

*Status: Point in time view as at 06/01/1997.*

*Changes to legislation: There are currently no known outstanding effects for the Companies Act 1985, SCHEDULE 2. (See end of Document for details)*

## SCHEDULES

### <sup>F1</sup>SCHEDULE 2

#### INTERPRETATION OF REFERENCES TO “BENEFICIAL INTEREST”

##### Textual Amendments

- F1** Schs. 1-15B repealed (prosp.) by Companies Act 2006 (c. 46), ss. 1295, 1300, Sch. 16 and the repeal being partly in force, as to which see individual provisions

### [<sup>F2</sup>PART I

#### REFERENCES IN SECTIONS 23, 145, 146 AND 148]

##### Textual Amendments

- F2** Sch 2: heading inserted (subject to the transitional and saving provisions in S.I. 1990/355, arts. 6–9) by Companies Act 1989 (c. 40, SIF 27), ss. 23, 213(2), Sch. 10 para. 18(2)

#### *Residual interests under pension and employees’ share schemes*

- 1 (1) Where shares in a company are held on trust for the purposes of a pension scheme or an employees’ share scheme, there is to be disregarded any residual interest which has not vested in possession, being an interest of the company or, [<sup>F3</sup>as this paragraph applies for the purposes of section 23(2)],
- ..... <sup>F4</sup>  
..... <sup>F4</sup>
- of any subsidiary of the company.
- (2) In this paragraph, “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 sub-paragraph (2), references to a right include a right dependent on the exercise of a discretion vested by the scheme in the trustee or any other person; and references

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to liabilities arising under a scheme include liabilities that have resulted or may result from the exercise of any such discretion.

- (4) For purposes of this paragraph, a residual interest vests in possession—
- (a) in a case within (a) or sub-paragraph (2), on the occurrence of the event there mentioned, whether or not the amount of the property receivable pursuant to the right mentioned in that sub-paragraph is then ascertained, and
  - (b) in a case within (b) or (c) of that sub-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.
- (5) ..... <sup>F5</sup>

#### Textual Amendments

- F3** Words substituted by [Companies Act 1989 \(c. 40, SIF 27\)](#), **ss. 129(2)**, 213(2)
- F4** Words repealed (subject to the transitional and saving provisions in [S.I. 1990/355](#), **arts. 5–9**) by [Companies Act 1989 \(c. 40, SIF 27\)](#), **ss. 23, 212, 213(2)**, [Sch. 10 para. 18\(3\)\(a\)](#), **Sch. 24**
- F5** [Sch. 2 para. 1\(5\)](#) repealed (subject to the transitional and saving provisions in [S.I. 1989/355](#), **arts. 5–9**) by [Companies Act 1989 \(c. 40, SIF 27\)](#), **ss. 23, 212, 213(2)**, [Sch. 10 para. 18\(3\)\(b\)](#), **Sch. 24**

- 2 (1) The following has effect as regards the operation of sections . . . <sup>F6</sup> 144, 145 and 146 to 149 in cases where a residual interest vests in possession.
- (2) ..... <sup>F7</sup>
- (3) Where by virtue of paragraph 1 of this Schedule any shares are exempt from section 144 or 145 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, those sections apply to the shares as if they had been issued or acquired on the date on which that interest vests in possession.
- (4) Where by virtue of paragraph 1 any shares are exempt from sections 146 to 149 at the time when they are acquired but the residual interest in question vests in possession before they are disposed of, those sections apply to the shares as if they had been acquired on the date on which that interest vests in possession.
- (5) The above sub-paragraphs apply irrespective of the date on which the residual interest vests or vested in possession; but where the <sup>M1</sup>date on which it vested was before 26th July 1983 (the passing of the Companies (Beneficial Interests) Act 1983), they have effect as if the vesting had occurred on that date.

#### Textual Amendments

- F6** “23,” repealed (subject to the transitional and saving provisions in [S.I. 1990/355](#), as mentioned in art. 5) by [Companies Act 1989 \(c. 40, SIF 27\)](#), **ss. 212, 213(2)**, **Sch. 24**
- F7** [Sch. 2 para. 2\(2\)](#) repealed (subject to the transitional and saving provisions as mentioned in [S.I. 1990/355](#), **art. 5**) by [Companies Act 1989 \(c. 40, SIF 27\)](#), **ss. 212, 213(2)**, **Sch. 24**

#### Marginal Citations

- M1** 1983 c. 50.

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*Employer’s charges and other rights of recovery*

- 3 (1) Where shares in a company are held on trust, there are to be disregarded—
- (a) if the trust is for the purposes of a pension scheme, any such rights as are mentioned in the following sub-paragraph, and
  - (b) if the trust is for the purposes of an employees’ share scheme, any such rights as are mentioned in (a) of the sub-paragraph, being rights of the company or, <sup>F8</sup>as this paragraph applies for the purposes of section 23(2)] . . . <sup>F9</sup> of any subsidiary of the company.
- (2) The rights referred to 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, an amount that can be recovered or retained under <sup>F10</sup>section 61 of the Pension Schemes Act 1993 (deduction of contributions equivalent premium from refund of scheme contributions)] or otherwise as reimbursement or partial reimbursement for any state scheme premium paid in connection with the scheme under Part III of that Act.
- (3) . . . . . <sup>F11</sup>

**Textual Amendments**

- F8** Words substituted by [Companies Act 1989 \(c. 40, SIF 27\)](#), **ss. 129(2)**, 213(2)
- F9** Words repealed (subject to the transitional and saving provisions in [S.I. 1990/355](#), **arts. 5–9**) by [Companies Act 1989 \(c. 40, SIF 27\)](#), **ss. 23, 212, 213(2)**, [Sch. 10 para. 18\(4\)\(a\)](#), **Sch. 24**
- F10** Words in [Sch. 2 para. 3\(2\)\(b\)](#) substituted (7.2.1994) by [1993 c. 48, s. 190](#), **Sch. 8 para. 16(a)**; [S.I. 1994/86](#), **art. 2**
- F11** [Sch. 2 para. 3\(3\)](#) repealed (subject to the transitional and saving provisions in [S.I. 1990/355](#), **arts. 5–9**) by [Companies Act 1989 \(c. 40, SIF 27\)](#), **ss. 23, 212, 213(2)**, [Sch. 10 para. 18\(4\)\(b\)](#), **Sch. 24**

*Trustee’s right to expenses, remuneration, indemnity, etc.*

- 4 (1) Where a company is a trustee . . . <sup>F12</sup>, there are to 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) <sup>F13</sup>As this paragraph applies for the purposes of section 23(2)] . . . <sup>F14</sup>, sub-paragraph (1) has effect as if references to a company included any body corporate which is a subsidiary of a company.
- <sup>F15</sup>(3) As respects sections 145, 146 and 148, sub-paragraph (1) above applies where a company is a personal representative as it applies where a company is a trustee.]

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#### Textual Amendments

- F12** Words repealed (subject to the transitional and saving provisions in S.I. 1990/355, arts. 5–9) by Companies Act 1989 (c. 40, SIF 27), ss. 23, 212, 213(2), Sch. 10 para. 18(5)(a), Sch. 24
- F13** Words substituted by Companies Act 1989 (c. 40, SIF 27), ss. 129(2), 213(2)
- F14** Words repealed (subject to the transitional and saving provisions in S.I. 1990/355, arts. 5–9) by Companies Act 1989 (c. 40, SIF 27), ss. 23, 212, 213(2), Sch. 10 para. 18(5)(b), Sch. 24
- F15** Sch. 2 para 4(3) added (subject to the transitional and saving provisions in S.I. 1990/355, arts. 6–9) by Companies Act 1989 (c. 40, SIF 27), ss. 23, 213(2), Sch. 10 para. 18(5)

#### *Supplementary*

- 5 (1) The following applies for the interpretation of [<sup>F16</sup>this Part of this Schedule].
- (2) “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.
- (3) In sub-paragraph (2) of this paragraph, and in paragraph 3(2)(a), “employer” and “employee” are to be read as if a director of a company were employed by it.

#### Textual Amendments

- F16** Words substituted by Companies Act 1989 (c. 40, SIF 27), ss. 23, 213(2), Sch. 10 para. 18(6) (subject to the transitional and saving provisions in S.I. 1990/355, arts. 6–9, Sch. 3)

### [<sup>F17</sup>PART II

#### REFERENCES IN SCHEDULE 5]

#### Textual Amendments

- F17** Sch. 2 paras. 6–9 inserted (subject to the transitional and saving provisions in S.I. 1990/355, arts. 6–9, Sch. 3) by Companies Act 1989 (c. 40, SIF 27), ss. 23, 213(2), Sch. 10 para. 18(7)

#### *Residual interests under pension and employees’ share schemes*

- 6 (1) Where shares in an undertaking 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 undertaking or any of its subsidiary undertakings.
- (2) In this paragraph a “residual interest” means a right of the undertaking in question (the “residual beneficiary”) to receive any of the trust property in the event of—

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- (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 sub-paragraph (2) references to a right include 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 liabilities that have resulted or may result from the exercise of any such discretion.
- (4) For the purposes of this paragraph a residual interest vests in possession—
- (a) in a case within sub-paragraph (2)(a), on the occurrence of the event there mentioned, whether or not the amount of the property receivable pursuant to the right mentioned in that sub-paragraph is then ascertained;
  - (b) in a case within sub-paragraph (2)(b) or (c), when the residual beneficiary becomes entitled to require the trustee to transfer to that beneficiary any of the property receivable pursuant to that right.

*[<sup>F18</sup> Employer’s charges and other rights of recovery]*

#### Textual Amendments

**F18** Sch. 2 paras. 6–9 inserted (subject to the transitional and saving provisions in S.I. 1990/355, arts. 6–9, Sch. 3) by Companies Act 1989 (c. 40, SIF 27), ss. 23, 213(2), Sch. 10 para. 18(7)

- 7 (1) Where shares in an undertaking 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 sub-paragraph (2) below;
  - (b) if the trust is for the purposes of an employee’s share scheme, any such rights as are mentioned in paragraph (a) of that sub-paragraph,
- being rights of the undertaking or any of its subsidiary undertakings.
- (2) The rights referred to 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, an amount that can be recovered or retained under [<sup>F19</sup>section 61 of the Pension Schemes Act 1993 (deduction of contributions equivalent premium from refund of scheme contributions)] or otherwise as reimbursement or partial reimbursement for any state scheme premium paid in connection with the scheme under [<sup>F19</sup>Chapter III of Part III] of that Act.

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**Textual Amendments**

**F19** Words in Sch. 2 para. 7(2)(b) substituted (7.2.1994) by 1993 c. 48, s. 190, Sch. 8 para. 16(b); S.I. 1994/86, art. 2

*[<sup>F20</sup> Trustee’s right to expenses, remuneration, indemnity, &c.]*

**Textual Amendments**

**F20** Sch. 2 paras. 6–9 inserted (subject to the transitional and saving provisions in S.I. 1990/355, arts. 6–9, Sch. 3) by Companies Act 1989 (c. 40, SIF 27), ss. 23, 213(2), Sch. 10 para. 18(7)

- 8 Where an undertaking is a trustee, there shall be disregarded any rights which the undertaking 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 undertaking in the performance of its duties as trustee.

*[<sup>F21</sup> Supplementary]*

**Textual Amendments**

**F21** Sch. 2 paras. 6–9 inserted (subject to the transitional and saving provisions in S.I. 1990/355, arts. 6–9, Sch. 3) by Companies Act 1989 (c. 40, SIF 27), ss. 23, 213(2), Sch. 10 para. 18(7)

- 9 (1) The following applies for the interpretation of this Part of this Schedule.
- (2) “Undertaking”, and “shares” in relation to an undertaking, have the same meaning as in Part VII.
- (3) This Part of this Schedule applies in relation to debentures as it applies in relation to shares.
- (4) “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.
- (5) In sub-paragraph (4) of this paragraph and in paragraph 7(2) “employee” and “employer” shall be read as if a director of an undertaking were employed by it.

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