STATUTORY INSTRUMENTS

1986 No. 1032

The Companies (Northern Ireland) Order 1986 (revoked)

PART IX

DISTRIBUTION OF PROFITS AND ASSETS

F1 Order repealed (prosp.) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), **Sch. 16** and the repeal being partly in force, as to which see individual Articles (with savings (with adaptations) by Companies Act 2006 (Commencement No. 6, Saving and Commencement Nos. 3 and 5 (Amendment)) Order 2008 (S.I. 2008/674), arts. 2(3), {4}, Sch. 2) and subject to amendments (6.4.2008) by Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2008/948), arts. 2(2), 3(1)(b)(2), Sch. 1 paras. 135, 147, 148 {Sch. 2 Note 1} (with arts. 6, 11, 12) and subject to amendments (6.4.2008) by S.R. 2008/133, {regs. 2, 3}

Limits of company's power of distribution

Certain distributions prohibited

271.—(1) A company shall not make a distribution except out of profits available for the purpose.

(2) In this Part, "distribution" means every description of a company's assets to its members, whether in cash or otherwise, except distribution by way of—

(a) an issue of shares as fully or partly paid bonus shares,

(b) the redemption or purchase of any of the company's own shares out of capital (including the proceeds of any fresh issue of shares) or out of unrealised profits in accordance with Chapter VII of Part VI,

(c) the reduction of share capital by extinguishing or reducing the liability of any of the members on any of the company's shares in respect of share capital not paid up, or by paying off paid-up share capital, and

(d) a distribution of assets to members of the company on its winding up.

(3) For the purposes of this Part, a company's profits available for distribution are its accumulated, realised profits, so far as not previously utilised by distribution or capitalisation, less its accumulated, realised losses, so far as not previously written off in a reduction or reorganisation of capital duly made.
This is subject to the provision made by Articles 273 and 274 for investment and other companies.

(4) A company shall not apply an unrealised profit in paying up debentures, or any amounts unpaid on its issued shares.

(5) Where the directors of a company are, after making all reasonable enquiries, unable to determine whether a particular profit made before 1st July 1983 is realised or unrealised, they may treat the profit as realised; and where after making such enquiries they are unable to determine whether a particular loss so made is realised or unrealised, they may treat the loss as unrealised.

Restriction on distribution of assets

272.—(1) A public company may only make a distribution at any time—

(a) if at that time the amount of its net assets is not less than the aggregate of its called-up share capital and undistributable reserves, and

(b) if, and to the extent that, the distribution does not reduce the amount of those assets to less than that aggregate.

This is subject to the provision made by Articles 273 and 274 for investment and other companies.

(2) In paragraph (1), "net assets" means the aggregate of the company's assets less the aggregate of its liabilities ("liabilities" to include any**[**[F1] provision for liabilities**]** within paragraph 88 of Schedule 4**[**[F1] that is made in Companies Order accounts and any provision that is made in IAS accounts**]**).

(3) A company's undistributable reserves are—

(a) the share premium account,

(b) the capital redemption reserve,

(c) the amount by which the company's accumulated, unrealised profits, so far as not previously utilised by capitalisation of a description to which this sub-paragraph applies, exceed its accumulated, unrealised losses (so far as not previously written off in a reduction or reorganisation of capital duly made), and

(d) any other reserve which the company is prohibited from distributing by any statutory provision (other than one contained in this Part) or by its memorandum or articles,

and, sub-paragraph (c) applies to every description of capitalisation except a transfer of profits of the company to its capital redemption reserve on or after 1st July 1983.

(4) A public company shall not include any uncalled share capital as an asset in any accounts relevant for the purposes of this Article.

F1 SR 2004/496

Modifications etc. (not altering text)

C1 Art. 272(3)(c) modified (1.1.2007) by Water and Sewerage Services (Northern Ireland) Order 2006 (S.I. 2006/3336 (N.I. 21)), arts. 1(3)(c), **275(3)** (with arts. 8(8), 121(3), 307)

C2 Art. 272(3)(d) modified (1.1.2007) by Water and Sewerage Services (Northern Ireland) Order 2006 (S.I. 2006/3336 (N.I. 21)), arts. 1(3)(c), **275(3)** (with arts. 8(8), 121(3), 307)

Other distributors by investment companies

273.—(1) Subject to the following provisions of this Article, an investment company (defined in Article 274) may also make a distribution at any time out of its accumulated, realised revenue profits, so far as not previously utilised by distribution or capitalisation, less its accumulated revenue losses (whether realised or unrealised), so far as not previously written off in a reduction or reorganisation of capital duly made—

(a) if at that time the amount of its assets is at least equal to one and a half times the aggregate of its liabilities, and

(b) if, and to the extent that, the distribution does not reduce that amount to less than one and a half times that aggregate.

(2) In paragraph (1)(a) "liabilities" includes any provision for liabilities or charges (within the meaning of paragraph 88 of Schedule 4**[**[F2] that is made in Companies Order accounts and any provision that is made in IAS accounts**]**).

(3) The company shall not include any uncalled share capital as an asset in any accounts relevant for the purposes of this Article.

(4) An investment company may not make a distribution by virtue of paragraph (1) unless—

(a) its shares are listed on a**[**[F3] recognised investment exchange other than an overseas investment exchange[F4]. . . **]**, and

(b) during the relevant period it has not—

(i) distributed any of its capital profits**[**[F5] otherwise than by way of the redemption or purchase of any of the company's own shares in accordance with Article 170 or 172 in Chapter VII of Part VI**]**, or

(ii) applied any unrealised profits or any capital profits (realised or unrealised) in paying up debentures or amounts unpaid on its issued shares.

[[F4](4A) In paragraph (4)(a) "recognised investment exchange" and "overseas investment exchange" have the same meaning as in Part 18 of the Financial Services and Markets Act 2000.**]**

(5) The "relevant period" under paragraph (4) is the period beginning with—

(a) the first day of the accounting reference period immediately preceding that in which the proposed distribution is to be made, or

(b) where the distribution is to be made in the company's first accounting reference period, the first day of that period,

and ending with the date of the distribution.

(6) An investment company may not make a distribution by virtue of paragraph (1) unless the company gave to the registrar the requisite notice (that is, notice under Article 274(1)) of the company's intention to carry on business as an investment company—

(a) before the beginning of the relevant period under paragraph (4), or

(b) in the case of a company incorporated on or after 1st July 1983, as soon as may have been reasonably practicable after the date of its incorporation.

F2	SR 2004/496
F3	1986 c. 60
F4	SI 2001/3649
F5	SR 2004/22

Meaning of "investment company"

274.—(1) In Article 273 "investment company" means a public company which has given notice in the prescribed form (which has not been revoked) to the registrar of its intention to carry on business as an investment company, and has since the date of that notice complied with the requirements specified in paragraph (2).

(2) Those requirements are—

(a) that the business of the company consists of investing its funds mainly in securities, with the aim of spreading investment risk and giving members of the company the benefit of the results of the management of its funds,

(b) that none of the company's holdings in companies (other than those which are for the time being investment companies) represents more than 15 per cent. by value of the investing company's investments,

(c) that**[**[F6] subject to paragraph (2A),**]** distribution of the company's capital profits is prohibited by its memorandum or articles,

(d) that the company has not retained, otherwise than in compliance with this Part, in respect of any accounting reference period more than 15 per cent. of the income it derives from securities.

[[F6](2A) An investment company need not be prohibited by its memorandum or articles from redeeming or purchasing its own shares in accordance with Article 170 or 172 in Chapter VII of Part VI out of its capital profits.**]**

(3) Notice to the registrar under paragraph (1) may be revoked at any time by the company on giving notice in the prescribed form to the registrar that it no longer wishes to be an investment company within the meaning of this Article; and, on giving such notice, the company ceases to be such a company.

[[F7](4) Subsections (1A) to (3) of section 842 of the Income and Corporation Taxes Act 1988 apply for the purposes of paragraph (2)(b) as for those of subsection (1)(b) of that section.**]**

F6 SR 2004/22
F7 1988 c. 39

Extension of Articles 273 and 274 to other companies

275.—(1) The Department may by regulations extend the provisions of Articles 273 and 274 (with or without modifications) to companies whose principal business consists of investing their funds in securities, land or other assets with the aim of spreading investment risk and giving their members the benefit of the results of the management of the assets.

(2) Regulations under this Article shall not be made unless a draft of the regulations has been laid before, and approved by a resolution of, the Assembly.

Realised profits of insurance company with long term business

276.—(1) Where**[**[F8] an authorised insurance company**]** carries on long term business—

[[F9](a) any amount included in the relevant part of the balance sheet of the company which represents a surplus in the fund or funds maintained by it in respect of that business and which has not been allocated to policy holders**[**[F8] or, as the case may be, carried forward unappropriated, in accordance with asset identification rules made under section 142(2) of the Financial Services and Markets Act 2000**]**, and**]**

(b) any deficit in that fund or those funds,

are to be (respectively) treated, for the purposes of this Part, as a realised profit and a realised loss; and, subject to this, any profit or loss arising in that business is to be left out of account for those purposes.

(2) In paragraph (1)—

(a) the reference to a surplus in any fund or funds of an insurance company is to an excess of the assets representing that fund or those funds over the liabilities of the company attributable to its long term business, as shown by an actuarial investigation, and

[[F9](aa) the reference to the relevant part of the balance sheet is

[[F10](i) **[**[F10]in the case of Companies Order individual accounts,**]** to that part of the balance sheet which represents Liabilities item A.V. (profit and loss account) in the balance sheet format set out in section B of Chapter I of Part I of Schedule 9A,**[**[F10] and**]**

[[F10](ii) in the case of IAS individual accounts, to that part of the balance sheet which represents accumulated profit or loss,**]]**

(b) the reference to a deficit in any such fund or funds is to the excess of those liabilities over those assets, as so shown.

(3) In this Article—

[F8(a) "actuarial investigation" means—

(i) an investigation made into the financial condition of an authorised insurance company in respect of its long term business, carried out once in every period of twelve months in accordance with rules made under Part 10 of the Financial Services and Markets Act 2000 by an actuary appointed as actuary to that company; or

(ii) an investigation made into the financial condition of an authorised insurance company in respect of its long term business carried out in accordance with a requirement imposed by the Financial Services Authority under section 166 of that Act by an actuary appointed as actuary to that company;]

[F8(b) "long term business" means business which consists of effecting or carrying out contracts of long term insurance.]

[F8(4) The definition of "long term business" in paragraph (3) 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.]

F8 SI 2001/3649
F9 SR 1997/314
F10 SR 2004/496

Treatment of development costs

277.—(1) Subject as follows, where development costs are shown as an asset in a company's accounts, any amount shown in respect of those costs is to be treated—

(a) under Article 271, as a realised loss, and

(b) under Article 273, as a realised revenue loss.

(2) This does not apply to any part of that amount representing an unrealised profit made on revaluation of those costs; nor does it apply if—

(a) there are special circumstances in the company's case justifying the directors in deciding that the amount there mentioned is not to be treated as required by paragraph (1),F11. . .

(b) [F11it is stated—]

[F11(i)] [F11in the case of Companies Order individual accounts, in] the note to the accounts required by paragraph 20 of Schedule 4[F12 or paragraph 20 of Schedule 8] (reasons for showing development costs as an asset)[F11, or]

[F11(ii)] [F11in the case of IAS individual accounts, in any note to the accounts,] that the amount is not to be so treated[F11, and]

[F11(c)] [F11the note explains] the circumstances relied upon to justify the decision of the directors to that effect.

F11 SR 2004/496
F12 SR 1997/436

Relevant accounts

Distribution to be justified by reference to company's accounts

278.—(1) This Article and Articles 279 to 284 are for determining the question whether a distribution may be made by a company without contravening Article 271, 272 or 273.

(2) The amount of a distribution which may be made is determined by reference to the following items as stated in the company's accounts—

(a) profits, losses assets and liabilities,

(b) **[**[F13]the following provisions—**]**

[[F13](i)**]** **[**[F13]in the case of Companies Order individual accounts,**]** provisions of any of the kinds mentioned in paragraphs 87 and 88 of Schedule 4 (depreciation, diminution in value of assets, retentions to meet liabilities, etc.)**[**[F13], and**]**

[[F13](ii)**]** **[**[F13]in the case of IAS individual accounts, provisions of any kind**]**, and

(c) share capital and reserves (including undistributable reserves).

(3) Except in a case falling within paragraph (4), the company's accounts which are relevant for this purpose are its last annual accounts, that is to say those prepared under Part VIII which were laid in respect of the last preceding accounting reference period in respect of which accounts so prepared were laid; and for this purpose accounts are laid if Article 249(1) has been complied with in relation to them.

(4) In the following two cases—

(a) where the distribution would be found to contravene the relevant Article if reference were made only to the company's last annual accounts, or

(b) where the distribution is proposed to be declared during the company's first accounting reference period, or before any accounts are laid in respect of that period,

the accounts relevant under this Article (called "interim accounts" in the first case, and "initial accounts" in the second) are those necessary to enable a reasonable judgement to be made as to the amounts of the items mentioned in paragraph (2).

(5) The relevant Article is treated as contravened in the case of a distribution unless the statutory requirements about the relevant accounts (that is, the requirements of this Article and Articles 279 to 281 as and where applicable) are complied with in relation to that distribution.

F13 SR 2004/496

Requirements for last annual accounts

279.—(1) If the company's last annual accounts constitute the only accounts relevant under Article 278, the statutory requirements in respect of them are as follows.

(2) The accounts must have been properly prepared in accordance with this Order, or have been so prepared subject only to matters which are not material for determining, by reference to items mentioned in Article 278(2), whether the distribution would contravene the relevant Article; and, without prejudice to the foregoing—

(a) so much of the accounts as consists of a balance sheet must give a true and fair view of the state of the company's affairs as at the balance sheet date, and

(b) so much of the accounts as consists of a profit and loss account must give a true and fair view of the company's profit or loss for the period in respect of which the accounts were prepared.

(3) The auditors must have made their report on the accounts under[F14 Article 243]; and paragraph (4) applies if the report is a qualified report, that is to say, it is not a report without qualification to the effect that in the auditors' opinion the accounts have been properly prepared in accordance with this Order.

(4) The auditors must in that case also have stated in writing (either at the time of their report or subsequently) whether, in their opinion, the matter in respect of which their report is qualified is material for determining, by reference to items mentioned in Article 278(2), whether the distribution would contravene the relevant Article; and a copy of the statement must have been laid before the company in general meeting.

(5) A statement under paragraph (4) suffices for the purposes of a particular distribution not only if it relates to a distribution which has been proposed but also if it relates to distributions of any description which includes that particular distribution, notwithstanding that at the time of the statement it has not been proposed.

F14 1990 NI 5

Requirements for interim accounts

280.—(1) The following are the statutory requirements in respect of interim accounts prepared for a proposed distribution by a public company.

(2) The accounts must have been properly prepared, or have been so prepared subject only to matters which are not material for determining, by reference to items mentioned in Article 278(2), whether the proposed distribution would contravene the relevant Article.

(3) "Properly prepared" means that the accounts must comply with[F15 Article 234] (applying that Article[F16 and Articles 234A and 234B] and Schedule 4 with such modifications as are necessary because the accounts are prepared otherwise than in respect of an accounting reference period) and any balance sheet comprised in the accounts must have been signed in accordance with[F15 Article 241]; and, without prejudice to the foregoing—

(a) so much of the accounts as consists of a balance sheet must give a true and fair view of the state of the company's affairs as at the balance sheet date, and

(b) so much of the accounts as consists of a profit and loss account must give a true and fair view of the company's profit or loss for the period in respect of which the accounts were prepared.

(4) A copy of the accounts must have been delivered to the registrar.

(5) If the accounts are in a language other than English and[F15 the second sentence of Article 250(1)] (translation) does not apply, a translation into English of the accounts, certified in the prescribed manner to be a correct translation, must also have been delivered to the registrar.

F15 1990 NI 5
F16 SR 2004/496

Requirements for initial accounts

281.—(1) The following are the statutory requirements in respect of initial accounts prepared for a proposed distribution by a public company.

(2) The accounts must have been properly prepared, or they must have been so prepared subject only to matters which are not material for determining, by reference to items mentioned in Article 278(2), whether the proposed distribution would contravene the relevant Article.

(3) Article 280(3) applies as respects the meaning of "properly prepared".

(4) The company's auditors must have made a report stating whether in their opinion the accounts have been properly prepared; and paragraph (5) applies if their report is a qualified report, that is to say, it is not a report without qualification to the effect that in the auditors' opinion the accounts have been so prepared.

(5) The auditors must in that case also have stated in writing whether, in their opinion, the matter in respect of which their report is qualified is material for determining, by reference to items mentioned in Article 278(2), whether the distribution would contravene the relevant Article.

(6) A copy of the accounts, of the auditors' report under paragraph (4) and of the auditors' statement (if any) under paragraph (5) must have been delivered to the registrar.

(7) If the accounts are, or the auditors' report under paragraph (4) or their statement (if any) under paragraph (5) is, in a language other than English and**[**[F17] the second sentence of Article 250(1)**]** (translation) does not apply, a translation into English of the accounts, the report or the statement (as the case may be), certified in the prescribed manner to be a correct translation, must also have been delivered to the registrar.

F17 1990 NI 5

Method of apply Article 278 so successive distributions

282.—(1) For the purpose of determining by reference to particular accounts whether a proposed distribution may be made by a company, Article 278 has effect, in a case where one or more distributions have already been made in pursuance of determinations made by reference to those same accounts, as if the amount of the proposed distribution was increased by the amount of the distributions so made.

(2) Paragraph (1) applies (if it would not otherwise do so) to—

(a) financial assistance lawfully given by a public company out of its distributable profits in a case where the assistance is required to be so given by Article 164,

(b) financial assistance lawfully given by a private company out of its distributable profits in a case where the assistance is required to be so given by Article 165(2),

(c) financial assistance given by a company in contravention of Article 161, in a case where the giving of that assistance reduces the company's net assets or increases its net liabilities,

(d) a payment made by a company in respect of the purchase by it of shares in the company (except by payment lawfully made otherwise than out of distributable profits), and

(e) a payment of any description specified in Article 178 (company's purchase of right to acquire its own shares, etc).

being financial assistance given or payment made since the relevant accounts were prepared, as if any such financial assistance or payment were a distribution already made in pursuance of a determination made by reference to those accounts.

(3) In this Article—

"financial assistance" means the same as in Chapter VI of Part VI,

"net assets" has the meaning given by Article 164(2)(a), and

"net liabilities", in relation to the giving of financial assistance by a company, means the amount by which the aggregate amount of the company's liabilities within the meaning of Article 164(2)(b) exceeds the aggregate amount of its assets, taking the amount of the assets and liabilities to be as stated in the company's accounting records immediately before the financial assistance is given.

(4) Paragraphs (2) and (3) are deemed to be included in Chapter VII of Part VI for the purposes of the Department's power to make regulations under Article 189.

Treatment of assets in the relevant accounts

283.—[[F18](1) For the purposes of Articles 271 and 272, the following are treated as realised losses—

(a) in the case of Companies Order individual accounts, provisions of any kind mentioned in paragraphs 87 and 88 of Schedule 4 (other than revaluation provisions), and

(b) in the case of IAS individual accounts, provisions of any kind (other than revaluation provisions).

(1A) In paragraph (1), a revaluation provision means a provision in respect of a diminution in value of a fixed asset appearing on a revaluation of all the fixed assets of the company, or of all of its fixed assets other than goodwill.**]**

(2) If, on the revaluation of a fixed asset, an unrealised profit is shown to have been made and, on or after the revaluation, a sum is written off or retained for depreciation of that asset over a period, then an amount equal to the amount by which that sum exceeds the sum which would have been so written off or retained for the depreciation of that asset over that period, if that profit had not been made, is treated for the purposes of Articles 271 and 272 as a realised profit made over that period.

(3) Where there is no record of the original cost of an asset, or a record cannot be obtained without unreasonable expense or delay, then for the purpose of determining whether the company has made a profit or loss in respect of that asset, its cost is taken to be the value ascribed to it in the earliest available record of its value made on or after its acquisition by the company.

(4) Subject to paragraph (6), any consideration by the directors of the value at a particular time of a fixed asset is treated as a revaluation of the asset for the purposes of determining whether any such revaluation of the company's fixed assets as is required for the purposes of the exception from paragraph (1) has taken place at that time.

(5) But where any such assets which have not actually been revalued are treated as revalued for those purposes under paragraph (4), that exception applies only if the directors are satisfied that their aggregate value at the time in question is not less than the aggregate amount at which they are for the time being stated in the company's accounts.

(6) Where Article 279(2), 280(2) or 281(2) applies to the relevant accounts, paragraphs (4) and (5) do not apply for the purpose of determining whether a revaluation of the company's fixed assets affecting the amount of the relevant items (that is, the items mentioned in Article 278(2)) as stated in those accounts has taken place, unless it is stated in a note to the accounts—

(a) that the directors have considered the value at any time of any fixed assets of the company, without actually revaluing those assets,

(b) that they are satisfied that the aggregate value of those assets at the time in question is or was not less than the aggregate amount at which they are or were for the time being stated in the company's accounts, and

(c) that the relevant items in question are accordingly stated in the relevant accounts on the basis that a revaluation of the company's fixed assets which by virtue of paragraphs (4) and (5) included the assets in question took place at that time.

F18	SR 2004/496

Distributors in kind

284. Where a company makes a distribution of or including a non-cash asset, and any part of the amount at which that asset is stated in the accounts relevant for the purposes of the distribution in accordance with Articles 278 to 283 represents an unrealised profit, that profit is to be treated as a realised profit—

(a) for the purpose of determining the lawfulness of the distribution in accordance with this Part (whether before or after the distribution takes place), and

(b) for the purpose of the application of paragraphs 12(a) and**[**[F19] 34(3)(a)**]** of Schedule 4**[**[F20] or paragraphs 12(a) and 34(3)(a) of Schedule 8**]** (only realised profits to be included in or transferred to the profit and loss account) in relation to anything done with a view to or in connection with the making of that distribution.

F19 1990 NI 5
F20 SR 1997/436

Supplementary

Consequences of unlawful distribution

285.—(1) Where a distribution, or part of one, made by a company to one of its own members is made in contravention of this Part and, at the time of the distribution, he knows or has reasonable grounds for believing that it is so made, he is liable to repay it (or that part of it, as the case may be) to the company or (in the case of a distribution made otherwise than in cash) to pay the company a sum equal to the value of the distribution (or part) at that time.

(2) Paragraph (1) is without prejudice to any obligation imposed apart from this Article on a member of a company to repay a distribution unlawfully made to him; but this Article does not apply in relation to—

(a) financial assistance given by a company in contravention of Article 161, or

(b) any payment made by a company in respect of the redemption or purchase by the company of shares in itself.

(3) This Article is deemed to be included in Chapter VII of Part VI for the purposes of the Department's power to make regulations under Article 189.

Saving for provision in a company's articles operative before the Order of 1981

286. Where immediately before 1st July 1983 a company was authorised by a provision of its articles to apply its unrealised profits in paying up in full or in part unissued shares to be allotted to members of the company as fully or partly paid bonus shares, that provision continues (subject to any alteration of the articles) as authority for those profits to be so applied after that date.

[[F21]*Distributions by banking or insurance companies*

287. Where a company's accounts relevant for the purposes of this Part are prepared in accordance with the special provisions of Part VIII relating to banking or insurance companies, Articles 272 to 283 apply with the modifications shown in Schedule 11.**]**

F21 1990 NI 5, art. 25, Sch, **10** Pt. 1

Interpretation for Part IX

288.—(1) The following has effect for the interpretation of this Part.

(2) "Capitalisation", in relation to a company's profits, means any of the following operations (whenever carried out)—

(a) applying the profits in wholly or partly paying up unissued shares in the company to be allotted to members of the company as fully or partly paid bonus shares, or

(b) transferring the profits to capital redemption reserve.

(3) References to profits and losses of any description are (respectively) to profits and losses of that description made at any time and, except where the context otherwise requires, are (respectively) to revenue and capital profits and revenue and capital losses.

Saving for other restraints on distribution

289. The provisions of this Part are without prejudice to any statutory provision or rule of law, or any provision of a company's memorandum or articles, restricting the sums out of which, or the cases in which, a distribution may be made.

Status:
Point in time view as at 01/01/2006.

Changes to legislation:
There are currently no known outstanding effects for the The Companies (Northern Ireland) Order 1986 (revoked), PART IX.