



Aircraft and Shipbuilding Industries Act 1977

1977 CHAPTER 3

PART II

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

Compensation

35 Compensation for vesting of securities

- (1) Compensation for the vesting in a Corporation by virtue of this Part of this Act of the securities of any company shall be satisfied by the issue of government stock, that is to say, stock the principal whereof and the interest whereon shall be charged on the National Loans Fund with recourse to the Consolidated Fund; and in this Part of this Act government stock issued by way of compensation in accordance with this section is referred to as “compensation stock”.
- (2) No compensation shall be payable in respect of securities which, immediately before they become vested in a Corporation by virtue of this Part of this Act, are held by or on behalf of the Crown.
- (3) Subject to section 30(4) above, and to subsection (4) below, the amount of compensation due to any person in respect of any securities of a company which are held by him immediately before the date of transfer of that company shall be an amount equal to the base value of those securities less any deduction which is appropriate in his case by virtue of section 39 below.
- (4) Where—
 - (a) on any date after 6th November 1975 but before the relevant vesting date—
 - (i) a payment is made to a company by virtue of section 1 of the Civil Aviation Act 1949, or

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- (ii) financial assistance for a company is provided under Part II of the Industry Act 1972, and
- (b) the Secretary of State makes a special declaration with respect to the payment or assistance before the offer to make the payment or provide the assistance is accepted,
- the amount of compensation due to any person in respect of the securities of the company which are held by him immediately before its date of transfer shall be the reduced amount.
- (5) Where compensation stock falls to be issued in satisfaction of an amount of compensation due to any person, the amount of stock so issued shall be such as, in the opinion of the Treasury, is equal on the date of issue to that amount of compensation, regard being had (in estimating the value of the compensation stock so issued) to the market value of other government securities at or about that date.
- (6) In this section—
- “the reduced amount ” means whichever of the following amounts is specified in a stockholders' representative's notice, namely—
- (a) 5 per cent. of the amount which would have been payable under subsection (3) above, if the special declaration had not been made, or
- (b) the amount which, if the company had not received the payment or assistance mentioned in subsection (4) above, and had in consequence been wound up, the holders of the securities would have received in the winding-up ;
- “special declaration ” means a declaration by the Secretary of State that in his opinion either—
- (a) the company would be unable to pay its debts as they fall due without the payment or assistance in question; or
- (b) the state of the company's affairs is such that in all the circumstances it is probable that in the foreseeable future it would become unable so to pay them without that payment or assistance ; and
- " stockholders' representative's notice " means a notice served on the Secretary of State within 3 months after the relevant vesting date by the stockholders' representative appointed under section 41 below.
- (7) If no stockholders' representative's notice is served, the reduced amount is the amount specified in paragraph (a) of the definition in subsection (6) above.
- (8) If any question arises as to—
- (a) the amount of compensation payable under subsection (4) above, or
- (b) when the company would have been wound up but for the payment or assistance,
- it shall be settled by agreement between the Secretary of State and the stockholders' representative or, in default of such agreement, by arbitration under this Act.
- (9) Schedule 5 to this Act shall have effect for supplementing the provisions of this section.

36 Payment of compensation

- (1) Subject to subsections (6) to (8) below, compensation shall not be payable in respect of the vesting of any class of securities of a company in a Corporation before such

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- date (in this Part of this Act referred to as “the conversion date”) as may be specified in relation to that class of securities in an order made by the Secretary of State.
- (2) An order of the Secretary of State under subsection (1) above may not specify as the conversion date for any class of a company's securities a date earlier than the date of transfer of that company.
 - (3) The date specified in such an order as the conversion date for the equity share capital of a company or for rights which are treated as securities by virtue of section 21(6) above (and in respect of which a deduction may accordingly fall to be made under section 39(8)(b) below) shall be the first convenient date which falls after the relevant conditions have been fulfilled in relation to the company.
 - (4) The relevant conditions referred to in subsection (3) above are—
 - (a) that the base value of the equity share capital and of the rights mentioned in that subsection has been determined in accordance with the following provisions of this Part of this Act; and
 - (b) that there has been determined the amount of any deduction or deductions falling to be made by virtue of section 39 below in determining the amount of the compensation payable to any person in respect of any of the equity share capital or rights in question.
 - (5) Except in a case to which subsection (3) above applies, the date specified as the conversion date for any class of a company's securities shall be the first convenient date which falls after the date on which the base value of the securities of that class has been determined in accordance with the following provisions of this Part of this Act.
 - (6) At any time on or after the date of transfer of a company such sum may be paid on account of compensation in respect of the vesting of its securities as the Secretary of State thinks fit, with the approval of the Treasury, notwithstanding that the total amount of the compensation payable is not yet ascertained.
 - (7) A payment under subsection (6) above may be made on such terms and conditions as the Secretary of State, with the approval of the Treasury, thinks fit.
 - (8) Subsections (1), (2) and (9) of section 35 above shall apply for the purposes of subsection (6) above ; and subsection (5) of that section shall apply for the purposes of subsection (6) above with the substitution of the words “to be paid on account ” for the word “due ”.

37 Base value of securities of a listed class

- (1) In the case of securities of any class that were listed : in the Stock Exchange Daily Official List on each of the relevant; days, the base value of securities of that class for the purposes of section 35 above shall, subject to the provisions of this section, be deemed to be the average of the mean of the quotations for securities of that class appearing in that List on each of the relevant days, such addition, if any, being made to the average as is necessary to make it a complete multiple of one halfpenny.
- (2) Where, in the case of securities of any class whose base value would, apart from this subsection, fall to be ascertained under subsection (1) above, there has been, at any time after the last of the relevant days, a fresh issue of securities of that class, the base value of every security of that class for the purposes of section 35 above shall (subject to subsection (3) below) instead of being ascertained under subsection (1) above, be

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deemed to be the average of the base values of all the securities of that class calculated on the basis that—

- (a) the base value of each of the securities comprised in that issue is the price at which it was issued or, if it was issued free, is nil; and
 - (b) the base value of the remaining securities is that which they had or would have had for the purposes of that section immediately before the issue took place.
- (3) Where, at any time after the last of the relevant days, any securities whose base value would, apart from this subsection, fall to be ascertained under subsection (1) or (2) above have been converted into securities of a different nominal value—
- (a) the base value of those securities as so converted shall, for the purposes of section 35 above, be deemed to be a value bearing to the base value which the securities had or would have had for the purposes of that section immediately before the conversion took place the same proportion as the nominal value of the securities as converted bears to the nominal value of the securities immediately before the conversion took place; and
 - (b) subsection (2) above shall apply to any fresh issue of securities which have been converted as mentioned above, but if a part only of a class of securities has been so converted, the converted securities shall, for the purposes of that subsection, be treated as securities of a different class from that of the unconverted securities.
- (4) If all the securities of any issue were originally disposed of to a person who did not become the registered holder of those securities, the price of each of the securities shall, for the purposes of subsection (2) above, be deemed to be either—
- (a) the price paid for the security by the first registered holder thereof, or
 - (b) the price received by the company for the security plus an amount equal to 2 ½ per cent. of that price,
- whichever is the lower.
- (5) If any question arises under the preceding provisions of this section as to the base value of any securities, it shall be settled by agreement between the Secretary of State and the stockholders' representative or, in default of such agreement, by arbitration under this Act.
- (6) Calculations for the purposes of this section are to be completed correct to five places of decimals.

(7) In this section—

“convert ” means, in relation to any securities, to consolidate and divide those securities into units of larger nominal value or to sub-divide those securities into units of smaller nominal value, without in either case making any change in the aggregate nominal value of the securities;

“the mean of the quotations ” means the average of the two figures shown in the Stock Exchange Daily Official List on the date in question in respect of the security in question under the heading “Quotations ” ;

“quotation ” has the same meaning as in the Stock Exchange Daily Official List, and accordingly does not include the statements of the business that was done; and

“the Stock Exchange Daily Official List ” means the publication known as the Stock Exchange Daily List of Officially Quoted Securities which is published by and under the authority of the Council of the Stock Exchange, London;

and for the purposes of subsection (1) above, an alteration effected, after the last of the relevant days, in rights attaching to securities shall not be taken to have changed them into different securities.

38 Base value of other securities

- (1) Subject to the following provisions of this section, the base value for the purposes of section 35 above of any securities of a class which were issued on or before the last of the relevant days but were not listed in the Stock Exchange Daily Official List on each of those days shall be such as may be determined by agreement between the Secretary of State and the stockholders' representative or, in default of such agreement, as may be determined by arbitration under this Act to be the base value which the securities would have had under section 37 above if they had been listed in the Stock Exchange Daily Official List on all of the relevant days.
- (2) Subsections (2), (3), (4) and (6) of section 37 above shall have effect in relation to securities to which subsection (1) above applies as they have effect in relation to securities to which subsection (1) of that section applies.
- (3) The arbitration tribunal, in determining the base value that any securities would have had if they had been listed as mentioned in subsection (1) above, shall have regard to all relevant factors.
- (4) Where securities of a class were issued on or after the first of the relevant days and before the end of the last of the relevant days, the base value of those securities and of all other securities of that class issued before the first of the relevant days shall be determined in accordance with subsection (1) above on the assumption that the securities were issued and the consideration therefor was given immediately before the first of the relevant days.
- (5) For the purposes of determining in accordance with subsection (1) above the base value of securities of any company, it shall be assumed that the assets of that company were not subject to any charge on any of the relevant days.
- (6) If on any of the relevant days—
 - (a) a company the base value of the securities of which falls to be determined in accordance with subsection (1) above was a subsidiary of another body corporate (in this subsection referred to as “the parent company”), and
 - (b) the undertaking carried on by the company formed a substantial part of the undertakings of the group of companies of which the company and the parent company were members, and
 - (c) shares forming part of the equity share capital of the parent company were listed in the Stock Exchange Daily Official List,one of the relevant factors to which the arbitration tribunal shall have regard in determining the base value of the company's securities in accordance with subsection (1) above shall be the quotation of the shares referred to in paragraph (c) above.
- (7) If, by virtue of section 20 above, any property, rights or liabilities become vested in a company on the date of transfer, then, for the purpose of determining the base value of any securities of the company in accordance with subsection (1) above, it shall be assumed that, immediately before each of the relevant days, there were vested in the company such property, rights or liabilities as on that day corresponded to the

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property, rights or liabilities which become so vested and as would have satisfied a vesting condition for the purposes of the said section 20.

- (8) In any case where—
- (a) prior to any relevant day, a Minister of the Crown had paid any sum to a company with a view to rendering financial assistance to it, and
 - (b) on that day the detailed terms on which the company was to hold the sum had not been agreed and, pending an agreement on those terms, the company held the sum on the terms that immediate repayment could be required at any time, and
 - (c) the detailed terms referred to in paragraph (b) above were not agreed before 28th February 1974,

then, in determining the base value of the company's securities in accordance with subsection (1) above, it shall be assumed that the sum referred to in paragraph (a) above had never been paid to the company.

- (9) Without prejudice to subsection (8) above, in determining, in accordance with subsection (1) above, the base value which securities of any company would have had under section 37 above, no account shall be taken of any prospects which, on or before any relevant day, the company might have had of receiving financial assistance from any Minister of the Crown, other than—
- (a) grants under Part I of the Industry Act 1972 (regional development grants); and
 - (b) other assistance which on that relevant day the company had a statutory or contractual right to receive.

- (10) Subject to subsection (11) below, where securities of a new class have been issued after the last of the relevant days, the base value of the securities of that class for the purpose of section 35 above shall be deemed to be the price at which they were issued or, if they were issued free, shall be deemed to be nil; and—
- (a) subsections (2) and (3) of section 37 above shall have effect in relation to any fresh issue or conversion of securities of the new class, and
 - (b) subsections (4) to (6) of that section shall have effect for the purposes of this subsection.

- (11) Where—
- (a) apart from this subsection the base value of securities would fall to be ascertained under subsection (10) above, and
 - (b) they were issued for a consideration consisting in whole or in part of the transfer to the company by which they were issued (in this subsection referred to as “the transferee”) of the whole or any part of an undertaking of another company (in this subsection referred to as “the transferor”) which at the date of that transfer was a member of the same group of companies as the transferee,

the base value shall instead be determined in accordance with subsection (1) above, on the assumptions—

- (i) that the securities were in existence on each of the relevant days; and
- (ii) that on each of the relevant days the undertaking of the transferee included the whole or, as the case may require, the part of the undertaking carried on on that day by the transferor which then corresponded to the undertaking or part thereof transferred to the transferee by way of consideration for the issue of the securities ; and

- (iii) that, in any case where the transfer of the undertaking, or part thereof formed only part of the consideration for the issue of the securities, the remainder of that consideration was an asset of the transferee on each of the relevant days.
- (12) Expressions to which a meaning is assigned by subsection (7) of section 37 above have the same meanings in this section.

39 The appropriate deduction

- (1) Subject to and in accordance with the provisions of this section, a deduction shall be made from the amount of the compensation which would otherwise be due to any person under section 35 above in respect of the vesting in a Corporation of any securities of an acquired company—
- (a) if any of the conditions specified in subsection (2) below is fulfilled, and
 - (b) in a case to which subsection (5) below applies.
- (2) The conditions referred to in subsection (1) above are—
- (a) that the acquired company has, in pursuance of an authority or recommendation contained in a resolution of the directors of the company passed after 27th February 1974 and not later than the safeguarding date, made payments of dividend or interest of such a nature and amount that, on the relevant hypothesis, all persons who were directors of the acquired company at the time when the resolution was passed would be liable to make a payment to the relevant Corporation under section 23(1) above;
 - (b) that a company has, in pursuance of an authority or recommendation contained in a resolution of the directors of the company passed after 27th February 1974 and not later than the safeguarding date, and at a date on which it was a wholly owned subsidiary of an acquired company, made payments of interest of such a nature and amount that, on the relevant hypothesis, all persons who were directors of the company at the time when the resolution was passed would be liable to make a payment to the relevant Corporation under section 23(2) above;
 - (c) that the acquired company or a company which at the material time was a wholly owned subsidiary of it has entered into a transaction which, on the relevant hypothesis, would be a material transaction, within the meaning of section 30 above ; and
 - (d) that the acquired company or a company which at the material time was a wholly owned subsidiary of it has entered into a transaction which, on the relevant hypothesis, would be an onerous transaction, within the meaning of section 31 above.
- (3) The fulfilment with respect to a wholly owned subsidiary of an acquired company of a condition specified in paragraph (c) or (d) of subsection (2) above shall be treated for the purposes of subsection (1) above as its fulfilment with respect to the acquired company itself.
- (4) For the purposes of this section, the relevant hypothesis is that—
- (a) for any reference to the safeguarding date in section 23 or 30 above there were substituted a reference to 27th February 1974;
 - (b) for the references to 29th October 1974 in section 24(1)(c) and (2) above there were substituted references to 27th February 1974 ;
 - (c) in section 31—

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- (i) for any reference to the day after the safeguarding date there were substituted a reference to 28th February 1974 ; and
 - (ii) in subsection (1) the words from “in relation to ” to “any other transaction ” were omitted ; and
 - (d) for any reference to the date of transfer in section 23, 30 or 31 above there were substituted a reference to the day after the safeguarding date.
- (5) This subsection applies where, within the period beginning on 28th February 1974 and ending—
- (a) on the date of service of a notice under section 21(1) above, or
 - (b) 9 months after the date of transfer,
- whichever is the earlier, there has been repayment of any sum the right to repayment of which, if the sum had not been repaid, would, following the service of such a notice, have been treated as a security or part of a security under section 21(6) above.
- (6) In any case where, by virtue of the preceding provisions of this section, a deduction falls to be made as mentioned in subsection (1) above, that deduction (in the following provisions of this section referred to, in relation to the securities of the company concerned, as “the appropriate deduction ”) shall be the aggregate of,—
- (a) if the condition specified in subsection (2)(a) or (b) above is fulfilled, the amount which, on the relevant hypothesis, would become due to the Corporation concerned under subsection (1) of section 23 above on a claim made as mentioned in subsection (3) thereof; and
 - (b) if the condition specified in subsection (2)(c) above is fulfilled, the net loss which, on the relevant hypothesis and on an application under subsection (5) of section 30 above, would be determined under subsection (7) of that section to result from the transaction referred to in subsection (2)(c) above; and
 - (c) if the condition specified in subsection (2)(d) above is fulfilled, the net loss which, on the relevant hypothesis and on an application under subsection (3) of section 31 above, would be determined under subsection (8)(i) of that section to result from the transaction referred to in subsection (2)(d) above; and
 - (d) in a case to which subsection (5) above applies, the net loss to the Corporation resulting from the repayment in question.
- (7) The question—
- (a) whether any, and if so which, of the conditions specified in subsection (2) above is fulfilled, or
 - (b) whether, in any case, subsection (5) above applies,
- and any question as to—
- (i) the amount of the appropriate deduction to be made in respect of any securities, or
 - (ii) any amount to be included in such a deduction by virtue of subsection (6) above,
- shall be determined by agreement between the Secretary of State and the stockholders' representative or, in default of such agreement, by arbitration under this Act.
- (8) No deduction shall be made by virtue of this section from the compensation otherwise due to any person in respect of a security unless—
- (a) the security forms part of the equity share capital of a company, or

- (b) in the case of a right which is treated as a security by virtue of section 21(6) above, that security is of such a nature that, if it existed as such, it would form part of a company's equity share capital,
and securities in respect of which a deduction falls to be so made are in the following provisions of this section referred to as "equities".
- (9) Subject to subsection (10) below, the appropriate deduction for a company's securities, as calculated under subsection (6) above, shall be apportioned among all the persons who, immediately before the date of transfer, held equities of the company so that the amount of the appropriate deduction which is apportioned to any such person bears to the total amount of the appropriate deduction the same proportion as the base value for the purposes of section 35 above of the equities so held by him bears to the aggregate of the base values for those purposes of all the company's equities.
- (10) Where, apart from this subsection, the amount of the appropriate deduction apportioned to any person under subsection (9) above in respect of equities held by him immediately before the date of transfer of the company concerned would otherwise exceed the base value of those equities for the purposes of section 35 above, the amount so apportioned to him shall be reduced to an amount equal to that base value (but without affecting the amount of the appropriate deduction so apportioned to any other person).

40 General provisions as to compensation stock

- (1) Compensation stock shall bear such rate of interest and be subject to such conditions as to repayment, redemption and other matters as the Treasury may determine.
- (2) The Treasury may by regulations made by statutory instrument make provision as to the issue of compensation stock by the Bank of England.
- (3) Regulations under subsection (2) above may contain such incidental or supplementary provisions as the Treasury consider appropriate.
- (4) The Corporation in which any securities become vested shall be liable to indemnify the Bank of England against any loss suffered by them arising out of, or in connection with, the issue of compensation stock in respect of the vesting of those securities.
- (5) Any expenses incurred in connection with the issue or repayment of compensation stock shall be charged on and issued out of the National Loans Fund.
- (6) References in the preceding provisions of this section to compensation stock include references to stock issued by way of compensation in accordance with paragraph 5 of Schedule 4 to this Act.

41 Stockholders' representatives

- (1) In the case of every company whose securities are to vest in either Corporation by virtue of this Part of this Act, there shall be appointed an individual (in this Act referred to as "the stockholders' representative") to represent the interests of holders of securities of that company in connection with the determination of the base value of those securities under the preceding provisions of this Part of this Act.
- (2) The provisions of Schedule 6 to this Act shall have effect with respect to the office of stockholders' representative and meetings of the holders of securities whose interests are represented by a stockholders' representative and matters incidental thereto.

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- (3) References in this section and Schedule 6 to this Act to securities do not include securities of a company which, immediately before the date of transfer, are held by or on behalf of the Crown.
- (4) The Secretary of State shall pay, out of money provided by Parliament, to a stockholders' representative such remuneration (whether by salary or fees) and such allowances, and such expenses incurred by him in the exercise of his functions, as may be determined by the Secretary of State with the approval of the Minister for the Civil Service ; and any sums paid by the Secretary of State under this section shall, on demand, be repaid to him by the Corporation in which vest the securities to which his functions relate.
- (5) Any sums repaid to the Secretary of State under subsection (4) above shall be paid into the Consolidated Fund.
- (6) Where a stockholders' representative is appointed for a company, then—
- (a) the company,
 - (b) any person to whom property or rights of the company have been disposed of after the date of transfer,
 - (c) any person by whom any property or rights have been disposed of to the company, and
 - (d) any other company which, at any time between 5th September 1973 and the date of transfer is a member of the same group of companies,

shall make available to the stockholders' representative such facilities for the examination of and the making of extracts from or copies of books, accounts and documents of the company or person, and such services of employees of that company or of any such person, as he may reasonably request for the purposes of his duties or, in the event of any question arising between the stockholders' representative and the company or person whether any request is reasonable, as may be directed by the Secretary of State.