



# Broadcasting Act 1990

## 1990 CHAPTER 42

### PART IV

#### TRANSFER OF UNDERTAKINGS OF IBA AND CABLE AUTHORITY

##### *Provisions relating to nominated company*

#### **135 Initial Government holding in nominated company.**

- (1) As a consequence of the vesting in the nominated company, in accordance with the scheme made under Schedule 9 to this Act, of property, rights and liabilities of the IBA, that company shall issue to the Secretary of State such securities of the company as he may from time to time direct.
- (2) The Secretary of State shall not give a direction under subsection (1) at a time when the nominated company has ceased to be wholly owned by the Crown.
- (3) Securities required to be issued in pursuance of this section shall be issued at such time or times, and (subject to subsection (4)) on such terms, as the Secretary of State may direct.
- (4) Any shares issued in pursuance of this section—
  - (a) shall be of such nominal value as the Secretary of State may direct; and
  - (b) shall be issued as fully paid and treated for the purposes of [F1the Companies Act 2006] as if they had been paid up by virtue of the payment to the nominated company of their nominal value in cash.
- (5) The Secretary of State shall not exercise any power conferred on him by this section, or dispose of any securities issued to him in pursuance of this section, without the consent of the Treasury.
- (6) Without prejudice to the generality of section 198(2), any dividends or other sums received by the Secretary of State in right of or on the disposal of any securities acquired by virtue of this section shall be paid into the Consolidated Fund.

*Status: Point in time view as at 01/10/2009.*

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### Textual Amendments

- F1** Words in s. 135(4)(b) substituted (1.10.2009) by [The Companies Act 2006 \(Consequential Amendments, Transitional Provisions and Savings\) Order 2009 \(S.I. 2009/1941\)](#), art. 1(2), [Sch. 1 para. 119\(2\)](#) (with art. 10)

## 136 Exercise of functions through nominees.

- (1) The Secretary of State may, with the consent of the Treasury, appoint any person to act as his nominee, or one of his nominees, for the purposes of section 135; but any issue of securities to any such nominee in pursuance of that section shall be effected in accordance with such directions as may be given from time to time by the Secretary of State with the consent of the Treasury.
- (2) Any person holding any securities as a nominee of the Secretary of State by virtue of subsection (1) shall hold and deal with them (or any of them) on such terms and in such manner as the Secretary of State may direct with the consent of the Treasury.

## 137 Target investment limit for Government shareholding in nominated company.

- (1) As soon as he considers it expedient, and in any case not later than six months after the nominated company ceases to be wholly owned by the Crown, the Secretary of State shall by order fix a target investment limit in relation to the aggregate of the shares for the time being held in the company, under or by virtue of any enactment, by any Minister of the Crown or any nominee of his (“the Government shareholding”).
- (2) The target investment limit for the Government shareholding in the company shall be expressed as a proportion of the voting rights which are exercisable in all circumstances at general meetings of the company (“the ordinary voting rights”).
- (3) The first target investment limit fixed under this section for the Government shareholding in the company shall be equal to the proportion of the ordinary voting rights which is in fact carried by the Government shareholding in the company at the time when the order fixing the limit is made.
- (4) The Secretary of State may from time to time by order fix a new target investment limit for the Government shareholding in the company in place of the one previously in force under this section; but—
  - (a) any new limit must be lower than the one it replaces; and
  - (b) an order under this section may only be revoked by an order fixing a new limit.
- (5) It shall be the duty of a Minister of the Crown so to exercise—
  - (a) any power to dispose of any shares held in the company under or by virtue of any enactment, and
  - (b) his power to give directions to any nominee of his,
 as to secure that the Government shareholding in the company does not carry a proportion of the ordinary voting rights exceeding any target investment limit for the time being in force under this section.
- (6) Notwithstanding subsection (5), a Minister of the Crown may take up, or direct any nominee of his to take up, any rights for the time being available to him, or to the nominee, as an existing holder of shares or other securities of the company; but if,

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as a result, the proportion of the ordinary voting rights carried by the Government shareholding in the company at any time exceeds the target investment limit for the time being in force under this section, it shall be the duty of that Minister to comply with subsection (5) as soon after that time as is reasonably practicable.

- (7) References in this section to a Minister of the Crown include references to the Treasury; and for the purposes of this section the temporary suspension of any of the ordinary voting rights shall be disregarded.
- (8) Any order under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.

### **138 Reserves of nominated company.**

- (1) If the Secretary of State so directs at any time before the nominated company ceases to be wholly owned by the Crown, such sums as may be specified in the direction shall, instead of being applied in any other way, be carried by the company to a reserve (“the statutory reserve”).
- (2) The statutory reserve may only be applied by the nominated company in paying up unissued shares of the company to be allotted to members of the company as fully paid bonus shares.
- (3) Notwithstanding subsection (2), the statutory reserve shall not count as an undistributable reserve of the nominated company for the purposes of [F<sup>2</sup>section 831(4)(d) of the Companies Act 2006] (restriction on distribution of assets); but, for the purpose of determining under that section whether the nominated company may make a distribution at any time, any amount for the time being standing to the credit of the statutory reserve shall be treated for the purposes of [F<sup>3</sup>section 831(4)(c)] as if it were unrealised profits of the company.

#### **Textual Amendments**

- F2** Words in s. 138(3) substituted (6.4.2008) by [The Companies Act 2006 \(Consequential Amendments etc\) Order 2008 \(S.I. 2008/948\)](#), art. 2(2), [Sch. 1 para. 175\(a\)](#) (with arts. 6, 11, 12)
- F3** Words in s. 138(3) substituted (6.4.2008) by [The Companies Act 2006 \(Consequential Amendments etc\) Order 2008 \(S.I. 2008/948\)](#), art. 2(2), [Sch. 1 para. 175\(b\)](#) (with arts. 6, 11, 12)

### **139 Loans by Secretary of State to nominated company.**

- (1) As from the transfer date the Secretary of State may, with the consent of the Treasury, make loans to the nominated company out of money provided by Parliament; but no loan shall be made by him under this section at a time when the company has ceased to be wholly owned by the Crown.
- (2) The aggregate amount outstanding in respect of the principal of loans made by the Secretary of State under this section shall not exceed the limit specified in subsection (3).
- (3) That limit is £20 million or such greater sum, not exceeding £100 million, as the Secretary of State may from time to time specify by order made with the consent of the Treasury.

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- (4) Any loan made by the Secretary of State under this section shall be repaid to him at such times and by such methods, and interest on the loan shall be paid to him at such times and at such rates, as he may from time to time direct with the consent of the Treasury.
- (5) An order shall not be made by the Secretary of State under this section unless a draft of it has been laid before and approved by a resolution of the House of Commons.

#### **140 Temporary restriction on borrowings of nominated company.**

- (1) The aggregate amount outstanding in respect of the principal of any relevant borrowing of the nominated company shall not, at any time when the company is wholly owned by the Crown, exceed such sum as the Secretary of State may determine with the consent of the Treasury.
- (2) In subsection (1) “relevant borrowing”, in relation to the nominated company, means—
  - (a) loans made to that company or to any subsidiary of that company, other than—
    - (i) loans so made by any such subsidiary or (as the case may be) by that company, and
    - (ii) loans made to that company by the Secretary of State under section 139; and
  - (b) loans which are to be treated as having been made to that company, including loans which are to be treated as having been so made by virtue of the issue of debentures in pursuance of section 135.

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