



Aircraft and Shipbuilding Industries Act 1977

1977 CHAPTER 3

PART II

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

Safeguarding of assets, avoidance of certain transactions, etc.

26 Power to acquire securities of certain additional companies

- (1) If it appears to the Secretary of State that a company which, apart from this section, would not come into public ownership—
- (a) operates or owns the whole, or a substantial or essential part, of works which, at any time on or after the initial date, were operated or owned (as the case may be) by an acquired company or an excluded company or by a company which on that date was the subsidiary of an acquired company or an excluded company, or
 - (b) was on the initial date the wholly owned subsidiary of an acquired company but ceased to be such a subsidiary before the date of transfer of the acquired company, or
 - (c) was on the initial date the wholly owned subsidiary of an excluded company but ceased to be such a subsidiary before the relevant vesting date,

then, subject to subsection (2) below, the Secretary of State may, at any time before the relevant vesting date or within the period of 3 months beginning on that date, serve on that company a notice (in this Act referred to as a “notice of acquisition”) stating that, subject to the following provisions of this section, the securities of the company will vest in the Corporation specified in the notice in like manner as the securities of the acquired companies.

- (2) No notice of acquisition may be served on a company under subsection (1) above if—

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- (a) in a case falling within paragraph (a) of that subsection—
 - (i) the Secretary of State has approved in writing for the purposes of this section, either before or after they were effected, all transactions entered into after the initial date resulting, directly or indirectly, in the transfer or grant to the company of rights of ownership in, or rights in respect of the user of, any of the works referred to in that paragraph, and
 - (ii) the Secretary of State undertook that the powers conferred by this section would not be used in relation to those works ; or
 - (b) in a case falling within paragraph (b) or paragraph (c) of that subsection, the Secretary of State has approved in writing for the purposes of this section, either generally or specially, the making of the arrangements which led to the company ceasing to be the wholly owned subsidiary of an acquired company or an excluded company.
- (3) The Secretary of State may also serve a notice of acquisition on a company, at any time before the relevant vesting date or within the period of 3 months beginning on that date, if it appears to him—
- (a) that the whole of the equity share capital of the company is held by or on behalf of the Crown, and
 - (b) that it has as a subsidiary an acquired company falling within Part I of Schedule 1 or Schedule 2 to this Act.
- (4) A company on which a notice of acquisition has been served may, within the period of 3 months beginning on the date of the service of the notice, serve a notice on the Secretary of State contending that none of the conditions specified in subsection (1) or (3) above was fulfilled in relation to the company, and the notice shall set out the grounds of that contention.
- (5) Where a notice is served on the Secretary of State under subsection (4) above and neither that notice nor the notice of acquisition is withdrawn, the question whether the contention of the company is correct shall be determined by arbitration under this Act, and, on any such arbitration, the arbitration tribunal shall, if they are satisfied that the contention of the company is correct, revoke the notice of acquisition, but shall otherwise confirm it.
- (6) Every notice of acquisition shall specify a date, which shall not be earlier than the relevant vesting date nor earlier than the expiry of 3 months after the service of the notice, and, subject to subsection (7) below, the date so specified shall be the date of transfer in relation to the company on which the notice is served.
- (7) The Secretary of State and the company on which a notice of acquisition is served may by agreement substitute another date for the date specified in accordance with subsection (6) above, and where a reference to arbitration is made under the preceding provisions of this section and the arbitration tribunal confirm the notice, the date of transfer shall be whichever is the latest of the following dates, namely—
- (a) the date specified in the notice of acquisition in accordance with subsection (6) above ;
 - (b) any date substituted for that date in accordance with the preceding provisions of this subsection; and
 - (c) the date on which expires the period of 2 months beginning on the date of the decision of the arbitration tribunal.

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- (8) Where a notice of acquisition is served on a company and is not withdrawn or revoked, the securities of the company shall, on the date of transfer, vest in the Corporation specified in the notice.
- (9) When a notice of acquisition has been served on a company under this section and either—
- (a) the period within which the company may serve a notice under subsection (4) above has expired without such a notice being served, or
 - (b) the question whether or not the notice is to have effect has been finally settled in favour of the Secretary of State,
- the company shall forthwith give notice to every holder of its securities of the fact that its securities are to be acquired by the Corporation specified in the notice ; and the notice—
- (i) shall, in the case of security holders whose names are entered in any register kept by or on behalf of the company, be given in the same manner as the company gives notice to its members of its general meetings, and
 - (ii) shall, in any other case, be given by advertisement or in any way allowed by the company's articles of association for giving notice to its members.

27 Removal of company from companies to be acquired

- (1) If it appears to the Secretary of State, in relation to a company which, apart from this section, would be an acquired company or in relation to a subsidiary of such a company,—
- (a) that one of the conditions specified in subsection (2) below is fulfilled, or
 - (b) that both the conditions specified in subsection (3) below are fulfilled,
- the Secretary of State may, at any time before the date which, if the company were to come into public ownership, would be its date of transfer, serve a notice on the company stating that, subject to the following provisions of this section, the securities of the company will not vest in the relevant Corporation by virtue of this Act.
- (2) The conditions mentioned in subsection (1)(a) above are—
- (a) in relation to a company which apart from this section would be an acquired company, the following conditions, namely—
 - (i) that the company does not operate or own the whole, or a substantial or essential part, of works which at any time on or after the initial date were owned by the company,
 - (ii) that on or after 21st November 1975 the company has passed a resolution for its winding up or has been ordered to be wound up by a court, and
 - (iii) that a receiver has been appointed in respect of the undertaking of the company or in respect of any part of that undertaking which comprises works which at any time after that date were owned by the company; and
 - (b) in relation to a subsidiary of such a company the same conditions, but with the substitution of a reference to the subsidiary for any reference to the company and a reference to the initial date for any reference to 21st November 1975.
- (3) The conditions mentioned in subsection (1)(b) above are—

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- (a) that the company is included among the companies falling within Part I of Schedule 1 or Schedule 2 to this Act, and
 - (b) that before the relevant vesting date the Secretary of State has served a notice of acquisition on a company (in this section referred to as “the acquired company”) of which, at the date of service, it is the subsidiary.
- (4) A notice served on a company under this section because it appeared to the Secretary of State that the conditions specified in subsection (3) above were fulfilled shall cease to have effect if the notice of acquisition served on the acquired company is withdrawn or revoked.
- (5) Without prejudice to subsection (4) above, a company on which a notice has been served under this section may, within the period of 3 months beginning on the date of the service of that notice, serve a notice on the Secretary of State contending that the circumstances at the date of service did not fall within subsection (2) or (3) above.
- (6) Where a notice is served on the Secretary of State under subsection (5) above, and neither that notice nor the Secretary of State's notice is withdrawn, any question whether the circumstances at the date of service of the Secretary of State's notice fell within subsection (2) or (3) above shall be determined by arbitration under this Act, and on any such arbitration the arbitration tribunal shall, if they are satisfied that the contention of the company is correct, revoke the Secretary of State's notice but shall otherwise confirm it.
- (7) Where a notice under this section has been served by the Secretary of State on any company—
 - (a) the securities of the company shall not vest in a Corporation by virtue of section 19 above during the period within which a notice may be served by the company under subsection (5) above or, if such a notice has been served by the company, pending the final settlement of the question whether or not the Secretary of State's notice is to have effect, and
 - (b) if the Secretary of State withdraws his notice or the arbitration tribunal revoke that notice and, but for this subsection, the vesting of securities would have already taken place or would take place within the period of 2 months beginning on the date of the withdrawal or, as the case may be, the decision of the arbitration tribunal, the date of transfer shall be the date on which expires the period of 2 months beginning on the date of the withdrawal or decision.
- (8) Where—
 - (a) a notice under this section has been served on a company because it appeared to the Secretary of State that the conditions specified in subsection (3) above were fulfilled in relation to it, and
 - (b) the acquired company transfers to any other person any of the securities held by it in the company on which the notice was served, the transfer shall be void unless—
 - (i) the prior consent of the Secretary of State was obtained for it, or
 - (ii) the notice of acquisition was withdrawn or revoked before it.
- (9) If a notice served on a company ceases to have effect by virtue of subsection (4) above, the securities of the company shall vest in the relevant Corporation on its date of transfer or on the date on which the notice of acquisition was withdrawn or revoked, whichever is the later.

- (10) Where a notice is served on a company under this section and is neither withdrawn nor revoked, and does not cease to have effect by virtue of subsection (4) above, the provisions of this Act other than this section and sections 28 and 29 below shall have effect, and be deemed always to have had effect, as if the company had never been included among the companies falling within Part I of Schedule 1 or Schedule 2 to this Act or, as the case may be, as if no notice of acquisition had ever been served on the company under section 26 above.
- (11) In this Act “excluded company” means a company in relation to which this Act has effect as mentioned in subsection (10) above.
- (12) Where the Secretary of State has served a notice on a company under this section and either the period within which the company may serve a notice under subsection (3) above has expired without such a notice being served or the question whether or not the Secretary of State's notice is to have effect has been finally settled in favour of the Secretary of State—
- (a) the effect of the latter notice shall be published in the London, Edinburgh and Belfast Gazettes, and
 - (b) the company shall give the like notice thereof to the holders of its securities as in the case of a notice of acquisition under section 26 above.

28 Prohibition of transfer of certain works

- (1) Subject to subsection (4) below, it shall not be lawful for an acquired company or a company which is the subsidiary of an acquired company to enter at any time before the date of transfer into a transaction transferring or granting to any person any rights of ownership in, or rights in respect of the user of, any works or part of any works used by that company or by any subsidiary of it.
- (2) Subject to subsection (4) below, it shall not be lawful for any company (not being a company falling within subsection (1) above) which has acquired any rights of ownership in, or any rights in respect of the user of, any works or part of any works which, at any time on or after the initial date, were owned or operated by an acquired company or a company which at any such time was a subsidiary of an acquired company, to enter into any transaction transferring or granting to any person any rights of ownership in those works or any part thereof, or any rights in respect of the user of those works or any part thereof—
- (a) at any time before the relevant vesting date or within the period of 3 months beginning on that date, or
 - (b) if a notice of acquisition is served on the company under section 26 above, at any time before the date of transfer of that company or, if the notice is withdrawn or revoked, the date of such withdrawal or revocation.
- (3) Subject to subsection (7) below, any transaction purporting to effect such a transfer or grant as is mentioned in subsection (1) or (2) above shall be void.
- (4) Nothing in subsection (1) or subsection (2) above shall apply to a transfer or grant which is approved in writing for the purposes of this section by the Secretary of State, either generally or specially; and the Secretary of State may approve a transfer or grant which would otherwise fall within either of those subsections at a time after it has been made and, in that case, the transfer or grant shall be deemed always to have been valid.

- (5) Any approval under subsection (4) above may be given subject to conditions, including conditions enabling the relevant Corporation to require the transfer, surrender or grant of rights in respect of the works or part of the works in question to the Corporation itself or to a company which comes into public ownership.
- (6) Any question whether a transaction is rendered void by subsection (1) or subsection (2) above shall, unless settled by agreement between the relevant Corporation and the parties to the transaction and the parties to any subsequent transaction relating to the same works, be determined by arbitration under this Act between that Corporation and those parties.
- (7) If proceedings for the determination of such a question are not commenced within the period of 9 months beginning on the date of transfer or (if the company concerned has no date of transfer) the relevant vesting date, the transaction shall be deemed always to have been valid (but without prejudice to the effect of any agreement under subsection (6) above).
- (8) If a Corporation suffers damage by reason of any transaction which is unlawful by virtue of subsection (1) or subsection (2) above, the Corporation may, at any time within the period of 9 months beginning on the date of transfer or (if the company concerned has no date of transfer) the relevant vesting date, make an application to the arbitration tribunal, and all parties to the transaction and, subject to subsection (9) below, all persons who were directors of the company at the time when the transaction was entered into shall, unless the tribunal otherwise direct, be made parties to the application.
- (9) In the case of a transaction entered into in pursuance of a resolution of the directors of a company, no person who was not a director at the time when the resolution authorising or recommending the transaction was passed shall, by reason of his directorship, be made a party to an application under subsection (8) above relating to that transaction.
- (10) If, on an application under subsection (8) above, the arbitration tribunal are satisfied that the Corporation concerned has suffered such damage as is referred to in that subsection, they shall make such orders against any of the parties to the application as they think just, having regard to the extent to which those parties were respectively responsible for the transaction or benefited from it and to all the circumstances of the case, for the payment by them to the Corporation of sums sufficient to enable the loss, or such part thereof as the tribunal think just, to be made good.
- (11) No person shall be liable to any criminal proceedings by reason only of a contravention of subsection (1) or subsection (2) above.

29 Recovery of assets transferred away

- (1) In any case where
 - (a) it appears to the Secretary of State that a company which comes into public ownership or an excluded company or a company which on the relevant vesting date is a wholly owned subsidiary of an excluded company has, at any time after the initial date and before the date of transfer, entered into any transaction which—
 - (i) transferred or granted to any person, other than a company which comes into public ownership, any rights of ownership in any works or rights in respect of the user of any works, or

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- (ii) transferred or granted any industrial or intellectual property to any such person, and
 - (b) the transfer or grant has not been approved in writing for the purposes of this section by the Secretary of State (whether before or after the date of the transfer or grant), and
 - (c) it appears to the Secretary of State that it is necessary, for the purpose of enabling one of the Corporations fully to carry out its functions under this Act, that the rights or property so transferred or granted, or any rights derived from those rights or that property should vest in or be surrendered to that Corporation or to a company which comes into public ownership,

he may authorise the Corporation to serve on any person entitled to the rights or property in question a notice (in this Act referred to as a “Schedule 4 notice”) stating that Schedule 4 below applies to rights or property specified in the notice.
- (2) A Schedule 4 notice may be served at any time within the period of 3 months beginning on the date of transfer.
- (3) Subject to subsection (4) below, subsection (1) above shall apply in relation to a transaction entered into by a company (in the following provisions of this section referred to as “the former subsidiary”) which—
 - (a) was on the initial date the wholly owned subsidiary of an acquired company or an excluded company (in the following provisions of this section referred to as “the parent company”), and
 - (b) ceased to be such a subsidiary before the date of transfer of the parent company,

as if the first reference in paragraph (a) of that subsection to a company which comes into public ownership were a reference to the former subsidiary and as if, in relation to the former subsidiary, the reference to the date of transfer were a reference to the date which is the date of transfer in relation to the parent company.
- (4) In any case where, after the date of transfer of the parent company, the former subsidiary comes into public ownership by virtue of section 26 above, nothing in subsection (3) above shall affect the operation of subsection (1) above in relation to a transaction entered into by the former subsidiary after the date of transfer of the parent company but before the date of transfer of the former subsidiary.
- (5) An approval given under paragraph (b) of subsection (1) above may be given subject to conditions, including conditions enabling the Corporation concerned to require the transfer, surrender or grant of rights in respect of the works, or property in question to the Corporation or to a company which comes into public ownership.
- (6) In any case where—
 - (a) consequentially on the service of a notice under section 27 above, the securities of a company do not vest in a Corporation, and
 - (b) the grounds for the service of that notice were those specified in subsection (2) (a)(ii) or (iii) of that section, and
 - (c) any such property or rights as are specified in subsection (1)(a)(i) or (ii) above remain vested in the company or have become vested in a receiver,

subsection (1) above, with the omission of paragraph (b), shall apply as if the property or rights had been transferred or granted as mentioned in paragraph (a) of that subsection.

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- (7) Any person on whom a Schedule 4 notice has been served may, within the period of 3 months beginning on the date of service of that notice, serve a notice on the Corporation concerned contending that the circumstances stated in the Schedule 4 notice as having appeared to the Secretary of State in accordance with paragraph (a) of subsection (1) above do not exist or, where the Schedule 4 notice was served by virtue of subsection (6) above, that any one or more of the conditions specified in paragraphs (a) to (c) of that subsection is or are not fulfilled, and the notice shall set out the grounds of that contention.
- (8) Where a notice is served on a Corporation under subsection (7) above, and neither that notice nor the Schedule 4 notice is withdrawn, the question whether the circumstances referred to in that subsection exist or whether the condition or conditions referred to in that subsection is or are fulfilled shall be determined by arbitration under this Act; and on any such arbitration the arbitration tribunal shall, if they are satisfied that the contention of the person who served the notice under that subsection is correct, revoke the Schedule 4 notice, but shall otherwise confirm it.
- (9) Where a Schedule 4 notice is served and is not withdrawn or revoked, Schedule 4 to this Act shall have effect.
- (10) In relation to an excluded company or a company which on the relevant date is a subsidiary of an excluded company, references in this section and Schedule 4 to this Act to the date of transfer shall be construed as references to the relevant vesting date.

30 Dissipation of assets by transactions involving holders of securities etc.

- (1) Subject to subsection (2) below, this section applies where any company which comes into public ownership has, after the safeguarding date and before the date of transfer,—
 - (a) made any payments to its members for the purpose of reducing the share capital of the company otherwise than by the redemption of any redeemable securities; or
 - (b) redeemed any securities which the company was not under any obligation to redeem before the date of transfer or made payments in respect of the redemption of any securities which exceed the minimum payments required to satisfy the rights existing on the safeguarding date of the holders of those securities ; or
 - (c) made any other payment to the holders of its securities (in their capacity as such) out of capital moneys, or distributed assets other than money to the holders of its securities (in their capacity as such); or
 - (d) made to the holders of any of its securities any payment by way of special dividend in respect of the securities ; or
 - (e) repaid any sum the right to repayment of which, if the sum had not been repaid, would, following the service of a notice under section 21 above, have been treated as a security or part of a security under subsection (6) of that section ; or
 - (f) entered into any transaction the effect of which is that property or rights of the company are transferred or granted to any person and the consideration for the transfer or grant is received by the holders of securities of the company or any of them (in their capacity as such); or
 - (g) effected a transfer of rights of ownership in any works to another company of which it was at the time of the transfer a subsidiary or to another subsidiary of that company;

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and in the following provisions of this section the transactions specified in paragraphs (a) to (g) above are, subject to subsection (2) below, referred to as “material transactions”.

- (2) For the purposes of this section a transaction is not a material transaction if it has been approved in writing by the Secretary of State for those purposes, either generally or specially, and whether before or after the date of the transaction.
- (3) An approval given by the Secretary of State under subsection (2) above may specify as a condition of the approval such of the conditions (if any) falling within subsection (4) below as is appropriate to the transaction to which the approval relates, but the Secretary of State shall not give an approval subject to any such condition unless he is satisfied that, after not less than 14 days notice in writing, a meeting has been held of the holders for the time being of the securities which would be affected by the condition and that a majority in number representing three-fourths in value of those holders who are present and voting either in person or by proxy at the meeting have agreed to the condition.
- (4) The conditions referred to in subsection (3) above are—
 - (a) in the case of a transaction falling within any of paragraphs (a), (c), (d) and (f) of subsection (1) above, a condition requiring the compensation payable under this Act in respect of the securities of the members or holders concerned to be reduced to such extent as may be specified in the approval or as may be subsequently determined in a manner so specified ; and
 - (b) in the case of a transaction falling within paragraph (g) of subsection (1) above, a condition requiring the compensation payable under this Act in respect of such securities of the company effecting the transfer as may be specified in the approval to be reduced to such extent as may be so specified or as may be subsequently determined in a manner so specified.
- (5) The relevant Corporation may, in the case of any company which comes into public ownership, at any time within the period of 9 months beginning on the date of transfer, make an application to the arbitration tribunal in respect of any transaction which in the opinion of the Corporation is a material transaction and, subject to subsection (6) below,—
 - (a) all persons who were directors of the company at the time when the transaction was entered into, and
 - (b) in the case of a transaction mentioned in paragraph (f) of subsection (1) above, or any transaction mentioned in paragraph (c) thereof where the payments made or assets distributed represent the consideration for the transfer or grant of property or rights by the company to any other person, the persons to whom the property or rights were transferred or granted,shall, unless the tribunal otherwise direct, be made parties to the application.
- (6) In the case of any transaction entered into in pursuance of a resolution of the directors of a company, no person who was not a director at the time when the resolution authorising or recommending the transaction was passed shall, by reason of his directorship, be made a party to an application under subsection (5) above relating to that transaction.
- (7) If the arbitration tribunal are satisfied that a transaction in respect of which an application under subsection (5) above is made is a material transaction, they shall determine the extent of the net loss resulting to the Corporation from the transaction and shall make such orders against any of the parties to the application as they think

just, having regard to the extent to which those parties were respectively responsible for the transaction or benefited from it and all the circumstances of the case, for the payment by them to the Corporation of sums sufficient to enable the net loss, or such part thereof as the tribunal think just, to be made good or met.

31 Onerous transactions: disclaimer and recovery of losses

(1) Subject to subsection (2) below, the provisions of this section apply in any case where, on or after the appropriate date and before the date of transfer, a company which comes into public ownership has entered into a transaction which, in the opinion of the relevant Corporation, was of such a nature as, and at the time it was entered into could reasonably have been foreseen by the company to be likely,—

- (a) to cause a loss to the company, or
- (b) to impose a liability on it substantially greater than any benefit accruing to it,

and which, in the opinion of the relevant Corporation, either—

- (i) was both an unusual transaction for the company to enter into, having regard to the activities in which the company was engaged at the time of the transaction, and not reasonably necessary for the purpose of those activities, having regard to the circumstances at that time; or
- (ii) was a transaction entered into otherwise than in the ordinary course of the company's business and on such terms or with such a party as to indicate an unreasonable lack of prudence on the part of the company, having regard to the circumstances at the time of the transaction;

and for the purposes of this subsection “the appropriate date ” means, in relation to a transaction consisting of the making or variation of an agreement or lease, the initial date and, in the case of any other transaction, the day after the safeguarding date; and a transaction falling within this subsection is in the following provisions of this section referred to as an “onerous transaction ”.

(2) For the purposes of this section, a transaction is not an onerous transaction if—

- (a) it consists of a payment to which section 23 above applies; or
- (b) it is a material transaction within the meaning of section 30 above or would be a material transaction but for an approval given under subsection (2) of that section ; or
- (c) it is made or entered into for any charitable purpose ; or
- (d) it is made or entered into in connection with the determination of any question, dispute or matter falling to be determined by or under any provision of this Part of this Act; or
- (e) it has been approved in writing for the purposes of this section by the Secretary of State, either generally or specifically, and either before or after the time of the transaction.

(3) At any time within the period of 9 months beginning on the date of transfer, the relevant Corporation may make an application to the arbitration tribunal in respect of any onerous transaction entered into by a company on or after the day after the safeguarding date; and all parties to the transaction and, subject to subsection (4) below, all persons who were directors of the company at the time when the transaction was entered into shall, unless the tribunal otherwise direct, be made parties to the application.

(4) Where an application under subsection (3) above relates to a transaction entered into in pursuance of a resolution of the directors of the company concerned, no person

who was not a director at the time when the resolution authorising or recommending the transaction was passed shall, by reason of his directorship, be made a party to the application.

- (5) If, in the case of an onerous transaction which consists of the making or variation of an agreement or lease, the agreement or lease remains, in whole or in part, unperformed or unexpired on the date of transfer, the company shall, if so directed by the relevant Corporation, by notice in writing given to the other parties to the agreement or lease at any time within the period of 6 months beginning on the date of transfer, disclaim the agreement or lease.
- (6) In this Act a notice under subsection (5) above is referred to as a “notice of disclaimer”.
- (7) Where a company gives a notice of disclaimer, any of the other parties to the agreement or lease concerned may, within the period of 2 months beginning on the date on which the notice is served, refer to arbitration under this Act the question whether or not the agreement or lease ought to be disclaimed under this section, and the relevant Corporation, as well as the company concerned, shall be made a party to the arbitration.
- (8) If, on an application under subsection (3) or a reference under subsection (7) above, the arbitration tribunal are themselves satisfied, having regard to all relevant factors, that the transaction concerned—
 - (a) was of such a nature as to cause such a loss, or to impose such a liability, as is referred to in subsection (1) above, and
 - (b) at the time it was entered into could reasonably have been foreseen by the company to be likely to cause such a loss or impose such a liability, and that it falls within either paragraph (i) or paragraph (ii) of that subsection, the tribunal shall—
 - (i) in the case of an application under subsection (3) above, determine the extent of the net loss resulting to the Corporation from the transaction, and
 - (ii) in the case of a reference under subsection (7) above, confirm the notice of disclaimer,unless (in either case) the tribunal are satisfied that the transaction was not entered into with a view to defeating the object of any provision made by this Act or (if the transaction was entered into before the passing of this Act) with a view to defeating any provision which might reasonably have been anticipated to be likely to be contained in this Act.
- (9) Where the arbitration tribunal make a determination of a net loss under subsection (8) (i) above, they shall make such orders against any of the parties to the application concerned as they think just, having regard to the extent to which those parties were respectively responsible for the transaction or benefited from it and all the circumstances of the case, for the payment by them to the relevant Corporation of sums sufficient to enable the net loss, or such part thereof as the tribunal think just, to be made good or met.
- (10) If on a reference under subsection (7) above the arbitration tribunal do not confirm the notice of disclaimer, they shall revoke it.

32 Provisions supplementary to section 31

- (1) Where a notice of disclaimer is given with respect to an agreement or lease and that notice is not revoked by the arbitration tribunal, the agreement shall be deemed to be frustrated or, as the case may be, the lease shall be deemed to be surrendered, on the date on which the notice of disclaimer becomes final, and for that reason the parties thereto shall be deemed to be discharged from the further performance of their obligations under the agreement or lease.
- (2) Where an agreement is deemed to be frustrated by virtue of subsection (1) above, neither—
 - (a) the following enactments, namely—
 - (i) section 2(3) of the Law Reform (Frustrated Contracts) Act 1943, and
 - (ii) section 2(3) of the Frustrated Contracts Act (Northern Ireland) 1947, (each of which requires the court to give effect to any provision of a contract intended to operate on or notwithstanding the frustration of the contract), nor
 - (b) any rule of the common law of Scotland corresponding to those enactments, shall apply to that agreement.
- (3) Where, on a reference to the arbitration tribunal under section 31(7) above, the notice of disclaimer is confirmed, the arbitration tribunal shall have exclusive jurisdiction to determine claims arising under the agreement or lease in question with respect to the period before the frustration or surrender and, in the case of an agreement, any claims arising as a result of its frustration, and the tribunal may, in the case of a lease, on the application of either party thereto, make such modifications (if any) of the provisions of the lease relating to repairing obligations or any other provisions taking effect on or within a limited time before the determination of the lease as the tribunal think just.
- (4) For the purposes of this section, a notice of disclaimer which is not revoked shall be deemed to become final on the following date, that is to say,—
 - (a) if no reference to arbitration is made under section 31(7) above, the date on which the period for making such a reference expires; and
 - (b) in any other case, the date on which the notice is confirmed by the arbitration tribunal.

33 Supplementary provisions relating to dissipation of assets

- (1) Where it appears to the arbitration tribunal that a transaction in respect of which an application is made under section 30 or section 31 above is or may be one of a group of inter-connected transactions which ought to be treated for the purposes of that section as a single transaction, they may order such additional persons as they think fit, being parties to any transaction comprised in the group, to be made parties to the application, and, if the tribunal are satisfied that the whole or part of the group of transactions ought to be treated as a single transaction for the purposes of that section, they may give a direction to that effect, and that section shall have effect accordingly.
- (2) The serving of a Schedule 4 notice in relation to any property or rights shall not prejudice the taking of proceedings under either of the sections referred to in subsection (1) above with respect to any transaction relating to that property or those rights, and any such proceedings and any proceedings pursuant to the notice may, if the arbitration tribunal think fit, be heard together, and any sums ordered by the tribunal in the proceedings under either of those sections to be paid by any person may, if the

tribunal think fit, be set off against any compensation payable to that person in the proceedings pursuant to the notice.

34 Approvals and undertakings given before passing of Act

- (1) Where—
 - (a) the Secretary of State has approved in writing any transaction before the passing of this Act, and
 - (b) the approval was expressed to be given for the purposes of any provision of this Part of this Act when that provision should come into operation, or to be subject to a condition affecting the operation of any provision of this Part of this Act, and
 - (c) the approval sufficiently identifies the provision in question,
the approval shall have effect for the purposes of or in relation to that provision in like manner as if it had been given after the passing of this Act.
- (2) Where the Secretary of State has given an undertaking in writing before the passing of this Act with respect to the use of any powers to be conferred by any provision of this Part of this Act, and the undertaking sufficiently identifies the provision in question, the undertaking shall have effect in relation to that provision in like manner as if it had been given after the passing of this Act.