



# Companies Act 1985

## 1985 CHAPTER 6

### PART XXVI

#### INTERPRETATION

#### [<sup>F1</sup>736A Provisions supplementing s. 736.

- (1) The provisions of this section explain expressions used in section 736 and otherwise supplement that section.
- (2) In section 736(1)(a) and (c) the references to the voting rights in a company are to the rights conferred on shareholders in respect of their shares or, in the case of a company not having a share capital, on members, to vote at general meetings of the company on all, or substantially all, matters.
- (3) In section 736(1)(b) the reference to the right to appoint or remove a majority of the board of directors is to the right to appoint or remove directors holding a majority of the voting rights at meetings of the board on all, or substantially all, matters; and for the purposes of that provision—
  - (a) a company shall be treated as having the right to appoint to a directorship if—
    - (i) a person's appointment to it follows necessarily from his appointment as director of the company, or
    - (ii) the directorship is held by the company itself; and
  - (b) a right to appoint or remove which is exercisable only with the consent or concurrence of another person shall be left out of account unless no other person has a right to appoint or, as the case may be, remove in relation to that directorship.
- (4) Rights which are exercisable only in certain circumstances shall be taken into account only—
  - (a) when the circumstances have arisen, and for so long as they continue to obtain, or
  - (b) when the circumstances are within the control of the person having the rights;

*Status: Point in time view as at 08/11/2006. This version of this provision has been superseded.*

*Changes to legislation: Companies Act 1985, Section 736A is up to date with all changes known to be in force on or before 27 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

and rights which are normally exercisable but are temporarily incapable of exercise shall continue to be taken into account.

- (5) Rights held by a person in a fiduciary capacity shall be treated as not held by him.
- (6) Rights held by a person as nominee for another shall be treated as held by the other; and rights shall be regarded as held as nominee for another if they are exercisable only on his instructions or with his consent or concurrence.
- (7) Rights attached to shares held by way of security shall be treated as held by the person providing the security—
- (a) where apart from the right to exercise them for the purpose of preserving the value of the security, or of realising it, the rights are exercisable only in accordance with his instructions;
  - (b) where the shares are held in connection with the granting of loans as part of normal business activities and apart from the right to exercise them for the purpose of preserving the value of the security, or of realising it, the rights are exercisable only in his interests.
- (8) Rights shall be treated as held by a company if they are held by any of its subsidiaries; and nothing in subsection (6) or (7) shall be construed as requiring rights held by a company to be treated as held by any of its subsidiaries.
- (9) For the purposes of subsection (7) rights shall be treated as being exercisable in accordance with the instructions or in the interests of a company if they are exercisable in accordance with the instructions of or, as the case may be, in the interests of—
- (a) any subsidiary or holding company of that company, or
  - (b) any subsidiary of a holding company of that company.
- (10) The voting rights in a company shall be reduced by any rights held by the company itself.
- (11) References in any provision of subsections (5) to (10) to rights held by a person include rights falling to be treated as held by him by virtue of any other provision of those subsections but not rights which by virtue of any such provision are to be treated as not held by him.
- (12) In this section “company” includes any body corporate.]

#### Textual Amendments

- F1** S. 736, 736A substituted (subject to the transitional provisions in S.I. 1990/1392, **art. 6**, and see also next two following entries) by **Companies Act 1989 (c. 40, SIF 27)**, **ss. 144(1), 213(2)**

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

- C1** S. 736A applied (with modifications) (6.4.2001) by S.I. 2001/1090, **reg. 4, Sch. 2 Pt. I**
- C2** S. 736A applied (20.6.2003) by **Enterprise Act 2002 (c. 40)**, **ss. {79(9)}, 279**; S.I. 2003/1397, **art. 2, Sch.**  
S. 736A applied (24.8.2004 for certain purposes and 5.10.2004 in so far as not already in force) by **Energy Act 2004 (c. 20)**, **ss. 37(5), 198(2)**; S.I. 2004/2184, **art. 2(1), Sch. 1**; S.I. 2004/2575, **art. 2(1), Sch. 1**
- C3** S. 736A(2)–(4) applied by **Electricity Act 1989 (c. 29, SIF 44:1)**, **ss. 104, 105, 112(3), Sch. 14 para. 4, Sch. 15 para. 4(2), Sch. 17 para. 35(1)**

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- C4** S. 736A(3)–(12) modified (E.W.) (16.1.1990 to the extent mentioned in S.I. 1990/2445, **art. 4** otherwise 7.10.1993) by Local Government and Housing Act 1989 (c. 42, SIF 81:1), **s. 68(4)**; S.I. 1993/2410, **art.3**

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