STATUTORY INSTRUMENTS

1986 No. 1032

The Companies (Northern Ireland) Order 1986 (revoked)

PART IX

DISTRIBUTION OF PROFITS AND ASSETS

Limits of company's power of distribution

F1	Order repealed (prosp.)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}

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

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), Cross Heading: Limits of company's power of distribution.