

1994 No. 2

COMPANIES

**Disclosure of Interests in Shares (Amendment)
Regulations (Northern Ireland) 1994**

Made 10th January 1994

Coming into operation 11th March 1994

The Department of Economic Development, in exercise of the powers conferred on it by Article 218A of the Companies (Northern Ireland) Order 1986(a) and of every other power enabling it in that behalf, hereby makes the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Disclosure of Interests in Shares (Amendment) Regulations (Northern Ireland) 1994 and shall come into operation on 11th March 1994.

Amendments of Part VII of the Companies (Northern Ireland) Order 1986

2. Part VII of the Companies (Northern Ireland) Order 1986 shall be amended in accordance with regulations 3 to 9.

Article 206

3. In Article 206(1) (obligation of disclosure) for the words “of the interests which he has, or had” there shall be substituted “with respect to his interests (if any)”.

Article 207

4.—(1) In Article 207(b) (interests to be disclosed) for paragraph (2) there shall be substituted the following paragraphs—

“(2) Where a person is interested in shares comprised in relevant share capital, then—

- (a) if in some or all of those shares he has interests which are material interests, he has a notifiable interest at any time when the aggregate nominal value of the shares in which those material interests subsist is equal to or more than 3 per cent. of the nominal value of that share capital; and

(a) S.I. 1986/1032 (N.I. 6); Article 218A was inserted by Article 69(5) of the Companies (No. 2) (Northern Ireland) Order 1990 (S.I. 1990/1504 (N.I. 10)).

(b) Article 207(2) was amended by Article 69(2) of the Companies (No. 2) (Northern Ireland) Order 1990.

(b) he has a notifiable interest at any time when, not having such an interest by virtue of sub-paragraph (a), the aggregate nominal value of the shares in which he has interests (whether or not including material interests) is equal to or more than 10 per cent. of the nominal value of the relevant share capital.

(2A) For the purposes of this Part, a material interest is any interest other than—

(a) an interest which a person authorised to manage investments belonging to another has by virtue of having the management of such investments under an agreement in or evidenced in writing;

(b) an interest which a person has by virtue of being the operator of—

(i) an authorised unit trust scheme;

(ii) a recognised scheme; or

(iii) a UCITS (as defined in paragraph (8)); or

(c) an interest in shares in a listed company which, if that company were not listed, would fall to be disregarded by virtue of Article 217(10);

(d) an interest of another which a person is taken to have by virtue of the application of Article 211 (notification of family and corporate interests) or 213 (obligation of disclosure arising under Article 212) where the interest of that other person falls within sub-paragraph (a), (b) or (c)."

(2) In paragraph (5) of that Article, after the words "Article 206(1)" there shall be inserted "or (3)".

(3) After paragraph (5) of that Article there shall be inserted the following paragraphs—

"(6) For the purposes of paragraph 2A, a person is authorised to manage investments belonging to another if—

(a) he is an authorised person under Chapter III of Part I of the Financial Services Act 1986(a) and may manage that other's investments without contravening any prohibition mentioned in paragraph (7); or

(b) he is an authorised credit institution which may manage that other's investments without being in breach of its authorisation.

(7) The prohibitions referred to in paragraph (6)(a) are—

(a) any prohibition contained in rules—

(i) which make provision of a description mentioned in section 48(2)(a) and (b) of the Financial Services Act 1986; and

(ii) which are made by the Secretary of State, the Treasury, a designated agency, a recognised professional body or a recognised self-regulating organisation, and

(b) any prohibition imposed under section 65 of that Act.

(8) In this Part “UCITS” means a collective investment scheme which—

- (a) is constituted in a member State other than the United Kingdom; and
- (b) complies with the conditions necessary for it to enjoy the rights conferred by Council Directive 85/611/EEC(a) co-ordinating the laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities; and sub-section (8) of section 86 of the Financial Services Act 1986 (meaning of “constituted in a Member State”) applies for the purposes of sub-paragraph (a) as it applies for the purposes of that section.”.

Article 208

5. For Article 208 (“percentage level” in relation to notifiable interests) there shall be substituted the following Article—

“ “Percentage level” in relation to notifiable interests

208.—(1) Subject to the qualifications mentioned in paragraphs (2) and (3), “percentage level”, in Article 207(5)(b), means the percentage figure found by expressing the aggregate nominal value of all the shares comprised in the share capital concerned in which the person has material interests immediately before or (as the case may be) immediately after the relevant time as a percentage of the nominal value of that share capital and rounding that figure down, if it is not a whole number, to the next whole number.

(2) In relation to a notifiable interest which a person has when the aggregate nominal value of the shares in which he is interested is equal to or more than 10 per cent. of the nominal value of that relevant share capital, paragraph (1) shall have effect as if for the words “has material interests” there were substituted “is interested”.

(3) Where the nominal value of the share capital is greater immediately after the relevant time than it was immediately before, the percentage level of the person’s interest immediately before (as well as immediately after) that time is determined by reference to the larger amount.”.

Article 210

6.—(1) In Article 210 (particulars to be contained in notification), in paragraph (2), for sub-paragraph (a) there shall be substituted the following sub-paragraph—

“(a) subject to paragraphs (2A) and (2B), state the number of shares comprised in that share capital in which the person making the notification knows he had material interests immediately after the time when the obligation arose, or”.

(2) After that paragraph there shall be inserted the following paragraphs—

“(2A) Where, immediately after the relevant time, the aggregate nominal value of the shares in which the person making the notification is interested is equal to or more than 10 per cent. of the nominal value of that relevant share capital, paragraph (2)(a) shall have effect as if for the words “had material interests” there were substituted the words “was interested.”.

(2B) Nothing in paragraph (2) or (2A) requires a notification to state, in relation to any shares, whether the interest of the person making the notification is (or is not) a material interest.”.

Article 214

7.—(1) In Article 214 (obligation of persons acting together to keep each other informed) in paragraph (3)(a), for the words “if he were under the obligation of disclosure with respect to that interest” there shall be substituted “if he were under the wide obligation of disclosure with respect to that interest” and after sub-paragraph (b) there shall be inserted—

“and

(c) except in the circumstance mentioned in paragraph (3A), the number of shares (if any) out of the number given under sub-paragraph (a) in which he knows that, immediately after the time when the obligation to give the notice arose, he had interests (apart from the agreement) which were not material interests.”.

(2) After Article 214(3) there shall be inserted the following paragraphs—

“(3A) The circumstance referred to in paragraph (3)(c) is that the aggregate nominal value of the shares comprised in relevant share capital in which the person is interested (apart from the agreement) is equal to or more than 10 per cent. of the nominal value of the relevant share capital.

(3B) For the purposes of paragraph (3)(a) “the wide obligation of disclosure” means the obligation to disclose the number of shares in which the person concerned has any interest (material or otherwise).”.

Article 217

8. For Article 217 (interests to be disregarded) there shall be substituted the following Article—

“Interests to be disregarded

217.—(1) Subject to paragraphs (5) and (6), the following interests in shares are disregarded for the purposes of Articles 206 to 210—

(a) where property is held on trust and an interest in shares is comprised in that property, an interest of a person, being a discretionary interest or an interest in reversion or remainder or an interest of a bare trustee;

(b) an interest which a person has by virtue of holding units in—

- (i) an authorised unit trust scheme;
 - (ii) a recognised scheme; or
 - (iii) a UCITS;
- (c) an interest of a person which is an exempt security interest within the meaning of paragraph (2);
- (d) an interest which a person has by virtue of his being a beneficiary under a retirement benefits scheme as defined in section 611 of the Income and Corporation Taxes Act 1988(a);
- (e) an interest which a person has in shares as a result of the acceptance of a takeover offer made by him (either alone or jointly with one or more other persons) for shares where—
- (i) the offer is subject to a threshold acceptance condition; and
 - (ii) the threshold acceptance condition is not fulfilled;
- (f) an interest of a person which is an exempt custodian interest within the meaning of paragraph (4);
- (g) an interest which a person has by virtue of his being a personal representative of any estate;
- (h) an interest which a person has—
- (i) by virtue of his being a trustee of an authorised unit trust scheme, or
 - (ii) in relation to a recognised scheme or a UCITS, by virtue of his being entrusted with the custody of the property in question (whether or not under a trust).
- (2) An interest in shares is an exempt security interest for the purposes of paragraph (1)(c)—
- (a) if it is held by a person who is—
 - (i) a person authorised under Part I of the Banking Act 1987(b), an authorised credit institution, a person authorised under the law of a member State other than the United Kingdom to accept deposits who would, if he were to accept such deposits in the United Kingdom require authorisation under Part I of that Act, or an authorised insurance undertaking; or
 - (ii) a person authorised under the law of a member State to deal in securities or derivatives, who deals in securities or derivatives on a relevant stock exchange or on a relevant investment exchange, whether as a member or otherwise; or
 - (iii) a relevant stock exchange, a relevant investment exchange or a recognised clearing house; or
 - (b) if it is held by the Bank of England or by the central bank of a member State other than the United Kingdom;

(a) 1988 c. 1

(b) 1987 c. 22

and it is held by way of security only for the purposes of a transaction entered into in the ordinary course of his or its business as such a person.

(3) For the purposes of paragraph (1)(e)—

(a) “takeover offer” has the same meaning as in Part XIVA(a); and

(b) “a threshold acceptance condition” means a condition that acceptances are received in respect of such proportion of the shares for which the takeover offer is made as is specified in or determined in accordance with the terms of the takeover offer.

(4) For the purposes of paragraph (1)(f) an interest of a person is an exempt custodian interest if it is held by him—

(a) as a custodian (whether under a trust or by a contract); or

(b) under an arrangement pursuant to which he has issued, or is to issue, depositary receipts in respect of the shares concerned.

(5) An interest referred to in any sub-paragraph of paragraph (1) (except for sub-paragraph (c)) is disregarded only if the person referred to in the relevant sub-paragraph or in paragraph (4) is not entitled to exercise or control the exercise of voting rights in respect of the shares concerned; and for this purpose he is not so entitled if he is bound (whether by contract or otherwise) not to exercise the voting rights, or not to exercise them otherwise than in accordance with the instructions of another.

(6) In the case of an interest referred to in paragraph (1)(c), an interest of a person referred to in paragraph (2) is disregarded only if that person—

(a) is not entitled (within the meaning of paragraph (5)) to exercise or control the exercise of voting rights in respect of the shares concerned; or,

(b) is so entitled, but has not evidenced any intention to exercise them or control their exercise nor taken any step to do so.

(7) For the purposes of paragraphs (5) and (6), voting rights which a person is entitled to exercise or of which he is entitled to control the exercise only in certain circumstances shall be taken into account only when the circumstances have arisen and for so long as they continue to obtain.

(8) An interest in shares of a company is also disregarded for the purposes of Articles 206 to 210—

(a) if it is held by a market maker in securities or derivatives for the purposes of his business; but

(b) only in so far as it is not used by him for the purpose of intervening in the management of the company.

(9) For the purposes of paragraph (8) a person is a market maker in securities or derivatives if—

(a) Part XIVA was substituted for Articles 421, 422 and 423 of the Companies (Northern Ireland) Order 1986 by Article 26 of the Companies (Northern Ireland) Order 1989 (S.I. 1989/2404 (N.I. 18))

- (a) he is authorised under the law of a member State to deal in securities or derivatives and so deals on a relevant stock exchange or on a relevant investment exchange (whether as a member or otherwise); and
- (b) he holds himself out at all normal times as willing to acquire and dispose of securities or derivatives at prices specified by him and in so doing is subject to the rules of that exchange;

and he holds an interest for the purposes of his business if he holds it for the purposes of a business carried on by him as a market maker in a member State.

(10) The following interests in shares in a public company which is not listed are also disregarded for the purposes of Articles 206 to 210—

- (a) an interest which subsists by virtue of a scheme made under section 25 of the Charities Act (Northern Ireland) 1964(a), section 24 or 25 of the Charities Act 1993(b), section 11 of the Trustee Investments Act 1961(c) or section 42 of the Administration of Justice Act 1982(d);
- (b) an interest for the life of himself or another of a person under a settlement in the case of which the property comprised in the settlement consists of or includes shares, and the conditions mentioned in paragraph (11) are satisfied;
- (c) an interest of the Accountant General of the Supreme Court in shares held by him;
- (d) an interest of the Probate Judge subsisting by virtue of section 3 of the Administration of Estates Act (Northern Ireland) 1955(e);
- (e) an interest of the President of the Family Division of Her Majesty's High Court of Justice in England subsisting by virtue of section 9 of the Administration of Estates Act 1925(f).

(11) The conditions referred to in paragraph (10)(b) are, in relation to a settlement—

- (a) that it is irrevocable; and
- (b) that the settler (within the meaning of section 670 of the Income and Corporation Taxes Act 1988) has no interest in any income arising under, or property comprised in, the settlement.

(12) A person is not by virtue of Article 216(4)(b) taken to be interested in shares by reason only that he has been appointed a proxy to vote at a specified meeting of a company or of any class of its members and at any adjournment of that meeting, or has been appointed by a corporation to act as its representative at any meeting of a company or of any class of its members.

(a) 1964 c. 33 (N.I.)

(b) 1993 c. 10

(c) 1961 c. 62

(d) 1982 c. 53

(e) 1955 c. 24 (N.I.)

(f) 1925 c. 23 as amended by 1970 c. 31 section 1(6) and Schedule 2, paragraph 5

(13) In the application of paragraph (1)(a) to property held on trust according to the law of Scotland, for the words “or remainder or an interest of a bare trustee” there shall be substituted “or in fee or an interest of a simple trustee”.

Article 228

9. In Article 228 (interpretation for Part VII), for paragraph (1) there shall be substituted the following paragraph—

“(1) In this Part—

“associated index”, in relation to a register, means the index kept in relation to that register in pursuance of Article 219(6);

“authorised credit institution” means a credit institution as defined in Article 1 of Council Directive 77/780/EEC(a) which is authorised to carry on the business of a credit institution by a competent authority of a member State other than the United Kingdom;

“authorised insurance undertaking” means an insurance undertaking which has been authorised in accordance with Article 6 or 23 of Council Directive 73/239/EEC(b) or Article 6 or 27 of Council Directive 79/267/EEC(c), or is authorised under the law of a member State to carry on insurance business restricted to re-insurance;

“authorised unit trust scheme” has the same meaning as in Chapter VIII of Part I of the Financial Services Act 1986;

“depository receipt” means a certificate or other record (whether or not in the form of a document)—

(a) which is issued by or on behalf of a person who holds shares or who holds evidence of the right to receive shares, or has an interest in shares, in a particular company; and

(b) which evidences or acknowledges that another person is entitled to rights in relation to those shares or shares of the same kind, which shall include the right to receive such shares (or evidence of the right to receive such shares) from the person mentioned in paragraph (a);

“derivatives” means—

(a) options to acquire or dispose of shares; and

(b) rights under a contract falling within paragraph 8 of Schedule 1 to the Financial Services Act 1986 (futures), where the property in question is shares;

“designated agency” has the same meaning as in the Financial Services Act 1986;

(a) OJ No. L322, 17.12.77, p. 30, as amended by Council Directive 86/524/EEC (OJ No. L309, 4.11.86, p. 15) and Council Directive 89/646/EEC (OJ No. L386, 30.12.89, p. 1)

(b) OJ No. L228, 16.8.73, p. 3

(c) OJ No. L63, 13.3.79, p. 1

- “listed company” means a company any of the shares in which are officially listed on a relevant stock exchange and “listed” shall be construed accordingly;
- “material interest” shall be construed in accordance with Article 207(2A);
- “operator”, in relation to a collective investment scheme, shall be construed in accordance with section 75(8) of the Financial Services Act 1986;
- “recognised clearing house”, “recognised professional body”, “recognised scheme”, and “recognised self-regulating organisation” have the same meaning as in the Financial Services Act 1986;
- “register of interests in shares” means the register kept in pursuance of Article 219 including that part of the register kept in pursuance of Article 221;
- “relevant investment exchange” means an exchange situated or operating in a member State on which derivatives are traded;
- “relevant share capital” has the meaning given by Article 206(2);
- “relevant stock exchange” means a stock exchange situated or operating in a member State;
- “UCITS” has the meaning given by Article 207(8);
- “units” has the same meaning as in section 75 of the Financial Services Act.”.

Revocation

10. The Listed Companies (Disclosure of Share Interests) (Exclusions) Regulations (Northern Ireland) 1979(a) are hereby revoked.

Transitional provisions

11.—(1) In this regulation “commencement” means the commencement of these Regulations.

(2) Where a person—

- (a) has a notifiable interest immediately after commencement, but did not have such an interest immediately before commencement; or
- (b) had a notifiable interest immediately before commencement, but does not have such an interest immediately after commencement; or
- (c) had a notifiable interest immediately before commencement and has such an interest immediately after commencement but the percentage levels of his interest immediately before and immediately after commencement are not the same;

(a) S.R. 1979 No. 229. By virtue of Article 69(6) of the Companies (No. 2) (Northern Ireland) Order 1990, these Regulations have effect as if made under Article 218A(1)(d) of the Companies (Northern Ireland) Order 1986.

then he comes under an obligation to notify the company with respect to the interest which he has or had in its shares; and the provisions of Part VII of the Companies (Northern Ireland) Order 1986 shall apply as if that obligation arose under Article 206 of that Order.

Sealed with the Official Seal of the Department of Economic Development on 10th January 1994.

(L.S.)

A. L. Brown

Assistant Secretary

EXPLANATORY NOTE

(This note is not part of the Regulations.)

These Regulations amend Part VII of the Companies (Northern Ireland) Order 1986 ("the 1986 Order") which imposes an obligation to disclose certain interests in shares comprised in certain issued share capital of public companies. Exemptions from that obligation, contained in that Part and in the Listed Companies (Disclosure of Share Interests) (Exclusions) Regulations (Northern Ireland) 1979 (S.R. 1979 No. 229) are amended or superseded. In some cases the changes made are because continuance of certain exemptions in their present form would be incompatible with Council Directive 88/627/EEC on the information to be published when a major holding in a listed company is acquired or disposed of (OJ No. L348, 17.12.88, p. 62).

Regulation 4 amends Article 207 of the 1986 Order to make special provision for certain interests in relation to the percentage level of interest constituting a notifiable interest within the meaning of that Part. Amendments to Article 206 (regulation 3), Article 210 (regulation 6) and Article 214 (regulation 7) and the substitution of Article 208 (regulation 5) are amendments consequential upon the amendment to Article 207 of the 1986 Order.

Regulation 8 supersedes Article 217 of the 1986 Order (interests in shares to be disregarded for the purposes of Articles 206 to 210) and the above-mentioned Regulations by substituting a new Article 217. Exemptions provided under new paragraph (1) are subject to certain conditions as to the control of voting rights attaching to the shares concerned (see paragraphs (5), (6) and (7)). The exemption provided under paragraph (8) is subject to a condition as to intervention in the management of the company. Paragraph (10) provides for additional classes of interest to be exempted where the company concerned is not a listed company. Paragraph (12) continues the exemption for proxy holders formerly contained in paragraph (2) of Article 217.

Regulation 9 substitutes a new paragraph for Article 228(1) of the 1986 Order (definitions to be applied for Part VII).

Regulation 10 revokes the Listed Companies (Disclosure of Share Interests) (Exclusions) Regulations (Northern Ireland) 1979 (S.R. 1979 No. 229).

Regulation 11 makes transitional provisions to ensure that interests becoming disclosable as a result of the Regulations should be subject to an obligation to notify and that disclosure takes place where as a result of the Regulations a person no longer has a notifiable interest or the percentage of his interest changes.