



Aircraft and Shipbuilding Industries Act 1977 (repealed)

1977 CHAPTER 3

PART II

VESTING OF SECURITIES AND OTHER ASSETS IN THE CORPORATIONS AND ACQUIRED COMPANIES

Payments of dividend and interest

23 Control of dividends and interest.

(1) If, without the prior approval in writing of the Secretary of State, an acquired company has, in pursuance of an authority or recommendation contained in a resolution of the directors of the company passed after the safeguarding date and before the date of transfer,—

- (a) made, in respect of a period of control, such payments of dividend or interest, other than payments by way of capital or special dividend, on any of its securities or on any loan as exceed the maximum permitted for that period by section 24 below, or
- (b) made payments of dividend on any of its securities in respect of a period prior to the first of the periods of control,

then, subject to the following provisions of this section, all persons who were directors of the company at the time when the resolution was passed shall be liable to pay to the relevant Corporation an amount equal to the amount of the excess referred to in paragraph (a) above or, as the case may require, to the payments falling within paragraph (b) above.

(2) If, without the prior approval in writing of the Secretary of State, a company which, at the date of the resolution concerned, was a wholly owned subsidiary of an acquired company has, in pursuance of an authority or recommendation contained in a resolution of the directors of the company passed after the safeguarding date and before the date of transfer, made, in respect of a period of control, such payments

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of interest on any of its securities or on any loan as exceed the maximum permitted for that period by section 24 below, then, subject to the following provisions of this section, all persons who were directors of the company at the time when the resolution was passed shall be liable to pay to the relevant Corporation an amount equal to the amount of that excess.

- (3) A claim by the relevant Corporation for the payment of an amount due under subsection (1) or subsection (2) above shall be made within the period of 9 months beginning on the date of transfer of the company concerned and, if so made and not settled by agreement, shall be determined by arbitration under this Act.
- (4) If the arbitration tribunal decide the claim in favour of the relevant Corporation, they shall make such orders against all or any of the directors of the company in respect of their liability on the claim as the tribunal think just, having regard to all the circumstances.
- (5) For the purposes of this section and section 24 below, any payment by a company out of its net revenue to its members in their capacity as such shall be treated as a payment of dividend, and references in this section and that—
 - (a) to payments of dividend shall be construed, in the case of payments of dividend which are qualifying distributions within the meaning of Part V of the ^{MI}Finance Act 1972, as references to the franked payments, within the meaning of that Part, of which those distributions form part; and
 - (b) to payments of interest shall be construed as references to the gross amount of those payments, that is to say, in any case where those payments were made under deduction of income tax, to the amounts thereof before any deduction was made therefrom in respect of income tax.
- (6) In determining the amount recoverable under this section from the directors of a company by virtue of subsection (1) or (2) above, there shall be deducted from the amount which, apart from this subsection, would be so recoverable, a sum equal to income tax on that amount at the basic rate or, as the case may require, the standard rate for the relevant year of assessment, that is to say,—
 - (a) in the case of an amount which is so recoverable by virtue of a payment of interest, the year of assessment in which that payment was made; and
 - (b) in the case of an amount which is so recoverable by virtue of a payment of dividend, the year of assessment in which the dividend was paid.
- (7) For the purposes of this section and sections 24 and 25 below, the periods of control, in relation to a company, are the last financial year of the company ending before the safeguarding date and any subsequent period or periods ending before the date of transfer.
- (8) In this section and in sections 24 and 25 below—

“financial year” has the same meaning as in the [^{F1}Companies Act 1985];
and

“net revenue”, in relation to a company, means the revenue of that company, after deducting therefrom proper provision for taxation and for the redemption of capital and all charges which are proper to be made to revenue account including, in particular, proper provision for the depreciation of assets or for the renewal of assets and provision for interest on the loan capital of the company.

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- (9) For the purposes of this section and section 24 below, the certified net revenue of a company for a period of control is such amount as the company's auditor certifies to be the company's net revenue for that period as disclosed by a profit and loss account for that period which, in his opinion, gives a true and fair view of the company's profit or loss.

Textual Amendments

- F1** Words substituted by [Companies Consolidation \(Consequential Provisions\) Act 1985 \(c. 9, SIF 27\)](#), s. 30, [Sch. 2](#)

Marginal Citations

- M1** 1972 c. 41.

24 Permitted dividends and interest.

- (1) Subject to the following provisions of this section, for the purposes of section 23 above the payments of dividend or interest permitted for any period of control of a company are as follows—

- (a) in the case of securities forming part of the loan capital of the company, other than cumulative loan stock, and in the case of other loans under which the company is the debtor, payments of interest at the minimum rate required to prevent the company from committing any default in respect of its obligations to the holders of those securities or, as the case may be, the creditors under those loans;
- (b) in the case of cumulative loan stock, payments of interest at the minimum rate required to prevent any interest being carried over for subsequent payment; and
- (c) in the case of securities forming part of the share capital of the company, payments of dividend of amounts which, when aggregated, do not exceed whichever is the less of—
 - (i) the certified net revenue of the company for the period of control, and
 - (ii) the total amount of dividend paid before 29th October 1974, otherwise than as a capital or special dividend, on securities forming part of the share capital of the company in respect of the basis financial year or, if no final dividend was paid at any time before that date, such amount as the Secretary of State may approve for the purposes of this section.

- (2) In this section—

“basis financial year” means the last financial year for which a final dividend was paid before 29th October 1974, and

“final dividend” means a dividend declared by a company at its annual general meeting.

- (3) If, with respect to any period of control of a company the maximum permitted payments of dividend in respect of securities forming part of the share capital of the company are those specified in sub-paragraph (ii) of subsection (1)(c) above, payments of dividend—

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- (a) which are made in respect of cumulative preference shares, and by virtue of cumulative rights attaching to those shares, and
- (b) which, when aggregated with other payments falling within subsection (1) (c) above and made in respect of that period, do not exceed the certified net revenue of the company for that period,

shall be within the maximum permitted for that period for the purposes of section 23 above.

- (4) In any case where the number of days comprised in a period of control exceeds, or is less than, the number of days comprised in the basis financial year, then, in the application of subsection (1) above to that period of control, the total amount of the dividends paid by the company in the basis financial year shall be treated as increased or, as the case may be, reduced by multiplying that amount by the fraction of which the numerator is the number of days comprised in the period of control and the denominator is the number of days comprised in the basis financial year.
- (5) In any case where the issued share capital of a company at the end of a period of control exceeds, or is less than, its issued share capital at the end of the basis financial year, then, in the application of subsection (1) above to that period of control, the total amount of the dividends paid by the company in the basis financial year shall be treated as increased or, as the case may be, reduced by multiplying that amount or, where subsection (4) above applies, that amount as varied under that subsection, by the fraction of which the numerator is the amount of the issued share capital of the company at the end of the period of control and the denominator is the amount of the issued share capital of the company at the end of the basis financial year.
- (6) For the purposes of subsection (5) above, the amount of a company's issued share capital at the end of a period of control shall be computed by taking the amount of its issued share capital at the end of the basis financial year and adjusting it—
 - (a) by adding the amount or value of any consideration actually received in the period between the end of the basis financial year and the end of that period of control for the issue of share capital or in payment up of issued share capital, and
 - (b) by deducting the amount or value of any money or other assets paid or transferred by the company during the period referred to in paragraph (a) above for the repayment or redemption of any share capital,
 and the amount of the company's issued share capital at the end of the basis financial year shall be what is then the amount of the company's paid-up share capital and of any share premium account (or other comparable account by whatever name called).
- (7) Any reference in this section to payments of dividend shall be construed, in the case of payments made before 6th April 1973, as a reference to the gross amount of those payments, that is to say, to the amounts thereof before any deduction was made therefrom in respect of income tax; and if any such payment made by a company before that date was made without deduction of income tax, the amount of that payment shall be treated for the purposes of this section as a net amount paid after deduction of tax, and the gross amount of the payment shall be calculated accordingly for those purposes.

25 Final payments of dividend and interest.

- (1) As soon as possible after the date of transfer, each acquired company shall make the following payments to the persons who, immediately before that date, where the

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holders of securities of the company in respect of which compensation is payable under this Part of this Act, namely—

- (a) payments on all securities forming part of the loan capital of the company of interest which has accrued up to the date of transfer and has not been paid, at the rates permitted under section 24 above or, if rates in excess of those rates have been approved under section 23(1) above, at the highest rates so approved; and
 - (b) payments of dividend for the final financial period on any other securities of the company of such amounts as to ensure that the aggregate payments of dividend for that period on those securities are equal to the maximum amounts permitted under section 24 above, or, if larger amounts have been approved under section 23(1) above, to the largest amounts so approved.
- (2) As soon as possible after the date of transfer, each acquired company and each wholly owned subsidiary of an acquired company shall make to the persons who, immediately before that date, were owed any sums the rights to repayment of which are treated as securities under section 21(6) above, payments of interest which has accrued in respect of them up to the date of transfer, and has not been paid, at the rates permitted under section 24 above or, if rates in excess of those rates have been approved under section 23(1) or (2) above, at the highest rates so approved.
 - (3) For the purpose of any such payments as are referred to in subsections (1) and (2) above, the statutory or other provisions relating to the company shall be deemed to permit payments of interest or dividend in respect of the final financial period.
 - (4) In this section the expression “final financial period”, in relation to a company, means, subject to subsection (5) below, such part of the financial year during which the date of transfer occurs as precedes that date.
 - (5) In any case where the accounts of a company in respect of the last financial year ending before the date of transfer have not been laid before the company in general meeting before that date, the expression “final financial period”, in relation to that company, means that financial year together with such part of the financial year during which the date of transfer occurs as precedes that date.

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