

Company No: 1780482

THE COMPANIES ACTS 1985 to 1989

COMPANY LIMITED BY GUARANTEE

AND NOT HAVING A SHARE CAPITAL

**ARTICLES OF ASSOCIATION
OF
DESIGN AND ARTISTS COPYRIGHT SOCIETY**

(Adopted by special resolution passed • 2004)

1 Definitions and interpretation

In these articles the following words and expressions have the following meanings:

the **"Act"** means the Companies Act 1985 as amended by the Companies Act 1989 and as further amended from time to time;

"Affiliated Society" or **"Sister Society"** means any of the societies in countries outside the United Kingdom affiliated to the Society or to which the Society is itself affiliated or which is affiliated in common with the Society to another society or which is associated by contract or otherwise with the Society;

"Artist's Resale Right" means the resale right for the benefit of the author of an original work of art including the resale right set out in Directive 2001/84/EC of the European Parliament and of the Council of the European Union dated 27 September 2001 and any right enforced by any law implementing such Directive anywhere and any right of a similar nature in any part of the world;

"Associate Member" means a member of the Society admitted pursuant to article 3.2 and any member of the Society who was immediately before the adoption of these articles an associate member of the Society;

"Auditors" means the auditors of the Society appointed in accordance with article 72;

the **"Board"** means the board of directors for the time being of the Society;

"chief executive" means the chief executive of the Society from time to time;

"Creators' Council" means the creators' council established pursuant to article 66;

"Creator Member" means a member of the Society admitted pursuant to article 3.1 and any Member satisfying any of the criteria set out in article 3.1 upon ceasing to be a Governing Member and any member of the Society who was immediately before the adoption of these articles an ordinary or a successor member of the Society;

"director" means a director of the Society unless the context provides otherwise;

"distribution" means any distribution which may, pursuant to the Rules, be made among the Members and Affiliated Societies and Visual Creators and their successors (whether or not Members or Affiliated Societies) out of the moneys received by the Society in respect of the exercise of the rights, licence or authority granted by them to the Society and "distributed" and "distributable" have corresponding meanings;

"Full Rights" means in relation to any Work, any and all copyright and related rights in the whole or any part or parts of any Work including (without limitation) Secondary Rights and Artist's Resale Right;

"Governing Member" means a member of the Society admitted pursuant to article 3.3;

"Member" means any Governing Member, Creator Member or Associate Member;

"Members' Charter" means the charter governing the business of the Creators' Council and the principles governing the membership of the Society and the standards of service that the Members can expect from the Society;

"membership" means membership of the Society;

the **"office"** means the registered office of the Society;

"Payback" means the payments made from time to time by the Society to Visual Creators (and their heirs and beneficiaries) of a share of revenue collected by the Society in respect of Collectively Administered Rights for the secondary uses of the Works of Visual Creators;

"person" means any individual, corporation, firm or other legal entity;

"Representative Organisation" means an organisation which represents the interests of any Visual Creator from whom that organisation has obtained the right, mandate or authority to authorise the Society to administer all Secondary Rights;

"Rights" means the Full Rights, Secondary Rights and Artist's Resale Right or any of them;

"Rules" means the rules from time to time made for the purposes mentioned in object 3.16 of the memorandum of association.

"Secondary Rights" or **"Collectively Administered Rights"** means in relation to any Work, those rights which the Visual Creator is unable to exercise otherwise than collectively including all or any of the following (without limitation):

- (a) cable retransmission right
- (b) communication to the public right
- (c) making available to the public right
- (d) digital and electronic imaging rights
- (e) lending right
- (f) off-air recording right
- (g) private audio-visual recording right
- (h) public display right
- (i) rental right
- (j) reprographic right
- (k) terrestrial and satellite broadcast right
- (l) such other rights as may hereafter come into existence;

the **"Society"** means Design and Artists Copyright Society;

"Secretary" means the secretary of the Society appointed in accordance with article 63;

"Visual Creator" means the creator of any Work capable of being reproduced by any means whatsoever; and

"Work" means any artistic work including without limitation any painting, drawing, diagram, map, chart, plan, engraving, etching, lithograph, woodcut, photograph or other product of photography, sculpture, cast, collage, architectural work or architectural model, work of artistic craftsmanship, computer or electronically generated work, or typographical arrangement or other visual artefact whatsoever and any film which is primarily intended to be viewed and appreciated as a work in the nature of an artistic work such as a photograph or painting rather than as a film.

Words importing the singular number include the plural and vice versa.

Words importing the masculine gender include the other genders.

Words importing persons include firms, associations and limited companies.

Words or expressions contained in these articles shall bear the same meaning as in the Act but excluding any statutory modification not in force at the date at which these articles become binding on the Society.

Headings used in these articles have no meaning.

2 Membership

The number of members of the Society is unlimited.

3 Eligibility of Members

3.1 The following persons shall be eligible to become Creator Members for admission to membership of the Society:

- (a) any painter or sculptor or illustrator or photographer or designer or any other Visual Creator; and
- (b) any surviving spouse, child or other relative, beneficiary under a will or personal representative of a deceased Visual Creator or Creator Member who is the successor in title to the Visual Creator or Creator Member to the Rights in the Work.

3.2 Any other person who is the owner of, or who manages, administers, promotes or otherwise controls any rights in any Work or who is a Representative Organisation and who does not fall within article 3.1 shall be eligible to become an Associate Member for admission to membership of the Society.

3.3 Any person appointed as a director of the Society shall be a Governing Member.

4 Categories of membership

4.1 Any person who is eligible may apply to the Society for admission to membership. Such applications shall be made in writing signed by the applicant and shall be in such form or forms as the Board shall from time to time prescribe. The Board may require an applicant to supply such evidence of eligibility as it considers reasonably necessary.

4.2 Each application shall be considered by the Board (or any other body approved by the Board for such purpose) in such manner as the Board may from time to time direct. The Board shall have full and unrestricted power to refuse any application without assigning any reason for such refusal.

Revised Articles of Association

- 4.3 Any Member may choose one of the levels of services from time to time offered by the Society. The Society may represent a Member in respect of the Full Rights or some only of the Full Rights.
- 4.4 (a) The Board shall fix and may from time to time vary any subscription which shall be paid by the Members and shall fix and may vary from time to time the dates on which such subscription shall become due and payable.
- (b) The Board may differentiate and vary as they see fit, the subscriptions payable by Members and may for this purpose divide the membership of the Society into different subscription classes. The Board shall on application, if it so wishes, determine the subscription class of the prospective Member and shall determine that part of the current subscription which shall be paid by the prospective Member on admission for the remaining part of the subscription period if it has been determined.
- (c) The Board may reduce any subscription or may remit the payment of the same and any arrears of subscriptions of any Member in any case where the circumstances make such reduction or remission desirable in the opinion of the directors.

5 Rights of Members

5.1 Subject to these articles, Governing Members shall have the following rights:

- (a) those set out in the Act as applicable to members of a company limited by guarantee;
- (b) any common law or equitable or other rights applicable to members of a company limited by guarantee; and
- (c) all the voting rights of the Society as set out in these articles.

5.2 Creator Members and Associate Members shall have the following rights:

- (a) to have the Member's name properly recorded in the Society's register of members, to inspect and receive copies of the entries on the register, and to have the register rectified when defective;
- (b) to inspect the Society's registers of mortgages, charges and debentures;
- (c) to obtain a copy of the Society's memorandum and articles of association on payment of the prescribed fee;
- (d) to recover compensation for misrepresentation (although not fraudulent) by directors or promoters;
- (e) on payment, to receive copies of resolutions and agreements of the Society which are required to be delivered for registration;
- (f) to petition for a winding-up order or to make an application to the court in a voluntary winding-up and to take proceedings for misfeasance against directors and officers of the Society in a winding-up;
- (g) to petition for relief when the affairs of the Society are being conducted in a manner which is unfairly prejudicial to his interests;
- (h) to be sent a copy of the Society's annual accounts, together with a copy of the directors' report and of the auditors' report on those accounts;
- (i) to require the Society pursuant to section 366A(3)¹ of the Act to hold an annual general meeting in a year when the Society (through an elective resolution) has elected not to hold such a meeting;
- (j) to receive notice of and to attend general meetings;
- (k) to call a meeting of the Society pursuant to section 370(3)² of the Act;
- (l) any common law or equitable or other rights applicable to members of a company limited by guarantee; and
- (m) to propose a resolution to remove a director pursuant to section 303³ of the Act.

5.3 Subject to these articles, Creator Members and Associate Members shall not be entitled to vote at general meetings unless also admitted to membership as a Governing Member under article 3.3, but shall have the right to vote on a resolution to remove any director and shall have such additional rights and privileges as the Board, in its discretion, shall from time to time decide that Creator Members as a class and Associate Members as a class shall each enjoy.

5.4 The rights and privileges of a Member are personal to such member who shall not be at liberty to transfer his membership, rights and/or privileges to any other person.

6 Delegation of rights

6.1 Every Creator Member and Associate Member shall on admission, or at any time after admission if requested by the Society, delegate or cause to be delegated to the Society all the rights to be administered on his behalf by the Society. In the case of any Creator Member who was immediately before the adoption of these articles an ordinary or successor member of the Society, these are the Full Rights until otherwise agreed by the Society with that Creator Member or, subject to the other provisions of these articles, that Creator Member ceases to be a Member. In the case of any other Member these are such of the Full Rights and/or the Secondary Rights and/or the Artist's Resale Right as shall be agreed between the Society and that Member.

6.2 Every delegation to the Society pursuant to this article shall be in such form as the Board may from time to time prescribe and shall operate for and during the period of membership, subject to the provisions of articles 8 and 9. To the extent that the Member enters into an agreement with the Society and any of the terms of such agreement conflict with any of these articles, these articles shall prevail.

- 6.3 Those Full Rights or the Secondary Rights or the Artist's Resale Right (as the case may be) in each work of a Creator Member or an Associate Member as shall be delegated to the Society in accordance with article 6.1 shall be administered by the Society throughout the world and on an exclusive basis (unless otherwise agreed) on behalf of that Creator Member or Associate Member and shall include:
- (a) all such rights as subsist under the laws of overseas countries and which correspond approximately to the rights administered for the United Kingdom howsoever such rights may be described in those laws;
 - (b) such additional rights as the Board may from time to time decide are not capable of being effectively administered otherwise than by collective, administration PROVIDED THAT no such decision shall have effect:
 - (i) until a notification of the Board's decision has been sent to each Creator Member or Associate Member; nor
 - (ii) in relation to a particular Creator Member or Associate Member, if, within 30 days from the date of the notification to that Creator Member or Associate Member of the Board's decision, the Creator Member or Associate Member serves on the Secretary written notice stating that he does not wish the decision to apply to the rights in his Works.
- 6.4 Pending the delegation of rights to the Society pursuant to this article and in so far as such delegation may not extend, every Creator Member and Associate Member by virtue of his admission grants to the Society for and during the period of membership, subject to the provisions of articles 9 and 10, in his name or in that of the Society the power and authority (but not the duty):
- (a) to authorise or permit or forbid the exercise of the rights to be administered by the Society on behalf of the Creator Member or Associate Member;
 - (b) to grant licences on his behalf for the exercise of such rights;
 - (c) to collect fees, subscriptions or moneys whether for the authorised use of any of the Member's Works, or by way of damages or compensation for the unauthorised use of such works provided that the Society shall not be deemed to hold such fees, subscriptions or moneys on trust for the said Member, whose sole remedy against the Society in respect of the same shall be limited to recovery of the contractual debt owed to him by the Society;
 - (d) to institute and conduct proceedings against all persons infringing the said rights and if the Society in its discretion thinks fit to defend or oppose any proceedings taken against any Creator Member or Associate Member in respect of such rights and to compound, compromise, refer to arbitration or submit to judgment in any such proceedings, and generally to represent the Creator Member or Associate Member in all matters concerning the said rights;
 - (e) to protect generally such rights in the Member's Works.
- 6.5 The Society may exercise and enforce the rights of members of any Affiliated Society pursuant to the terms of any contract now existing or which may subsequently be made between the Society and the Affiliated Society.
- 6.6 The Society may accept and act upon the authority of members of any Affiliated Society to exercise rights in their Works to a greater extent than that provided in this article 6.
- 6.7 The Society may, by notice in writing to any Member, decline to exercise all or any rights in any Work of which such Member is the creator or proprietor, and in such circumstances the provisions of articles 6.1 and 6.4 shall cease to apply to such right(s), and any delegation already made to the Society by such Member shall be determined by the Society. Provided always that the Society may at any time, and from time to time by further notice in writing to such Member, withdraw such notice in respect of all or any of the rights comprised in the notice, whereupon the provisions of articles 6.1 and 6.4 shall again apply to such right(s).
- 6.8 The provisions of this article 6 and of article 8.1 shall apply to any Governing Member who would be a Creator Member or an Associate Member were he not a Governing Member as if the references to Creator Member or Associate Member as appropriate were references to Governing Member.

7 Waiver

On admission, every Member shall be deemed to have waived any right he may have against the Society in respect of any exploitation of rights in his Works which may have occurred prior to such date of admission, and in respect of any revenue under any licence received by the Society before such date.

8 Cessation of membership of a Creator Member or an Associate Member

- 8.1 On the death of a Creator Member his membership shall cease and shall not be transmitted to any other person, but the rights (if any) already vested in the Society by the Creator Member, or controlled by the Society by virtue of his membership, shall remain so vested or controlled:
- (a) for the period ending either on the 31st day of December in the seventh year following the year in which the Creator Member's death occurred, unless within that period an admission as mentioned in the following articles 8.1(b) and 8.1(c) takes place; or
 - (b) if a successor shall be admitted to membership during such period, then for so long as such successor remains a Member; or
 - (c) if a person is admitted during such period to membership of an Affiliated Society in respect of the rights of the deceased Member, then up to the date of such admission,

Revised Articles of Association

PROVIDED THAT where there is a current licence in force in respect of such Creator Member, the rights vested in or controlled by the Society shall remain so vested or controlled until the end of such licence and shall survive termination of the Member's membership.

Any payment to which the Creator Member would, if living, have been entitled in accordance with the Rules in respect of any period prior to the admission of such successor shall be made to the Creator Member's personal representative until a successor is admitted, or until the end of such seventh year set out in this article, whichever is the earlier date. Upon the admission to membership of any successor, any payment to which the Creator Member would, if living, have been entitled in accordance with the Rules in respect of any period subsequent to such admission shall be made to such successor.

- 8.2 In the case of a Creator Member or an Associate Member being a limited company, its membership shall cease, in the event of and upon the liquidation of such limited company other than voluntary liquidation for the purpose of reconstruction, and, in the case of a Creator Member or Associate Member being a firm, in the event of and upon such firm ceasing to carry on business. Upon such liquidation or cessation of business, the rights (if any) already vested in the Society by such limited company or firm, shall remain so vested or controlled for a period ending on the 31st day of December in the seventh year following the year in which the liquidation or cessation of business occurred. Any payment to which the limited company or firm would, if it had remained a Creator Member or Associate Member, have been entitled in accordance with the Rules in respect of such period shall be made to the person entitled for the time being to receive debts due to the limited company or firm.
- 8.3 The membership of any Creator Member or Associate Member shall immediately cease:
- (a) upon the expiration of the longest period for which copyright subsists by virtue of statute in any country which is either a member of the Berne Union or a party to the Universal Copyright Convention in any of the works in respect of which such Member is entitled to participate in distributions; or
 - (b) in the case of any Creator Member, being an executor or administrator, upon his having disposed of all interest in all subject rights which may have vested in him as such executor or administrator.
- 8.4 Any Creator Member or Associate Member may be given notice by the Board determining this membership at the expiration of fourteen (14) days from the date of such notice, and his membership shall cease accordingly. Such notice shall be in writing and shall be signed by the Secretary PROVIDED ALWAYS THAT if, before the expiration of such notice from the Board, such Creator Member or Associate Member shall in writing outline his reasons in favour of the continuance of his membership and require the Board to submit the question of the continuance of his membership for further consideration at the next Board meeting, he shall not cease to be a Creator Member or Associate Member unless and until the Board in its next meeting shall have reviewed his reasons in favour of the continuance of his membership and shall have approved its original decision. If the Board shall approve its original decision, the Creator Member or Associate Member shall cease to be a Creator Member or Associate Member at the conclusion of such meeting.
- 8.5 Any Creator Member or Associate Member may give three months' notice in writing to the Secretary expiring on the last day of a month, terminating his membership at the earliest three (3) years after his first admission to membership at the end of the month in that third year corresponding to the month in which he was first admitted to membership,
- 8.6 Where there is a current licence in force in respect of any Work of any Member ceasing to be a Member in accordance with article 8.2, 8.3, 8.4 or 8.5, the rights vested in or controlled by the Society shall remain so vested or controlled until the end of such licence and shall survive termination of the Member's membership. Any payment to which that Member, had it remained a Member, has been entitled in accordance with the Rules shall be made:
- (a) to the person entitled to the Rights to which the payment relates in the case of a Member ceasing to be a Member in accordance with paragraph (b) of article 8.3; or
 - (b) to that Member in the case of a Member ceasing to be a Member in accordance with article 8.4 or 8.5.

9 Proceedings instituted by or against the Society

If any proceedings have been instituted by or against the Society in respect of any Member's Works, either in the name of the Society or of the Member, and such Member ceases to be a Member during the pendency of the proceedings, any rights the subject of such proceedings which have been vested in the Society by such Member, or are controlled by the Society by virtue of his membership, shall remain so vested or controlled until such proceedings are finally disposed of unless and until the Board otherwise determines.

10 Cessation of rights privileges and obligations

Subject to the provisions of articles 8 and 9, all rights privileges and obligations of membership shall cease on the date of cessation of membership. In particular, but without prejudice to the generality of the foregoing, the Member concerned shall (subject to the provisions of articles 8 and 9) cease to have any claim upon the assets of the Society, and shall not be entitled to participate in any further distributions, save as to any payment to which he may be entitled in accordance with the Rules in respect of any period prior to the cesser of membership or in accordance with Payback.

11 Cessation of membership of Governing Members

Any Governing Member who ceases to be a director of the Society shall, immediately upon such cessation, cease to be a Governing Member provided that if the director ceasing to be a director is the only remaining director on the Board, such director shall only cease to be a Governing Member on the appointment of another director to the Board to fill his or her vacancy. If such Governing Member satisfies the criteria set out in article 3.1 or article 3.2 he shall, upon ceasing to be a Governing Member, become a Creator Member or Associate Member (as the case requires).

12 General meetings

Unless otherwise agreed by the Governing Members from time to time, pursuant to section 379A⁴ of the Act or unless an elective resolution has been passed to dispense with the holding of an annual general meeting pursuant to section 366A⁵ of the Act, the Society shall hold a general meeting in every calendar year as its annual general meeting at such time and place as may be determined by the Board, and shall specify the meeting as such in the notices calling it PROVIDED THAT every general meeting shall be held not more than fifteen months after the holding of the last preceding meeting.

13 Extraordinary general meetings

All general meetings, other than annual general meetings, shall be called extraordinary meetings.

14 Convening extraordinary general meetings

The Board may whenever it thinks fit convene an extraordinary meeting, and extraordinary meetings shall also be convened on such requisition, or in default may be convened by such requisitionists of the Governing Members, as provided by section 368⁶ of the Act.

15 Notice for general meetings

Subject to the provisions of the Act relating to special resolutions, twenty one (21) days' notice at the least of every annual general meeting and fourteen (14) days' notice at the least of every other general meeting (exclusive in every case both of the day on which it is served and of the day for which it is given), specifying the place, the day and the hour of the meeting, and in the case of special business the general nature of that business, shall be given in the manner set out in these articles to such persons as are under these articles or under the Act entitled to receive such notices from the Society; but with the consent of all the Governing Members entitled to receive notices of such meetings, or of such proportion as is prescribed by the Act in the case of meetings other than annual general meetings, a meeting may be convened by such notice as those Governing Members may think fit.

16 Failure of notice

The accidental omission to give notice of a meeting to, or the non-receipt of such notice by, any person entitled to receive notice of a meeting shall not invalidate any resolution passed, or proceeding, at any meeting.

17 Proceedings at general meetings

All business shall be treated as special business that is transacted at any extraordinary meeting, and all that is transacted at an annual general meeting shall also be treated as special business, with the exception of the consideration of the income and expenditure account and balance sheet, and the reports of the Board and of the Auditors, the election of members of the Board and the fixing of the remuneration of the Auditors.

18 Quorum for general meetings

No business shall be transacted at any general meeting unless a quorum is present when the meeting proceeds to business. Save as provided in these articles, five (5) Governing Members for the time being of the Society shall be a quorum.

19 Quorum not present

If within half an hour from the time appointed for the holding of a general meeting a quorum is not present, the meeting, if convened on the requisition of Governing Members, shall be dissolved. In any other case it shall stand adjourned to the same day in the next week, at the same time and place, or at such other place as the chairman shall appoint, and if at such adjourned meeting a quorum is not present within half an hour from the time appointed for holding the meeting the Governing Members present shall be a quorum.

20 Chairman of general meetings

The chairman (if any) of the Board shall preside as chairman at every general meeting, but if there be no such chairman, or if at any meeting he shall not be present within fifteen minutes after the time appointed for holding the same, or shall be unwilling to preside, the Governing Members present shall choose some Governing Member to preside.

21 Adjournment of general meetings

The chairman, may, with the consent of the Governing Members attending any meeting at which a quorum is present (and shall if so directed by the meeting) adjourn a meeting from time to time, and from place to place, but no business shall be transacted at any adjourned meeting other than business which might have been transacted at the meeting from which the adjournment took place. Whenever a meeting is adjourned for ten days or more notice of the adjourned meeting shall be given in the same manner as of an original meeting. Save as set out in these articles, the Governing Members shall not be entitled to any notice of an adjournment, or of the business to be transacted at an adjourned meeting.

22 Voting at general meetings

22.1 At all general meetings a resolution put to the vote of the meeting (other than a resolution to remove directors) shall be decided on a show of hands by a majority of the Governing Members present in person and entitled to vote, unless before or upon the declaration of the result of the show of hands a poll be demanded in writing by the chairman or by at least two Governing Members present in person or by proxy and entitled to vote, or by a Governing Member or Governing Members present in person or by proxy and representing one-tenth of the total voting rights of all the Members having the right to vote at the meeting, and unless a poll be so demanded a declaration by the chairman of the meeting that a resolution has been carried unanimously or by a particular majority, or lost, or not carried by a particular majority, shall be conclusive, and an entry to that effect in the minute book of the Society shall be conclusive evidence thereof, without proof of the number or proportion of the votes recorded in favour of or against that resolution.

22.2 In the case of a resolution put to the vote of a general meeting to remove any of the directors, such vote shall, subject to the provisions of article 27, be decided on a show of hands by a majority of the Members present in person and entitled to vote and the remaining provisions of article 22.1 shall apply as if the references to Governing Members were to Members.

35 Directors to become Governing Members

Each person who is appointed a director of the Society (other than a duly authorised Alternate) shall become a Governing Member.

36 Disqualification of directors

A director shall cease to hold such office immediately if:

- (a) he is declared bankrupt, or becomes insolvent or he makes any arrangement or composition with his creditors; or the director being a corporation has a receiving order or an administration order made against him or goes into liquidation other than a voluntary liquidation for the purpose of reconstruction or amalgamation or is dissolved; or
- (b) he is, or may be, suffering from mental disorder and either
 - (i) he is admitted to hospital in pursuance of an application for admission for treatment under the Mental Health Acts; or
 - (ii) an order is made by a court having jurisdiction (whether in the United Kingdom or elsewhere) in matters concerning mental disorder for his detention or for the appointment of a receiver, curator bonis or other person to exercise powers with respect to his property or affairs; or
- (c) by notice in writing to the Society he resigns his office; or
- (d) subject to article 11, he ceases to be a Governing Member of the Society; or
- (e) he is or becomes prohibited from holding office by reason of any order made under the Act; or
- (f) he is removed from office by a resolution duly passed pursuant to section 303⁸ of the Act.

37 Retirement by rotation of directors

The directors shall not be liable to retirement by rotation.

38 Appointment of directors

The directors shall have power at any time, and from time to time to appoint any person to be a director, either to fill a casual vacancy or as an addition to the existing directors, but so that the total number of directors shall not at any time exceed the number which may be fixed from time to time by these articles. Such appointments shall not be required to be approved by the Governing Members in general meeting. Any vacancy shall be filled by the Board within three (3) months of it occurring.

39 Removal of directors

The Society may by ordinary resolution, of which special notice has been given in accordance with section 379⁹ of the Act, remove any director before the expiration of his period of office notwithstanding anything in these articles or in any agreement between the Society and such director.

40 Filling a vacancy

The Governing Members may by ordinary resolution appoint another person in place of a director removed from office under the immediately preceding article. Without prejudice to the powers of the directors under article 38 but subject to the provisions of article 36, the Governing Members in general meeting may appoint any person to be a director either to fill a casual vacancy or as an additional director.

41 Term of appointment

Each director appointed to the Board shall be appointed to serve a term of three years. At the end of such term, a director shall be eligible for re-appointment to the Board for a further term of three years. At the end of such further term, the director will not be eligible to reapply for appointment until a further period of three years has elapsed.

42 Borrowing powers

The directors may exercise all the powers of the Society to borrow money and to mortgage or charge its undertaking and property, or any part thereof, and to issue debentures, debenture stock and other securities whether outright or as security for any debt, liability or obligation of the Society or of any third party.

43 Powers and duties of the directors

- 43.1 Subject to the provisions of the Act, the memorandum of association of the Society and these articles and to any directions given by or pursuant to a special resolution of the Society the business of the Society shall be managed by the Board who may pay all such expenses of, and preliminary and incidental to, the promotion, formation, establishment and registration of the Society as they think fit, and may exercise all such powers of the Society and do on behalf of the Society such acts as may be exercised and done by the Society as are not by the Act or by these articles required to be exercised or done by the Society in general meeting.
- 43.2 In addition to all the powers expressly conferred on them and without detracting from the generality of their powers under article 43.1 or any other article, the Board shall have the following powers namely:
 - (a) generally, to do all things necessary or expedient for the due conduct of the affairs of the Society not herein otherwise provided for PROVIDED THAT the distribution of all moneys received by the Society in respect of the rights administered by it on behalf of its members shall be made in accordance with the Rules regulating the basis on which the amounts to be distributed to each member are to be calculated and the manner and frequency of each distribution, such Rules being made by the Governing Members;
 - (b) in their capacity as Governing Members to make and from time to time to repeal or alter the Rules, and in their capacity as directors, to make and from time to time repeal rules and regulations as to

Revised Articles of Association

the management of the Society and the affairs thereof, and as to the duties of any officers or servants of the Society, and as to the conduct of business by the Board or any committee and as to any of the matters or things within the powers or under the control of the Board provided that the same shall not be inconsistent with the memorandum of association of the Society or these articles; and

- (c) to appoint a patron or patrons of the Society for such period and on such terms as the Board may deem appropriate. For the avoidance of doubt such a patron need not be a Member and does not become a Member by virtue of his appointment as a patron.

44 Validity of actions of the Board

Article 43 is subject to the provisions of the Act, these articles and to such rules and/or regulations, being not inconsistent with such provisions, as may be prescribed by the Society in general meeting; but no rule or regulation made by the Society in general meeting shall invalidate any prior act of the Board which would have been valid if such regulation had not been made.

45 Maintenance of quorum

The Board for the time being may act notwithstanding any vacancy in their body, but if and so long as their number is reduced below the number fixed by or pursuant to these articles as the necessary quorum of directors, the continuing director or directors may act for the purposes of summoning a general meeting, or appointing further directors to the Board, but not for any other purpose.

46 Director's interests

Provided a director declares his interest therein in a manner provided by the Act he may vote as a director in regard to any contract or arrangement in which he is interested or upon any matter arising out of the same and he shall be counted in the quorum when any such contract or arrangement is under consideration.

47 Director party to transactions

Subject to the provisions of the Act and provided that he has disclosed to the directors the nature and extent of any material interest of his, a director notwithstanding his office:

- (a) may be a party to, or otherwise interested in any transaction or arrangement with the Society or in which the Society is otherwise interested;
- (b) may be a director or other officer of, or employed by, or a party to any transaction or arrangement with, or otherwise interested in, any body corporate promoted by the Society or in which the Society is otherwise interested; and
- (c) shall not, by reason of his office, be accountable to the Society for any benefit which he derives from any such office or employment or from any such transaction or arrangement or from any interest in any such body corporate and no such transaction or arrangement shall be liable to be avoided on the ground of any such interest or benefit.

48 Nature of director's interests

For the purposes of article 47:

- (a) a general notice given to the directors that a director is to be regarded as having an interest (of the nature or extent specified in the notice) in any transaction or arrangement in which a specified person or class of persons is interested shall be deemed to be a disclosure that the director has an interest in any such transaction of the nature and extent so specified; and
- (b) an interest of which a director has no knowledge and of which it is unreasonable to expect him to have knowledge shall not be treated as an interest of his.

49 Agent of the Society

The Board may, by power of attorney or otherwise appoint any person to be the agent of the Society for such purposes and on such conditions as they determine, including authority for the agent to delegate all or any of his powers.

50 Delegation of directors' powers

The Board may delegate any of their powers to any of the directors as it considers desirable to be exercised by him or them. Any such delegation may be made subject to any conditions the Board may impose and either collaterally with or to the exclusion of their own powers and may be revoked or altered.

51 Proceedings of the directors

The directors may meet together for the despatch of business, adjourn and otherwise regulate their meetings as they think fit. Five (5) directors all present at the same time shall be a quorum.

52 Voting at Board meetings

Questions arising at any meeting shall be decided by a majority of votes. In case of any equality of votes, the chairman of the meeting shall have a second or casting vote.

53 Period of notice for Board meetings

Unless all the directors indicate their willingness to accept shorter notice of a meeting of directors and save as otherwise provided, no fewer than three (3) days' notice of the time and place of each meeting of the Board shall be given to each director.

54 Participation in Board meetings

Any director may participate in a meeting of the Board by means of a conference telephone or similar communications system whereby all those participating in the meeting can hear and address each other. Such participation shall be deemed to constitute presence in person at such meeting for all purposes including that of establishing a quorum. A meeting held by such means shall be deemed to take place where the largest group of participators in number is assembled. In the absence of such a majority the location of the chairman shall be deemed to be the place of the meeting.

55 Convening Board meetings

A director may, and at the request of a director or the Secretary shall, at any time call a meeting of the Board by notice served upon all of them, unless any director has lodged written notice of his intended absence abroad with the Secretary waiving his right to receive notice of Board meetings during such period of absence.

56 Notice of Board meetings

Notice of every meeting of the Board shall be given to every director but the non-receipt of notice by any director shall not invalidate the proceedings at any meeting of the Board.

57 Chairman of the Board

The Board may elect from its number a chairman, treasurer and any other officer and determine the periods for which they are to hold office but if no such chairman has been elected or if at any meeting the chairman is not present within five minutes after the time appointed for holding the same, the Board shall choose one of its number to be chairman of the meeting.

58 Competent Board

A meeting of the Board at which a quorum is present shall be competent to exercise all the authorities, powers and discretions by or under these articles or other rules or regulations of the Society for the time being vested in the directors generally.

59 Committees

The Board may delegate any of their powers to committees consisting of such of its number as it thinks fit, and any committee so formed shall in the execution of the powers so delegated conform to any regulations imposed on it by the Board. The Board may in its absolute discretion appoint any other person (not being a director or a Governing Member) to serve on any such committee PROVIDED ALWAYS that the persons comprising any committee established pursuant to this article shall include not fewer than one of the directors. The meetings and proceedings of any such committee shall be governed by the provisions of these articles for regulating the meetings and proceedings of the Board so far as applicable and so far as the same shall not be superseded by any regulations made as aforesaid. All decisions of any such committee shall be reported fully and promptly to the Board.

60 Validity of acts

All acts done by any meeting of the Board or of any committee of directors or by any person acting as one of the directors shall, notwithstanding it be afterwards discovered that there was some defect in the appointment or continuance in office of any such member or person acting as aforesaid or that they or any of them were disqualified, be as valid as if every such person had been duly appointed or had duly continued in office and was qualified to be one of the directors.

61 Minutes of meetings

The Board shall cause proper minutes to be made in books provided for the purpose of all appointments of officers made by the directors and of the proceedings of all meetings of the Society and of the Board and of committees of directors, and all business transacted at such meetings and any such minutes of any meeting if purporting to be signed by the chairman of such meeting, or by the chairman of the next succeeding meeting, shall be sufficient evidence without any further proof of the facts therein stated.

62 Resolutions of all the directors

A resolution of all the directors for the time being or of any committee of directors who are entitled to receive notice of a meeting of the directors or of such committee shall be as valid and effective as if it had been passed at a meeting of respectively the directors or of such committee duly convened and held and may consist of several documents (including a facsimile) each accurately stating the terms of the resolution and each signed by one or more of the directors.

63 Secretary

The Secretary shall be appointed by the directors for such term at such remuneration as they may think fit, and any Secretary so appointed may be removed by them.

64 Alternate directors

No director shall be entitled to appoint any person to be his alternate director.

65 Distribution of money

All monies received by the Society in respect of the exercise of the rights, licence or authority granted by the Members and the Affiliated Societies shall, subject to article 43, be distributed or otherwise dealt with by the Board in accordance with the Rules. Annually the Society shall produce a publicly available report of its distribution procedures and results and the Rules.

66 Creators' Council

- (a) The existence of the Creators' Council is to give genuine influence on the decision making process as well as on the social and cultural policy of DACS.
- (b) Subject to article 66(c), the chief executive of the Society, in consultation with others as appropriate, shall appoint up to fifteen (15) members to form a Creators' Council as the first members of the Creators' Council of whom at least three (3) members will be Members, other than Governing Members.

Revised Articles of Association

In addition, up to three (3) Governing Members will be appointed by the Board as members of the Creators' Council for such period, in each case, as the Board shall determine. The chief executive of the Society on the recommendation of the Board and subject to these articles, shall determine the period of appointment of each member of the Creators' Council appointed by the chief executive.

The minimum number of members of the Creators' Council appointed by the chief executive of the Society shall be four (4) of whom at least three (3) shall be Members, other than Governing Members, and if the number so appointed falls at any time below this minimum, the chief executive of the Society shall appoint further members to increase the number of members so appointed to at least four (4) of whom at least three (3) shall be Members, other than Governing Members. The minimum number of members of the Creators' Council appointed by the Board shall be two (2) Governing Members and, if the number so appointed falls below this minimum, the Board shall appoint further Governing Members as members to increase the number of such members to at least two (2).

- (c) The composition of the Creators' Council will comprise substantial representation from the visual creators' community and the chief executive shall ensure that this objective is achieved.
- (d) On the recommendation of the Board, the quorum for the annual meeting of the Creators' Council shall be one (1) member of the Creators' Council who is also a member of the Board and at least one third of the remaining members of the Creators' Council who are not members of the Board.
- (e) For all meetings other than the annual meeting of the Creators' Council, there shall be no quorum.
- (f) The Creators' Council shall be required to meet at least once a year following at least fourteen (14) days' notice. The Creators' Council shall meet at whatever intervals it considers to be necessary to conduct its business on no fewer than three (3) days' notice. In addition, the chief executive may convene a meeting of any two (2) or more members of the Creators' Council by giving no fewer than three (3) days' notice in writing to those members of the Creators' Council.
- (g) The Creators' Council shall have the power to make recommendations to the Board which the Board shall be bound to consider.
- (h) Meetings of the Creators' Council may also be called by the Board in order for the Board to consult with the Creators' Council on matters of importance to the Society.
- (i) The Members' Charter shall be reviewed by the Board annually and changes to the Members' Charter shall be proposed to the Creators' Council as necessary. Changes shall only be made to the Members' Charter with the approval of the Creators' Council.
- (j) A member of the Creators' Council appointed by the chief executive of the Society may be removed by the chief executive by notice in writing to that member. A member of the Creators' Council appointed by the Board may be removed by the Board by notice in writing to that member.

67 Accounts

The Board shall cause proper accounting records to be kept. Proper books shall not be deemed to be kept if there are not kept such books of account as are necessary to give a true and fair view of the state of the affairs of the Society and to explain its transactions.

68 Accounting records

The accounting records shall be kept at the office, or, subject to section 222¹⁰ of the Act, at such other place or places as the Board shall think fit, and shall be open to the inspection of the directors at all reasonable times during business hours.

69 Inspection of accounts and books

The Society in general meeting may from time to time make reasonable conditions and regulations as to the time and manner of the inspection by Members of the accounts and books of the Society or any of them, and subject to such conditions and regulations, the accounts and books of the Society shall be open to the inspection of Members at all reasonable times during business hours.

70 Income and expenditure account and balance sheet

At the annual general meeting in every year the Board shall lay before the Society a proper income and expenditure account for the period since the last preceding account (or in the case of the first account, since the incorporation of the Society) made up to a date not more than six months before such meeting, together with a proper balance sheet made up at the same date.

Every such balance sheet shall be accompanied by proper reports of the directors and the Auditors, and copies of such account, balance sheet and reports (all of which shall be framed in accordance with any statutory requirements for the time being in force) and of any other documents required by law to be annexed or attached thereto or to accompany the same shall not less than twenty-one clear days before the date of the meeting be sent to all persons entitled to receive notice of general meetings in the manner in which notices are hereinafter directed to be served. The Auditors' report shall be read before the meeting as required by the Act.

71 Audit

Once at least in every year the accounts of the Society shall be examined and the correctness of the income and expenditure account and balance sheet ascertained by properly qualified Auditors.

72 Appointment of auditors

Auditors shall be appointed and their duties regulated in accordance with sections 384 to 394A¹¹ of the Act, the Board being treated as the directors mentioned in those sections.

73 The seal

The seal of the Society shall not be affixed to any instrument except by the authority of a resolution of the directors and in the presence of either two directors or of one of the directors and the Secretary or such other persons as may be authorised by the Board and the said director or directors and/or the Secretary and/or authorised person (as the case may be) shall sign every instrument to which the seal shall be so affixed in their presence and in favour of any purchaser or person bona fide dealing with the Society such signatures shall be conclusive evidence of the fact that the seal has been properly affixed.

74 Notices

Subject to article 75, a notice may be served by the Society upon any Member either personally or by sending it through the post addressed to such Member at his address as appearing in the register of members of the Society.

75 Notice by advertisement

Except in the case of any Member who has previously given notice in writing to the Society that he requires notice under article 15 to be given in the manner set out in article 74, notice given under article 15 may be served by the Society upon any member by advertising with due prominence in suitable art, design and photography trade publications.

76 Notice to members not within the United Kingdom or the Republic of Ireland

Any Member described in the register of members of the Society by an address not within the United Kingdom or the Republic of Ireland, who shall from time to time give the Society an address within the United Kingdom or the Republic of Ireland at which notices may be served upon him, shall be entitled to have notices serviced upon him at such address, but, otherwise, only Members described in the register of members of the Society by an address within the United Kingdom or the Republic of Ireland shall be entitled to receive notices from the Society.

77 Deemed service

Any notice, if served by post, shall be deemed to have been served on the first day following that on which the notice is put into the post, and in proving such service it shall be sufficient to prove that the notice was properly addressed and put into the post as a prepaid first class letter.

78 Indemnity

Every director or other officer of the Society shall be entitled to be indemnified out of the assets of the Society against all losses or liabilities which he may sustain or incur in or about the execution of the duties of his office or otherwise in relation thereto, including any liability incurred by him in defending any proceedings whether civil or criminal, in which he is acquitted or in connection with any application under sections 144¹² or 727¹³ of the Act in which relief is granted to him by the court and no director or other officer shall be liable for any loss, damage or misfortune which may happen to or be incurred by the Society in the execution of the duties of his office or in relation thereto. This article shall only have effect insofar as its provisions are not avoided by section 310¹⁴ of the Act.

Footnotes

¹ **366A** (3) In any year in which an annual general meeting would be required to be held but for the election, and in which no such meeting has been held, any member of the company may, by notice to the company not later than three months before the end of the year, require the holding of an annual general meeting in that year.

² **370** (3) Two or more members holding not less than one-tenth of the issued share capital (excluding any shares in the company held as treasury shares) or, if the company does not have a share capital, not less than 5 per cent. in number of the members of the company may call a meeting.

³ **303 Resolution to remove director** – (1) A company may by ordinary resolution remove a director before the expiration of his period of office, notwithstanding anything in its articles or in any agreement between it and him. (2) Special notice is required of a resolution to remove a director under this section or to appoint somebody instead of a director so removed at the meeting at which he is removed. (3) A vacancy created by the removal of a director under this section, if not filled at the meeting at which he is removed, may be filled as a casual vacancy. (4) A person appointed director in place of a person removed under this section is treated, for the purpose of determining the time at which he or any other director is to retire, as if he had become director on the day on which the person in whose place he is appointed was last appointed a director. (5) This section is not to be taken as depriving a person removed under it of compensation or damages payable to him in respect of the termination of his appointment as director or of any appointment terminating with that as director, or as derogating from any power to remove a director which may exist apart from this section.

⁴ **379A Elective resolution of private company**

(1) An election by a private company for the purposes of-

(a) section 80A (election as to duration of authority to allot shares), (b) section 252 (election to dispense with laying of accounts and reports before general meeting), (c) section 366A (election to dispense with holding of annual general meeting), (d) section 369(4) or 378(3) (election as to majority required to authorise short notice of meeting), or (e) section 386 (election to dispense with appointment of auditors annually), shall be made by resolution of the company in general meeting in accordance with this section.

Such a resolution is referred to in this Act as an "elective resolution".

(2) An elective resolution is not effective unless-

(a) at least 21 days' notice in writing is given of the meeting, stating that an elective resolution is to be proposed and stating the terms of the resolution, and (b) the resolution is agreed to at the meeting, in person or by proxy, by all the members entitled to attend and vote at the meeting.

(2A) An elective resolution is effective notwithstanding the fact that less than 21 days' notice in writing of the meeting is given if all the members entitled to attend and vote at the meeting so agree.

(2B) For the purposes of this section, notice in writing of the meeting is to be taken as given to a person where notice of the meeting is sent using electronic communications to such address as may for the time being be notified by that person to the company for that purpose.

(2C) For the purposes of this section a notice in writing of the meeting is also to be treated as given to a person where-

(a) the company and that person have agreed that notices of meetings required to be given to that person may instead be accessed by him on a web site; (b) the meeting is a meeting to which that agreement applies; (c) that person is notified, in a manner for the time being agreed between him and the company for the purpose, of-

(i) the publication of the notice on a web site; (ii) the address of that web site; and (iii) the place on that web site where the notice may be accessed, and how it may be accessed; and

(d) the notice continues to be published on that web site throughout the period beginning with the giving of that notification and ending with the conclusion of the meeting;

and for the purposes of this section a notice treated in accordance with this subsection as given to any person is to be treated as so given at the time of the notification mentioned in paragraph (c).

(2D) A notification given for the purposes of subsection (2C)(c) must –

(a) state that it concerns a notice of a company meeting at which an elective resolution is to be proposed, and (b) specify the place, date and time of the meeting.

(2E) Nothing in subsection (2C) shall invalidate the proceedings of a meeting where –

(a) any notice that is required to be published as mentioned in paragraph (d) of that subsection is published for a part, but not all, of the period mentioned in that paragraph; and (b) the failure to publish that notice throughout that period is wholly attributable to circumstances which it would not be reasonable to have expected the company to prevent or avoid.

(2F) In so far as the articles of the company do not provide for notices and notifications to be served using electronic communications, the provisions of Table A (as for the time being in force) as to such service shall apply.

(3) The company may revoke an elective resolution by passing an ordinary resolution to that effect.

(4) An elective resolution shall cease to have effect if the company is re-registered as a public company.

(5) An elective resolution may be passed or revoked in accordance with this section, and the provisions referred to in subsections (1) and (2B) to (2E) have effect, notwithstanding any contrary provision in the company's articles of association.

(5A) In this section, "address" includes any number or address used for the purposes of electronic communications.

⁵ **366A Election by private company to dispense with annual general meetings**

(1) A private company may elect (by elective resolution in accordance with section 379A) to dispense with the holding of annual general meetings.

(2) An election has effect for the year in which it is made and subsequent years, but does not affect any liability already incurred by reason of default in holding an annual general meeting.

(3) In any year in which an annual general meeting would be required to be held but for the election, and in which no such meeting has been held, any member of the company may, by notice to the company not later than three months before the end of the year, require the holding of an annual general meeting in that year.

(3A) The power of a member under subsection (3) to require the holding of an annual general meeting is exercisable not only by the giving of a notice but also by the transmission to the company at such address as may for the time being be specified for the purpose by or on behalf of the company of an electronic communication containing the requirement.

(4) If such a notice is given or electronic communication is transmitted, the provisions of section 366(1) and (4) apply with respect to the calling of the meeting and the consequences of default.

(5) If the election ceases to have effect, the company is not obliged under section 366 to hold an annual general meeting in that year if, when the election ceases to have effect, less than three months of the year remains.

This does not affect any obligation of the company to hold an annual general meeting in that year in pursuance of a notice given or electronic communication is transmitted under subsection (3).

(5A) In this section, "address" includes any number or address used for the purposes of electronic communications.

⁶ **368 Extraordinary general meeting on members' requisition**

(1) The directors of a company shall, on a members' requisition, forthwith notwithstanding anything in the company's articles.

This applies notwithstanding anything in the company's articles.

(2) A members' requisition is a requisition of-

(a) members of the company holding at the date of the deposit of the requisition not less than one-tenth of such of the paid-up capital of the company as at that date carries the right of voting at general meetings of the company; or (b) in the case of a company not having a share capital, members of it representing not less than one-tenth of the total voting rights of all the members having at the date of deposit of the requisition a right to vote at general meetings.

(2A) For the purposes of subsection (2)(a) any of the company's paid up capital held as treasury shares must be disregarded.

(3) The requisition must state the objects of the meeting, and must be signed by the requisitionists and deposited at the registered office of the company, and may consist of several documents in like form each signed by one or more requisitionists.

(4) If the directors do not within 21 days from the date of the deposit of the requisition proceed duly to convene a meeting, the requisitionists, or any of them representing more than one half of the total voting rights of all of them, may themselves convene a meeting, but any meeting so convened shall not be held after the expiration of 3 months from that date.

(5) A meeting convened under this section by requisitionists shall be convened in the same manner, as nearly as possible, as that in which meetings are to be convened by directors.

(6) Any reasonable expenses incurred by the requisitionists by reason of the failure of the directors duly to convene a meeting shall be repaid to the requisitionists by the company and any sum so repaid shall be retained by the company out of any sums due or to become due from the company by way of fees or other remuneration in respect of their services to such of the directors as were in default.

(7) In the case of a meeting at which a resolution is to be proposed as a special resolution, the directors are deemed not to have duly convened the meeting if they do not give the notice required for special resolutions by section 378(2).

(8) The directors are deemed not to have duly convened a meeting if they convene a meeting for a date more than 28 days after the date of the notice convening the meeting.

7 375 Representation of corporations at meetings

(1) A corporation, whether or not a company within the meaning of this Act, may –

(a) if it is a member of another corporation, being such a company, by resolution of its directors or other governing body authorise such person as it thinks fit to act as its representative at any meeting of the company or at any meeting of any class of members of the company; (b) if it is a creditor (including a holder of debentures) of another corporation, being such a company, by resolution of its directors or other governing body authorise such person as it thinks fit to act as its representative at any meeting of creditors of the company held in pursuance of this Act or of rules made under it, or in pursuance of the provisions contained in any debenture or trust deed, as the case may be.

(2) A person so authorised is entitled to exercise the same powers on behalf of the corporation which he represents as that corporation could exercise if it were an individual shareholder, creditor or debenture-holder of the other company.

⁸ Please see footnote 3.

9 379 Resolution requiring special notice

(1) Where by any provision of this Act special notice is required of a resolution, the resolution is not effective unless notice of the intention to move it has been given to the company at least 28 days before the meeting at which it is moved.

(2) The company shall give its members notice of any such resolution at the same time and in the same manner as it gives notice of the meeting or, if that is not practicable, shall give them notice either by advertisement in a newspaper having an appropriate circulation or in any other mode allowed by the company's articles, at least 21 days before the meeting.

(3) If, after notice of the intention to move such a resolution has been given to the company, a meeting is called for a date 28 days or less after the notice has been given, the notice is deemed properly given, though not given within the time required.

10 222 Where and for how long records to be kept

(1) A company's accounting records shall be kept at its registered office or such other place as the directors think fit, and shall at all times be open to inspection by the company's officers.

(2) If accounting records are kept at a place outside Great Britain, accounts and returns with respect to the business dealt with in the accounting records so kept shall be sent to, and kept at, a place in Great Britain, and shall at all times be open to such inspection.

(3) The accounts and returns to be sent to Great Britain shall be such as to –

(a) disclose with reasonable accuracy the financial position of the business in question at intervals of not more than six months, and (b) enable the directors to ensure that the company's balance sheet and profit and loss account comply with the requirements of this Act.

(4) If a company fails to comply with any provision of subsections (1) to (3), every officer of the company who is in default is guilty of an offence, and liable to imprisonment or a fine or both, unless he shows that he acted honestly and that in the circumstances in which the company's business was carried on the default was excusable.

(5) Accounting records which a company is required by section 221 to keep shall be preserved by it –

(a) in the case of a private company, for three years from the date on which they are made, and (b) in the case of a public company, for six years from the date on which they are made.

This is subject to any provision contained in rules made under section 411 of the Insolvency Act 1986 (company insolvency rules).

(6) An officer of a company is guilty of an offence, and liable to imprisonment or a fine or both, if he fails to take all reasonable steps for securing compliance by the company with subsection (5) or intentionally causes any default by the company under that subsection.

11 384 Duty to appoint auditors

(1) Every company shall appoint an auditor or auditors in accordance with this Chapter.

This is subject to section 388A ([certain companies]) exempt from obligation to appoint auditors).

(2) Auditors shall be appointed in accordance with section 385 (appointment at general meeting at which accounts are laid), except in the case of a private company which has elected to dispense with the laying of accounts in which case the appointment shall be made in accordance with section 385A.

(3) References in this Chapter to the end of the time for appointing auditors are to the end of the time within which an appointment must be made under section 385(2) or 385A(2), according to whichever of those sections applies.

(4) Sections 385 and 385A have effect subject to section 386 under which a private company may elect to dispense with the obligation to appoint auditors annually.

385 Appointment at general meeting at which accounts laid

(1) This section applies to every public company and to a private company which has not elected to dispense with the laying of accounts.

(2) The company shall, at each general meeting at which accounts are laid, appoint an auditor or auditors to hold office from the conclusion of that meeting until the conclusion of the next general meeting at which accounts are laid.

(3) The first auditors of the company may be appointed by the directors at any time before the first general meeting of the company at which accounts are laid; and auditors so appointed shall hold office until the conclusion of that meeting.

(4) If the directors fail to exercise their powers under subsection (3), the powers may be exercised by the company in general meeting.

385A Appointment by private company which is not obliged to lay accounts

(1) This section applies to a private company which has elected in accordance with section 252 to dispense with the laying of accounts before the company in general meeting.

(2) Auditors shall be appointed by the company in general meeting before the end of the period of 28 days beginning with the day on which copies of the company's annual accounts for the previous financial year are sent to members under section 238 or, if notice is given under section 253(2) requiring the laying of the accounts before the company in general meeting, the conclusion of that meeting.

Auditors so appointed shall hold office from the end of that period or, as the case may be, the conclusion of that meeting until the end of the time for appointing auditors for the next financial year.

(3) The first auditors of the company may be appointed by the directors at any time before–

(a) the end of the period of 28 days beginning with the day on which copies of the company's first annual accounts are sent to members under section 238, or

(b) if notice is given under section 253(2) requiring the laying of the accounts before the company in general meeting, the beginning of that meeting;

and auditors so appointed shall hold office until the end of that period or, as the case may be, the conclusion of that meeting.

(4) If the directors fail to exercise their powers under subsection (3), the powers may be exercised by the company in general meeting.

(5) Auditors holding office when the election is made shall, unless the company in general meeting determines otherwise, continue to hold office until the end of the time for appointing auditors for the next financial year; and auditors holding office when an election ceases to have effect shall continue to hold office until the conclusion of the next general meeting of the company at which accounts are laid.

386 Election by private company to dispense with annual appointment

(1) A private company may elect (by elective resolution in accordance with section 379A) to dispense with the obligation to appoint auditors annually.

(2) When such an election is in force the company's auditors shall be deemed to be re-appointed for each succeeding financial year on the expiry of the time for appointing auditors for that year, unless–

[(a) the directors of the company have taken advantage of the exemption conferred by section 249A or 249AA, or]

(b) a resolution has been passed under section 393 to the effect that their appointment should be brought to an end.

(3) If the election ceases to be in force, the auditors then holding office shall continue to hold office–

(a) where section 385 then applies, until the conclusion of the next general meeting of the company at which accounts are laid;

(b) where section 385A then applies, until the end of the time for appointing auditors for the next financial year under that section.

(4) No account shall be taken of any loss of the opportunity of further deemed re-appointment under this section in ascertaining the amount of any compensation or damages payable to an auditor on his ceasing to hold office for any reason.

387 Appointment by Secretary of State in default of appointment by company

(1) If in any case no auditors are appointed, re-appointed or deemed to be re-appointed before the end of the time for appointing auditors, the Secretary of State may appoint a person to fill the vacancy.

(2) In such a case the company shall within one week of the end of the time for appointing auditors give notice to the Secretary of State of his power having become exercisable.

If a company fails to give the notice required by this subsection, the company and every officer of it who is in default is guilty of an offence and liable to a fine and, for continued contravention, to a daily default fine.

Revised Articles of Association

388 Filling of casual vacancies

- (1) The directors, or the company in general meeting, may fill a casual vacancy in the office of auditor.
- (2) While such a vacancy continues, any surviving or continuing auditor or auditors may continue to act.
- (3) Special notice is required for a resolution at a general meeting of a company-
 - (a) filling a casual vacancy in the office of auditor, or
 - (b) re-appointing as auditor a retiring auditor who was appointed by the directors to fill a casual vacancy.
- (4) On receipt of notice of such an intended resolution the company shall forthwith send a copy of it-
 - (a) to the person proposed to be appointed, and
 - (b) if the casual vacancy was caused by the resignation of an auditor, to the auditor who resigned.

388A Certain companies exempt from obligation to appoint auditors

- (1) A company which by virtue of section 249A (certain categories of small company) or [section 249AA] (dormant companies) is exempt from the provisions of Part VII relating to the audit of accounts is also exempt from the obligation to appoint auditors.
- (2) The following provisions apply if a company which has been exempt from those provisions ceases to be so exempt.
- (3) Where section 385 applies (appointment at general meeting at which accounts are laid), the directors may appoint auditors at any time before the next meeting of the company at which accounts are to be laid; and auditors so appointed shall hold office until the conclusion of that meeting.
- (4) Where section 385A applies (appointment by private company not obliged to lay accounts), the directors may appoint auditors at any time before-
 - (a) the end of the period of 28 days beginning with the day on which copies of the company's annual accounts are next sent to members under section 238, or
 - (b) if notice is given under section 253(2) requiring the laying of the accounts before the company in general meeting, the beginning of that meeting;and auditors so appointed shall hold office until the end of that period or, as the case may be, the conclusion of that meeting.
- (5) If the directors fail to exercise their powers under subsection (3) or (4), the powers may be exercised by the company in general meeting.

389A Right to information

- (1) The auditors of a company have a right of access at all times to the company's books, accounts and vouchers, and are entitled to require from the company's officers such information and explanations as they think necessary for the performance of their duties as auditors.
- (2) An officer of a company commits an offence if he knowingly or recklessly makes to the company's auditors a statement (whether written or oral) which-
 - (a) conveys or purports to convey any information or explanations which the auditors require, or are entitled to require, as auditors of the company, and
 - (b) is misleading, false or deceptive in a material particular.A person guilty of an offence under this subsection is liable to imprisonment or a fine, or both.
- (3) A subsidiary undertaking which is a body corporate incorporated in Great Britain, and the auditors of such an undertaking, shall give to the auditors of any parent company of the undertaking such information and explanations as they may reasonably require for the purposes of their duties as auditors of that company. If a subsidiary undertaking fails to comply with this subsection, the undertaking and every officer of it who is in default is guilty of an offence and liable to a fine; and if an auditor fails without reasonable excuse to comply with this subsection he is guilty of an offence and liable to a fine.
- (4) A parent company having a subsidiary undertaking which is not a body corporate incorporated in Great Britain shall, if required by its auditors to do so, take all such steps as are reasonably open to it to obtain from the subsidiary undertaking such information and explanations as they may reasonably require for the purposes of their duties as auditors of that company.

If a parent company fails to comply with this subsection, the company and every officer of it who is in default is guilty of an offence and liable to a fine.

- (5) Section 734 (criminal proceedings against unincorporated bodies) applies to an offence under subsection (3).

390 Right to attend company meetings, &c

- (1) A company's auditors are entitled-
 - (a) to receive all notices of, and other communications relating to, any general meeting which a member of the company is entitled to receive;
 - (a) to attend any general meeting of the company; and
 - (b) to be heard at any general meeting which they attend on any part of the business of the meeting which concerns them as auditors.[1A] Subsections (4A) to (4G) of section 369 (electronic communication of notices of meetings) apply for the purpose of determining whether notice of a meeting is received by the company's auditors as they apply in determining whether such a notice is given to any person.]
- (2) In relation to a written resolution proposed to be agreed to by a private company in accordance with section 381A, the company's auditors are entitled-
 - (a) to receive all such communications relating to the resolution as, by virtue of any provision of Schedule 15A, are required to be supplied to a member of the company,
 - (b)- ...
 - (d)
- (3) The right to attend or be heard at a meeting is exercisable in the case of a body corporate or partnership by an individual authorised by it in writing to act as its representative at the meeting.

390A Remuneration of auditors

- (1) The remuneration of auditors appointed by the company in general meeting shall be fixed by the company in general meeting or in such manner as the company in general meeting may determine.
- (2) The remuneration of auditors appointed by the directors of the Secretary of State shall be fixed by the directors of the Secretary of State, as the case may be.
- (3) There shall be stated in a note to the company's annual accounts the amount of the remuneration of the company's auditors in their capacity as such.
- (4) For the purposes of this section "remuneration" includes sums paid in respect of expenses.
- (5) This section applies in relation to benefits in kind as to payments in cash, and in relation to any such benefit references to its amount are to its estimated money value.

The nature of any such benefit shall also be disclosed.

390B Remuneration of auditors or their associates for non-audit work

- (1) The Secretary of State may make provision by regulations for securing the disclosure of the amount of any remuneration received or receivable by a company's auditors or their associates in respect of services other than those of auditors in their capacity as such.
- (2) The regulations may-
 - (a) provide that "remuneration" includes sums paid in respect of expenses,
 - (b) apply in relation to benefits in kind as to payments in cash, and in relation to any such benefit require disclosure of its nature and its estimated money value,
 - (c) define "associate" in relation to an auditor,
 - (d) require the disclosure of remuneration in respect of services rendered to associated undertakings of the company, and
 - (e) define "associated undertaking" for that purpose.
- (3) The regulations may require the auditors to disclose the relevant information in their report or require the relevant information to be disclosed in a note to the company's accounts and require the auditors to supply the directors of the company with such information as is necessary to enable that disclosure to be made.
- (4) The regulations may make different provision for different cases.
- (5) Regulations under this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

391 Removal of auditors

- (1) A company may by ordinary resolution at any time remove an auditor from office, notwithstanding anything in any agreement between it and him.
- (2) Where a resolution removing an auditor is passed at a general meeting of a company, the company shall within 14 days give notice of that fact in the prescribed form to the registrar.
If a company fails to give the notice required by this subsection, the company and every officer of it who is in default of an offence and liable to a fine and, for continued contravention, to a daily default fine.
- (3) Nothing in this section shall be taken as depriving a person removed under it of compensation or damages payable to him in respect of the termination of his appointment as auditor or of any appointment terminating with that as auditor.
- (4) An auditor of the company who has been removed has, notwithstanding his removal, the rights conferred by section 390 in relation to any general meeting of the company-
 - (a) at which his term of office would otherwise have expired, or
 - (b) at which it is proposed to fill the vacancy caused by his removal.In such a case the references in that section to matters concerning the auditors as auditors shall be construed as references to matters concerning him as a former auditor.

391A Rights of auditors who are removed or not re-appointed

(1) Special notice is required for a resolution at a general meeting of the company-

- (a) removing an auditor before the expiration of his term of office, or
- (b) appointing as auditor a person other than a retiring auditor.

(2) On receipt of notice of such an intended resolution the company shall forthwith send a copy of it to the person proposed to be removed or, as the case may be, to the person proposed to be appointed and to the retiring auditor.

(3) The auditor proposed to be removed or (as the case may be) the retiring auditor may make with respect to the intended resolution representations in writing to the company (not exceeding a reasonable length) and request their notification to members of the company.

(4) The company shall (unless the representations are received by it too late for it to do so)-

- (a) in any notice of the resolution given to members of the company, state the fact of the representations having been made, and
- (b) send a copy of the representations to every member of the company to whom notice of the meeting is or has been sent.

(5) If a copy of any such representations is not sent out as required because received too late or because of the company's default, the auditor may (without prejudice to his right to be heard orally) require that the representations be read out at the meeting.

(6) Copies of the representations need not be sent out and the representations need not be read at the meeting if, on the application either of the company or of any other person claiming to be aggrieved, the court is satisfied that the rights conferred by this section are being abused to secure needless publicity for defamatory matter; and the court may order the company's costs on the application to be paid in whole or in part by the auditor, notwithstanding that he is not a party to the application.

392 Resignation of auditors

(1) An auditor of a company may resign his office by depositing a notice in writing to that effect at the company's registered office.

The notice is not effective unless it is accompanied by the statement required by section 394.

(2) An effective notice of resignation operates to bring the auditor's term of office to an end as of the date on which the notice is deposited or on such later date as may be specified in it.

(3) The company shall within 14 days of the deposit of a notice of resignation send a copy of the notice to the registrar of companies.

If default is made in complying with this subsection, the company and every officer of it who is in default is guilty of an offence and liable to a fine and, for continued contravention, a daily default fine.

392A Rights of resigning auditors

(1) This section applies where an auditor's notice of resignation is accompanied by a statement of circumstances which he considers should be brought to the attention of members or creditors of the company.

(2) He may deposit with the notice a signed requisition calling on the directors of the company forthwith duly to convene an extraordinary general meeting of the company for the purpose of receiving and considering such explanation of the circumstances connected with his resignation as he may wish to place before the meeting.

(3) He may request the company to circulate to its members-

- (a) before the meeting convened on his requisition, or
- (b) before any general meeting at which his term of office would otherwise have expired or at which it is proposed to fill the vacancy caused by his resignation,

a statement in writing (not exceeding a reasonable length) of the circumstances connected with his resignation.

(4) The company shall (unless the statement is received too late for it to comply)-

- (a) in any notice of the meeting given to members of the company, state the fact of the statement having been made, and
- (b) send a copy of the statement to every member of the company to whom notice of the meeting is or has been sent.

(5) If the directors do not within 21 days from the date of the deposit of a requisition under this section proceed duly to convene a meeting for a day not more than 28 days after the date on which the notice convening the meeting is given, every director who failed to take all reasonable steps to secure that a meeting was convened as mentioned above is guilty of an offence and liable to a fine.

(6) If a copy of the statement mentioned above is not sent out as required because received too late or because of the company's default, the auditor may (without prejudice to his right to be heard orally) require that the statement be read out at the meeting.

(7) Copies of a statement need not be sent out and the statement need not be read out at the meeting if, on the application either of the company or of any other person who claims to be aggrieved, the court is satisfied that the rights conferred by this section are being abused to secure needless publicity for defamatory matter; and the court may order the company's costs on such an application to be paid in whole or in part by the auditor, notwithstanding that he is not a party to the application.

(8) An auditor who has resigned has, notwithstanding his resignation, the rights conferred by section 390 in relation to any such general meeting of the company as is mentioned in subsection (3)(a) or (b).

In such a case the references in that section to matters concerning the auditors as auditors shall be construed as references to matters concerning him as a former auditor.

393 Termination of appointment of auditors not appointed annually

(1) When an election is in force under section 386 (election by private company to dispense with annual appointment), any member of the company may deposit notice in writing at the company's registered office proposing that the appointment of the company's auditors be brought to an end.

No member may deposit more than one such notice in any financial year of the company.

(2) If such a notice is deposited it is the duty of the directors-

- (a) to convene a general meeting of the company for a date not more than 28 days after the date on which the notice was given, and
- (b) to propose at the meeting a resolution in a form enabling the company to decide whether the appointment of the company's auditors should be brought to an end.

(3) If the decision of the company at the meeting is that the appointment of the auditors should be brought to an end, the auditors shall not be deemed to be re-appointed when next they would be and, if the notice was deposited within the period immediately following the distribution of accounts, any deemed re-appointment for the financial year following that to which those accounts relate which has already occurred shall cease to have effect.

The period immediately following the distribution of accounts means the period beginning with the day on which copies of the company's annual accounts are sent to members of the company under section 238 and ending 14 days after that day.

(4) If the directors do not within 14 days from the date of the deposit of the notice proceed duly to convene a meeting, the member who deposited the notice (or, if there was more than one, any of them) may himself convene the meeting; but any meeting so convened shall not be held after the expiration of three months from that date.

(5) A meeting convened under this section by a member shall be convened in the same manner, as nearly as possible, as that in which meetings are to be convened by directors.

(6) Any reasonable expenses incurred by a member by reason of the failure of the directors duly to convene a meeting shall be made good to him by the company; and any such sums shall be recouped by the company from such of the directors as were in default out of any sums payable, or to become payable, by the company by way of fees or other remuneration in respect of their services.

(7) This section has effect notwithstanding anything in any agreement between the company and its auditors; and no compensation or damages shall be payable by reason of the auditors' appointment being terminated under this section.

394 Statement by person ceasing to hold office as auditors

(1) Where an auditor ceases for any reason to hold office, he shall deposit at the company's registered office a statement of any circumstances connected with his ceasing to hold office which he considers should be brought to the attention of the members or creditors of the company or, if he considers that there are no such circumstances, a statement that there are none.

(2) In the case of resignation, the statement shall be deposited along with the notice of resignation; in the case of failure to seek re-appointment, the statement shall be deposited not less than 14 days before the end of the time allowed for next appointing auditors; in any other case, the statement shall be deposited not later than the end of the period of 14 days beginning with the date on which he ceases to hold office.

(3) If the statement is of circumstances which the auditor considers should be brought to the attention of the members or creditors of the company, the company shall within 14 days of the deposit of the statement either-

- (a) send a copy of it to every person who under section 238 is entitled to be sent copies of the accounts, or
- (b) apply to the court.

(4) The company shall if it applies to the court notify the auditor of the application.

(5) Unless the auditor receives notice of such an application before the end of the period of 21 days beginning with the day on which he deposited the statement, he shall within a further seven days send a copy of the statement to the registrar.

(6) If the court is satisfied that the auditor is using the statement to secure needless publicity for defamatory matter-

- (a) it shall direct that copies of the statement need not be sent out, and
- (b) it may further order the company's costs on the application to be paid in whole or in part by the auditor, notwithstanding that he is not a party to the application; and the company shall within 14 days of the court's decision send to the persons mentioned in subsection (3)(a) a statement setting out the effect of the order.

(7) If the court is not so satisfied, the company shall within 14 days of the court's decision-

- (a) send copies of the statement to the persons mentioned in subsection (3)(a), and
- (b) notify the auditor of the court's decision;

Revised Articles of Association

and the auditor shall within seven days of receiving such notice send a copy of the statement to the registrar.

394A Offences of failing to comply with s 394

- (1) If a person ceasing to hold office as auditor fails to comply with section 394 he is guilty of an offence and liable to a fine.
- (2) In proceedings for an offence under subsection (1) it is a defence for the person charged to show that he took all reasonable steps and exercised all due diligence to avoid the commission of the offence.
- (3) Sections 733 (liability of individuals for corporate default) and 734 (criminal proceedings against unincorporated bodies) apply to an offence under subsection (1).
- (4) If a company makes default in complying with section 394, the company and every officer of it who is in default is guilty of an offence and liable to a fine and, for continued contravention, to a daily default fine.

¹² **144 Acquisition of shares by company's nominee**

- (1) Subject to section 145, where shares are issued to a nominee of a company mentioned in section 143(1), or are acquired by a nominee of such a company from a third person as partly paid up, then, for all purposes-
 - (a) the shares are to be treated as held by the nominee on his own account; and
 - (b) the company is to be regarded as having no beneficial interest in them.
- (2) Subject to that section, if a person is called on to pay any amount for the purpose of paying up, or paying any premium on, any shares in such a company which were issued to him, or which he otherwise acquired, as the company's nominee and he fails to pay that amount within 21 days from being called on to do so, then-
 - (a) if the shares were issued to him as subscriber to the memorandum by virtue of an undertaking of his in the memorandum, the other subscribers to the memorandum, or
 - (b) if the shares were otherwise issued to or acquired by him, the directors of the company at the time of the issue or acquisition, are jointly and severally liable with him to pay that amount.
- (3) If in proceedings for the recovery of any such amount from any such subscriber or director under this section it appears to the court-
 - (a) that he is or may be liable to pay that amount, but
 - (b) that he has acted honestly and reasonably and, having regard to all the circumstances of the case, he ought fairly to be excused from liability, the court may relieve him, either wholly or partly, from his liability on such terms as the court thinks fit.
- (4) Where any such subscriber or director has reason to apprehend that a claim will or might be made for the recovery of any such amount from him, he may apply to the court for relief; and the court has the same power to relieve him as it would have had in proceedings for the recovery of that amount.

¹³ **727 Power of court to grant relief in certain cases**

- (1) If in any proceedings for negligence, default, breach of duty or breach of trust against an officer of a company or a person employed by a company as auditor (whether he is or is not an officer of the company) it appears to the court hearing the case that that officer or person is or may be liable in respect of the negligence, default, breach of duty or breach of trust, but that he has acted honestly and reasonably, and that having regard to all the circumstances of the case (including those connected with his appointment) he ought fairly to be excused for the negligence, default, breach of duty or breach of trust, that court may relieve him, either wholly or partly, from his liability on such terms as it thinks fit.
- (2) If any such officer or person as above-mentioned has reason to apprehend that any claim will or might be made against him in respect of any negligence, default, breach of duty or breach of trust, he may apply to the court for relief; and the court on the application has the same power to relieve him as under this section it would have had if it had been a court before which proceedings against that person for negligence, default, breach of duty or breach of trust had been brought.
- (3) Where a case to which subsection (1) applies is being tried by a judge with a jury, the judge, after hearing the evidence, may, if he is satisfied that the defendant or defender ought in pursuance of that subsection to be relieved either in whole or in part from the liability sought to be enforced against him, withdraw the case in whole or in part from the jury and forthwith direct judgment to be entered for the defendant or defender on such terms as to costs or otherwise as the judge may think proper.

¹⁴ **310 Provisions exempting officers and auditors from liability**

- (1) This section applies to any provision, whether contained in a company's articles or in any contract with the company or otherwise, for exempting any officer of the company or any person (whether an officer or not) employed by the company as auditor from, or indemnifying him against, any liability which by virtue of any rule of law would otherwise attach to him in respect of any negligence, default, breach of duty or breach of trust of which he may be guilty in relation to the company.
- (2) Except as provided by the following subsection, any such provision is void.
- (3) This section does not prevent a company-
 - (a) from purchasing and maintaining for any such officer or auditor insurance against any such liability, or
 - (b) from indemnifying any such officer or auditor against any liability incurred by him-
 - (i) in defending any proceedings (whether civil or criminal) in which judgment is given in his favour or he is acquitted, or
 - (ii) in connection with any application under section 144(3) or (4) (acquisition of shares by innocent nominee) or section 727 (general power to grant relief in case of honest and reasonable conduct) in which relief is granted to him by the court.