



# British Technology Group Act 1991

## 1991 CHAPTER 66

### *Vesting of property etc. of NRDC and NEB in a successor company*

#### **1 Vesting of property etc. of NRDC and NEB in a successor company**

- (1) On such day as the Secretary of State may by order appoint all the property, rights and liabilities to which—
  - (a) the National Research Development Corporation; or
  - (b) the National Enterprise Board,was entitled or subject immediately before that day shall, subject to section 2 below, become by virtue of this section property, rights and liabilities of a company nominated for the purposes of this section by the Secretary of State; and references in this Act to the appointed day or to the successor company are references to the day so appointed or to the company so nominated respectively.
- (2) The Secretary of State may, after consulting the Corporation and Board mentioned in subsection (1) above (in this Act referred to as “the Corporation” and “the Board”), by order nominate for the purposes of this section any company formed and registered under the Companies Act 1985; but on the appointed day the company in question must be a company limited by shares which is wholly owned by the Crown.
- (3) References in this Act to property, rights and liabilities of the Corporation or Board are references to all such property, rights and liabilities, whether or not capable of being transferred or assigned by the Corporation or Board.
- (4) It is hereby declared for the avoidance of doubt that—
  - (a) any reference in this Act to property of the Corporation or Board is a reference to property of the Corporation or Board whether situated in the United Kingdom or elsewhere; and
  - (b) any reference in this Act to rights or liabilities of the Corporation or Board is a reference to rights to which the Corporation or Board is entitled, or (as the case may be) liabilities to which it is subject, whether under the law of the United Kingdom or of any part of the United Kingdom or under the law of any country or territory outside the United Kingdom.

- (5) An order under this section appointing a day under subsection (1) above or nominating any company for the purposes of this section may be varied or revoked by a subsequent order at any time before any property, rights or liabilities of the Corporation or Board vest in any company by virtue of this section.
- (6) Schedule 1 to this Act shall have effect for the purpose of supplementing the provisions of this section.

## **2 Extinguishment of NRDC reserve and NEB public dividend capital**

- (1) There shall be extinguished immediately before the appointed day—
  - (a) the reserve established by the Corporation under section 10 of the Development of Inventions Act 1967; and
  - (b) any liability of the Board to the Secretary of State in respect of the Board's public dividend capital.
- (2) Subsection (1)(b) above shall not operate to extinguish any liability of the Board under paragraph 5(3) or (3A) of Schedule 2 to the Industry Act 1975 which accrued before the appointed day.

### *Provisions relating to Government holdings in successor company*

## **3 Initial Government holding in the successor company**

- (1) As a consequence of the vesting in the successor company by virtue of section 1 above of property, rights and liabilities of the Corporation and the Board, the successor company shall issue such securities of the company as the Secretary of State may from time to time direct; and any such securities shall, as the Secretary of State may so direct—
  - (a) be issued to the Treasury or the Secretary of State, or
  - (b) be allotted to the Treasury or the Secretary of State and subsequently issued to the persons for the time being entitled to be issued with them (who may include the Treasury or the Secretary of State).
- (2) The Secretary of State shall not give a direction under subsection (1) above at a time when the successor company has ceased to be wholly owned by the Crown.
- (3) Securities to be issued or allotted in pursuance of this section shall be issued or allotted at such time or times, and (subject to subsection (4) below) 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 the Companies Act 1985 as if they had been paid up by virtue of the payment to the successor company of their nominal value in cash.
- (5) The Secretary of State may not exercise any power conferred on him by this section, or dispose of any securities issued or of any rights to securities initially allotted to him in pursuance of this section, without the consent of the Treasury.

- (6) Any dividends or other sums received by the Treasury or the Secretary of State in right of, or on the disposal of, any securities or rights acquired by virtue of this section shall be paid into the Consolidated Fund.

#### **4 Government investment in securities of the successor company**

- (1) Subject to section 6(5) below, the Treasury or, with the consent of the Treasury, the Secretary of State may at any time acquire—
- (a) securities of the successor company; or
  - (b) rights to subscribe for any such securities.
- (2) The Secretary of State may not dispose of any securities or rights acquired by him by virtue of this section without the consent of the Treasury.
- (3) Any expenses incurred by the Treasury or the Secretary of State in consequence of the provisions of this section shall be paid out of money provided by Parliament.
- (4) Any dividends or other sums received by the Treasury or the Secretary of State in right of, or on the disposal of, any securities or rights acquired by virtue of this section shall be paid into the Consolidated Fund.

#### **5 Exercise of functions through nominees**

- (1) The Treasury or, with the consent of the Treasury, the Secretary of State may, for the purposes of section 3 or 4 above, appoint any person to act as the nominee, or one of the nominees, of the Treasury or the Secretary of State; and—
- (a) securities of the successor company may be issued or allotted in pursuance of section 3 above to any nominee of the Treasury or the Secretary of State appointed for the purposes of that section and may be issued to any person entitled to be issued with the securities following their initial allotment to any such nominee, and
  - (b) any such nominee appointed for the purposes of section 4 above may acquire securities or rights under that section,
- in accordance with directions given from time to time by the Treasury or, with the consent of the Treasury, by the Secretary of State.
- (2) Any person holding any securities or rights as a nominee of the Treasury or the Secretary of State by virtue of subsection (1) above shall hold and deal with them (or any of them) on such terms and in such manner as the Treasury or, with the consent of the Treasury, the Secretary of State may direct.

#### **6 Target investment limit for Government shareholding**

- (1) As soon after the date when the successor company ceases to be wholly owned by the Crown as he considers expedient, and in any case not later than six months after that date, the Secretary of State shall by order fix a target investment limit in relation to the shares for the time being held in the successor company by virtue of any provision of this Act by the Treasury and their nominees and by the Secretary of State and his nominees (“the Government shareholding”).

- (2) The target investment limit shall be expressed as a proportion of the voting rights which are exercisable in all circumstances at general meetings of the successor company (“the ordinary voting rights”).
- (3) The first target investment limit fixed under this section shall be equal to the proportion of the ordinary voting rights which is carried by the Government shareholding 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 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 the Treasury and of the Secretary of State so to exercise—
  - (a) their powers under section 4 above and any power to dispose of any shares held by virtue of any provision of this Act, and
  - (b) their power to give directions to their respective nominees,as to secure that the Government shareholding 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) above, the Treasury or the Secretary of State may take up, or direct any of their respective nominees to take up, any rights for the time being available to them or him, or to that nominee, as an existing holder of shares or other securities of the successor company; but if, as a result, the proportion of the ordinary voting rights carried by the Government shareholding at any time exceeds the target investment limit, it shall be the duty of the Treasury or (as the case may be) the Secretary of State to comply with subsection (5) above as soon after that time as is reasonably practicable.
- (7) For the purposes of this section the temporary suspension of any of the ordinary voting rights shall be disregarded.

## **7 Offers for sale of securities etc**

Where an offer for sale of any securities of the successor company is to be made by or on behalf of the Crown or any invitation or advertisement is to be issued by or on behalf of the Crown in connection with the offer, the Secretary of State shall consult such persons appearing to him to be representative of the universities of the United Kingdom as he considers appropriate.

### *Financial provisions relating to successor company*

## **8 Financial structure of successor company**

- (1) If the aggregate nominal value of the securities of the successor company issued in pursuance of section 3 above is for the time being less than the amount of the reserve and public dividend capital extinguished by virtue of section 2 above a sum equal to the amount of the difference shall be carried by the successor company to a reserve (“the statutory reserve”).

- (2) The statutory reserve may only be applied by the successor company in paying up unissued shares of the company to be allotted to its members as fully paid bonus shares except to the extent that the Secretary of State directs, with the consent of the Treasury, that it may be applied as if it were profits available for distribution within the meaning of section 263(1) of the Companies Act 1985 (distributions to be made out of profits).
- (3) No direction shall be given by the Secretary of State under subsection (2) above at a time when the successor company has ceased to be wholly owned by the Crown.
- (4) Notwithstanding subsection (2) above, no part of the statutory reserve shall count as an undistributable reserve of the successor company for the purposes of section 264(3)(d) of the Companies Act 1985 (restriction on distribution of assets); but for the purpose of determining under section 264 whether the successor company may make a distribution at any time, any amount for the time being standing to the credit of the statutory reserve (excluding any amount which under subsection (2) above is authorised to be, but has not yet been, applied as if it were profits available for distribution) shall be treated for the purposes of section 264(3)(c) as if it were unrealised profits of the company.
- (5) For the purposes of any statutory accounts of the successor company—
  - (a) all the property, rights and liabilities to which the Corporation or Board was entitled or subject immediately before the end of the last financial year of the Corporation or Board ending before the appointed day shall be taken to have been vested in the successor company by virtue of section 1 above, and to have been so vested immediately after the end of that year; and
  - (b) the value or amount (as at the time of vesting) of any asset or liability of the Corporation or Board taken to have been vested in the successor company by virtue of paragraph (a) above shall be taken to be the value or (as the case may be) the amount assigned to that asset or liability for the purposes of the corresponding statement of accounts prepared by the Corporation or Board in respect of the financial year referred to in that paragraph.
- (6) For the purposes of any statutory accounts of the successor company the amount to be included in respect of any item shall be determined as if anything done by the Corporation or Board (whether by way of acquiring, revaluing or disposing of any asset, or incurring, revaluing or discharging any liability, or by carrying any amount to any provision or reserve, or otherwise) had been done by the successor company.

Accordingly (but without prejudice to the generality of the preceding provision) the amount to be included from time to time in any reserves of the successor company as representing its accumulated realised profits shall be determined as if any profits realised and retained by the Corporation or Board had been realised and retained by the company.
- (7) References in this section to the statutory accounts of the successor company are to any accounts prepared by that company for the purposes of any provision of the Companies Act 1985 (including group accounts).

## **9 Loans by Secretary of State to successor company**

- (1) As from the appointed day the Secretary of State may, with the consent of the Treasury, make loans to the successor company; but no loan shall be made by him under this section at a time when that company has ceased to be wholly owned by the Crown.

- (2) The Treasury may issue to the Secretary of State out of the National Loans Fund any sums necessary to enable him to make loans under this section.
- (3) 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 it shall be paid to him at such rates and at such times, as he may, with the consent of the Treasury, from time to time direct.
- (4) Any sums received by the Secretary of State under subsection (3) above shall be paid into the National Loans Fund.
- (5) The Secretary of State shall in respect of each financial year prepare, in such form and manner as the Treasury may direct, an account of—
  - (a) sums issued to him under subsection (2) above;
  - (b) sums received by him under subsection (3) above; and
  - (c) the disposal by him of sums so issued or received;
 and shall send the account to the Comptroller and Auditor General not later than the end of November in the following financial year; and the Comptroller and Auditor General shall examine, certify and report on the account and lay copies of it, together with his report, before each House of Parliament.

## **10 Temporary restrictions on successor company's borrowings etc**

- (1) If the articles of association of the successor company confer on the Secretary of State powers exercisable with the consent of the Treasury for, or in connection with, restricting the sums of money which may during any period be borrowed or raised by the successor company and its subsidiaries, taken as a whole, those powers shall be exercisable in the national interest notwithstanding any rule of law and the provisions of any enactment.
- (2) For the purposes of this section any alteration of the articles of association of the successor company which—
  - (a) has the effect of conferring or extending any such power as is mentioned in subsection (1) above, and
  - (b) is made at a time when that company has ceased to be wholly owned by the Crown,
 shall be disregarded.

### *Dissolution of the Corporation and Board*

## **11 Dissolution of the Corporation and Board**

- (1) The Corporation and Board shall continue in existence after the appointed day until dissolved in accordance with subsection (2) below; and in relation to each of those bodies the period of its continued existence after the appointed day is referred to in this Act as “the transitional period”.
- (2) If in the case of either of those bodies the Secretary of State is satisfied that nothing further remains to be done by it under Schedule 3 to this Act, he may, after consulting that body and the successor company, by order dissolve that body on a day specified in the order.

### *Supplementary provisions*

#### **12 Corporation tax**

- (1) Subject to subsection (2) below, the successor company shall be treated for the purposes of the Corporation Tax Acts as if it were the same person as the Corporation and the Board.
- (2) Notwithstanding subsection (1) above, section 345 of the Income and Corporation Taxes Act 1988 (computation of chargeable gains) shall apply to the successor company without regard to any allowable losses of the Corporation or the Board.
- (3) Any share issued by the successor company in pursuance of section 3 above shall be treated for the purposes of the Corporation Tax Acts as if it had been issued wholly in consideration of a subscription paid to that company of an amount equal to the nominal value of the share.
- (4) Any debenture issued by the successor company in pursuance of that section shall be treated for the purposes of those Acts as if it had been issued—
  - (a) wholly in consideration of a loan made to that company of an amount equal to the principal sum payable under the debenture; and
  - (b) wholly and exclusively for the purposes of the trade carried on by that company.

#### **13 Application of Trustee Investments Act 1961 in relation to investment in the successor company**

- (1) For the purpose of applying paragraph 3(b) of Part IV of Schedule 1 to the Trustee Investments Act 1961 (which provides that shares and debentures of a company shall not count as wider-range and narrower-range investments respectively within the meaning of that Act unless the company has paid dividends in each of the five years immediately preceding that in which the investment is made) in relation to investment in shares or debentures of the successor company during the calendar year in which the appointed day falls (“the first investment year”) or during any year following that year, the successor company shall be deemed to have paid a dividend as there mentioned—
  - (a) in any year preceding the first investment year which is included in the relevant five years; and
  - (b) in the first investment year, if that year is included in the relevant five years and the successor company does not in fact pay such a dividend in that year.
- (2) In subsection (1) above “the relevant five years” means the five years immediately preceding the year in which the investment in question is made or proposed to be made.

#### **14 Orders**

- (1) Any power of the Secretary of State to make an order under this Act shall be exercisable by statutory instrument.
- (2) Any statutory instrument containing an order made by the Secretary of State under section 6 above or 17(1) below shall be subject to annulment in pursuance of a resolution of either House of Parliament.

## 15 Administrative expenses

Any administrative expenses incurred by the Secretary of State or the Treasury in consequence of the provisions of this Act shall be paid out of money provided by Parliament.

## 16 Interpretation

(1) In this Act—

“the appointed day” means the day appointed under section 1(1) above;

“the Board” means the National Enterprise Board;

“the Corporation” means the National Research Development Corporation;

“debenture” includes debenture stock;

“financial year”, in relation to the Corporation, means a year ending on 31st March and, in relation to the Board, means the accounting year as defined in section 37(1) of the Industry Act 1975;

“securities”, in relation to a company, includes shares, debentures, bonds and other securities of the company, whether or not constituting a charge on the assets of the company;

“shares” includes stock;

“the successor company” means the company nominated for the purposes of section 1 above;

“the transitional period” has the meaning given by section 11(1) above.

(2) A company shall be regarded for the purposes of this Act as wholly owned by the Crown at any time when each of the issued shares of the company is held by, or by a nominee of, the Treasury or the Secretary of State.

## 17 Consequential amendments, repeals and transitional provisions

(1) The Secretary of State may by order make—

(a) such consequential modifications of any provision contained in any Act (whether public general or local) passed, or subordinate legislation made, before the appointed day as appear to him to be necessary or expedient in connection with any reference in that Act or subordinate legislation to the Corporation or the Board;

(b) such transitional or saving provision as appears to him to be necessary or expedient in connection with the coming into force of any provision of this Act;

and any provision of an order made under this subsection after the appointed day may be made so as to have effect as from that or any later day.

(2) The enactments mentioned in Schedule 2 to this Act (which include certain spent enactments) are hereby repealed to the extent specified in the third column of that Schedule.

(3) The transitional provisions and savings contained in Schedule 3 to this Act shall have effect.

## 18 Short title, commencement and extent

(1) This Act may be cited as the British Technology Group Act 1991.



- (2) Subject to subsections (3) and (4) below, this Act shall come into force on the appointed day.
- (3) Sections 1, 2, 7, 14, 16(1), this section and paragraph 1 of Schedule 1 shall come into force at the passing of this Act.
- (4) Parts II and III of Schedule 2 shall come into force on the dissolution of the Corporation or, as the case may be, the Board.
- (5) Except for sections 3 to 6, 8 to 10 and 13, this Act extends to Northern Ireland.