

---

## STATUTORY INSTRUMENTS

---

# 1995 No. 3272

## The Uncertificated Securities Regulations 1995

### PART V

#### MISCELLANEOUS AND SUPPLEMENTAL

##### *Miscellaneous*

##### **Construction of references to transfers etc.**

**31.** References in any enactment or rule of law to a proper instrument of transfer or to a transfer with respect to securities, or any expression having like meaning, shall be taken to include a reference to an Operator-instruction to a participating issuer to register a transfer of title on the relevant register of securities in accordance with the Operator-instruction.

##### **Certain formalities and requirements not to apply**

**32.—**(1) Any requirements in an enactment or rule of law which apply in respect of the transfer of securities otherwise than by means of a relevant system shall not prevent an Operator-instruction from requiring a participating issuer to register a transfer of title to uncertificated units of a security.

(2) Subject to regulation 26(2), notwithstanding any enactment, instrument or rule of law, a participating issuer shall not issue a certificate in relation to any uncertificated units of a participating security.

(3) A document issued by or on behalf of a participating issuer purportedly evidencing title to an uncertificated unit of a participating security shall not be evidence of title to the unit of the security; and in particular section 186 of the 1985 Act shall not apply to any document issued with respect to uncertificated shares.

(4) Any requirement in or under any enactment to endorse any statement or information on a certificate evidencing title to a unit of a security—

- (a) shall not prohibit the conversion into, or issue of, units of the security in uncertificated form; and
- (b) in relation to uncertificated units of the security, shall be taken to be a requirement to provide the holder of the units with the statement or information on request by him.

(5) Sections 53(1)(c) and 136 of the Law of Property Act 1925(1) (which impose requirements for certain dispositions and assignments to be in writing) shall not apply (if they would otherwise do so) to—

- (a) any transfer of title to uncertificated units of a security by means of a relevant system; and
- (b) any disposition or assignment of an interest in uncertificated units of a security title to which is held by a relevant nominee, or in which the relevant nominee has an interest by virtue of regulation 25(1) or (2).

(6) In paragraph (5) “relevant nominee” means a subsidiary undertaking of an Operator designated by him as a relevant nominee in accordance with such rules and practices as are mentioned in paragraph 19(d) of Schedule 1 to these Regulations.

### **Trusts, trustees and personal representatives etc.**

**33.—**(1) Unless expressly prohibited from transferring units of a security by means of any computer-based system, a trustee or personal representative shall not be chargeable with a breach of trust or, as the case may be, with default in administering the estate by reason only of the fact that—

- (a) for the purpose of acquiring units of a security which he has the power to acquire in connection with the trust or estate, he has paid for the units under arrangements which provide for them to be transferred to him from a system-member but not to be so transferred until after the payment of the price;
- (b) for the purpose of disposing of units of a security which he has power to dispose of in connection with the trust or estate, he has transferred the units to a system-member under arrangements which provide that the price is not to be paid to him until after the transfer is made; or
- (c) for the purpose of holding units of a security belonging to the trust or estate in uncertificated form and for transferring title to them by means of a relevant system, he has become a system-member.

(2) Notwithstanding section 192 of the 1985 Act, a trustee of a trust deed for securing an issue of debentures shall not be chargeable with a breach of trust by reason only of the fact that he has assented to an amendment of the trust deed only for the purposes of—

- (a) allowing the holding of the debentures in uncertificated form;
- (b) allowing the exercise of rights attaching to the debentures by means of a relevant system; or
- (c) allowing the transfer of title to the debentures by means of a relevant system;

provided that he has given or caused to be given notice of the amendment in accordance with the trust deed not less than 30 days prior to its becoming effective to all persons registered as holding the debentures on a date not more than 21 days before the dispatch of the notice.

(3) The Operator shall not be bound by or compelled to recognise any express, implied or constructive trust or other interest in respect of uncertificated units of a security, even if he has actual or constructive notice of the said trust or interest.

(4) Paragraph (3) shall not prevent, in the case of a participating issuer constituted under the law of Scotland, the Operator giving notice of a trust to the participating issuer on behalf of the system-member.

### **Notices of meetings**

**34.—**(1) For the purposes of determining which persons are entitled to attend or vote at a meeting, and how many votes such persons may cast, the participating issuer may specify in the notice of the meeting a time, not more than 48 hours before the time fixed for the meeting, by which a person must be entered on the relevant register of securities in order to have the right to attend or vote at the meeting.

(2) Changes to entries on the relevant register of securities after the time specified by virtue of paragraph (1) shall be disregarded in determining the rights of any person to attend or vote at the meeting, notwithstanding any provisions in any enactment, articles of association or other instrument to the contrary.

(3) For the purposes of serving notices of meetings, whether under section 370(2) of the 1985 Act, any other enactment, a provision in the articles of association or any other instrument, a participating

issuer may determine that persons entitled to receive such notices 'are those persons entered on the relevant register of securities at the close of business on a day determined by him.

(4) The day determined by a participating issuer under paragraph (3) may not be more than 21 days before the day that the notices of the meeting are sent.

### **Notices to minority shareholders**

**35.**—(1) This regulation shall apply in relation to any uncertificated units of a security to which a notice given pursuant to section 429 of the 1985 Act relates, in place of the provisions of section 430(6) of that Act.

(2) On receipt of a notice sent pursuant to section 430(5)(a) of the 1985 Act, a company which is a participating issuer shall be under the same obligation to enter the offeror on its register of securities as the holder of the uncertificated units of the security to which the notice relates, in place of the system-member who was immediately prior to such entry registered as the holder of such units, as it would be if it had received an Operator-instruction requiring it to amend its register of securities in such manner; and regulation 23(9) shall have effect accordingly.

(3) A company which amends its register of securities in accordance with paragraph (2) shall forthwith notify the Operator by issuer-instruction of the amendment.

(4) The reference in section 430D(5) of the 1985 Act to section 430(6) shall be taken to include a reference to the provisions of paragraph (2).

(5) In this regulation, “offeror” has the meaning given by section 428(8) of the 1985 Act as construed in accordance with section 430D(5) of that Act. 23

### **Irrevocable powers of attorney**

**36.**—(1) This regulation applies where the terms of an offer for all or any uncertificated units of a participating security provide that a person accepting the offer creates an irrevocable power of attorney in favour of the offeror, or a person nominated by the offeror, in the terms set out in the offer.

(2) An acceptance communicated by properly authenticated dematerialised instruction in respect of uncertificated units of a security shall constitute a grant of an irrevocable power of attorney by the system-member accepting the offer in favour of the offeror, or person nominated by the offeror, in the terms set out in the offer.

(3) Where the contract constituted by such offer and acceptance referred to in paragraphs (1) and (2) respectively is governed by the law of England and Wales, section 4 of the Powers of Attorney Act 1971(2) shall apply to a power of attorney constituted in accordance with this regulation.

(4) A declaration in writing by the offeror stating the terms of a power of attorney and that it has been granted by virtue of this regulation and stating the name and address of the grantor shall be prima facie evidence, and in Scotland sufficient evidence unless the contrary is shown, of the grant; and any requirement in any enactment, rule of law, or instrument to produce a copy of the power of attorney, or such a copy certified in a particular manner, shall be satisfied by the production of the declaration or a copy of the declaration certified in that manner.

(5) In the application of this regulation to an offer, acceptance or contract governed by the law of Scotland, any reference to an irrevocable power of attorney shall mean and include reference to an irrevocable mandate, however expressed.

## *Defaults and contraventions*

### **Breaches of statutory duty**

**37.**—(1) A default in complying with, or a contravention of, regulation 16(8), 18(2), 21(1) or (2), 22,23(4) or (S), 26(1), 26(2)(a) or (c), 27(1), 28(3) or 35(3) shall be actionable at the suit of a person who suffers loss as a result of the default or contravention, or who is otherwise adversely affected by it, subject to the defences and other incidents applying to actions for breach of statutory duty.

(2) Paragraph (1) shall not affect the liability which any person may incur, nor affect any right which any person may have, apart from paragraph (1).

### **Liability of officers for contraventions**

**38.** In regulation 16(7), 19(4), 23(9), 26(4) or 27(8) an officer of a participating issuer shall be in default in complying with, or in contravention of, the provision mentioned in that regulation if, and only if, he knowingly and wilfully authorised or permitted the default or contravention.

## *Northern Ireland*

### **Application to Northern Ireland**

**39.**—(1) In their application to Northern Ireland, these Regulations shall have effect with the following modifications.

(2) In regulation 32(5)—

- (a) for the reference to section 53(1)(c) of the Law of Property Act 1925 there shall be substituted a reference to section 6 of the Statute of Frauds (Ireland) 1695(3); and
- (b) for the reference to section 136 of the Law of Property Act 1925 there shall be substituted a reference to section 87 of the Judicature (Northern Ireland) Act 1978(4).

(3) In regulation 36(3) for the reference to section 4 of the Powers of Attorney Act 1971 there shall be substituted a reference to section 3 of the Powers of Attorney Act (Northern Ireland) 1971(5).

(4) For references to provisions of the 1985 Act there shall be substituted references to the equivalent provisions of the 1986 Order and, in particular, for the references to the 1985 Act listed in column 1 of Schedule 3 in the provisions of these Regulations listed in column 2 of that Schedule, there shall be substituted the references to the 1986 Order listed in column 3 of that Schedule.

## *Amendments and revocations*

### **Minor and consequential amendments**

**40.**—(1) In subsection (1)(b) of section 182 of the 1985 Act after “simplified process)” there shall be inserted “and to regulations made under section 207 of the Companies Act 1989 (which enable title to securities to be evidenced and transferred without a written instrument).”.

(2) In section 183 of that Act—

- (a) in subsection (1) after “Stock Transfer Act 1982” there shall be inserted “or is in accordance with regulations made under section 207 of the Companies Act 1989.”; and

---

(3) 1695 c.12(Ir)

(4) 1978 c. 23

(5) 1971 c. 33 (N.I.)

- (b) subsection (4) shall not apply in relation to the transfer of uncertificated units of a security by means of a relevant system.
- (3) In subsection (4) of section 380 of the 1985 Act, after paragraph (k) the following paragraphs shall be added—
- “(1) a resolution of the directors passed by virtue of regulation 16(2) of the Uncertificated Securities Regulations 1995 (which allow title to a company’s shares to be evidenced and transferred without written instrument); and
- (m) a resolution of a company passed by virtue of regulation 16(6) of the Uncertificated Securities Regulations 1995 (which prevents or reverses a resolution of the directors under regulation 16(2) of those Regulations).”.
- (4) In subsection (1) of section 180 of the 1986 Act, after paragraph (n) there shall be added the following paragraph—
- “(nn) to an Operator approved under the Uncertificated Securities Regulations 1995 if the information is necessary to ensure the proper functioning of a relevant system within the meaning of those Regulations in relation to defaults and potential defaults by market-participants;”.

## **Revocations**

- 41.** The Uncertificated Securities Regulations 1992(6) are hereby revoked.