

SCHEDULE 3

Article 12(1)

PROVISIONS RELATING TO OLD PUBLIC COMPANIES

Meaning of “old public company”

1.—(1) For the purposes of this Schedule an “old public company” is a company limited by shares, or a company limited by guarantee and having a share capital, in respect of which the following conditions are met.

- (2) In relation to a company registered in Great Britain, the conditions are that—
- (a) the company either existed on 22nd December 1980 or was incorporated after that date pursuant to an application made before that date,
 - (b) on that date or, if later, on the day of the company’s incorporation, the company was not or (as the case may be) would not have been a private company within the meaning of section 28 of the Companies Act 1948(1), and
 - (c) the company has not since that date or the day of the company’s incorporation (as the case may be) either been re-registered as a public company or become a private company.
- (3) In relation to a company registered in Northern Ireland, the conditions are that—
- (a) the company either existed on 1st July 1983 or was incorporated after that date pursuant to an application made before that date,
 - (b) on that date or, if later, on the date of the company’s incorporation, the company was not or (as the case may be) would not have been a private company within the meaning of section 28 of the Companies Act (Northern Ireland) 1960(2), and
 - (c) the company has not since that date or the date of the company’s incorporation (as the case may be) either been re-registered as a public company or become a private company.

Application of Companies Acts to old public companies

- 2.—**(1) References in the Companies Acts to—
- (a) a public company, or
 - (b) a company other than a private company,
- are to be read (unless the context otherwise requires) as including an old public company.
- (2) References in the Companies Acts to a private company are to be read accordingly.
- (3) Sub-paragraphs (1) and (2)—
- (a) do not apply in relation to—
 - (i) Part 7 of the Companies Act 2006 (re-registration as a means of altering a company’s status), and
 - (ii) sections 662 to 669 of that Act (treatment of shares held by or for public company) (see paragraph 7(1) and (2) below), and
 - (b) do not restrict the power to make provision by regulations under section 65 of that Act (inappropriate use of indications of company type or legal form).

(1) 1948 c.38.

(2) 1960 c.22 (N.I.).

Old public company re-registering as a public company

3.—(1) Sections 90 to 96 of the Companies Act 2006 (re-registration as public company limited by shares) apply to an old public company.

(2) As they so apply—

- (a) references to a private company shall be read as references to an old public company, and
- (b) references to a special resolution of the company shall be read as references to a resolution of the directors.

(3) Chapter 3 of Part 3 of that Act (resolutions affecting a company's constitution) applies to any such resolution.

(4) References in this Schedule to re-registration as a public company, in relation to an old public company, are to re-registration by virtue of this paragraph.

Old public company becoming private: special resolution

4.—(1) An old public company may pass a special resolution not to be re-registered as a public company.

(2) Sections 98 and 99 of the Companies Act 2006 (application to court to cancel resolution; notice to registrar of court application or order) apply to such a resolution as they would apply to a special resolution by a public company to be re-registered as private.

(3) If either—

- (a) 28 days from the passing of the resolution elapse without an application being made under section 98 of the Companies Act 2006 (as applied), or
- (b) such an application is made and proceedings are concluded on the application without the court making an order for the cancellation of the resolution,

the registrar of companies shall issue the company with a certificate stating that it is a private company.

(4) The company then becomes a private company by virtue of the issue of the certificate.

(5) For the purposes of sub-paragraph (3)(b), proceedings on the application are concluded—

- (a) except in a case within the following paragraph, when the period mentioned in section 99(3) of the Companies Act 2006 (as applied) for delivering a copy of the court's order on the application to the registrar has expired, or
- (b) when the company has been notified that the application has been withdrawn.

(6) A certificate issued to a company under sub-paragraph (3) is conclusive evidence that the requirements of this paragraph have been complied with and that the company is a private company.

Old public company becoming private: statutory declaration

5.—(1) If an old public company delivers to the registrar a statutory declaration by a director or secretary of the company that the company does not at the time of the declaration satisfy the conditions for the company to be re-registered as public, the registrar shall issue the company with a certificate stating that it is a private company.

(2) The company then becomes a private company by virtue of the issue of the certificate.

(3) A certificate issued to a company under sub-paragraph (1) is conclusive evidence that the requirements of this paragraph have been complied with and that the company is a private company.

Failure by old public company to obtain new classification

6.—(1) If at any time a company which is an old public company has not delivered to the registrar of companies a declaration under paragraph 5, the company and any officer of it who is in default is guilty of an offence unless at the time the company—

- (a) has applied to be re-registered as a public company, and the application has not been refused or withdrawn, or
- (b) has passed a special resolution not to be re-registered as a public company, and the resolution has not been revoked, and has not been cancelled under section 98 of the Companies Act 2006 as applied by paragraph 4.

(2) A person guilty of an offence under this paragraph is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.

Old public company holding, or having charge on, own shares

7.—(1) In sections 662 to 669 of the Companies Act 2006 (treatment of shares held by or for public company) references to a public company do not include an old public company.

(2) Section 668 of that Act (application of sections 662 to 667 to private company re-registering as public company) applies to an old public company as to a private company.

(3) In the case of a company that—

- (a) after the relevant date remained an old public company, and
- (b) did not before that date apply to be re-registered as a public company,

any charge on its own shares which was in existence on or immediately before that date is a permitted charge and not void under section 670 of the Companies Act 2006.

(4) For the purposes of sub-paragraph (3) the relevant date is—

- (a) in relation to a company registered in Great Britain, 22nd March 1982;
- (b) in relation to a company registered in Northern Ireland, 30th September 1984.

Old public companies: trading under misleading name

8.—(1) An old public company commits an offence if it carries on a trade, profession or business under a name that includes, as its last part, the words “public limited company” or “cwmni cyfyngedig cyhoeddus”.

(2) Where an offence under this paragraph is committed by a company, an offence is also committed by every officer of the company who is in default.

(3) A person guilty of an offence under this paragraph is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.

Old public companies: payment for share capital

9. Sections 584 to 587 of the Companies Act 2006 (payment for shares: additional rules for public companies) apply to an old public company whose directors have passed and not revoked a resolution to be re-registered as a public company, as those sections apply to a public company.