

2004 No. 263

COMPANIES

Companies (Membership of Holding Company) (Dealers in Securities) Regulations (Northern Ireland) 2004

Made - - - - - *14th June 2004*

Coming into operation *2nd August 2004*

The Department of Enterprise, Trade and Investment, being a Department designated(a) for the purposes of section 2(2) of the European Communities Act 1972(b) in relation to measures relating to the acquisition by a body corporate of shares in its holding company, in exercise of the powers conferred on it by the said section 2(2) and of every other power enabling it in that behalf, hereby makes the following Regulations:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Companies (Membership of Holding Company) (Dealers in Securities) Regulations (Northern Ireland) 2004 and shall come into operation on 2nd August 2004.

(2) The Interpretation Act (Northern Ireland) 1954(c) shall apply to these Regulations as it applies to an Act of the Northern Ireland Assembly.

Amendment of Article 33 of the Companies (Northern Ireland) Order 1986

2. In Article 33 of the Companies (Northern Ireland) Order 1986 (membership of holding company)(d), for paragraphs (3) and (3A) there shall be substituted the following –

“(3) The prohibition does not apply where shares in the holding company are held by the subsidiary in the ordinary course of its business as an intermediary.

For this purpose a person is an intermediary if that person –

- (a) carries on a bona fide business of dealing in securities;
- (b) is a member of an EEA exchange (and satisfies any requirements for recognition as a dealer in securities laid down by that exchange) or is otherwise approved or supervised as a dealer in securities under the laws of an EEA State; and
- (c) does not carry on an excluded business.

(3A) The excluded businesses are the following –

- (a) any business which consists wholly or mainly in the making or managing of investments;

(a) S.I. 1997/1742

(b) 1972 c. 68; as amended by the European Economic Area Act 1993 (c. 51)

(c) 1954 c. 33 (N.I.)

(d) S.I. 1986/1032 (N.I. 6); Article 33 was substituted by Article 64(1) of the Companies (No. 2) (Northern Ireland) Order 1990 (S.I. 1990/1504 (N.I. 10)), and amended by S.I. 2001/3649

- (b) any business which consists wholly or mainly in, or is carried on wholly or mainly for the purpose of, providing services to persons who are connected with the person carrying on the business;
- (c) any business which consists in insurance business;
- (d) any business which consists in managing or acting as trustee in relation to a pension scheme or which is carried on by the manager or trustee of such a scheme in connection with or for the purposes of the scheme;
- (e) any business which consists in operating or acting as trustee in relation to a collective investment scheme or is carried on by the operator or trustee of such a scheme in connection with or for the purposes of the scheme.

(3B) For the purposes of paragraphs (3) and (3A) –

- (a) the question whether a person is connected with another shall be determined in accordance with the provisions of section 839 of the Income and Corporation Taxes Act 1988(a);
- (b) “collective investment scheme” has the meaning given in section 235 of the Financial Services and Markets Act 2000(b);
- (c) “EEA exchange” means a market which appears on the list drawn up by an EEA State pursuant to Article 16 of Council Directive 93/22/EEC on investment services in the securities field(c);
- (d) “insurance business” means business which consists of the effecting or carrying out of contracts of insurance;
- (e) “securities” includes –
 - (i) options,
 - (ii) futures, and
 - (iii) contracts for differences,

and rights or interests in those investments;

- (f) “trustee” and “the operator” shall, in relation to a collective investment scheme, be construed in accordance with section 237(2) of the Financial Services and Markets Act 2000.

(3C) Paragraph (3B) must be read with –

- (a) section 22 of the Financial Services and Markets Act 2000;
- (b) any relevant order under that section; and
- (c) Schedule 2 to that Act.

(3D) Where –

- (a) a subsidiary which is a dealer in securities has purportedly acquired shares in its holding company in contravention of the prohibition in paragraph (1); and
- (b) a person acting in good faith has agreed, for value and without notice of that contravention, to acquire shares in the holding company from the subsidiary or from someone who has purportedly acquired the shares after their disposal by the subsidiary,

any transfer to that person of the shares mentioned in sub-paragraph (a) shall have the same effect as it would have had if their original acquisition by the subsidiary had not been in contravention of the prohibition.”.

3. In paragraph (4) of Article 33 of the Companies (Northern Ireland) Order 1986 –

(a) 1988 c. 1; section 839 was amended by section 74 of, and paragraph 20 of Part II of Schedule 17 to, the Finance Act 1995 (c. 4), and modified by S.I. 1988/745
 (b) 2000 c. 8
 (c) O.J. No. L141, 11.6.93, p. 27

- (a) for the words “the coming into operation of Article 64 of the Companies (No. 2) (Northern Ireland) Order 1990” there shall be substituted the words “2nd August 2004”; and
- (b) for the words “after the coming into operation of that Article” there shall be substituted the words “on or after 2nd August 2004”.

4. In paragraph (5) of Article 33 of the Companies (Northern Ireland) Order 1986 for the words “after the coming into operation of that Article” there shall be substituted the words “on or after 2nd August 2004”.

Consequential amendments

5.—(1) In the Companies (Northern Ireland) Order 1986 the following definition shall be inserted at the appropriate place in Article 2(3) (general interpretation) –

“ “EEA State” means a State which is a Contracting Party to the Agreement signed at Oporto on 2nd May 1992(a) as adjusted by the Protocol signed at Brussels on 17th March 1993(b);”.

(2) In Article 270(1) of that Order (minor definitions for Part VIII)(c), the definition of “EEA State” shall be omitted.

(3) The following entry shall be inserted at the appropriate place in the index of defined expressions set out in Article 2A of that Order(d) –

“EEA State	Article 2(3)”
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(4) In the index of defined expressions set out in Article 270A of that Order(e), the entry relating to “EEA State” shall be omitted.

Sealed with the Official Seal of the Department of Enterprise, Trade and Investment on 14th June 2004.

(L.S.)

M. Bohill

A senior officer of the Department of Enterprise, Trade and Investment

(a) O.J. No. L1, 3.1.94, p. 3
 (b) O.J. No. L1, 3.1.94, p. 571
 (c) Article 270 was substituted by Article 24 of the Companies (Northern Ireland) Order 1990, (S.I. 1990/593 (N.I.5)) and amended by S.R. 1997 No. 314
 (d) Article 2A was inserted by Article 78 of, and Schedule 5 to, the Companies (No. 2) (Northern Ireland) Order 1990
 (e) Article 270A was inserted by Article 24 of the Companies (Northern Ireland) Order 1990 and was amended by S.R. 1997 No. 314

EXPLANATORY NOTE

(This note is not part of the Regulations.)

These Regulations further implement the provisions of Article 24a of Second Council Directive 77/91/EEC (O.J. No. L26, 31.1.77, p. 1), on the co-ordination of safeguards in respect of the formation of public limited liability companies and maintenance and alteration of their capital. Article 24a was inserted by Council Directive 92/101/EEC (O.J. No. L347, 28.11.92, p. 64). Those Community provisions extend to the EEA by virtue of Annex XXII to the EEA Agreement and Decision No. 7/94 of the EEA Joint Committee.

The Regulations alter the scope of the exemption contained in Article 33(3) of the Companies (Northern Ireland) Order 1986, which excludes certain kinds of dealings in securities from the prohibition (laid down by Article 33(1) of the Order) on the ownership by a body corporate of shares in its holding company. The exemption for the benefit of market makers is replaced by an exemption for the benefit of intermediaries, defined as a certain class of dealers in securities. Excluded from that definition are persons who carry on various categories of excluded business, which correspond to those contained in section 80A(5) and section 88A(5) of the Finance Act 1986. Provision is also made for the consequences of a breach of the prohibition where the shares are subsequently acquired by a purchaser without notice of the breach. The amendments provided for by these Regulations are made following changes in the system of trading on certain regulated securities markets.

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