

2004 No. 22

COMPANIES

**Companies (Investment Companies) (Distribution of Profits)
Regulations (Northern Ireland) 2004**

Made - - - - - 22nd January 2004

Coming into operation 1st March 2004

The Department of Enterprise, Trade and Investment^(a), being a Department designated^(b) for the purposes of section 2(2) of the European Communities Act 1972^(c) in relation to measures relating to the acquisition by companies of their own shares, and to distributions to their shareholders, in exercise of the powers conferred on it by the said section 2(2) and of every other power enabling it in that behalf, hereby make the following Regulations:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Companies (Investment Companies) (Distribution of Profits) Regulations (Northern Ireland) 2004 and shall come into operation on 1st March 2004.

(2) In these Regulations, “the 1986 Order” means the Companies (Northern Ireland) Order 1986^(d).

(3) The Interpretation Act (Northern Ireland) 1954^(e) shall apply to these Regulations as it applies to an Act of the Northern Ireland Assembly.

Amendment of Article 273

2. In Article 273 of the 1986 Order (other distributions by investment companies)^(f), in paragraph (4)(b)(i) after the words “capital profits” there shall be inserted the words “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”.

Amendment of Article 274

3. In Article 274 of the 1986 Order (meaning of “investment company”)^(g) –
(a) in paragraph (2)(c), after “that” insert “subject to paragraph (2A),” and
(b) after that paragraph insert –

(a) Formerly the Department of Economic Development; *see* S.I. 1999/283 (N.I. 1) Article 3(5)

(b) S.I. 1999/654

(c) 1972 c. 68: as amended by the European Economic Area Act 1993 (c. 51)

(d) S.I. 1986/1032 (N.I. 6)

(e) 1954 c. 33 (N.I.)

(f) Article 273 was amended by section 212(2) of, and paragraph 34 of Schedule 16 to, the Financial Services Act 1986 (c. 60) and further amended by S.I. 2001/3649

(g) Article 274 was amended by section 117(3) of the Finance Act 1988 (c. 39)

“(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.”.

Transitional provision

4. Article 273(4) of the 1986 Order shall apply in relation to any part of a relevant period (as defined in Article 273(5)) which falls before the date of coming into operation of these Regulations as if the amendment to that Article effected by regulation 2 had not been made.

Sealed with the Official Seal of the Department of Enterprise, Trade and Investment on 22nd January 2004.

(L.S.)

M. Bohill

A senior officer of the Department of Enterprise, Trade and Investment

EXPLANATORY NOTE

(This note is not part of the Regulations.)

These Regulations amend Articles 273 and 274 in Part IX of the Companies (Northern Ireland) Order 1986 (“the 1986 Order”) concerning the distribution of profits of an investment company. The amendments are in further implementation of Article 15.4 of the Second Council Directive 77/91/EEC (O.J. No. L26, 31.1.77, p. 1), on the co-ordination of safeguards in respect of the formation of public limited liability companies and the maintenance and alteration of their capital.

The Regulations alter the requirements that a public limited company must satisfy in order to qualify as an investment company under Article 274 of the 1986 Order, and in order to take advantage of the special rules on distributions by investment companies contained in Article 273 of the 1986 Order. Under Article 274(2)(c) as amended a company must, to qualify as an investment company, continue to be prohibited by its memorandum or articles of association from distributing capital profits, but that prohibition need no longer extend to distributions of capital profits by redemption or purchase of a company’s own shares under Article 170 or 172 of the 1986 Order. Similarly, an investment company will, under Article 273(4)(b)(i) as amended continue to be prohibited from making a distribution in a relevant accounting period if it has already made a distribution of capital profits in that period, but that requirement has been relaxed to provide that distributions by redemption or purchase of a company’s own shares pursuant to Articles 170 or 172 will not prevent an Article 273 distribution (subject to the transitional provision in regulation 4).

© Crown Copyright 2004

£1.75

Published by The Stationery Office Limited

ISBN 0-337-95371-6



9 780337 953712