



COMPANIES ACT 1992

TRANSFER OF SECURITIES REGULATIONS 1996

ARRANGEMENT OF THE REGULATIONS

PART I

CITATION, COMMENCEMENT AND INTERPRETATION

1. Citation and commencement.
2. Purposes and basic definitions.
3. Interpretation.

PART II

PARTICIPATING COMPANIES

Participation by companies

4. Participation in respect of shares.
5. Participation where articles consistent.
6. Participation where articles inconsistent.
7. Interpretation of regulations 5 and 6.
8. Participation in respect of securities other than shares.

Keeping of registers

9. Entries on registers.
10. Effect of entries on registers.
11. Rectification of and changes to registers of securities.
12. Closing registers.
13. Registration of transfers of securities.
14. Registration of linked transfers.

15. Position of transferee prior to entry on register.

Conversions and new issues

16. Conversion of securities into certificated form.
17. Conversion of securities into uncertificated form.
18. New issues in uncertificated form.

PART III

DEMATERIALISED INSTRUCTIONS ETC.

19. Properly authenticated dematerialised instructions.

PART IV

MISCELLANEOUS AND SUPPLEMENTAL

Miscellaneous

20. Construction of references to transfers etc.
21. Certain formalities and requirements not to apply.
22. Trusts, trustees and personal representatives etc.
23. Notices of meetings.
24. Notices to minority shareholders.
25. Irrevocable powers of attorney.

Defaults and contraventions

26. Breaches of statutory duty.
27. Liability of officers for contraventions.

Amendments and revocations

28. Minor and consequential amendments.



COMPANIES ACT 1992

TRANSFER OF SECURITIES REGULATIONS 1996

Approved by Tynwald: 10th December 1996

Coming into operation: 1 January 1997

In exercise of the powers conferred on the Treasury by section 28 of the Companies Act 1992(a), and of all other enabling powers, the following Regulations are hereby made:-

PART I

CITATION, COMMENCEMENT AND INTERPRETATION

Citation and commencement

1. These Regulations may be cited as the Transfer of Securities Regulations 1996 and, subject to section 28(8) of the Act, shall come into operation on 1 January 1997.

Purposes and basic definitions

2. (1) These Regulations enable title to units of a security to be evidenced otherwise than by a certificate and transferred otherwise than by a written instrument, and make provision for certain supplementary and incidental matters.

(2) Where title to a unit of a security is evidenced otherwise than by a certificate by virtue of these Regulations, the transfer of title to such a unit of a security shall be subject to these Regulations.

(a) 1992 c.4.

(3) Part II of these Regulations has effect for the purpose -

(a) of enabling companies to be participating companies in relation to a relevant system, that is to say, companies which permit -

(i) the holding of units of securities issued by them in uncertificated form; and

(ii) the transfer by means of the system of title to units of such of the securities issued by them as are held in that form; and

(b) of establishing the duties and obligations of participating companies in relation to uncertificated units of a security with respect to the keeping of registers, the registration of transfers and other matters.

(4) Part III of these Regulations has effect for the purpose of securing in certain circumstances -

(a) that the persons expressed to have sent instructions by means of a relevant system which are properly authenticated, and the persons on whose behalf those instructions are expressed to have been sent, are prevented from denying to the persons to whom those instructions are addressed that certain information relating to them is correct; and

(b) that the persons to whom the instructions referred to in sub-paragraph (a) (i) are addressed may accept that certain information relating to them is correct.

Interpretation

3. (1) In these Regulations -

"the 1931 Act" means the Companies Act 1931 (b);

"certificate" means any certificate, instrument or other document of, or

evidencing, title to units of a security;

"certificated unit of a security" means a unit of a security which is not an uncertificated unit;

"company" means a company within the meaning of section 341(1) of the 1931 Act;

"dematerialised instruction" means an instruction sent or received by means of a relevant system;

"generate", in relation to an Operator-instruction, means to initiate the procedures by which an Operator-instruction comes to be sent;

"instruction" includes any instruction, election, acceptance or any other message of any kind;

"interest in a security" means any legal or equitable interest or right in relation to a security, including -

- (a) an absolute or contingent right to acquire a security created, allotted or issued or to be created, allotted or issued; and
- (b) the interests or rights of a person for whom a security is held by a custodian or depositary;

"issue", in relation to a new unit of a security, means to confer title to a new unit on a person;

"issuer-instruction" means a properly authenticated dematerialised instruction attributable to a participating company;

"officer", in relation to a participating company, includes a director, manager or secretary;

"Operator" means a person approved under the U.K. Regulations as Operator of a relevant system for the purposes of those Regulations;

"Operator-instruction" means a properly authenticated dematerialised instruction attributable to an Operator;

"Operator-system" means those facilities and procedures which are part of the relevant system, which are maintained and operated by or for an Operator, by which he generates Operator-instructions and receives dematerialised instructions from system-participants and by which persons change the form in which units of a participating security are held;

"participating company" means a company which has issued a security which is a participating security;

"participating security" means a security, title to units of which is permitted by an Operator to be transferred by means of a relevant system;

"register of members" means a register of members maintained by a company under section 96 of the 1931 Act;

"register of securities" -

- (a) in relation to shares, means a register of members; and
- (b) in relation to units of a security other than shares, means a register maintained by the issuing company, whether by virtue of these Regulations or otherwise, of persons holding the units;

"relevant system" means a system operated by an Operator, and includes an Operator-system;

"rules", in relation to an Operator, means rules made or conditions imposed by him with respect to the provision of the relevant system;

"securities" means shares, stock, debentures, debenture stock, loan stock, bonds, and other securities of any description, and interests in a security;

"settlement bank", in relation to a relevant system, means a person who has contracted to make payments in connection with transfers of title

to uncertificated units of a security by means of that system;

"share" means share (or stock) in the share capital of a company;

"sponsoring system-participant" means a system-participant who is permitted by an Operator to send properly authenticated dematerialised instructions attributable to another person and to receive properly authenticated dematerialised instructions on another person's behalf;

"system" means a computer-based system, and procedures, which enable title to units of a security to be evidenced and transferred without a written instrument, and which facilitate supplementary and incidental matters;

system-member", in relation to a relevant system, means a person who is permitted by an Operator to transfer by means of that system title to uncertificated units of a security held by him, and shall include, where relevant, two or more persons who are jointly so permitted;

"system-member instruction" means a properly authenticated dematerialised instruction attributable to a system-member;

"system-participant", in relation to a relevant system, means a person who is permitted by an Operator to send and receive properly authenticated dematerialised instructions;

"system-user", in relation to a relevant system, means a person who as regards that system is a participating company, system-member, system-participant or settlement bank;

"U.K. Regulations" means the Uncertificated Securities Regulations 1995 (a Statutory Instrument) (c);

"uncertificated unit of a security" means a unit of a security title to which is recorded on the relevant register of securities as being held in uncertificated form, and title to which, by virtue of these

Regulations, may be transferred by means of a relevant system;
"unit of a security" means the smallest possible transferable unit of the
security;

and other expressions have the meanings given to them by the 1931 Act.

(2) For the purposes of these Regulations -

(a) a dematerialised instruction is properly authenticated if -

(i) it is identifiable as being from the computers of a
particular system-participant; and

(ii) is properly authenticated in accordance with the
specifications of the operator; and

(b) a dematerialised instruction is attributable to a person if
it is expressed -

(i) to have been sent by that person; or

(ii) if it is expressed to have been sent on behalf of that
person, in accordance with the specifications of the
Operator,

and a dematerialised instruction may be attributable to more than
one person.

PART II

PARTICIPATING COMPANIES

Participation by companies

Participation in respect of shares

4. (1) Where an Operator permits a class of shares in relation to which -
- (a) regulation 5 applies, or
 - (b) a directors' resolution passed in accordance with regulation
6 is effective,

to be a participating security, title to shares of that class which are

recorded on a register of members as being held in uncertificated form may be transferred by means of the relevant system to which the permission relates.

(2) In paragraph (1), the reference to a register of members shall not include a branch register.

Participation where articles consistent

5. (1) This regulation applies to a class of shares if a company's articles of association in all respects are consistent with -

- (a) the holding of shares in that class in uncertificated form;
- (b) the transfer of title to shares in that class by means of a relevant system; and
- (c) these Regulations.

(2) A company may permit the holding of shares in a class to which this regulation applies in uncertificated form, and the transfer of title to any such shares by means of a relevant system.

Participation where articles inconsistent

6. (1) This regulation applies to a class of shares if a company's articles of association in any respect are inconsistent with -

- (a) the holding of shares in that class in uncertificated form;
- (b) the transfer of title to shares in that class by means of a relevant system; or
- (c) any provision of these Regulations.

(2) A company may resolve, subject to paragraph (6) (a), by resolution of its directors (in this Part referred to as a "directors' resolution") that title to shares of a class issued or to be issued by it may be transferred by means of a relevant system.

(3) Upon a directors' resolution becoming effective in accordance with

its terms, and for as long as it is in force, the articles of association in relation to the class of shares which were the subject of the directors' resolution shall not apply to any uncertificated shares of that class to the extent that the articles are inconsistent with -

- (a) the holding of shares of that class in uncertificated form;
- (b) the transfer of title to shares of that class by means of a relevant system; and
- (c) any provision of these Regulations.

(4) Unless a company has given notice to every member of the company in accordance with its articles of association of its intention to pass a directors' resolution before the passing of such a resolution, it shall give such notice within 60 days of the passing of the resolution.

(5) Notice given by the company before the coming into force of these Regulations of its intention to pass a directors' resolution which, if it had been given after the coming into force of these Regulations would have satisfied the requirements of paragraph (4), shall be taken to satisfy the requirements of that paragraph.

(6) In respect of a class of shares, the members of a company may by ordinary resolution -

- (a) if a directors' resolution has not been passed, resolve that the directors of the company shall not pass a directors' resolution; or
- (b) if a directors' resolution has been passed but not yet come into effect in accordance with its terms, resolve that it shall not come into effect; or
- (c) if a directors' resolution has been passed and is effective in accordance with its terms but the class of shares has not yet been permitted by the Operator to be a participating

security, resolve that the directors' resolution shall cease to have effect; or

- (d) if a directors' resolution has been passed and is effective in accordance with its terms and the class of shares has been permitted by the Operator to be a participating security, resolve that the directors shall take the necessary steps to ensure that title to shares of the class that was the subject of the directors' resolution shall cease to be transferable by means of a relevant system and that the directors' resolution shall cease to have effect;

and the directors shall be bound by the terms of any such ordinary resolution.

(7) Such sanctions as apply to a company and its officers in the event of a default in complying with section 117 of the 1931 Act shall apply to a participating company and its officers in the event of a default in complying with paragraph (4).

(8) A company shall not permit the holding of shares in such a class as is referred to in paragraph (1) in uncertificated form, or the transfer of title to shares in such a class by means of a relevant system, unless in relation to that class of shares a directors' resolution is effective.

(9) This regulation shall not be taken to exclude the right of the members of a company to amend the articles of association of the company, in accordance with the articles, to allow the holding of any class of its shares in uncertificated form and the transfer of title to shares in such a class by means of a relevant system.

Interpretation of regulations 5 and 6

7. For the purposes of regulations 5 and 6 any shares with respect to which share warrants to bearer are issued under section 71 of the 1931 Act shall be

regarded as forming a separate class of shares.

Participation in respect of securities other than shares

8. (1) Subject to paragraph (2), where an Operator permits a security other than a share to be a participating security, title to units of that security which are recorded in a register of securities as being held in uncertificated form may be transferred by means of a relevant system.

(2) In relation to any security (other than a share), if a current term of its issue is in any respect inconsistent with -

- (a) the holding of title to units of that security in uncertificated form;
- (b) the transfer of title to units of that security by means of a relevant system; or
- (c) these Regulations,

the company shall not permit the holding of units of that security in uncertificated form, or the transfer of title to units of that security by means of a relevant system.

(3) In this regulation the terms of issue of a security shall be taken to include the terms prescribed by the issuing company on which units of the security are held and title to them is transferred.

Keeping of registers

Entries on registers

9. (1) A participating company shall enter on its register of members, in respect of any class of shares which is a participating security, how many shares each member holds in uncertificated form and certificated form respectively.

(2) Without prejudice to section 74 of the 1931 Act, a participating company which apart from this regulation, is required by or under an enactment or instrument to maintain in the Island a register of persons holding securities (other than shares) issued by it, shall enter on that register in respect of any class of security which is a participating security -

- (a) the names and addresses of the persons holding units of that security; and
- (b) how many units of that security each person holds in uncertificated form and certificated form respectively.

(3) A participating company which, apart from this regulation, is not required by or under an enactment or instrument to maintain in the Island in respect of a participating security issued by it a register of persons holding units of that participating security, shall maintain in the Island a register recording -

- (a) the names and addresses of the persons holding units of that security in uncertificated form; and
- (b) how many units of that security each person holds in that form.

(4) Such sanctions as apply to a company and its officers in the event of a default in complying with section 96 of the 1931 Act shall apply to a participating company and its officers in the event of a default in complying with paragraph (1), (2) or (3).

(5) Without prejudice to any lesser period of limitation and to any rule as to the prescription of rights, liability incurred by a participating company arising -

- (a) from the making or deletion of an entry in a register of securities pursuant to paragraph (1), (2) or (3); or
- (b) from a failure to make or delete any such entry,

shall not be enforceable more than 20 years after the date on which the entry was made or deleted or, in the case of a failure, the failure first occurred.

(6) For the purposes of paragraph (1) -

- (a) notwithstanding section 104 of the 1931 Act, the reference to a company's register of members shall not be taken to include a branch register;
- (b) those members who hold shares in uncertificated form may not be entered as holders of those shares on a branch register;
and
- (c) any shares with respect to which share warrants to bearer are issued under section 71 of the 1931 Act shall be regarded as forming a separate class of shares.

(7) No notice of any trust, expressed, implied or constructive, shall be entered on a register of securities which is maintained by virtue of paragraph (3) in relation to uncertificated units of a security, or be receivable by the registrar of such a register.

Effect of entries on registers

10. (1) Subject to regulation 13(7), an entry on such a register as is mentioned in regulation 9(1) or (2) which records a person as holding units of a security in uncertificated form shall be evidence of such title to the units as would be evidenced if the entry on the register related to units of that security held in certificated form.

(2) Subject to regulation 13(7), an entry on a register maintained by virtue of regulation 9(3) shall be prima facie evidence that the person to whom the entry relates has such title to the units of the security which he is recorded as holding in uncertificated form as he would have if he held the units in certificated form.

Rectification of and changes to registers of securities

11. (1) A participating company shall not rectify a register of securities in relation to uncertificated units of a security held by a system-member except -

- (a) with the consent of the Operator; or
- (b) by order of the High Court.

(2) A participating company who rectifies or otherwise changes an entry on a register of securities in relation to uncertificated units of a security (except in response to an Operator-instruction) shall immediately -

- (a) notify the Operator; and
- (b) inform the system-members concerned,

of the change to the entry.

Closing registers

12. Notwithstanding section 100 of the 1931 Act or any other enactment, a participating company shall not close a register of securities relating to a participating security without the consent of the Operator.

Registration of transfers of securities

13. (1) A participating company shall register a transfer of title to uncertificated units of a security on a register of securities in accordance with an Operator-instruction unless -

- (a) the transfer is prohibited by order of the High Court and both the participating company and the relevant operator have actual notice of the order before the operator-instruction is sent; or
- (b) by or under an enactment; or
- (c) it has actual notice that the transfer is -
 - (i) avoided by or under an enactment; or

- (ii) a transfer to a deceased person; or
- (d) the circumstances described in paragraph (2) apply; or
- (e) it is entitled under paragraph (3) to refuse to register the transfer.

(2) The circumstances referred to in paragraph (1) (d) are that the transfer is one of two or more transfers in respect of which the Operator has notified the participating company that they are linked transfers, and that to those transfers regulation 14(1) does not apply by virtue of regulation 14(2).

(3) A participating company may refuse to register a transfer of title to uncertificated units of a security in accordance with an Operator-instruction if the instruction requires a transfer of units -

- (a) to an entity which is not a natural or legal person;
- (b) to a minor;
- (c) to be held jointly in the names of more persons than is permitted under the terms of the issue of the security; or
- (d) where, in relation to the Operator-instruction, the participating company has actual notice from the Operator of any of the matters specified in regulation 19(4) (a) (i) to (iii).

(4) A participating company shall notify the Operator by issuer-instruction whether it has registered a transfer in response to an Operator-instruction to do so.

(5) A participating company shall not register a transfer of title to uncertificated units of a security on a register of securities unless it is required to do so -

- (a) by an Operator-instruction;
- (b) by an order of the High Court;
- (c) by regulation 24(2); or

(d) by or under an enactment.

(6) Paragraph (5) shall not be taken to prevent a participating company from entering a person on a register of securities to whom title to uncertificated units of a security has been transmitted by operation of law.

(7) Any purported registration of a transfer of title to an uncertificated unit of a security other than in accordance with this regulation shall be of no effect.

(8) Section 67(1) of the 1931 Act shall apply in relation to a refusal by a participating company to register a transfer of securities in any of the circumstances specified in paragraph (1), as it applies in relation to a refusal by a company to register a transfer of shares or debentures; and in that subsection as it so applies the reference to the date on which the transfer was lodged with the company shall be taken to be a reference to the date on which the Operator-instruction was received by the participating company.

(9) Such sanctions as apply to a company and its officers in the event of a default in complying with section 67(1) of the 1931 Act shall apply to a participating company and its officers in the event of a default in complying with that section as applied by paragraph (8).

Registration of linked transfers

14. (1) Except in the circumstances described in paragraph (2), notwithstanding that there may be fewer uncertificated units of the security registered in the name of a person identified in any one of the Operator-instructions as a transferor than the number of uncertificated units to be transferred from him, where an Operator notifies a participating company that transfers are linked transfers, the participating company may either -

(a) register the combined effect of all the transfers taken

together; or

(b) register all the transfers simultaneously.

(2) Paragraph (1) does not apply in a case in which -

(a) registration of the combined effect of the linked transfers, or simultaneous registration of all the transfers (as the case may be), would not result in each of the persons identified in the Operator-instructions as a transferor having title to a number of uncertificated units of the security equal to or greater than nil; or

(b) one or more of the transfers constituting the linked transfers may not be registered by virtue of the

circumstances specified in regulation 13(1)(a), (b) or (c), or is to be refused registration by virtue of regulation 13(3).

Position of a transferee prior to entry on a register

15. (1) At the time an Operator-instruction is generated which will require a participating company to register on a register of securities a transfer of title to any uncertificated units of a security -

(a) the transferee shall acquire an equitable interest in the requisite number of uncertificated units of the security of the kind specified in the Operator-instruction in which the transferor has an equitable interest by virtue of this regulation, or in relation to which the transferor is recorded on the relevant register of securities as having title; and

(b) the equitable interest shall subsist until the time specified in paragraph (3).

(2) For the purposes of paragraph (1)(a), it shall not be denied that

the transferee has obtained the equitable interest referred to in paragraph (1) (a) solely by reason of the fact that the transferor acquired his equitable interest by virtue of paragraph (1) (a) at the same time as the transferee's equitable interest arises in that interest.

(3) Subject to any enactment or rule of law, an interest acquired under paragraph (1) -

- (a) in a case other than one in which under regulation 14(1) (a) a participating company registers the combined effect of linked transfers, shall subsist until the time that the transferee is entered on the register of securities in respect of the transfer of units to him; and
- (b) in a case in which under regulation 14(1) (a) a participating company registers the combined effect of linked transfers, shall subsist until the time that the combined effect of all the linked transfers is registered.

(4) The requisite number for the purposes of this regulation is whichever of the following is the lower at the time that the Operator-instruction is sent, namely -

- (a) the number of units which are specified in the Operator-instruction; and
- (b) the total of the number of uncertificated units in relation to which the transferor is recorded on the register of securities as having title and the number in which he has an interest by virtue of paragraph (1), less that number of units in which such interests subsist in favour of a third party by virtue of an earlier Operator-instruction requiring a participating company to register on a register of securities a transfer of title to those units.

(5) This regulation has effect notwithstanding that the units to which the Operator-instruction relates, or in which an interest arises by virtue of paragraph (1), or any of them, may be unascertained.

(6) Subject to paragraph (5), this regulation shall not be construed as conferring a proprietary interest (whether of the kind referred to in paragraph (1), or any other kind) in units of a security if the conferring of such an interest at the time specified in these Regulations would otherwise be void by or under an enactment or rule of law.

(7) In this regulation -

- (a) "the transferee" means the person identified in the Operator-instruction as the transferee; and
- (b) "the transferor" means the person identified in the Operator-instruction as the transferor.

Conversions and new issues

Conversion of securities into certificated form

16. (1) A participating company shall not change a unit of a participating security from uncertificated to certificated form except -

- (a) where permitted by the rules made and practices instituted by an Operator; or
- (b) following receipt of an Operator-instruction requiring the conversion into certificated form of uncertificated units of a participating security registered in the name of a system-member; or
- (c) subject to regulation 13, following receipt of an Operator-instruction requiring the registration of a transfer of title to uncertificated units of a security to a person who is not a system-member; or

(d) on the registration, in accordance with regulation 24(2), of an offeror who is not a system-member as holder of the units of the security referred to in that regulation.

(2) In the circumstances specified in paragraph (1)(b) to (d) a participating company shall -

- (a) record on the register of securities that the units of the security are held in certificated form;
- (b) where a certificate can be issued for the security, issue a certificate in respect of the units of the security to the relevant person; and
- (c) notify the Operator that the units are no longer held in uncertificated form.

(3) Section 68(1) of the 1931 Act shall apply in the circumstances specified in paragraph (1)(b) to (d) in relation to the issue of a certificate by a participating company pursuant to paragraph (2)(b) as it applies in relation to the completion and having ready for delivery by a company of share certificates, debentures or certificates of debenture stock following transfer.

(4) In section 68(1) of the 1931 Act as it applies under paragraph (3), the reference to the date on which a transfer was lodged with the company shall be a reference to the date on which the participating company received the relevant Operator-instruction or, where relevant, the date on which the participating company registered the offeror as holding the units of the security referred to in regulation 24(2).

(5) Such sanctions as apply to a company and its officers in the event of a default in complying with that section shall apply to a participating company and its officers in the event of a default in complying with paragraph (2) in accordance with the requirements laid down in paragraph (3).

Conversion of securities into uncertificated form

17. (1) A participating company shall not change a unit of a participating security from certificated form to uncertificated form except in the circumstances specified in paragraph (2).

(2) The circumstances referred to in paragraph (1) are -

(a) where the unit of the participating security is held by a system-member, that the participating company has received -

(i) a request in writing in the form required by the rules made and practices instituted by an Operator to register the system-member as holding the unit in uncertificated form; and

(ii) subject to paragraph (4), the certificate relating to the certificated unit which is to be converted into uncertificated form;

(b) where the unit of the participating security is to be registered on a register of securities in the name of a system-member following a transfer of the unit to him from a person other than the nominee of a recognised investment exchange, that the participating company -

(i) subject to paragraph (3), has received by means of the Operator-system a proper instrument of transfer in favour of the system-member relating to the unit to be transferred;

(ii) subject to paragraph (4), has received by means of the Operator-system the certificate relating to the certificated unit which is to be transferred and converted into uncertificated form; and

(iii) may accept by virtue of the rules made and practices

instituted by an Operator that the system-member to whom the unit is to be transferred wishes to hold it in uncertificated form; and

(c) where the unit of the participating security is to be registered on a register of securities in the name of a system-member following a transfer of the unit to him from a nominee of a recognised investment exchange, that the participating company -

(i) has received a proper instrument of transfer in favour of the system-member from the nominee relating to the unit to be transferred; and

(ii) may accept by virtue of the rules made and practices instituted by an Operator that the system-member to whom the unit is to be transferred wishes to hold it in uncertificated form.

(3) The requirement in paragraph (2) (b) (i) that the participating company shall have received an instrument of transfer relating to the unit of the participating security shall not apply in a case where for a transfer of a unit of that security no instrument of transfer is required.

(4) The requirements in paragraphs (2) (a) (ii) and (2) (b) (ii) that the participating company shall have received a certificate relating to the unit of the participating security shall not apply in a case where the system-member or transferor (as the case may be) does not have a certificate in respect of the unit to be converted into uncertificated form because no certificate has yet been issued to him.

(5) In the circumstances specified in paragraph (2) (a), on receipt of the request referred to in paragraph (2) (a) (i) and (except where paragraph (4) applies) the certificate referred to in paragraph (2) (a) (ii), the participating

company shall, within 2 months -

- (a) enter on the register of securities that the system-member holds the unit in uncertificated form; and
- (b) send the Operator an issuer-instruction informing him of the entry on the relevant register of securities.

(6) In the circumstances specified in paragraph (2) (b), on receipt of the instrument of transfer referred to in paragraph (2) (b) (i) (except where paragraph (3) applies) and the certificate referred to in paragraph (2) (b) (ii) (except where paragraph (4) applies), the participating company shall -

- (a) upon recording that the system-member holds the unit, enter on the register of securities that it holds the unit in uncertificated form; and
- (b) within 2 months thereafter, send the Operator an issuer-instruction informing him of the entry on the register of securities.

(7) In the circumstances specified in paragraph (2) (c), on receipt of the instrument of transfer referred to in paragraph (2) (c) (i), the participating company shall -

- (a) upon recording that the system-member holds the unit, enter on the register of securities that it holds the unit in uncertificated form; and
- (b) within 2 months thereafter, send the Operator an issuer-instruction informing him of the entry on the register of securities.

(8) Such sanctions as apply to a company in the event of a default by it in complying with section 67(1) of the 1931 Act shall apply to a participating company in the event of a default by it in complying with paragraph (5), (6) or (7).

(9) In this regulation "recognised investment exchange" means an investment exchange which is a recognised investment exchange for the purposes of regulation 27 of the U.K. Regulations.

New issues in uncertificated form

18. (1) A participating company may issue units of a participating security in uncertificated form to a person if, and only if, that person is a system-member.

(2) For the purposes of calculating the number of new units to which a system-member is entitled a participating company may treat a system-member's holdings of certificated and uncertificated units of a security as if they were separate holdings.

(3) On the issue in uncertificated form of new units of a participating security, the participating company shall by issuer-instruction notify the Operator of the persons to whom the uncertificated units of a security have been issued and of the number of such units issued to each of those persons.

PART III

DEMATERIALIZED INSTRUCTIONS ETC.

Properly authenticated dematerialised instructions

19. (1) Where a properly authenticated dematerialised instruction is expressed to have been sent on behalf of a person by a sponsoring system-participant or the Operator -

(a) the person on whose behalf the instruction is expressed to have been sent shall not be able to deny to the addressee -

(i) that the properly authenticated dematerialised instruction was sent with his authority; or

(ii) that the information contained in the properly

authenticated dematerialised instruction is correct;

and

(b) the sponsoring system-participant or the Operator (as the case may be) shall not be able to deny to the addressee -

(i) that he has authority to send the properly authenticated dematerialised instruction; or

(ii) that he has sent the properly authenticated dematerialised instruction.

(2) Where a properly authenticated dematerialised instruction is expressed to have been sent by a person, and the properly authenticated dematerialised instruction is not expressed to have been sent on behalf of another person, the person shall not be able to deny to the addressee -

(a) that the information contained in the properly authenticated dematerialised instruction is correct; or

(b) that he has sent the properly authenticated dematerialised instruction.

(3) An addressee who receives (whether directly, or by means of the facilities of a sponsoring system-participant acting on his behalf) a properly authenticated dematerialised instruction may, subject to paragraph (4), accept that at the time at which the properly authenticated dematerialised instruction was sent -

(a) the information contained in the instruction was correct;

(b) the system-participant or the Operator (as the case may be) identified in the instruction as having sent the instruction sent the instruction; and

(c) the instruction, where relevant, was sent with the authority of the person on whose behalf it is expressed to have been sent.

(4) Subject to paragraph (5), an addressee may not accept any of the matters specified in paragraph (3) if at the time he received the properly authenticated dematerialised instruction -

(a) he was a person other than a participating company or a sponsoring system-participant receiving properly authenticated dematerialised instructions on behalf of a participating company, and he had actual notice -

(i) that any information contained in it was incorrect;

(ii) that the system-participant or the Operator (as the case may be) expressed to have sent the instruction did not send the instruction; or

(iii) where relevant, that the person on whose behalf it was expressed to have been sent had not given to the Operator or the sponsoring system-participant (as the case may be), identified in the properly authenticated dematerialised instruction as having sent it, his authority to send the properly authenticated dematerialised instruction on his behalf; or

(b) that person was a participating company, or a sponsoring system-participant receiving properly authenticated dematerialised instructions on behalf of a participating company, and -

(i) he had actual notice from the Operator of any of the matters specified in sub-paragraph (a); or

(ii) the instruction was an Operator-instruction requiring the registration of title in the circumstances specified in regulation 13(1)(a), (b), (c) or (d); or

(c) he was an Operator and the instruction related to a transfer

of units of a security which was in excess of any limit imposed under paragraph 12 of Schedule 1 to the U.K. Regulations.

(5) Notwithstanding that an addressee has received in respect of a properly authenticated dematerialised instruction actual notice of the kind referred to in paragraph (4), the addressee may accept the matters specified in paragraph (3) if at the time that he received the actual notice it was not practicable for him to halt his processing of the instruction.

(6) Subject to paragraph (7), a person who is permitted by this regulation to accept any matter shall not be liable in damages or otherwise to any person by reason of his having relied on the matter that he was permitted to accept.

(7) The provisions of paragraph (6) do not affect any liability of a participating company under regulation 26 arising by reason of a default in complying with, or contravention of, regulation 13(5).

(8) Subject to paragraph (6), this regulation has effect without prejudice to the liability of any person for causing or permitting a dematerialised instruction -

- (a) to be sent without authority; or
- (b) to contain information which is incorrect; or
- (c) to be expressed to have been sent by a person who did not send it.

(9) For the purposes of this regulation-

- (a) a properly authenticated dematerialised instruction is expressed to have been sent by a person or on behalf of a person if it is attributable to that person; and
- (b) an addressee is the person to whom a properly authenticated dematerialised instruction indicates it is addressed in

accordance with the specifications of the Operator drawn up in order to satisfy paragraph 5(d) of Schedule 1 to the U.K. Regulations.

PART IV

MISCELLANEOUS AND SUPPLEMENTAL

Miscellaneous

Construction of references to transfers etc.

20. References in any enactment or rule of law to a proper instrument of transfer or to a transfer with respect to securities, or any expression having like meaning, shall be taken to include a reference to an Operator-instruction to a participating company to register a transfer of title on the relevant register of securities in accordance with the Operator-instruction.

Certain formalities and requirements not to apply

21. (1) Any requirements in an enactment or rule of law which apply in respect of the transfer of securities otherwise than by means of a relevant system shall not prevent an Operator-instruction from requiring a participating company to register a transfer of title to uncertificated units of a security.

(2) Subject to regulation 16(2), notwithstanding any enactment, instrument or rule of law, a participating company shall not issue a certificate in relation to any uncertificated units of a participating security.

(3) A document issued by or on behalf of a participating company purportedly evidencing title to an uncertificated unit of a participating security shall not be evidence of title to the unit of the security; and in particular section 69 of the 1931 Act shall not apply to any document issued with respect to uncertificated shares.

(4) Any requirement in or under any enactment to endorse any statement or information on a certificate evidencing title to a unit of a security -

- (a) shall not prohibit the conversion into, or issue of, units of the security in uncertificated form; and
- (b) in relation to uncertificated units of the security, shall be taken to be a requirement to provide the holder of the units with the statement or information on request by him.

(5) Section 14(5) of the Isle of Man Judicature Act 1883(d) and any other enactment or rule of law which imposes requirements for dispositions to be in writing shall not apply (if they would otherwise do so) to -

- (a) any transfer of title to uncertificated units of a security by means of a relevant system; and
- (b) any disposition or assignment of an interest in uncertificated units of a security title to which is held by a relevant nominee, or in which the relevant nominee has an interest by virtue of regulation 15(1).

(6) In paragraph (5) "relevant nominee" means a subsidiary undertaking of an Operator designated by him as a relevant nominee in accordance with such rules and practices as are mentioned in paragraph 19(d) of Schedule 1 to the U.K. Regulations.

Trusts, trustees and personal representatives etc.

22. (1) Unless expressly prohibited from transferring units of a security by means of any computer-based system, a trustee or personal representative shall not be chargeable with a breach of trust or, as the case may be, with default in administering the estate by reason only of the fact that -

- (a) for the purpose of acquiring units of a security which he has the power to acquire in connection with the trust or estate,

he has paid for the units under arrangements which provide for them to be transferred to him from a system-member but not to be so transferred until after the payment of the price;

- (b) for the purpose of disposing of units of a security which he has power to dispose of in connection with the trust or estate, he has transferred the units to a system-member under arrangements which provide that the price is not to be paid to him until after the transfer is made; or
- (c) for the purpose of holding units of a security belonging to the trust or estate in uncertificated form and for transferring title to them by means of a relevant system, he has become a system-member.

(2) A trustee of a trust deed for securing an issue of debentures shall not be chargeable with a breach of trust by reason only of the fact that he has assented to an amendment of the trust deed only for the purposes of -

- (a) allowing the holding of the debentures in uncertificated form;
- (b) allowing the exercise of rights attaching to the debentures by means of a relevant system; or
- (c) allowing the transfer of title to the debentures by means of a relevant system;

provided that he has given or caused to be given notice of the amendment in accordance with the trust deed not less than 30 days prior to its becoming effective to all persons registered as holding the debentures on a date not more than 21 days before the dispatch of the notice.

(3) The Operator shall not be bound by or compelled to recognise any express, implied or constructive trust or other interest in respect of

uncertificated units of a security, even if he has actual or constructive notice of the said trust or interest.

Notices of meetings

23. (1) For the purposes of determining which persons are entitled to attend or vote at a meeting, and how many votes such persons may cast, the participating company may specify in the notice of the meeting a time, not more than 48 hours before the time fixed for the meeting, by which a person must be entered on the relevant register of securities in order to have the right to attend or vote at the meeting.

(2) Changes to entries on the relevant register of securities after the time specified by virtue of paragraph (1) shall be disregarded in determining the rights of any person to attend or vote at the meeting, notwithstanding any provisions in any enactment, articles of association or other instrument to the contrary.

(3) For the purposes of serving notices of meetings, whether under section 114(1)(b) of the 1931 Act, any other enactment, a provision in the articles of association or any other instrument, a participating company may determine that persons entitled to receive such notices are those persons entered on the relevant register of securities at the close of business on a day determined by it.

(4) The day determined by a participating company under paragraph (3) may not be more than 21 days before the day that the notices of the meeting are sent.

Notices to minority shareholders

24. (1) This regulation shall apply in relation to any uncertificated units of a security to which a notice given pursuant to section 154 of the 1931 Act

relates.

(2) On receipt of a copy sent pursuant to section 154(2) of the 1931 Act, a company which is a participating company shall be under the same obligation to enter the transferee company on its register of securities as the holder of the uncertificated units of the security to which the notice relates, in place of the system-member who was immediately prior to such entry registered as the holder of such units, as it would be if it had received an Operator-instruction requiring it to amend its register of securities in such manner; and regulation 13(9) shall have effect accordingly.

(3) A company which amends its register of securities in accordance with paragraph (2) shall forthwith notify the Operator by issuer-instruction of the amendment.

(4) In this regulation, "transferee company" has the meaning given by section 154 of the 1931 Act.

Irrevocable powers of attorney

25. (1) This regulation applies where the terms of an offer for all or any uncertificated units of a participating security provide that a person accepting the offer creates an irrevocable power of attorney in favour of the offeror, or a person nominated by the offeror, in the terms set out in the offer.

(2) An acceptance communicated by properly authenticated dematerialised instruction in respect of uncertificated units of a security shall constitute a grant of an irrevocable power of attorney by the system-member accepting the offer in favour of the offeror, or person nominated by the offeror, in the terms set out in the offer.

(3) Where the contract constituted by such offer and acceptance referred to in paragraphs (1) and (2) respectively is governed by Manx law,

section 3 of the Powers of Attorney Act 1983(e) shall apply to a power of attorney constituted in accordance with this regulation.

(4) A declaration in writing by the offeror stating the terms of a power of attorney and that it has been granted by virtue of this regulation and stating the name and address of the grantor shall be prima facie evidence of the grant; and any requirement in any enactment, rule of law, or instrument to produce a copy of the power of attorney, or such a copy certified in a particular manner, shall be satisfied by the production of the declaration or a copy of the declaration certified in that manner.

Defaults and contraventions

Breaches of statutory duty

26. (1) A default in complying with, or a contravention of, regulation 6(8), 8(2), 11(1) or (2), 12, 13(4) or (5), 16(1), 16(2)(a) or (c), 17(1), 18(3) or 24(3) shall be actionable at the suit of a person who suffers loss as a result of the default or contravention, or who is otherwise adversely affected by it, subject to the defences and other incidents applying to actions for breach of statutory duty.

(2) Paragraph (1) shall not affect the liability which any person may incur, nor affect any right which any person may have, apart from paragraph (1).

Liability of officers for contraventions

27. In regulation 6(7), 9(4), 13(9), 16(5) or 17(8) an officer of a participating company shall be in default in complying with, or in contravention of, the provision mentioned in that regulation if, and only if, he knowingly and wilfully authorised or permitted the default or contravention.

Amendments and revocations

Minor and consequential amendments

28. (1) In section 63(1) of the 1931 Act after "the company" insert "and subject to regulations made under section 28 of the Companies Act 1992 (which enable title to securities to be evidenced and transferred without a written instrument).".

(2) In section 64 of the 1931 Act, after "delivered to the company" insert "or the transfer is in accordance with regulations made under section 28 of the Companies Act 1992".

(3) Section 66 of the 1931 Act shall not apply in relation to the transfer of uncertificated units of a security by means of a relevant system.

(4) In section 117(4) of the 1931 Act, after paragraph (e) add the following paragraphs -

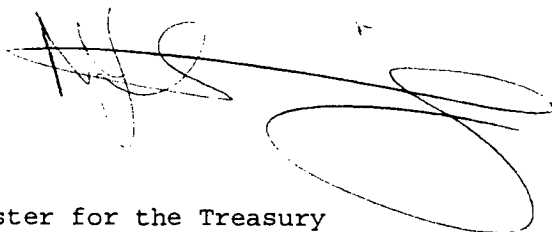
"(f) a resolution of the directors passed by virtue of regulation 6(2) of the Transfer of Securities Regulations 1996 (which allow title to a company's shares to be evidenced and transferred without written instrument); and

(g) a resolution of a company passed by virtue of regulation 6(6) of the Transfer of Securities Regulations 1996 (which prevents or reverses a resolution of the directors under regulation 6(2) of those Regulations).".

Made

30th October

1996



Minister for the Treasury

EXPLANATORY NOTE

(This Note is not part of the Regulations)

The Regulations will permit paperless (i.e. computerised) securities settlement systems to operate in relation to certain classes of company. The Regulations are intended to be in support of the system established under U.K. legislation. The principal legal effects will be to -

- (a) remove the obligations on companies to issue certificates;
- (b) create interests for those acquiring company securities by means of the system;
- (c) alter the effect of the law which requires transactions in company securities to be effected by means of written instruments;
- (d) ensure that companies will act in accordance with the instructions of the system operator.