
STATUTORY INSTRUMENTS

1983 No. 1119 (N.I. 12)

NORTHERN IRELAND

**The Companies (Beneficial Interests)
(Northern Ireland) Order 1983**

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| <i>Made</i> | <i>27th July 1983</i> |
| <i>Laid before Parliament</i> | <i>27th July 1983</i> |
| <i>Coming into Operation</i> | <i>3rd August 1983</i> |

ARRANGEMENT OF ORDER

Article

1. Title, commencement and citation.
2. Interpretation.
3. Preliminary.
4. Residual interests under pension and employees' share schemes.
5. Employer's charges and other rights of recovery.
6. Trustee's right to expenses, remuneration, indemnity, etc.

SCHEDULE—Vesting of residual interest.

At the Court at Buckingham Palace, the 27th day of July 1983

Present,

The Queen's Most Excellent Majesty in Council

Whereas this Order in Council is made only for purposes corresponding to the purposes of the Companies (Beneficial Interests) Act 1983: 1983 c.50

Now, therefore, Her Majesty, in exercise of the powers conferred by paragraph 1 of Schedule 1 to the Northern Ireland Act 1974 (as modified by section 6 of the said Act of 1983) and of all other powers enabling Her in that behalf, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:— 1974 c.28

Title, commencement and citation

1.—(1) This Order may be cited as the Companies (Beneficial Interests) (Northern Ireland) Order 1983 and shall come into operation on the seventh day after the day on which it is made.

(2) This Order and the Companies Acts (Northern Ireland) 1960 to 1982 may be cited together as the Companies Acts (Northern Ireland) 1960 to 1983.

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Interpretation

1954 c.33 (N.I.)

2.—(1) The Interpretation Act (Northern Ireland) 1954 shall apply to Article 1 and the following provisions of this Order as it applies to a Measure of the Northern Ireland Assembly.

1960 c.22 (N.I.)
S.I. 1981/838
(N.I. 19)

(2) In this Order “the principal Act” means the Companies Act (Northern Ireland) 1960 and “the 1981 Order” means the Companies (Northern Ireland) Order 1981.

(3) In this Order “pension scheme” means any scheme for the provision of benefits consisting of or including relevant benefits for or in respect of employees or former employees and “relevant benefits” means any pension, lump sum, gratuity or other like benefit given or to be given on retirement or on death or in anticipation of retirement or, in connection with past service, after retirement or death.

(4) In paragraph (3) and in Article 5(2)(a) “employer” and “employee” shall be construed as if a director of a company were employed by it.

(5) In this Order “employees’ share scheme” has the meaning given in Article 2(2) of the 1981 Order.

(6) In section 399 of the principal Act (interpretation)—

(a) for the words from the beginning to “1982” there shall be substituted the words “In the Companies Acts (Northern Ireland) 1960 to 1983”;

(b) in the definition of “the Companies Acts” for the words “to 1981” there shall be substituted the words “to 1983”.

(7) Part VII of the principal Act (which relates to companies formed or registered under the former Acts there mentioned) and section 344 of that Act (which relates to companies not formed under that Act but registered under it) shall apply for the purposes of the application of the provisions of this Order to such companies as aforesaid as they apply for the purposes of the application to them of the provisions of that Act.

Preliminary

3. This Order shall have effect, and be deemed always to have had effect, for the interpretation of references to a beneficial interest under a trust, or to a beneficial interest in shares, in the following provisions of the principal Act and the 1981 Order—

(a) section 27(2) of the principal Act (by virtue of which a subsidiary may hold shares in its holding company if the subsidiary is concerned as trustee and neither the holding company nor any of its subsidiaries is beneficially interested under the trust);

(b) paragraph 60(2) of Schedule 6 and paragraph 15(3) of Schedule 6A to that Act (by virtue of which the accounts of a holding company need not give particulars of shares or debentures held by a subsidiary in the circumstances described in the said section 27(2));

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- (c) Article 38(6)(a) of the 1981 Order (by virtue of which the provisions of that Article relating to the acquisition of shares by nominees do not apply where the company has no beneficial interest in the shares); and
- (d) Article 39(1)(b), (c) and (d) of that Order (which makes provision for the treatment of shares in a company in which it has a beneficial interest and which are acquired in the circumstances there mentioned).

Residual interests under pension and employees' share schemes

4.—(1) Where shares in a company are held on trust for the purposes of a pension scheme or an employees' share scheme there shall be disregarded any residual interest which has not vested in possession, being an interest of the company or, as respects the provisions mentioned in Article 3(a) and (b), of any subsidiary of the company.

(2) In this Article "a residual interest" means a right of the company or subsidiary in question ("the residual beneficiary") to receive any of the trust property in the event of—

- (a) all the liabilities arising under the scheme having been satisfied or provided for; or
- (b) the residual beneficiary ceasing to participate in the scheme; or
- (c) the trust property at any time exceeding what is necessary for satisfying the liabilities arising or expected to arise under the scheme.

(3) In paragraph (2) references to a right include references to a right dependent on the exercise of a discretion vested by the scheme in the trustee or any other person, and references to liabilities arising under a scheme include references to liabilities that have resulted or may result from the exercise of any such discretion.

(4) The Schedule shall have effect as respects the operation of section 27 of the principal Act and Articles 38 and 39 of the 1981 Order in cases where a residual interest vests in possession.

(5) For the purposes of this Article a residual interest vests in possession—

- (a) in a case within sub-paragraph (a) of paragraph (2), on the occurrence of the event there mentioned, whether or not the amount of the property receivable pursuant to the right referred to in that paragraph is then ascertained; and
- (b) in a case within sub-paragraph (b) or (c) of that paragraph, when the residual beneficiary becomes entitled to require the trustee to transfer to that beneficiary any of the property receivable pursuant to that right.

(6) As respects the provisions mentioned in Article 3(b), paragraph (1) shall have effect as if references to shares included references to debentures.

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Employer's charges and other rights of recovery

5.—(1) Where shares in a company are held on trust there shall be disregarded—

- (a) if the trust is for the purposes of a pension scheme, any such rights as are mentioned in paragraph (2); and
- (b) if the trust is for the purposes of an employees' share scheme, any such rights as are mentioned in sub-paragraph (a) of that paragraph,

being rights of the company or, as respects the provisions mentioned in Article 3(a) or (b), of any subsidiary of the company.

(2) The rights referred to in paragraph (1) are—

- (a) any charge or lien on, or set-off against, any benefit or other right or interest under the scheme for the purpose of enabling the employer or former employer of a member of the scheme to obtain the discharge of a monetary obligation due to him from the member; and
- (b) any right to receive from the trustee of the scheme, or as trustee of the scheme to retain, any amount that can be recovered or retained by virtue of Article 48 of the Social Security Pensions (Northern Ireland) Order 1975 (deduction of premium from refund of contributions) or otherwise as reimbursement or partial reimbursement for any state scheme premium paid in connection with the scheme under Part IV of that Order.

S.I. 1975/1503
(N.I. 15)

(3) As respects the provisions mentioned in Article 3(b), paragraph (1) shall have effect as if references to shares included references to debentures.

Trustee's right to expenses, remuneration, indemnity, etc.

6.—(1) Where a company is a trustee (whether as personal representative or otherwise) there shall be disregarded any rights which the company has in its capacity as trustee including, in particular, any right to recover its expenses or be remunerated out of the trust property and any right to be indemnified out of that property for any liability incurred by reason of any act or omission of the company in the performance of its duties as trustee.

(2) As respects the provisions mentioned in Article 3(a) and (b), paragraph (1) shall have effect as if references to a company included references to any body corporate which is a subsidiary of a company.

(3) The following provisions of the 1981 Order (which are superseded by paragraph (1)) are hereby repealed—

- (a) in Article 38(6)(a) the words in brackets;
- (b) in Article 39(1) the words following sub-paragraph (d).

N. E. Leigh
Clerk of the Privy Council.

SCHEDULE

Article 4(4)

VESTING OF RESIDUAL INTEREST

Section 27 of the principal Act

1. Where by virtue of the vesting in possession of a residual interest a subsidiary ceases to be exempt from section 27 of the principal Act, that section shall not prevent the subsidiary from continuing to be a member of its holding company but, subject to subsection (2) of that section, the subsidiary shall have no right from the date of vesting to vote at meetings of the holding company or of any class of its members.

Article 38 of the 1981 Order

2. Where by virtue of Article 4 any shares are exempt from Article 38 of the 1981 Order at the time when they are issued or acquired but the residual interest in question vests in possession before they are disposed of or fully paid up, that Article shall apply to the shares as if they had been issued or acquired on the date on which that interest vests in possession.

Article 39 of the 1981 Order

3. Where by virtue of Article 4 any shares are exempt from Article 39 of the 1981 Order at the time when they are acquired but the residual interest in question vests in possession before they are disposed of, that Article shall apply to the shares as if they had been acquired on the date on which that interest vests in possession.

Vesting before the coming into operation of this Order

4. The foregoing provisions of this Schedule apply whether the date on which the residual interest vests in possession is before or after the coming into operation of this Order but where that date is before the coming into operation of this Order those provisions shall have effect as if the vesting had occurred on the date on which this Order came into operation.

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EXPLANATORY NOTE

(This Note is not part of the Order.)

This Order amends the Companies Act (Northern Ireland) 1960 and the Companies (Northern Ireland) Order 1981 to provide for disregarding certain interests and rights in determining whether a company is beneficially interested under a trust or has a beneficial interest in shares.

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