the amount of such transactions, the nature of the related party relationship and other information about the



transactions which is necessary for an understanding of the financial position of the company.

(2) The provision of particulars and other information about individual transactions may be aggregated according to their nature, except where separate information is necessary for an understanding of the effects of related party transactions on the financial position of the company.

(3) *Subparagraph (1)* shall not apply to transactions which are entered into between 2 or more members of a group if any subsidiary undertaking which is party to the transaction is wholly owned by such a member.

(4) A word or expression that is used in this paragraph and is also used in Directive 2006/46/EC of the European Parliament and the Council of 14 June 2006 has the meaning in this paragraph that it has in that Directive.

#### *General*

**68.** Where sums originally denominated in foreign currencies have been brought into account under any items shown in the balance sheet or profit and loss account, the basis on which those sums have been translated into euro or, if different, the functional currency of the company, shall be stated.

### PART V

#### SPECIAL PROVISIONS WHERE A COMPANY IS A HOLDING COMPANY OR SUBSIDIARY UNDERTAKING

#### *Entity financial statements*

**69.** (1) This Part applies where the company is a holding company, whether or not it is itself a subsidiary undertaking.

(2) Where a company is a holding company or a subsidiary undertaking and any item required by *Part II* to be shown in the company's balance sheet, in relation to group undertakings, includes—

(a) amounts attributable to dealings with or interests in any holding undertaking or fellow subsidiary undertaking; or

(b) amounts attributable to dealings with or interests in any subsidiary undertaking of the company,

the aggregate amounts within *clauses (a)* and *(b)*, respectively, shall be shown as separate items, either by way of subdivision of the relevant item in the balance sheet or in a note to the company's financial statements.

*Guarantees and other financial commitments in favour of group undertakings*

**70.** Commitments within any of the *subparagraphs (1) to (6) of paragraph 60* (guarantees and other financial commitments) which are undertaken on behalf of or for the benefit of—

- (a) any holding undertaking or fellow subsidiary undertaking; or
- (b) any subsidiary undertaking of the company,

shall be stated separately from the other commitments within that subparagraph, and commitments within *clause (a)* shall also be stated separately from those within *clause (b)*.

**71.** (1) Subject to *subparagraph (2)*, where the company is a holding undertaking, the number, description and amount of the debentures of the company held by its subsidiary undertakings or their nominees shall be disclosed in a note to the company's financial statements.

(2) *Subparagraph (1)* does not apply in relation to any debentures—

- (a) in the case of which the subsidiary undertaking is concerned as personal representative; or
- (b) in the case of which it is concerned as trustee,

provided that in the latter case neither the company nor a subsidiary undertaking of the company is beneficially interested under the trust, otherwise than by way of security only for the purposes of a transaction entered into by it in the ordinary course of a business which includes the lending of money.

**72.** (1) Where a company is a subsidiary undertaking, the information specified in *subparagraphs (2), (3) and (4)* shall be stated with respect to the holding undertaking of—

- (a) the largest group of undertakings for which group financial statements are drawn up and of which the company is a member; and
- (b) the smallest such group of undertakings.

(2) The name of the holding undertaking shall be stated.

(3) There shall be stated —

- (a) if the holding undertaking is incorporated, the country in which it is incorporated; or
- (b) if it is unincorporated, the address of its principal place of business.

(4) If copies of the group financial statements referred to in *subparagraph (1)* are available to the public, there shall be stated the addresses from which copies of the financial statements can be obtained.

*Provisions of general application*

73. (1) This paragraph applies where a company is a holding company and either—

- (a) does not prepare group financial statements; or
- (b) prepares group financial statements which do not deal with one or more of its subsidiary undertakings,

and references in this paragraph to subsidiary undertakings shall be read, in a case within *clause (b)*, as references to such of the subsidiary undertakings of the company concerned as are excluded from the group financial statements.

(2) Subject to the following provisions of this paragraph, there shall be given in the notes to the company's entity financial statements —

- (a) the reasons why subsidiary undertakings are not dealt with in group financial statements; and
- (b) a statement —
  - (i) showing any qualifications contained in the reports of the statutory auditors of the subsidiary undertakings on their financial statements for their respective financial years ending with or during the financial year of the company; and
  - (ii) of any note or saving contained in those financial statements to call attention to a matter which, apart from the note or saving, would properly have been referred to in such a qualification,in so far as the matter which is the subject of the qualification or note is not covered by the company's entity financial statements and is material from the point of view of its members.

(3) Subject to the following provisions of this paragraph, the aggregate amount of the total investment of the holding company in the shares of the subsidiary undertakings shall be stated in a note to the company's entity financial statements by way of the equity method of accounting.

(4) In so far as information required by any of the preceding provisions of this paragraph to be stated in a note to the company's entity financial statements is not obtainable, a statement to that effect shall be given instead in a note to those entity financial statements.

(5) Where, in any case within *subparagraph (1)(b)*, the company prepares group financial statements, references in the preceding subparagraphs to the company's entity financial statements shall be read as references to the group financial statements.

74. Where a company has subsidiary undertakings whose financial years did not end with that of the company, the following information shall be given in relation to each such subsidiary undertaking (whether or not dealt with in any group financial statements prepared by the company)

by way of a note to the company's entity financial statements or (where group financial statements are prepared) to the group financial statements, that is to say —

- (a) the reasons why the company's directors consider that the subsidiary undertakings' financial years should not end with that of the company; and
- (b) the dates on which the subsidiary undertakings' financial years ending last before that of the company respectively ended or the earliest and latest of those dates.

## Part VI

### INTERPRETATION OF CERTAIN EXPRESSIONS IN SCHEDULE

#### *Assets: fixed or current*

**75.** For the purposes of this Schedule, assets of a company shall be taken to be fixed assets if they are intended for use on a continuing basis in the company's activities, and any assets not intended for such use shall be taken to be current assets.

#### *Capitalisation*

**76.** References in this Schedule to capitalising any work or costs are references to treating that work or those costs as a fixed asset.

#### *Investment property*

**77.** In this Schedule "investment property" means land or buildings (or both) held to earn rentals or for capital appreciation (or both).

#### *Listed investments*

**78.** In this Schedule, "listed investments" means investments as respects which there has been granted a listing on —

- (a) any regulated market or other stock exchange in the State;
- (b) any regulated market or other stock exchange of repute in any other EEA state; or
- (c) any stock exchange of repute in a state that is not an EEA state.

#### *Loans*

**79.** For the purposes of this Schedule, a loan shall be treated as falling due for payment, and an instalment of a loan shall be treated as falling due for payment, on the earliest date on which the lender could require repayment or (as the case may be) payment, if the

lender exercised all options and rights available to him or her.

*Materiality*

**80.** Amounts which in the particular context of any provision of this Schedule are not material may be disregarded for the purposes of that provision.

*Provisions*

**81.** (1) References in this Schedule to provisions for depreciation or diminution in value of assets are references to any amount written off by way of providing for depreciation or diminution in value of assets.

(2) Any reference in the profit and loss account formats set out in *Part II* to the depreciation of, or amounts written off, assets of any description is a reference to the movement in any provision for depreciation or diminution in value of assets of that description.

**82.** References in this Schedule to provisions for liabilities are references to any amount retained as reasonably necessary for the purpose of providing for any liability the nature of which is clearly defined and which exists at the financial year end date but, as respects the amount of which or the date on which it will be settled, there is uncertainty.

*Purchase price*

**83.** References in this Schedule (however expressed) to the purchase price of an asset of a company or of any raw materials or consumables used in the production of any such asset shall be read as including references to any consideration (whether in cash or otherwise) given by the company in respect of that asset or in respect of those materials or consumables (as the case may require).

## SCHEDULE 4

### ACCOUNTING PRINCIPLES, FORM AND CONTENT OF GROUP FINANCIAL STATEMENTS

#### PART I

##### CONSTRUCTION OF REFERENCES TO PROVISIONS OF SCHEDULE

1. Without prejudice to the generality of section 9 of the Interpretation Act 2005 and its application to the body of this Act and to Schedules 1, 2 and 5 to 17 -

- (a) a reference in this Schedule to a paragraph or Part is a reference to a paragraph or Part of this Schedule, unless it is indicated that a reference to some other enactment is intended; and
- (b) a reference in this Schedule to a subparagraph or clause is a reference to the subparagraph or clause of the provision in which the reference occurs, unless it is indicated that a reference to some other enactment is intended.

#### PART II

##### GENERAL RULES AND FORMATS

##### GENERAL RULES

2. (1) Group financial statements shall comply, except for any necessary modifications to take account of differences between group financial statements and entity financial statements, with the provisions of Schedule 3 as if the undertakings included in the consolidation (the “group”) were a single company.

(2) In particular, for the purposes of paragraph 69 of Schedule 3 (dealings with or interests in group undertakings) as it applies to group financial statements—

- (a) any subsidiary undertakings of the holding company not dealt with in the group financial statements shall be treated as a subsidiary undertaking of the group; and
- (b) if the holding company is itself a subsidiary undertaking, the group shall be treated as a subsidiary undertaking of any holding undertaking of the holding company, and the reference to fellow subsidiary undertakings shall be read accordingly.

3. (1) The group balance sheet and group profit and loss account shall consolidate in full the information contained in the separate balance sheets and profit and loss accounts of the holding company and of the subsidiary undertakings included in the consolidation, subject to the adjustments required or permitted by the following provisions of this Schedule and to such other adjustments (if any) as may be appropriate in accordance with generally accepted accounting practice.

(2) If the financial year of a subsidiary undertaking dealt with in the group financial statements differs from that of the holding company, the group financial statements shall be drawn up—

(a) from the entity financial statements of the subsidiary undertaking for its financial year last ending before the end of the holding company's financial year provided that the financial year ended no more than 3 months before that of the holding undertaking; or

(b) from interim financial statements drawn up by the subsidiary undertaking as at the end of the holding company's financial year.

#### AMENDMENTS TO FORMATS IN *SCHEDULE 3*

##### *Minority interest*

4. (1) In applying Balance Sheet Formats 1 and 2 set out in *Part II* of *Schedule 3* to group financial statements a separate item under the heading "Minority Interest" shall be shown—

(a) in Format 1 after item H; and

(b) in Format 2 under the general heading "Liabilities", between items A and B.

(2) The amount to be shown under the heading "Minority Interest" referred to in *subparagraph (1)* shall be the amount of share capital and reserves attributable to shares in subsidiary undertakings consolidated in the group financial statements held by or on behalf of persons other than the holding company and its subsidiary undertakings.

5. (1) In applying Profit and Loss Formats 1, 2, 3 and 4 set out in *Part II* of *Schedule 3* to group financial statements a separate item under the heading "Minority Interest" shall be shown—

(a) in Format 1, before item 20;

(b) in Format 2, before item 22;

(c) in Format 3, before item 11 in Section A and before item 9 in Section B; and

(d) in Format 4, before item 13 in Section A and before item 11 in Section B.

(2) The amount to be shown under the heading minority interest in accordance with *subparagraph (1)* shall be the amount of any profit or loss for the year attributable to shares in subsidiary undertakings consolidated in the group financial statements held by or

on behalf of persons other than the holding company and its subsidiary undertakings.

*Other changes*

6. (1) The formats set out in *Part II* of *Schedule 3* shall have effect in relation to group financial statements with the following modifications.

(2) In the Balance Sheet Formats, the items headed “Participating interests”, that is—

- (a) in Format 1, item A.III.3; and
- (b) in Format 2, item A.III.3 under the heading “ASSETS”;

shall be replaced by 2 items, “Interests in associated undertakings” and “Other participating interests”.

(3) In the Profit and Loss Account Formats, the items headed “Income from participating interests”, that is—

- (a) in Format 1, item 8;
- (b) in Format 2, item 10;
- (c) in Format 3, item B.4; and
- (d) in Format 4, item B.6,

shall be replaced by 2 items, “Income from interests in associated undertakings” and “Income from other participating interests”.

PART III

ACCOUNTING PRINCIPLES AND VALUATION RULES

ACCOUNTING PRINCIPLES

*General*

7. In determining the amounts to be included in the group financial statements, the accounting principles and valuation rules contained in *Part III* of *Schedule 3* shall apply and shall be applied consistently within those group financial statements.

8. (1) Subject to *subparagraph (2)*, a holding company shall apply the same methods of valuation in drawing up its group financial statements as it applies in drawing up its entity financial statements.



(2) ~~[Subject to paragraph 6, subparagraph (1)]~~<sup>246</sup> *Subparagraph (1)* shall not apply where, in the opinion of the directors, a departure from that ~~[paragraph]~~<sup>247</sup> is necessary for the purpose of giving a true and fair view.

(3) Where there is any application of *subparagraph (2)*, the particulars of the departure and the reasons therefor shall be disclosed in the notes to the group financial statements.

**9.** (1) Where the assets and liabilities to be included in the group financial statements have been valued or otherwise determined by undertakings included in the consolidation according to accounting rules differing from those used in the group financial statements, the values or amounts shall be adjusted so as to accord with the rules used for the group financial statements.

(2) The adjustments referred to in this paragraph need not be made if they are not material for the purpose of giving a true and fair view.

(3) If, in the opinion of the directors of the holding company, there are special reasons for departing from *subparagraph (1)* they may do so but particulars of any such departure, the reasons therefor and its effect shall be stated in the notes to the group financial statements.

#### *Preparing the consolidation*

**10.** (1) Group financial statements shall show the assets, liabilities and financial position as at the end of the financial year and the profit or loss for the financial year of the holding company and the undertakings included in the consolidation as if they were a single undertaking.

(2) In particular -

(a) debts and claims between the undertakings included in the consolidation shall be eliminated in preparing the group financial statements;

(b) income and expenditure relating to transactions between the undertakings included in the consolidation shall be eliminated in preparing the group financial statements;

(c) where profits and losses resulting from transactions between the undertakings included in the consolidation are

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<sup>246</sup> [Substituted by point 167 of Seanad Report Amendments.](#)

included in the book values of assets, they shall be eliminated in preparing the group financial statements,

but *clauses (a) to (c)* need not be complied with where the amounts involved are not material for the purpose of giving a true and fair view.

**11.** (1) The methods of consolidation shall be applied consistently from one financial year to the next.

(2) If, in the opinion of the directors of the holding company, there are special reasons for departing from *subparagraph (1)* they may do so but particulars of any such departure, the reasons therefor and its effect shall be stated in the notes to the group financial statements.

#### *Accounting for an acquisition*

**12.** (1) *Paragraphs 13 to 16* apply where an undertaking becomes a subsidiary undertaking of the holding company.

(2) That event is referred to in those provisions as an “acquisition” and references to the undertaking acquired shall be read accordingly.

**13.** An acquisition shall be accounted for by the acquisition method of accounting unless the conditions for accounting for it as a merger as set out in paragraph 15 are satisfied and the merger method of accounting is adopted.

**14.** (1) The acquisition method of accounting is as described in *subparagraphs (2) to (6)*.

(2) The identifiable assets and liabilities of the undertaking acquired shall be included in the consolidated balance sheet at their fair values as at the date of acquisition.

(3) In *subparagraph (2)* “identifiable assets or liabilities” means the assets or liabilities which are capable of being disposed of or discharged separately, without disposing of a business of the undertaking.

(4) The income and expenditure of the undertaking acquired shall be brought into the group financial statements only as from the date of acquisition.

(5) There shall be calculated the difference between the acquisition cost of the interest in the shares of the acquired undertaking

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<sup>247</sup> [Substituted by point 168 of Seanad Report Amendments.](#)

incurred by the undertakings included in the group financial statements, and the interest of the undertakings included in the group financial statements in the adjusted capital and reserves of the undertaking acquired.

(6) For the foregoing purpose—

“acquisition cost” means the amount of any cash consideration and the fair value of any other consideration, together with such amounts (if any) in respect of fees and other expenses of the acquisition as the holding company may determine to have been incurred in relation to the acquisition;

“adjusted capital and reserves of the undertaking acquired” means its capital and reserves at the date of the acquisition after adjusting the identifiable assets and liabilities of the undertaking to fair values as at that date.

(7) The resulting amount, if positive, shall be treated as goodwill and the provisions of *Schedule 3* in relation to goodwill shall apply.

(8) The resulting amount, if negative, shall be treated as a negative consolidation difference.

**15.** The conditions for accounting for an acquisition as a merger are—

(a) that at least 90 per cent of the nominal value of the equity shares in the undertaking acquired is held by or on behalf of the undertakings consolidated in the group financial statements,

(b) that the proportion referred to in *clause (a)* was attained pursuant to the arrangement providing for the issue of equity shares by the undertakings consolidated in the group financial statements,

(c) that the fair value of any consideration other than the issue of equity shares given pursuant to the arrangement by the undertakings consolidated in the group financial statements did not exceed 10 per cent of the nominal value of the equity shares issued.

**16.** (1) The merger method of accounting is as set out in *subparagraphs (2) to (6)*.

(2) The assets and liabilities of the undertaking acquired shall be brought into the group financial statements at the amount at which they stand in the acquired undertaking’s financial statements, subject to any adjustment authorised or required by this Part.

(3) The income and expenditure of the acquired undertaking shall be included in the group financial statements for the entire financial

year, including the period before the acquisition.

(4) The group financial statements shall show corresponding amounts relating to the previous financial year as if the undertaking had been included in the consolidation throughout that year.

(5) There shall be set off against the aggregate of—

(a) the appropriate amount in respect of shares issued by the undertakings consolidated in the group financial statements as part of the arrangement referred to in *paragraph 15(1)(b)* in consideration for the acquisition of shares in the acquired undertaking; and

(b) the fair value of any other consideration for the acquisition of shares in the acquired undertaking, determined as at the date when those shares were acquired,

the nominal value of the issued share capital of the acquired undertaking held by the undertakings consolidated in the group financial statements.

(6) The resulting amount shall be shown as an adjustment to the consolidated reserves.

**17.** (1) Where a group is acquired, *paragraphs 12 to 16* apply with the following adaptations.

(2) References to shares of the acquired undertaking shall be read as references to shares of the holding undertaking of the group acquired.

(3) Other references to the acquired undertaking shall be read as references to the group acquired; and references to the assets and liabilities, income and expenditure and capital and reserves of the acquired undertaking shall be read as references to the assets and liabilities, income and expenditure and capital and reserves of the group after making the set offs and other adjustments required by this Part in the case of group financial statements.

#### *Changes in the composition of the group*

**18.** If the composition of the undertakings consolidated in the group financial statements has changed significantly in the course of a financial year, the group financial statements must include information which makes the comparison of successive sets of group financial statements meaningful.

*Joint ventures*

**19.** (1) Where a holding company or one of its subsidiary undertakings consolidated in the group financial statements manages another undertaking jointly with one or more undertakings not consolidated in the group financial statements, that other undertaking (the “joint venture”) may, if it is not –

- (a) a body corporate; or
- (b) a subsidiary undertaking of the holding company,

be proportionally consolidated in the group financial statements in proportion to the rights in its capital held by the holding company or the subsidiary undertakings consolidated in the group financial statements, as the case may be.

(2) The provisions of this Schedule relating to the preparation of consolidated financial statements shall apply, with any necessary modifications, to the inclusion of joint ventures in the consolidated financial statements by proportional consolidation in accordance with *subparagraph (1)*.

*Associated undertakings*

**20.** (1) In *paragraph 21* “associated undertaking” means an undertaking in which an undertaking consolidated in the group financial statements has a participating interest and over whose operating and financial policy it exercises a significant influence and which is not—

- (a) a subsidiary undertaking of the holding company; or
- (b) a joint venture proportionally consolidated in accordance with *paragraph 19*.

(2) Where an undertaking holds 20 per cent or more of the voting rights in another undertaking, it shall be presumed to exercise such an influence over it unless the contrary is shown.

(3) The voting rights in an undertaking means the rights conferred on shareholders in respect of their shares or, in the case of an undertaking not having a share capital, on members, to vote at general meetings of the undertaking on all or substantially all matters.

(4) The provisions of *section 7(5)* and *(6)* with respect to determining whether shares are held in a body corporate and with respect to

reckoning the amount of voting rights held apply, with any necessary modifications, in determining for the purpose of this paragraph whether an undertaking holds 20 per cent or more of the voting rights in another undertaking.

**21.** (1) The interest of an undertaking consolidated in the group financial statements in an associated undertaking, and the amount of profit or loss attributable to such an interest, shall be shown in the group financial statements by way of the equity method of accounting including dealing with any goodwill arising in accordance with *paragraphs 20 to 22 and 24 of Schedule 3*.

(2) Where the associated undertaking is itself a holding undertaking, the net assets and profits or losses to be taken into account are those of the holding [\[undertaking\]<sup>248</sup>](#) and its subsidiary undertakings (after making any consolidation adjustments).

(3) The equity method of accounting need not be applied if the amounts in question are not material for the purpose of giving a true and fair view.

#### *Participating interest*

**22.** (1) In *paragraph 20* and this paragraph “participating interest” means an interest held by one undertaking in the equity shares of another undertaking which it holds on a long term basis for the purpose of securing a contribution to that undertaking’s own activities by the exercise of control or influence arising from or related to that interest.

(2) The reference in *subparagraph (1)* to an interest in equity shares includes –

(a) an interest which is convertible into an interest in equity shares; and

(b) an option to acquire equity shares or any such interest,

and an interest or option falls within *clause (a) or (b)* notwithstanding that the equity shares to which it relates are, until the conversion or the exercise of the option, unissued.

(3) Where an undertaking holds an interest in equity shares and such an interest represents 20 per cent or more of all such interests in the other undertaking it shall be presumed to hold that interest on the basis and for the purpose mentioned in *subparagraph (1)* unless the contrary is shown.

(4) For the purpose of this paragraph an interest held on behalf of an undertaking shall be treated as held by it.

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<sup>248</sup> [Inserted by point 169 of Seanad Report Amendments.](#)

(5) In the balance sheet and profit and loss formats set out in *Part II of Schedule 3*, “participating interest” does not include an interest in a group undertaking.

#### PART IV

##### INFORMATION REQUIRED BY WAY OF NOTES TO GROUP FINANCIAL STATEMENTS

**23.** Without prejudice to *paragraph 2*, the notes to the group financial statements shall, in addition to providing the information required by *Schedule 3*, also state the information required by *paragraphs 24 to 28*.

**24.** Where sums originally denominated in currencies, other than the currency in which the group financial statements are presented, have been brought into account under any items shown in the balance sheet or profit and loss account, the basis on which those sums have been translated into the currency in which the group financial statements are presented shall be stated.

**25.** In respect of the aggregate of the amounts shown in the group balance sheet under the heading “Creditors” there shall be stated the information required by *paragraph 58 of Schedule 3* as if references in that paragraph to a company were to the company and its subsidiary undertakings taken as a whole.

**26.** In relation to each joint venture proportionately consolidated, there shall be stated the nature of the joint management arrangement.

**27.** In relation to acquisitions taking place in the financial year, there shall be stated in the notes to the group financial statements –

(a) the name and registered office of the acquired undertaking, or where a group was acquired, the name and registered office of the holding undertaking of that group; and

(b) whether the acquisition has been accounted for by the acquisition method or the merger method of accounting.

**28.** *Paragraph 67* (related party transactions) of *Schedule 3* shall, in the case of group financial statements, apply to all transactions entered into by the holding company, or any subsidiary undertaking included in the consolidation, with related parties, being transactions of the kind referred to in that paragraph but not being intra-group transactions.

## SCHEDULE 5

### LIST OF COMPANIES FOR CERTAIN PURPOSES OF ACT (INCLUDING, IN PARTICULAR, SECTIONS [142], [350], [362] AND [510])

1. A company that is an authorised investment firm within the meaning of the European Communities (Markets in Financial Instruments) Regulations 2007 (S.I. No.60 of 2007).
2. A company that is an authorised market operator.
3. A company that is an associated undertaking or a related undertaking, of an authorised investment firm or an authorised market operator, within the meaning of the European Communities (Markets in Financial Instruments) Regulations 2007 (S.I. No.60 of 2007).
4. A company to which Chapter VII, VIII or IX of Part II of the Central Bank Act 1989 applies.
5. A company that is engaged in the business of accepting deposits or other repayable funds [or]<sup>249</sup> granting credit for its own account.
6. A company that is an associated body of a building society within the meaning of the Building Societies Act 1989.
7. A company that is an associated enterprise of a credit institution within the meaning ~~[of the European Communities (Consolidated Supervision of Credit Institutions) Regulations 1992 (S.I. No. 396 of 1992)]~~ of the European Communities (Credit Institutions) (Consolidated Supervision) Regulations 2009 (S.I. No. 475 of 2009).<sup>250</sup>
8. An investment company within the meaning of Part 24.

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<sup>249</sup> Substituted by point 156 of Committee Amendments.



9. A company that is a management company, trustee or custodian within the meaning of *Part 24* or of Part 2 of the Investment Funds, Companies and Miscellaneous Provisions Act 2005.
10. A company that is an undertaking for collective investment in transferable securities within the meaning of the European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations 2011 (S.I. No. 352 of 2011).
11. A company that is a management company or trustee of an undertaking for collective investment in transferable securities within the meaning of the European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations 2011 (S.I. No. 352 of 2011).
12. A company that is a management company or trustee of a unit trust scheme within the meaning of the Unit Trusts Act 1990.
13. A company that is a general partner or custodian of an investment limited partnership within the meaning of the Investment Limited Partnerships Act 1994.
14. ~~[A company that is an undertaking with close links with a financial undertaking within the meaning of the Supervision of Credit Institutions, Stock Exchange Member Firms and Investment Business Firms Regulations 1996 (S.I. No. 267 of 1996). A company that has close links (within the meaning of the European (Capital Requirements) Regulations 2014 (S.I. No. 158 of 2014) with an authorised investment firm referred to in paragraph 1 or a company referred to in paragraph 5.]~~<sup>251</sup>
15. Any other company the carrying on of business by which is required, by virtue of any enactment or instrument thereunder, to be authorised by the Central Bank.
16. A company that is the holder of an authorisation within the meaning of —
  - (a) Regulation 2 of the European Communities (Non-Life Insurance) Regulations 1976 (S.I. No. 115 of 1976);
  - (b) Regulation 2 of the European Communities (Non-Life Insurance) Framework Regulations 1994 (S.I. No. 359 of 1994);
  - (c) Regulation 2 of the European Communities (Life Assurance) Regulations 1984 (S.I. No. 57 of 1984); or
  - (d) Regulation 2 the European Communities (Life Assurance) Framework Regulations 1994 (S.I. No. 360 of 1994).
17. A company that is an insurance intermediary within the meaning of the Insurance Act 1989.
18. A company that is an excepted body within the meaning of the Trade Union Acts 1871 to 1990.

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<sup>250</sup> [Substituted by point 170 of Seanad Report Amendments.](#)

<sup>251</sup> [Substituted by point 171 of Seanad Report Amendments.](#)



## SCHEDULE 6

### FURTHER SAVINGS AND TRANSITIONAL PROVISIONS

#### *Continuity of company law not affected*

1. The continuity of the operation of the law relating to companies shall not be affected by the substitution of this Act for the prior Companies Acts.

#### *Status (generally) of instruments made under prior Companies Acts*

2. Notwithstanding anything in section 26(2)(d) of the Interpretation Act 2005, no instrument made under any of the prior Companies Acts shall continue in force save as provided for in this Schedule.

#### *Certain regulations saved*

3. Any regulations made under section 28 or 48 of the Companies (Auditing and Accounting) Act 2003 and in force before the commencement of *Chapter 2 of Part 15* shall continue in force as if made under the corresponding provision of that Chapter and may be amended or revoked accordingly.

#### *Certain superannuation schemes saved*

4. Every scheme made under section 9 of the Company Law Enforcement Act 2001 or section 20 of the Companies (Auditing and Accounting) Act 2003 and in force before the commencement of *Chapter 2 or 3*, as the case may be, of *Part 15* shall continue in force as if made under the corresponding provision of that Chapter and may be amended or revoked accordingly.

#### *Certain other instruments saved*

5. (1) As provided for in *section [1355], [1367] or [1381]*, as appropriate –

- (a) the Prospectus (Directive 2003/71/EC) Regulations 2005 (S.I. No. 324 of 2005) and any regulations amending those regulations;
- (b) the Market Abuse (Directive 2003/6/EC) Regulations 2005 (S.I. No. 342 of 2005) and any regulations amending those regulations;
- (c) the Transparency (Directive 2004/109/EC) Regulations 2007 (S.I. No. 277 of 2007) and any regulations amending those regulations,

shall continue in force and may be amended or revoked under *section [1354], [1366] or [1380]*, as appropriate, accordingly.

(2) The Companies Act 1990 (Uncertificated Securities) Regulations 1996 (S.I. No. 68 of 1996) shall continue in force and may be

amended or revoked under section [~~1088~~1086] accordingly.

[(3) As provided for in section [~~1400(6)~~1400(4)]<sup>252</sup>, the Companies Act 1990 (Prescribed Alternative Accounting Standards Bodies) Regulations 2005 (S.I. No. 382 of 2005) and any regulations amending those regulations shall continue in force and may be amended or revoked under section 12 accordingly.]<sup>253</sup>

*Applicability of offence investigation and other powers in case of offences under prior Companies Acts*

6. (1) For the purposes of the exercise of any power conferred by this Act, a reference in the provision concerned of this Act to an offence under a provision or provisions of this Act shall be read as including a reference to an offence under the corresponding provision or provisions of the prior Companies Acts.

(2) Without prejudice to the generality of *subparagraph (1)*, that subparagraph applies to the exercise of any power of investigation or search, entry or seizure conferred by this Act and, in particular, as respects the operation of any condition precedent, provided in the provision concerned of this Act, with respect to the power's exercise.

(3) *Section [789]* applies to a search warrant issued under section 20 of the Act of 1990 as it applies to a search warrant issued under *section [787]*.

*Continuity of law relating to disqualifications and restrictions, etc.*

7. (1) Without prejudice to the generality of *paragraph 1*, the continuity of the law relating to disqualifications and restrictions is not affected by the substitution of *Chapters 3, 4 and 6 of Part 14* for Part VII of the Act of 1990.

(2) Without prejudice to the generality of *paragraph 1*, any disqualification or declaration of restriction (within the meaning of Part VII of the Act of 1990) provided, made or granted under that Part and in force before the commencement of the corresponding provision of *Part 14* shall continue in force and operate as a disqualification or declaration of restriction provided, made or granted under that corresponding provision.

(3) Without prejudice to the generality of *paragraph 6, section [839]* (automatic disqualification on conviction of certain indictable offences) operates with respect to the circumstances of a person's being convicted of an indictable offence under the prior Companies Acts as it operates with respect to the circumstances of a person's being convicted of an indictable offence under this Act.

(4) Without prejudice to the generality of *paragraph 6*, the powers of the court under *section [842]* (court may make disqualification order) are exercisable by reference to matters or things done or omitted to be done under the prior Companies Acts as they are

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<sup>252</sup> [Substituted by point 172 of Seanad Report Amendments.](#)

exercisable by reference to matters or things done or omitted to be done under this Act.

(5) *Chapter 5* (Disqualification and Restriction Undertakings) of *Part 14* shall be read as being operative and as applicable in a case where the Director has reasonable grounds for the belief referred to in *section [850](2)* or *[852](2)* by reference to matters or things done or omitted to be done, or circumstances, under the prior Companies Acts as they are operative and applicable in a case where the Director has reasonable grounds for such belief by reference to matters or things done or omitted to be done, or circumstances, under this Act.

*Continuation of acts not completed*

**8.** (1) Any thing commenced under a provision of the prior Companies Acts, before the repeal, by this Act, of that provision, and not completed before that repeal, may be continued and completed under the corresponding provision of this Act.

(2) Without prejudice to the generality of the preceding subparagraph or *paragraph 1*, any petition presented for the winding up of a company or the appointment of an examiner to a company before the repeal of the provision concerned of the prior Companies Acts but not disposed of before the commencement of the corresponding provision of this Act may be proceeded with and heard under that corresponding provision and, likewise any subsequent act, application or proceeding in any such matter commenced but not completed before the corresponding provision of this Act is commenced may be so done, proceeded with or heard.

(3) However, in any such case, the court concerned shall, subject to *subparagraph (4)*, have jurisdiction to make whatever order it thinks appropriate for ensuring the smooth transition from the law and procedure under the prior Companies Acts to the law and procedure under this Act (that is to say, this Act and the rules of court as they have been brought into conformity with this Act as mentioned in *section [564](4)*) and that jurisdiction of the court shall extend, in a case where a liquidator has proceeded to take substantive steps in a winding up ordered by the court before the commencement of the relevant provision of *Part 11*, to making a direction that the functions of the court officer known as “the Examiner” that were performable under the rules of the court, before they were so brought into conformity, shall be performable in that winding up.

(4) In exercising the jurisdiction referred to in *subparagraph (3)*, the court shall bear in mind the extent to which a power of a liquidator that is exercisable under the relevant provisions of *Part 11* and also was exercisable under the relevant provisions of the prior Companies Acts may be exercised without the sanction of the court under the first-mentioned provisions.

(5) Notwithstanding anything in this paragraph or elsewhere, *sections [646] to [648]* (liquidator’s remuneration) shall not apply to a winding up commenced before the commencement of the relevant provisions of *Part 11* and the matters dealt with by those sections shall be governed by the relevant provisions of the prior Companies Acts and the rules of court in force before the commencement of

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<sup>253</sup> Inserted by point 275 of Report Amendments.

the first-mentioned provisions, and the second-mentioned provisions and rules of court shall, despite *section 4*, continue in force for that purpose accordingly.

(6) Without prejudice to the generality of *subparagraph (1)* or *paragraph 1*, any investigation by inspectors appointed under the Act of 1990 before the commencement of the relevant provisions of *Part 13* but not completed before that commencement may be continued and completed under those relevant provisions.

*Reckoning of periods of time in cases of acts continued under this Act*

**9.** (1) Where any thing commenced under the prior Companies Acts but not completed before the commencement of the corresponding provision of this Act is continued to be carried on under that corresponding provision but the time specified in that provision for completing the thing is less than the time specified in that behalf in the repealed provision then, notwithstanding that corresponding provision, the period of time within which the thing may be completed under it shall be that specified in the repealed provision.

(2) In the converse case (that is to say, a case in which a greater period of time is specified in the corresponding provision of this Act than that specified in the repealed provision), the thing concerned may be completed within that greater period of time.

*New Nomenclature for Certain Matters*

**10.** (1) Without prejudice to the generality of *paragraph 1*, neither the use of the expression “financial statements” in this Act, as distinct from the expression “accounts” used in the prior Companies Acts, nor the use, with respect to associated matters concerning accounts and financial reporting, in this Act of expressions different from those used in those other Acts affects the validity of the preparation, auditing, circulation or laying of documents or the delivery of them to the Registrar, being documents that -

(a) are prepared in respect of a financial year beginning before the commencement of this Schedule and ending thereafter; and

(b) bear a description by reference to the nomenclature used in the prior Companies Acts.

(2) Without prejudice to the generality of *paragraphs 1* and *8*, the use of the expression “independent expert” in this Act, as distinct from the expression “independent accountant” used in the Companies (Amendment) Act 1990, does not affect the continued performance, after the commencement of this Schedule, by a person engaged before that commencement (by reference to that former nomenclature) of his or her functions in relation to an actual or prospective examinership.

*References in enactments to provisions of prior Companies Acts*

**11.** (1) A reference in any enactment to a provision of the prior Companies Acts, being a provision that is repealed by this Act and which corresponds to a provision of this Act, shall, unless the context otherwise requires, be read as a reference to that provision of this Act.

(2) Without prejudice to the generality of *subparagraph (1)* -

(a) the reference in Regulation 22(2) of the European Communities (Takeover Bids (Directive 2004/25/EC))

Regulations 2006 (S.I. No. 255 of 2006) to section 204 of the Act of 1963 shall be read as a reference to *Chapter 2 of Part 9*; [...] <sup>254</sup>

(b) the reference in Regulation 81 of the Transparency (Directive 2004/109/EC) Regulations 2007 (S.I. No. 277 of 2007) to Chapter 2 of Part IV of the Act of 1990 shall be read as a reference to *Chapter 4* of [ *Part 17*; and

(c) the references in section 30 of the Multi-Unit Developments Act 2011 to section 311 or 311A of the Act of 1963 or section 12 or 12B of the Companies (Amendment) Act 1982, or to a particular provision of any such section, shall be read as references to Chapter 1 or, as appropriate, Chapter 2 of Part 12 or, as the case may be, the corresponding provision of either such Chapter.] <sup>255</sup>

(3) Nothing in this paragraph affects *section 6* (construction of references in other Acts to companies registered under the Companies (Consolidation) Act 1908 and Act of 1963).

*[Provisions as to status of companies restored to register, having been struck off under former enactments*

**12.** (1) Without prejudice to any specific provision in this Act in that behalf and the subsequent provisions of this paragraph, the provisions of this Act that shall apply to a company—

(a) struck off the register under any former enactment relating to companies (within the meaning of *section 5*); and

(b) subsequently restored to the register, whether under—

(i) the former enactment referred to in *section [744](3)*;

(ii) *Chapter 2 of Part 12*; or

(iii) section 30 of the Multi-Unit Developments Act 2011,

shall be those applicable to the type of company that corresponds to the type of company to which the company belonged before it was so struck off.

(2) Without prejudice to *subparagraphs (3) and (4)*, where any of this Act's provisions, as applicable to a particular type of company, operates differently by reference (however the matter is expressed) to the length of time that has elapsed after the provision's commencement, then the reference in *subparagraph (1)* to the provisions of this Act that are applicable to a type of company shall, in the case of that particular provision, be read as a reference to that provision as it is applicable to a company of the type concerned at the time of the particular company's restoration to the register (and then at a future date, as the case may be, as it is so applicable at that future date)

(3) If the company's type, before being so struck off, was that of a private company limited by shares and the date on which the company is restored to the register under *Chapter 2 of Part 12* or section 30 of the Multi-Unit Developments Act 2011 is subsequent to

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<sup>254</sup> Deleted by point 276 of Report Amendments.

the expiry of the transition period (within the meaning of *Chapter 6 of Part 2*), then, subject, in the case of a restoration under *section [738] or [741]*, to any direction or order of the court under *section [742]*, *section [61](1)(a) and (b)* shall apply in relation to the company notwithstanding that the company was not an existing private company within the meaning of that *Chapter 6* and, accordingly, the company shall, on the date of its restoration to the register, be deemed to be a private company limited by shares to which *Parts 1 to 15* apply and the other provisions of *section [61]* shall apply to it with any necessary modifications

(4) *Subparagraph (3)* shall similarly apply (where the company's type, before being so struck off, was that of a private company limited by shares) if, by virtue of *subsection (3) of section [744]*, the former enactment referred to in that subsection applies to the application for the company's restoration but with the modification that the reference in that subparagraph to a particular provision under which the application for restoration is made, or to a particular provision under which a direction or order of the court is made, shall be read as a reference to the corresponding provision of the former enactment concerned.

(5) If in any respect any difficulty arises during the period of 20 years after the commencement of *Chapter 2 of Part 12* in bringing into operation that Chapter as it relates to a case falling within any of *subparagraphs (1) to (4)*, the Minister[ may]<sup>256</sup> by regulations do anything which appears to[ the Minister to]<sup>257</sup> be necessary or expedient for bringing that Chapter into operation as it relates to such a case.

(6) The Minister's power to make regulations under *subparagraph (5)* extends to removing difficulties in cases in which a private company limited by shares was—

(a) struck off the register under any former enactment relating to companies (within the meaning of *section 5*); and

(b) restored to the register under—

(i) the former enactment referred to in *section [744](3)*;

(ii) *Chapter 2 of Part 12*; or

(iii) *section 30 of the Multi-Unit Developments Act 2011*,

and, before the date it is so restored, there has elapsed a length of time that, in the Minister's opinion, represents a substantial portion (or greater) of the transition period (within the meaning of *Chapter 6 of Part 2*).]<sup>258</sup>

*[Application of paragraph 12 to companies whose dissolution is declared void*

13. *Paragraph 12* shall, with any necessary modifications, apply to a company the dissolution of which is declared under *section 708* to have been void as it applies to a company restored to the register under an enactment referred to in that paragraph (but subject to any order the court may make under *section 708* in making such a declaration).]<sup>259</sup>

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<sup>255</sup> Substituted by point 277 of Report Amendments.

<sup>256</sup> Inserted by point 185 of Seanad Committee Amendments.

<sup>257</sup> Inserted by point 186 of Seanad Committee Amendments.

<sup>258</sup> Inserted by point 278 of Report Amendments.

<sup>259</sup> Inserted by point 187 of Seanad Committee Amendments.



*Authorisations, designations and approvals under Part XIII of the Act of 1990*

[13]. Every authorisation , designation and approval under Part XIII of the Act of 1990 (including any condition imposed thereunder) that is in force immediately before the commencement of *Part 24* shall continue in force as if granted, made or imposed under *Part 24* and may be the subject of the like exercise of powers thereafter as authorisations, designations, approvals and conditions generally under *Part 24*.

*Generality of Interpretation Act 2005 not affected*

[14]. Save for any express limitation by this Schedule of that Act's terms, this Schedule is without prejudice to the generality of the Interpretation Act 2005.

*Specific transitional provisions not affected*

[15]. This Schedule is in addition to the special provision made in certain provisions of this Act for transitional matters as they relate to those provisions and, in the event of conflict between this Schedule and such special provisions, those special provisions prevail as they relate to those matters.



**SCHEDULE 7**

**FORM OF CONSTITUTION OF DESIGNATED ACTIVITY COMPANY LIMITED BY SHARES**

**CONSTITUTION  
OF**  
*[ name of company as below ]*

**MEMORANDUM OF ASSOCIATION**

1. The name of the company is: THE SAFE SKIES SOFTWARE DESIGNATED ACTIVITY COMPANY.
2. The company is a designated activity company limited by shares, that is to say a private company limited by shares registered under Part 16 of the *Companies Act [2014]*.
3. The objects for which the company is established are the development, production and sale of computer software designed to enhance the safety of aviation and the doing of all such other things as are incidental or conducive to the attainment of the above object.
4. The liability of the members is limited.
5. The share capital of the company is €200,000, divided into 200,000 shares of €1 each.

**ARTICLES OF ASSOCIATION**

The following Regulations shall apply to the company:

*[or, instead of the immediately foregoing words, the following sentence :-\*]*

The provisions of the Companies Act 2012 are adopted.

\* See section [970968](5)

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

<i>Names, Addresses and Descriptions of Subscribers</i>	<i>Number of Shares taken by each Subscriber</i>
1. Patrick McKenna Address: Description:	300
2. Bridget McCloy Address: Description:	2,700
Total shares taken:	3,000

As appropriate :

signatures in writing of the above subscribers, attested by witness as provided for below; or authentication in the manner referred to in *section [888]*.

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_

Witness to the above Signatures:

Name: \_\_\_\_\_

Address: \_\_\_\_\_

## SCHEDULE 8

### FORM OF CONSTITUTION OF DESIGNATED ACTIVITY COMPANY LIMITED BY GUARANTEE

CONSTITUTION  
OF  
[ name of company as below ]

#### MEMORANDUM OF ASSOCIATION

1. The name of the company is: THE WESTERN COUNTIES TOURISM DEVELOPMENT DESIGNATED ACTIVITY COMPANY.
2. The company is a designated activity company limited by guarantee, that is to say a private company limited by guarantee and having a share capital registered under Part 16 of the *Companies Act [2014]*.
3. The objects for which the company is established are the promotion of tourism in the western counties of Ireland by providing facilities for tourists and the doing of all such other things as are incidental or conducive to the attainment of the above object.
4. The liability of the members is limited.
5. Every member of the company undertakes to contribute to the assets of the company, if the company is wound up while he or she is a member or is wound up within one year after the date on which he or she ceases to be a member, for -
  - (a) the payment of the debts and liabilities of the company contracted before he or she ceases to be a member, and the costs, charges and expenses of winding up; and
  - (b) the adjustment of the rights of contributories among themselves,

such amount as may be required, not exceeding €50.

6. The share capital of the company is €10,000, divided into 10,000 shares of €1 each.

#### ARTICLES OF ASSOCIATION

The following Regulations shall apply to the company:

[or, instead of the immediately foregoing words, the following sentence :-\*]

The provisions of the Companies Act 2012 are adopted.

\* See section [\[970968\]](#)(5)

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

<i>Names, Addresses and Descriptions of Subscribers</i>	<i>Number of Shares taken by each Subscriber</i>
1. Ann Larkin Address: Description:	1,000
Total shares taken:	1,000

As appropriate :

signature in writing of the above subscriber, attested by witness as provided for below; or authentication in the manner referred to in section [\[888\]](#).

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_

Witness to the above Signature:

Name: \_\_\_\_\_  
Address: \_\_\_\_\_

**SCHEDULE 9**

**FORM OF CONSTITUTION OF PUBLIC LIMITED COMPANY**

**CONSTITUTION  
OF  
[ name of company as below ]**

**MEMORANDUM OF ASSOCIATION**

1. The name of the company is : THE NORTHERN MINING PUBLIC LIMITED COMPANY.
2. The company is a public limited company, registered under Part 17 of the Companies Act 2012.
3. The objects for which the company is established are the mining of minerals of all kinds and the doing of all such other things as are incidental or conducive to the attainment of the above object.
4. The liability of the members is limited.
5. The share capital of the company is €30,000, divided into 30,000 shares of €1 each.

**ARTICLES OF ASSOCIATION**

The following Regulations shall apply to the company:

*[or, instead of the immediately foregoing words, the following sentence :-\*]*

The provisions of the Companies Act 2012 are adopted.

| \* See section [~~1009~~1007](5)

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

<i>Names, Addresses and Descriptions of Subscribers</i>	<i>Number of Shares taken by each Subscriber</i>
1. Jerry O' Donovan Address: Description:	5
2. Agnieszka Mooney Address: Description:	375
3. Cormac Vayner Address: Description:	225
4. Colleen Parsons Address: Description:	55
Total shares taken:	660

As appropriate :

signature in writing of the above subscribers, attested by witness as provided for below; or authentication in the manner referred to in *section [888]*.

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_

Witness to the above Signatures:

Name: \_\_\_\_\_

Address: \_\_\_\_\_

## SCHEDULE 10

### FORM OF CONSTITUTION OF COMPANY LIMITED BY GUARANTEE

CONSTITUTION  
OF  
[ name of company as below ]

#### MEMORANDUM OF ASSOCIATION

1. The name of the company is : THE UNIVERSITY FOUNDATION [ COMPANY LIMITED BY GUARANTEE]<sup>260</sup>.
2. The company is a company limited by guarantee, registered under Part 18 of the *Companies Act [2014]*.
3. The objects for which the company is established are the raising of funds for the furtherance of education and research carried out by Irish universities and the doing of all such other things as are incidental or conducive to the attainment of the above object.
4. The liability of the members is limited.
5. Every member of the company undertakes to contribute to the assets of the company, if the company is wound up while he or she is a member or is wound up within one year after the date on which he or she ceases to be a member, for -
  - (a) the payment of the debts and liabilities of the company contracted before he or she ceases to be a member, and the costs, charges and expenses of winding up; and
  - (b) the adjustment of the rights of contributories among themselves,such amount as may be required, not exceeding €1.

#### ARTICLES OF ASSOCIATION

[  
The following Regulations shall apply to the company:

1. The number of members with which the company proposes to be registered is 4.

[In addition to the immediately foregoing words, the following sentence may be included:-\*]

The provisions of the *Companies Act 2014* are adopted.

| \*See section [~~448~~1177](5).]<sup>261</sup>

We, the several persons whose names and addresses are subscribed, wish to be formed into a company in pursuance of this constitution.

<i>Names, Addresses and Descriptions of Subscribers.</i>
1. Francis McMaster Address: Description:
2. Colleen D. Cahill Address: Description:
3. Guy Tabarie Address:

<sup>260</sup> Substituted by point 279 of Report Amendments.

<sup>261</sup> Substituted by point 280 of Report Amendments.

Description:
4. Akosa Martins Address: Description:

As appropriate :  
signature in writing of the above subscribers, attested by witness as provided for below; or  
authentication in the manner referred to in *section [888]*.

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_

Witness to the above Signatures:

Name: \_\_\_\_\_

Address: \_\_\_\_\_

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| Section [~~1234~~1233].

## SCHEDULE 11

### FORM OF CONSTITUTION OF PRIVATE UNLIMITED COMPANY HAVING A SHARE CAPITAL

CONSTITUTION  
OF  
[ name of company as below ]

#### MEMORANDUM OF ASSOCIATION

1. The name of the company is: BIG WAREHOUSE UNLIMITED COMPANY.
2. The company is a private unlimited company having a share capital, registered under Part 19 of the Companies Act 2012.
3. The objects for which the company is established are the design and manufacture of clothing, and the doing of all such other things as are incidental or conducive to the attainment of the above object.
4. The share capital of the company is €200,000, divided into 200,000 shares of €1 each.
5. The liability of the members is unlimited.

#### ARTICLES OF ASSOCIATION

The following Regulations shall apply to the company:

[or, instead of the immediately foregoing words, the following sentence :-\*]

The provisions of the Companies Act 2012 are adopted.

| \* See section [~~1236~~1235](5)

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

<i>Names, Addresses and Descriptions of Subscribers</i>	<i>Number of Shares taken by each Subscriber</i>
1. Henry Klein Address: Description:	300
2. Brendan Pettit Address: Description:	2,700
3. Frances Little Address: Description:	500
Total shares taken:	3,500

As appropriate :

signature in writing of the above subscribers, attested by witness as provided for below; or authentication in the manner referred to in section [888].

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_



Witness to the above Signatures:

Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

| Section [~~1234~~1233].

## SCHEDULE 12

### FORM OF CONSTITUTION OF PUBLIC UNLIMITED COMPANY HAVING A SHARE CAPITAL

#### CONSTITUTION OF

[ name of company as below]

#### MEMORANDUM OF ASSOCIATION

1. The name of the company is: ALL BREEDS DOG CARE UNLIMITED COMPANY.
2. The company is a public unlimited company having a share capital, registered under Part 19 of the Companies Act 2012.
3. The objects for which the company is established are the provision of general care, kennelling and grooming services in respect of all breeds of dog and the doing of all such other things as are incidental or conducive to the attainment of the above object.
4. The share capital of the company is €400,000, divided into 200,000 shares of €2 each.
5. The liability of the members is unlimited.

#### ARTICLES OF ASSOCIATION

The following Regulations shall apply to the company:

[or, instead of the immediately foregoing words, the following sentence :-\*]

The provisions of the Companies Act 2012 are adopted.

| \* See section [~~1236~~1235](5)

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

<i>Names, Addresses and Descriptions of Subscribers</i>	<i>Number of Shares taken by each Subscriber</i>
1. Duncan Moloney Address: Description:	600
2. John Berry Address: Description:	850
3. Melissa Smith Address: Description:	500
4. Dermot O'Kelly Address: Description:	100
Total shares taken:	2,050

As appropriate :

signature in writing of the above subscribers, attested by witness as provided for below; or authentication in the manner referred to in section [888].

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_

Witness to the above Signatures:

Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

**SCHEDULE 13**

**FORM OF PUBLIC UNLIMITED COMPANY NOT HAVING A SHARE CAPITAL**

CONSTITUTION  
OF  
*[ name of company as below ]*  
MEMORANDUM OF ASSOCIATION

1. The name of the company is: The Old Head Leisure Unlimited Company.
2. The company is a public unlimited company not having a share capital, registered under Part 19 of the Companies Act 2012.
3. The objects for which the company is established are the provision of guided tours (including treks on foot or by means of bicycle) in and around the coastal areas of the counties of Kerry, Cork, Waterford and Wexford and the doing of all such things as are incidental or conducive to the attainment of the above object.
4. The liability of the members is unlimited.

ARTICLES OF ASSOCIATION

[

The following Regulations shall apply to the company:

1. The number of members with which the company proposes to be registered is 5.

*[or, instead of the immediately foregoing words, the following sentence may be included :-\*]*

The provisions of the *Companies Act 2014* are adopted.

| \* See section [~~1236~~1235](6)]<sup>262</sup>

We, the several persons whose names and addresses are subscribed, wish to be formed into a company in pursuance of this constitution.

<i>Names, Addresses and Descriptions of Subscribers.</i>
1. Máire de Barra Address: Description:
2. Carla Stewart Address: Description:
3. Liam Wallis Address: Description:
4. Emmett O'Toole Address: Description:

<sup>262</sup> Substituted by point 281 of Report Amendments.

5. Jane Grey

Address:

Description:

As appropriate :

signature in writing of the above subscribers, attested by witness as provided for below; or authentication in the manner referred to in *section [888]*.

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_

Witness to the above Signatures:

Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

**SCHEDULE 14**  
**PROVISIONS APPLIED TO UNREGISTERED COMPANIES**

Subject matter	Provision applied
Interpretation generally	<i>Section 2</i>
Periods of time	<i>Section 3</i>
Definition of “subsidiary”	<i>Section 7</i>
Definitions of “holding company”, “wholly owned subsidiary” and “group of companies”	<i>Section 8</i>
Construction of references to directors, board of directors and interpretation of certain other plural forms	<i>Section 11</i>
Amendment of constitution by special resolution and publication of certain notices	<i>Section 32(3) and section 33(1)(b) to (h) and (2)</i>
Registered person	<i>Section 39</i>
Persons authorised to bind company	<i>Section 40</i>
Official seal for sealing securities	<i>Section 45</i>
[...]	<sup>263</sup> ]
Registered office of company	<i>Section [50]</i>
Service of documents	<i>Section [51]</i>
Share premium	<i>Section [71](5)</i>
Restriction of <i>section 72(5)</i> in the case of mergers	<i>Section [72]</i>
Restriction of <i>section 72(5)</i> in the case of group reconstructions	<i>Section [73]</i>
Supplementary provisions in relation to <i>sections 73</i> and <i>74</i>	<i>Section [74]</i>
Financial assistance for acquisition of shares	<i>Section [82]</i>
Reduction in company capital and associated provisions and court procedures	<i>Sections [84] to [87]</i>
Rectification of dealings in shares	<i>Section [100]</i>

<sup>263</sup> Deleted by point 188 of Seanad Committee Amendments.

Acquisition of own shares	<i>Chapter 6 of Part 3</i>
Distributions	<i>Chapter 7 of Part 3</i>
Access to documents during business hours	<i>Section [127]</i>
Validity of acts of director or secretary	<i>Section [135]</i>
Register of directors and secretaries	<i>Section [149]</i>
Supplemental provisions (including offences) in relation to <i>section 150</i>	<i>Section [150]</i>
Particulars to be shown on all business letters of company	<i>Section [151]</i>
Summary Approval Procedure	<i>Chapter 7 of Part 4 (in so far as it relates to sections [82], [84] and [239])</i>
Form of registers, minutes, etc.	<i>Section [213]</i>
[Remedy in case of oppression]	<i>Section [212]<sup>264</sup></i>
Use of computers, etc. for certain company records	<i>Section [214]</i>
Inspection of registers, provision of copies of information in them and service of notices	<i>Chapter 10 of Part 4 (in so far as it relates to provisions applied by section [1311])</i>
Power of court to grant relief to officers of company	<i>Section [233]</i>
Anticipated claim: similar power of relief as under <i>section 230</i>	<i>Section [234]</i>
Any provision exempting officers of company from liability void (subject to exceptions)	<i>Section [235]</i>
Evidential provisions with respect to loans, other transactions, etc., between company and directors	<i>Chapter 3 of Part 5</i>
Substantive prohibitions or restrictions on loans to directors and other particular transactions involving conflict of interest	<i>Chapter 4 of Part 5</i>
Disclosure of interests in shares and debentures	<i>Chapter 5 of Part 5</i>
Meaning of “in default” in context of sanctions specified in respect of officers (whether directors or secretaries or not)	<i>Section [270]</i>
Presumption that default permitted and certain defence	<i>Section [271]</i>

<sup>264</sup> Inserted by point 282 of Report Amendments.

Financial statements, annual return and audit	<i>Part 6</i>
Definition ( <i>Part 7</i> )	<i>Section [408]</i>
Registration of charges and priority	<i>Chapter 2 of Part 7</i>
Examinerships	<i>Part 10</i>
Investigations	<i>Part 13</i>
Court may order compliance by company or officer	<i>Section [797]</i>
Disclosure orders	<i>Chapter 2 of Part 14</i>
Restrictions on, and disqualification of, directors	<i>Chapters 3 to 6 of Part 14</i>
Provisions relating to offences generally	<i>Chapter 7 of Part 14</i>
Additional general offences	<i>Chapter 8 of Part 14</i>
Evidential matters	<i>Chapter 9 of Part 14</i>
Fees	<i>Section [889]</i>
Inspection and production of documents kept by Registrar	<i>Section [891]</i>
Admissibility of certified copy or extract	<i>Section [892]</i>
Certificate by Registrar admissible as evidence of facts stated	<i>Section [893]</i>
Capacity of a PLC	<i>Section [<del>1013</del>1011]</i>
[Official seal for sealing securities	<i>Section [<del>1019</del>1017]</i> <sup>265</sup>
Share capital	<i>Chapter 3 of Part 17</i>
Interests in shares: disclosure of individual and group acquisitions	<i>Chapter 4 of Part 17</i>
Mergers and divisions	<i>Chapters 16 and 17 of Part 17</i>
Public Offers of Securities, Financial Reporting by Traded Companies, Prevention of Market Abuse, Etc.	<i>Part 23 (other than section [1374])</i>

<sup>265</sup> Inserted by point 189 of Seanad Committee Amendments.



Section [1325].

**SCHEDULE 15**

**REPEALS AND REVOCATIONS IN RELATION TO UNREGISTERED COMPANIES**

**PART 1**

**STATUTES REPEALED**

<i>Session and Chapter or Number and Year</i>	<i>Short title</i>	<i>Extent of repeal</i>
21 & 22 Geo III, c 16	Bank of Ireland Act 1781	The whole Act so far as unrepealed
31 Geo III, c 22	Bank of Ireland 1791	The whole Act so far as unrepealed
37 Geo III, c 50	Bank of Ireland 1797	The whole Act so far as unrepealed
48 Geo III, c 103	Bank of Ireland Act 1808	The whole Act so far as unrepealed
1 & 2 Geo IV, c 72	Bank of Ireland Act 1821	The whole Act so far as unrepealed
8 & 9 Vic, c 37	Bankers' (Ireland) Act 1845	So much of the Act as is unrepealed other than sections 25, 26 and 27
23 & 24 Vic, c 31	Bank of Ireland Act 1860	The whole Act
27 & 28 Vic, c 78	Bank Notes (Ireland ) Act 1864	The whole Act
35 & 36 Vic, c 5	Bank of Ireland Charter Amendment Act 1872	The whole Act so far as unrepealed
55 & 56 Vic, c 48	Bank Act 1892	Sections 1, 3, 6 and 7
No.4 (Private) of 1929	Bank of Ireland Act 1929	The whole Act so far as unrepealed
No.1 (Private) of 1935	Bank of Ireland Act 1935	The whole Act so far as unrepealed
No.23 of 1961	Finance Act 1961	Section 37
No.24 of 1971	Central Bank Act 1971	Section 51

**PART 2**

**INSTRUMENTS OR CHARTERS REVOKED**

<b>Instrument or Charter</b>	<b>Extent of revocation</b>
Commission (27 July 1782)	The whole instrument
Charter of the Governor and Company of the Bank of Ireland (10 May 1783)	The whole Charter

Section [1392].

## SCHEDULE 16

### FORM OF CONSTITUTION OF INVESTMENT COMPANY

#### CONSTITUTION OF [ name of company as below ]

#### MEMORANDUM OF ASSOCIATION

1. The name of the company is : THE HIGH SCORE INVESTMENT PUBLIC LIMITED COMPANY.
2. The company is a public limited company, registered under Part 24 of the Companies Act 2012.
3. The object for which the company is established is the collective investment of its funds in property with the aim of spreading investment risk and giving members of the company the benefit of the results of the management of its funds
4. The liability of the members is limited.
5. The share capital of the company shall be equal to the value for the time being of the issued share capital of the company.
6. [Unless this is provided for in the articles of association] The actual value of the paid up share capital of the company shall at all times be equal to the value of the assets of any kind of the company after the deduction of its liabilities.
7. The share capital of the company is divided into 1,000,000 shares.
8. The issued share capital of the company for the time being shall not be less than €5,000,000 nor more than €20,000,000.
9. [Unless this is provided for in the articles of association or the company has the approval of the Central Bank not to so provide] The shares of the company shall, at the request of any of the holders thereof, be purchased by the company directly or indirectly out of the company's assets.

#### ARTICLES OF ASSOCIATION

1. Regulations in relation to the company with respect to such aspects of the activity of collective investment referred to in section [1386](1)(a), or matters related thereto, as are deemed appropriate.
2. Unless the memorandum of association provides for this, the matter referred to in paragraph 6 above.
3. Unless the memorandum of association provides for this or the company has the approval of the Central Bank not to so provide, the matter referred to in paragraph 9 above.
4. Other regulations (if any).

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

<i>Names, Addresses and Descriptions of Subscribers</i>	<i>Number of Shares taken by each Subscriber</i>
1. Thomas Friel Address: Description:	5
2. George Mooney Address: Description:	375

3. Cormac O'Hara Address: Description:	225
4. Sarah Weizmann Address: Description:	55
Total shares taken:	660

As appropriate :

signature in writing of the above subscribers, attested by witness as provided for below; or authentication in the manner referred to in *section [888]*.

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_

Witness to the above Signatures:

Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Section [1405].

## SCHEDULE 17

### CONDITIONS TO BE SATISFIED FOR APPLICATION OF SEGREGATED LIABILITY TO SUB-FUNDS OF INVESTMENT COMPANY TRADING BEFORE 30 JUNE 2005

#### *Conditions for segregated liability to apply to sub-funds*

1. (1) *Section [1405](1)* shall not apply to an umbrella fund which was authorised and commenced trading (as that latter expression is to be read in accordance with this Schedule) before 30 June 2005 unless -

- (a) the members of the umbrella fund shall have resolved by special resolution that the provisions of *section [1405](1)* should apply to that umbrella fund; and
- (b) the special resolution has taken effect in accordance with *paragraph 2*.

(2) For the purposes of this Schedule, an umbrella fund shall be deemed to have commenced to trade before 30 June 2005 if—

- (a) shares, other than the subscriber shares issued for the purposes of incorporation of the umbrella fund, were issued in any sub-fund of that umbrella fund before 30 June 2005 and one or more of those shares remained in issue on that date; or
- (b) the umbrella fund, or any person acting on its behalf, entered into an agreement with a third party before 30 June 2005, which remained in force on that date and pursuant to which the assets of any sub-fund may be applied in satisfaction of any liability incurred on behalf of or attributable to any other sub-fund of the same umbrella fund.

#### *Taking effect of special resolution referred to in paragraph 1*

2. (1) If no application to the court is made pursuant to *paragraph 5*, a special resolution passed pursuant to *paragraph 1(1)* shall take effect on the date on which such resolution is passed or the 31st day after the date of service of notice on creditors issued pursuant to *paragraph 3(1)(b)*, whichever is the later.

(2) If an application is or applications are made to the court pursuant to *paragraph 5*, a special resolution pursuant to *paragraph 1(1)* shall not take effect until—

- (a) in the event that all applications made are withdrawn, the day on which such resolution is passed or the day next following the withdrawal of the last outstanding application, whichever is the later, subject to this day being no earlier than the 31st day after the date of service of notice on creditors issued pursuant to *paragraph 3(1)(b)*; and
- (b) in the event that all applications made are not withdrawn, whichever of the following is the later, that

is to say, the later of the day on which such resolution is passed, and:

- (i) where an order is granted by the court pursuant to *paragraph 5* or on appeal pursuant to *paragraph 6*, the date specified in that order or, if no such date is specified, the day next following the date on which the period for which the order is specified to remain in force expires or, as appropriate, following the day on which it otherwise ceases to be in force; or
- (ii) where no appeal against any decision of the court is lodged pursuant to *paragraph 6*, the day next following the date on which the period for such an appeal in relation to the last such determination of the court shall have elapsed; or
- (iii) where an appeal is lodged against any decision of the court pursuant to *paragraph 6*, the day next following the date on which the last outstanding such appeal is disposed of or withdrawn,

unless a court has otherwise ordered under *paragraph 5* or *6*.

*Certain requirements concerning notice of meeting to consider special resolution*

**3.** (1) Any notice of a meeting at which a special resolution of the type referred to in *paragraph 1(1)* is intended to be proposed —

- (a) shall be accompanied by audited financial statements for the umbrella fund which –
  - (i) include a statement of the assets and liabilities of each sub-fund of the umbrella fund; and
  - (ii) are prepared as at a date which is not more than 4 months before the date on which the notice convening the meeting is served,and such a statement is referred to subsequently in this paragraph and *paragraph 4* as a “statement of assets and liabilities”;
- (b) shall be given to all creditors of the umbrella fund, accompanied by a copy of the statement of assets and liabilities, in accordance with the provisions of *paragraph 4*; and
- (c) shall be delivered to the Registrar, accompanied by the statement of assets and liabilities, no later than the third day after the date on which the notice is first sent to members of the umbrella fund.

(2) If the means provided under *section [193]* (unanimous written resolutions) are proposed to be used to pass the special resolution, the following provisions have effect –

- (a) notice in writing of the proposed use of those means for that purpose shall be served on all members of the umbrella fund (and such notice shall not be valid if less than 30 days elapse between the date of service of it and the date of the signing of the resolution by the last member to sign);
- (b) each of the requirements under *subparagraph (1)* with respect to the notice of a meeting shall apply to

the notice in writing under *clause (a)*; and

(c) references in *subparagraph (1)* to the notice of a meeting shall be read as references to the notice in writing under *clause (a)*,

and references elsewhere in this Schedule to the notice of a meeting shall be read accordingly.

*Notice to creditors of meeting to consider special resolution under paragraph 1(1)*

4. (1) The requirement in *subparagraph (1)(a)* of *paragraph 3* to give all creditors of the umbrella fund notice of the meeting referred to in that paragraph shall be regarded as having been complied with if—

- (a) a notice in writing, accompanied by the statement of assets and liabilities, is sent to each relevant creditor of a sub-fund; and
- (b) a notice is published in at least one national newspaper, stating that the umbrella fund intends to avail itself of *section [1405](1)* and that an application may be made in accordance with *paragraph 5* for an order pursuant to that paragraph.

(2) For the purpose of this paragraph, a relevant creditor of a sub-fund is any creditor for whom provision was made, in accordance with the articles of association, in the net asset value of the sub-fund calculated—

- (a) in the case of a sub-fund in respect of which the net asset value is not calculated on a daily basis, as at the last valuation point for that sub-fund before the date of service of the notice pursuant to *paragraph 3(1)(b)*; and
- (b) in the case of a sub-fund in respect of which the net asset value is calculated on a daily basis, as at the second last valuation point for that sub-fund.

*Application to court opposing special resolution under paragraph 1(1)*

5. (1) An application may be made to the court in accordance with this paragraph for an order preventing any resolution passed, or proposed to be passed, pursuant to *subparagraph (1)* of *paragraph 1* from taking effect in relation to any umbrella fund referred to in that paragraph.

(2) An order under this paragraph may be granted only if the court considers that it would be just and equitable to do so.

(3) Each order granted pursuant to this paragraph shall specify the period in respect of which the order shall remain in force and, without prejudice to the powers of the court to specify such period, may specify that the order shall cease to be in force on the date on which the applicant ceases to be a creditor of the umbrella fund or the date on which the applicant consents to the application of *section [1405](1)* to that umbrella fund, whichever is the later.

(4) An application under this paragraph may only be made by a relevant creditor or relevant creditors constituting not less than 1 per cent in number of the creditors of any sub-fund, or the debts owed to whom account for not less than 1 per cent in value of the debts owed by any sub-fund, in each case as provided for in the net asset value of that sub-fund referred to in *paragraph 4*.

(5) Any application pursuant to this paragraph shall be made by a relevant creditor within 28 days after the date of service of the notice referred to in *paragraph 3(1)(b)*, and may be made on behalf of the creditors entitled to make the application by one or more of their number as they may appoint in writing for such purpose.

(6) Notice of an application to the court for the purposes of this paragraph shall be sent by the relevant creditor or relevant creditors to the umbrella fund and to the Central Bank within 2 days after the date on which the application is made, and the umbrella fund and the Central Bank shall each be entitled to appear and be heard on an application made pursuant to this paragraph.

(7) In considering whether it is just and equitable to make an order pursuant to this paragraph, the court shall have regard to the following matters:

- (a) the terms of any agreement or arrangement between the creditor or creditors and the umbrella fund or its delegates;
- (b) the course of dealings between the creditor or creditors and the umbrella fund or its delegates;
- (c) the conduct of the umbrella fund or its delegates towards the creditor or creditors;
- (d) the extent to which the umbrella fund or its delegates represented to the creditor or creditors that the umbrella fund would have recourse to the assets of any other sub-fund to discharge the liabilities owed to the creditor or creditors;
- (e) the extent to which it was reasonable for the relevant creditor or relevant creditors to expect to have recourse to the assets of any other sub-fund; and
- (f) any other matters which the court shall deem relevant.

*Appeal from decision of court under paragraph 5*

**6.** (1) Any creditor who has made an application pursuant to *paragraph 5*, or the umbrella fund in respect of which the application is made, may appeal to the Supreme Court against any decision of the court in respect of that application.

(2) Notice of any such appeal shall be lodged within 5 days after the date on which the order is perfected by the court.

(3) Notice of any appeal lodged by the umbrella fund shall be sent to the Central Bank and to the relevant creditor or relevant creditors who made the application pursuant to *paragraph 5* within 2 days after the date on which the appeal is made.

(4) Notice of any appeal by the party which made the application pursuant to *paragraph 5* shall be sent to the Central Bank and to the umbrella fund within 2 days after the date on which the appeal is made.