



# Companies Act 1985

## 1985 CHAPTER 6

### PART VI

#### DISCLOSURE OF INTERESTS IN SHARES

##### *Individual and group acquisitions*

#### [<sup>F1</sup>209] **Interests to be disregarded.**

- (1) Subject to subsections (5) and (6), the following interests in shares are disregarded for the purposes of sections 198 to 202—
  - (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 subsection (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<sup>M1</sup>;
  - (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 subsection (4);
  - (g) an interest which a person has by virtue of his being a personal representative of any estate;

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- (h) an interest which a person has—
- (i) by virtue of his being a trustee of an authorised unit trust scheme, <sup>F2</sup> . . .
  - (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) [<sup>F3</sup> or.
  - [ by virtue of his being a depository, within the meaning of the Open-<sup>F4</sup>(iii) Ended Investment Companies Regulations 2001, of an open-ended investment company.]]

[ An interest in shares is an exempt security interest for the purposes of subsection (1) <sup>F5</sup>(2) (c) if the condition mentioned in subsection (2A) is satisfied and it is held by—

- (a) a person who has permission under Part 4 of the Financial Services and Markets Act 2000 to accept deposits;
- (b) an EEA firm of the kind mentioned in paragraph 5(b) of Schedule 3 to that Act [<sup>F6</sup>which falls within article 1(1)(a) of the banking consolidation directive (within the meaning of that Schedule)];
- (c) a person authorised under the law of a member State other than the United Kingdom to accept deposits who—
  - (i) would not qualify for authorisation under paragraph 12 of Schedule 3 to that Act; and
  - (ii) would require permission under another provision of that Act to accept such deposits in the United Kingdom;
- (d) an authorised insurance undertaking;
- (e) 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 a relevant investment exchange, whether as a member or otherwise;
- (f) a relevant stock exchange;
- (g) a relevant investment exchange;
- (h) a recognised clearing house;
- (i) the Bank of England; or
- (j) the central bank of a member State other than the United Kingdom.

(2A) The condition is that the interest in the shares must be held by way of security only for the purposes of a transaction entered into in the ordinary course of his or its business as a person or other body falling within any of paragraphs (a) to (j) of subsection (2).

(2B) Paragraphs (a) to (c) of subsection (2) 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.

(2C) But paragraph (a) of subsection (2) does not include—

- (a) a building society incorporated, or deemed to be incorporated, under the Building Societies Act 1986; or
- (b) a credit union, within the meaning of the Credit Unions Act 1979 of the Credit Unions (Northern Ireland) Order 1985.]

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

- (a) “takeover offer” has the same meaning as in Part XIII 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

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offer is made as is specified in or determined in accordance with the terms of the takeover offer.

- (4) For the purposes of subsection (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 paragraph of subsection (1) (except for paragraph (c)) is disregarded only if the person referred to in the relevant paragraph or in subsection (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 (c) of subsection (1), an interest of a person referred to in subsection (2) is disregarded only if that person—
- (a) is not entitled (within the meaning of subsection (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 subsections (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 sections 198 to 202—
- (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 subsection (8) a person is a market maker in securities or derivatives if—
- (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.

[ Where—

- <sup>F7</sup>(9A) (a) in pursuance of arrangements made with the operator of a relevant system—
- (i) securities of a particular aggregate value are on any day transferred by means of that system from a person (“A”) to another person (“B”);
  - (ii) the securities are of kinds and amounts determined by the operator-system; and

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- (iii) the securities, or securities of the same kinds and amounts, are on the following day transferred by means of the relevant system from B to A; and
  - (b) the securities comprise any shares of a company, any interest of B in those shares is also disregarded for the purposes of sections 198 to 202.
- (9B) For the purposes of subsection (9A)—
  - (a) any day which, in England and Wales, is a non-business day for the purposes of the Bills of Exchange Act 1882 is disregarded; and
  - (b) expressions which are used in the [F<sup>8</sup>Uncertificated Securities Regulations 2001] have the same meanings as in those Regulations.]
- (10) The following interests in shares in a public company which is not listed are also disregarded for the purposes of sections 198 to 202—
  - (a) an interest which subsists by virtue of—
    - (i) a scheme made under section 24 or 25 of the Charities Act 1993<sup>M2</sup>, section 25 of the Charities Act (Northern Ireland) 1964<sup>M3</sup>, section 11 of the Trustee Investments Act 1961<sup>M4</sup> or section 42 of the Administration of Justice Act 1982<sup>M5</sup>, or
    - (ii) the scheme set out in the Schedule to the Church Funds Investment Measure 1958<sup>M6</sup>;
  - (b) an interest of the Church of Scotland General Trustees or of the Church of Scotland Trust in shares held by them or of any other person in shares held by those Trustees or that Trust otherwise than as simple trustees;
  - (c) 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 subsection (11) are satisfied;
  - F<sup>9</sup>(d) .....
  - (e) an interest of the Accountant General of the Supreme Court in shares held by him;
  - (f) an interest of the Public Trustee;
  - (g) an interest of the Probate Judge subsisting by virtue of section 3 of the Administration of Estates Act (Northern Ireland) 1955<sup>M7</sup>.
- (11) The conditions referred to in subsection (10)(c) are, in relation to a settlement—
  - (a) that it is irrevocable, and
  - (b) that the settlor (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 section 208(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.
- (13) In the application of subsection (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”.]

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### Textual Amendments

- F1** S. 209 substituted (18.9.1993) by S.I. 1993/1819, **reg. 8**
- F2** Word in s. 209(1)(h)(i) omitted (6.1.1997) by virtue of S.I. 1996/2827, **reg. 75, Sch. 8 Pt. I para. 6**
- F3** S. 209(1)(h)(iii) and the word "or" immediately preceding it inserted (6.1.1997) by S.I. 1996/2827, **reg. 75, Sch. 8 Pt. I para. 6**
- F4** S. 209(1)(h)(iii) substituted (1.12.2001) by S.I. 2001/1228, **regs. 1(2)(3), 84, Sch. 7 para. 5; S.I. 2001/3538, art. 2(1)**
- F5** S. 209(2)-(2C) substituted (1.12.2001) for s. 209(2) by S.I. 2001/3649, **arts. 1, 9**
- F6** Words in s. 209(2)(b) inserted (27.4.2002) by **The Electronic Money (Miscellaneous Amendments) Regulations 2002 (S.I. 2002/765), reg. 2(1)**
- F7** S. 209(9A)(9B) inserted (15.7.1996) by S.I. 1996/1560, **reg. 2**
- F8** Words in s. 209(9B)(b) substituted (26.11.2001) by S.I. 2001/3755, **reg. 51, Sch. 7 para. 9** (with **regs. 39, 45**)
- F9** S. 209(10)(d) repealed (1.7.1995) by 1994 c. 36, s. 21(2), **Sch. 2** (with s. 20); S.I. 1995/1317, **art. 2**

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### Modifications etc. (not altering text)

- C1** S. 209(10) modified (1.1.1995 in accordance with **Sch. para. 3** of the amending Act) by 1994 c. V, s. 1, **Sch. para. 42(1)**

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### Marginal Citations

- M1** 1988 c.1.  
**M2** 1993 c.10.  
**M3** 1964 c.33 (N.I.).  
**M4** 1961 c.62.  
**M5** 1982 c.53.  
**M6** 1958 No.1.  
**M7** 1955 c.24 (N.I.).

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