



# Aircraft and Shipbuilding Industries Act 1977 (repealed)

## 1977 CHAPTER 3

### PART II

#### VESTING OF SECURITIES AND OTHER ASSETS IN THE CORPORATIONS AND ACQUIRED COMPANIES

*Acquisition of securities and assets*

##### **19 Vesting in British Aerospace or British Shipbuilders of securities of Scheduled companies.**

- (1) Subject to the provisions of this Part of this Act, on the aircraft industry vesting date all securities of the companies which on 29th October 1974 were known by the names specified on Part I of Schedule 1 to this Act, being the companies other than any excepted company which on that date fulfilled the conditions in Part II of that Schedule, shall, by virtue of this section, vest in British Aerospace free from all trusts and incumbrances.
- (2) Subject to the provisions of this Part of this Act, on the shipbuilding industry vesting date, all securities of the companies which on 31st July 1974 were known by the names specified in Part I of Schedule 2 to this Act, being the companies other than any excepted company which on that date fulfilled the conditions in Part II of that Schedule, shall, by virtue of this section, vest in British Shipbuilders free from all trusts and incumbrances.
- (3) Each Corporation shall, in respect of the securities of any company which vest in it by virtue of this Part of this Act, be entitled or subject, as from the date of transfer, to the exclusion of the previous holders thereof, to all the rights, privileges and advantages and all the liabilities and obligations arising from the holding of those securities, in all respects as if the securities had been duly transferred to the Corporation in accordance with the enactments and rules of law (other than this Act) applicable thereto and

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everything necessary to make those rights, privileges, advantages, liabilities and obligations fully effective had been duly done.

- (4) Without prejudice to subsection (3) above, all persons concerned with the keeping of the register of the holders of any such securities as are referred to in that subsection shall forthwith register the relevant Corporation therein and the company concerned shall forthwith issue to that Corporation the appropriate documents of title relating to the securities of the company which vest in that Corporation by virtue of this Part of this Act.
- (5) In this section—
  - “excepted company” means any company—
    - (a) which before 21st November 1975 a court has ordered to be wound up; or
    - (b) which before that day has passed a resolution for voluntary winding up; or
    - (c) of whose property a receiver has been appointed before that date; and
  - “securities”, in relation to a company, does not include any security forming part of the loan capital of the company, the terms of which enable it to be redeemed, either without notice or upon not more than one year’s notice, at a price not exceeding the nominal amount of the security together with any outstanding interest, at any time after the creation of the security or the expiry of a period not exceeding one year after the creation of the security.

**Modifications etc. (not altering text)**

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| C1 | 29.4.1977 appointed under s. 56(1) as aircraft industry vesting date by <a href="#">S.I. 1977/539, art. 2</a>    |
| C2 | 1.7.1977 appointed under s. 56(1) as shipbuilding industry vesting date by <a href="#">S.I. 1977/540, art. 2</a> |

**20      Vesting in acquired company of certain assets of privately-owned companies in same group.**

- (1) Subject to subsection (5) below, where immediately before the date of transfer an acquired company was the wholly owned subsidiary of the person from whom it was acquired, any property, rights or liabilities to which this subsection applies shall vest in the acquired company on the date of transfer of the company.
- (2) The property, rights and liabilities to which subsection (1) above applies are any property, rights and liabilities of an associated privately owned company which—
  - (a) satisfy a vesting condition for the purposes of this section, and
  - (b) would remain vested in the associated privately owned company but for this section.
- (3) Property, rights and liabilities satisfy a vesting condition for the purposes of this section if—
  - (a) they are wholly appurtenant to the undertaking carried on by the acquired company, or
  - (b) they are mainly appurtenant to property, rights or liabilities which are wholly appurtenant to that undertaking, or

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- (c) they cannot reasonably be severed from property, rights or liabilities of the acquired company or property, rights or liabilities such as are mentioned in paragraph (a) or (b) above.
- (4) In the application of subsections (1) to (3) above in a case where the acquired company fulfils the criteria in paragraph 2 of Part II of Schedule 2 to this Act, the references in subsection (3) above to the undertaking carried on by the acquired company shall be construed as references to the shipbuilding undertaking carried on at a shipyard or other works in which the acquired company had an interest in possession on 31st July 1974.
- (5) The rights and liabilities under any agreement for the rendering of personal services by any person shall be vested in the acquired company by virtue of this section if, and only if, immediately before the date of transfer, his employment under the agreement was wholly or mainly for the purposes of the undertaking carried on as mentioned in subsection (3) or, as the case may require, subsection (4) above.
- (6) The provisions of Schedule 3 to this Act shall have effect for supplementing the preceding provisions of this section.
- (7) In this section and Schedule 3 to this Act—
  - “associated privately owned company” means any privately owned company which immediately before the date of transfer was the holding company of an acquired company or the wholly owned subsidiary of a company whose securities do not vest but which was the holding company of an acquired company; and
  - “privately owned company” means a company whose securities do not vest, and which is not a subsidiary of a company whose securities vest, in either of the Corporations by virtue of this Part of this Act.

## 21 Certain loans from associated persons to be treated as securities.

- (1) In any case where—
  - (a) immediately before the date of transfer, an acquired company or the wholly owned subsidiary of an acquired company owes a debt to an associated person, and
  - (b) it appears to the Secretary of State that the circumstances in which and the purposes for which the debt was incurred were of such a nature that, had the acquired company or its wholly owned subsidiary sought to borrow the money in question from a person who was not an associated person, the terms of the provision of that money would have been likely, assuming the debtor not to be the subsidiary of any company, to be such as to require the issue to the lender by the debtor of securities,

the Secretary of State may, at any time within the period of 9 months beginning on the date of transfer, serve a notice on the person to whom the debt is owed stating that, in the opinion of the Secretary of State, the right to repayment of the whole or part of the debt should be treated as a security of the acquired company for the purposes of vesting and compensation.

- (2) Subject to subsection (5) below, where a notice is served under subsection (1) above, no person—
  - (a) shall be entitled to exercise any right to repayment of the debt in question, or
  - (b) shall be subject to any obligation to repay it.

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- (3) Where a notice has been served under subsection (1) above, the questions—
  - (a) whether the right to repayment of the whole or part of the debt ought to be treated for the purposes of vesting and compensation as a security of the acquired company by whom or by whose wholly owned subsidiary the debt is owed, and
  - (b) on what date and terms and for what consideration any such security should be treated for those purposes as having been issued by the acquired company, shall be settled by agreement between the Secretary of State and the person on whom the notice was served within the period of 3 months beginning on the day on which he was so served or, in default of such agreement, by arbitration under this Act.
- (4) If the arbitration tribunal are satisfied that the right to repayment of the whole or any part of the debt in question ought to be treated as a security of the acquired company for the purposes of vesting and compensation, they shall confirm the Secretary of State's notice under subsection (1) above with any necessary amendments but otherwise shall revoke it.
- (5) If, by reason—
  - (a) of an agreement under subsection (3) above, or
  - (b) of the revocation or amendment of a notice under subsection (4) above, the right to repayment of the debt or of any part of it does not fall to be treated as a security for the purposes of vesting and compensation, subsection (2) above shall to that extent cease to apply on the date of the agreement or the date when the notice is revoked or amended.
- (6) If—
  - (a) the parties have agreed under subsection (3) above that the right to repayment of the debt or of any part of it ought to be treated as a security, or
  - (b) the arbitration tribunal confirm the Secretary of State's notice as respects the right to repayment of the debt or any part of it,
 the right which falls to be treated as a security shall vest in the relevant Corporation on the operative date of the notice as a security of the acquired company issued to the creditor on such date and terms and for such consideration as have been determined by agreement or arbitration under subsection (3) above and be treated as such a security—
  - (i) for the purposes of section 19 above, and
  - (ii) subject to subsection (7) below, for the purposes of any provision of this Part of this Act relating to compensation for securities or the issue of securities.
- (7) A right to repayment shall not be so treated for the purpose of any provision of this Part of this Act relating to compensation under which it is necessary to determine, at any time before the operative date of the notice,—
  - (a) the persons who are the holders of, or of any class of, securities of the acquired company concerned; or
  - (b) whether any matter was agreed to by a majority or any particular majority of any such persons.
- (8) Where a matter is referred to the arbitration tribunal under subsection (3) above, the tribunal shall, in determining the issue before them, have regard to all factors which appear to them to be relevant and, in particular, to—
  - (a) the structure of the capital of the acquired company;
  - (b) the nature and amounts of that company's assets and liabilities; and

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- (c) the length of time over which the debt in question has been outstanding on the date of transfer.
- (9) If the terms on which a security is to be treated under this section as having been issued include any charge on assets of the acquired company, subsection (5) of section 38 below shall not apply for the purpose of determining the base value of that security.
- (10) In this section—
  - “operative date”, in relation to a notice means—
    - (a) where paragraph (a) of subsection (6) above applies, the date of the agreement,
    - (b) where paragraph (b) applies, the date of confirmation of the notice by the arbitration tribunal; and
  - “securities” has the same meaning as in section 19 above.

## **22 Determination of rights to require the issue of securities or to nominate directors.**

- (1) If, after the date of transfer, a person other than a Corporation or a company which comes into public ownership would, apart from this section, have—
  - (a) a right to require the issue of, or to subscribe for or purchase or otherwise acquire, any securities of such a company, or
  - (b) a right to appoint any person, or to be appointed, otherwise than by virtue of an agreement for rendering personal services, to the office of director of such a company,that right shall cease as from the date of transfer.
- (2) Where the right referred to in subsection (1) above was conferred on a person as an incident of—
  - (a) an agreement conferring other rights on that person, or
  - (b) the holding of any securities of a company,nothing in that subsection shall affect the continued existence of any other rights or liabilities under that agreement or, as the case may be, under the terms upon which those securities were held.
- (3) Where any person suffers loss by reason of the determination, by virtue of this section, of any such right relating to a company as is referred to in subsection (1) above, being a right conferred by an agreement made, or by virtue of the holding of securities issued, before the initial date, or on or after that date with the approval in writing of the Secretary of State, he shall be entitled to claim from the relevant Corporation compensation under this section in respect of that loss.
- (4) Any question whether any person has a right to claim compensation under this section or as to the amount of that compensation shall, in default of agreement, be determined by arbitration under this Act; but no claim for compensation under this section shall be made after the expiry of the period of 12 months beginning on the date of transfer of the company concerned.

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