



Aircraft and Shipbuilding Industries Act 1977

1977 CHAPTER 3

PART II

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

Acquisition of securities and assets

21 Certain loans from associated persons to be treated as securities

(1) In any case where—

- (a) immediately before the date of transfer, an acquired company or the wholly owned subsidiary of an acquired company owes a debt to an associated person, and
- (b) it appears to the Secretary of State that the circumstances in which and the purposes for which the debt was incurred were of such a nature that, had the acquired company or its wholly owned subsidiary sought to borrow the money in question from a person who was not an associated person, the terms of the provision of that money would have been likely, assuming the debtor not to be the subsidiary of any company, to be such as to require the issue to the lender by the debtor of securities,

the Secretary of State may, at any time within the period of 9 months beginning on the date of transfer, serve a notice on the person to whom the debt is owed stating that, in the opinion of the Secretary of State, the right to repayment of the whole or part of the debt should be treated as a security of the acquired company for the purposes of vesting and compensation.

(2) Subject to subsection (5) below, where a notice is served under subsection (1) above, no person—

- (a) shall be entitled to exercise any right to repayment of the debt in question, or

Status: This is the original version (as it was originally enacted).

- (b) shall be subject to any obligation to repay it.
- (3) Where a notice has been served under subsection (1) above, the questions—
- (a) whether the right to repayment of the whole or part of the debt ought to be treated for the purposes of vesting and compensation as a security of the acquired company by whom or by whose wholly owned subsidiary the debt is owed, and
 - (b) on what date and terms and for what consideration any such security should be treated for those purposes as having been issued by the acquired company,
- shall be settled by agreement between the Secretary of State and the person on whom the notice was served within the period of 3 months beginning on the day on which he was so served or, in default of such agreement, by arbitration under this Act.
- (4) If the arbitration tribunal are satisfied that the right to repayment of the whole or any part of the debt in question ought to be treated as a security of the acquired company for the purposes of vesting and compensation, they shall confirm the Secretary of State's notice under subsection (1) above with any necessary amendments but otherwise shall revoke it.
- (5) If, by reason—
- (a) of an agreement under subsection (3) above, or
 - (b) of the revocation or amendment of a notice under subsection (4) above,
- the right to repayment of the debt or of any part of it does not fall to be treated as a security for the purposes of vesting and compensation, subsection (2) above shall to that extent cease to apply on the date of the agreement or the date when the notice is revoked or amended.
- (6) If—
- (a) the parties have agreed under subsection (3) above that the right to repayment of the debt or of any part of it ought to be treated as a security, or
 - (b) the arbitration tribunal confirm the Secretary of State's notice as respects the right to repayment of the debt or any part of it,
- the right which falls to be treated as a security shall vest in the relevant Corporation on the operative date of the notice as a security of the acquired company issued to the creditor on such date and terms and for such consideration as have been determined by agreement or arbitration under subsection (3) above and be treated as such a security—
- (i) for the purposes of section 19 above, and
 - (ii) subject to subsection (7) below, for the purposes of any provision of this Part of this Act relating to compensation for securities or the issue of securities.
- (7) A right to repayment shall not be so treated for the purpose of any provision of this Part of this Act relating to compensation under which it is necessary to determine, at any time before the operative date of the notice,—
- (a) the persons who are the holders of, or of any class of, securities of the acquired company concerned; or
 - (b) whether any matter was agreed to by a majority or any particular majority of any such persons.
- (8) Where a matter is referred to the arbitration tribunal under subsection (3) above, the tribunal shall, in determining the issue before them, have regard to all factors which appear to them to be relevant and, in particular, to—
- (a) the structure of the capital of the acquired company ;

- (b) the nature and amounts of that company's assets and liabilities; and
 - (c) the length of time over which the debt in question has been outstanding on the date of transfer.
- (9) If the terms on which a security is to be treated under this section as having been issued include any charge on assets of the acquired company, subsection (5) of section 38 below shall not apply for the purpose of determining the base value of that security.
- (10) In this section—
- “operative date”, in relation to a notice means—
 - (a) where paragraph (a) of subsection (6) above applies, the date of the agreement,
 - (b) where paragraph (b) applies, the date of confirmation of the notice by the arbitration tribunal; and
 - “securities” has the same meaning as in section 19 above.