
STATUTORY INSTRUMENTS

1992 No. 225

The Uncertificated Securities Regulations 1992

PART VI

UNCERTIFICATED SECURITIES

CHAPTER I

Uncertificated Securities: General Provisions

Exclusion of enactments and rule of law

48.—(1) A company shall not be under any obligation (if it otherwise would be) to issue any certificate evidencing the title to a unit of an uncertificated security of the company and in particular section 185 of the 1985 Act shall not apply to a company to the extent that it has uncertificated shares.

(2) Subject to paragraph 4 of Schedule 5 to these Regulations, any certificate issued by or on behalf of a company purportedly evidencing the title to a unit of an uncertificated security of the company shall not be (if it would otherwise be) *prima facie* evidence, and in Scotland sufficient evidence unless the contrary is shown, of the title to the unit and in particular section 186 of the 1985 Act shall not have effect in relation to any certificate issued with respect to uncertificated shares.

(3) No rule of law to the effect that, in a contract to transfer the title to units of a security, it is a term that the transferor shall execute and deliver to the transferee a proper instrument of transfer and a certificate evidencing the rights and interests liable to be conveyed (or obtain a certification of the transfer from any person) shall apply with respect to units of an uncertificated security.

Implied terms in contracts for the transfer of uncertificated securities

49.—(1) It is an implied term in a contract for the transfer of a unit of an uncertificated security that:

- (a) any authority, instructions or notifications of transactions necessary for the effecting of the transfer will be given by the transferor or by persons acting on behalf of the transferor; and
- (b) the controller to hold any entitlements concerned for the transferee is to be a company controller.

(2) A term implied into a contract by this regulation may be excluded or varied expressly or, where the contract makes alternative provision, impliedly.

For this purpose a contract may make alternative provision expressly or by implication.

Trustees holding units of an uncertificated security

50.—(1) A provision in any instrument or enactment which authorises:

- (a) the holding and investment of trust property in units of a security; or
- (b) the variation of investments in units of a security comprising trust property,

shall be deemed to authorise investment of trust property in units of any uncertificated security which, if the security had been in certificated form, would have been an authorised investment for the purposes of the provision or rule of law.

(2) Paragraph (1) shall be without prejudice to:

- (a) any other condition which is imposed by the instrument, enactment or rule of law relating to the investment of trust property in units of a security; and
- (b) any express provision of any instrument which prohibits the investment of trust property in units of an uncertificated security.

(3) Any provision of any instrument or enactment or any rule of law relating to the employment of agents by trustees shall not be taken as precluding the holding of, or investment of trust property in, units of an uncertificated security by virtue only of the reason that the power to transfer the units is under these Regulations held for the trustees by a controller and a trustee shall not be answerable for the insufficiency or deficiency of any securities or any income therefrom, or for any other loss due to the acts, neglects or defaults of the controller unless the same happens through the trustee's own wilful default or neglect.

(4) For the purpose of this regulation "trustee" (in England and Wales and Northern Ireland) shall include a personal representative and any other person acting in a fiduciary capacity and (in Scotland) any person who is a trustee for the purposes of the Trusts (Scotland) Act 1921(1) and "trust property" shall include all property held by persons acting in such capacities.

CHAPTER II

Transmission by Operation of Law

Transmission &c by operation of law

51.—(1) This regulation applies where:

- (a) the affairs of an account holder are, by or under any enactment or Order of a court of competent jurisdiction or (without prejudice to the foregoing) by virtue of the appointment of a receiver of any description, being managed by or are subject to the control of another (the "manager") (whether generally or to the extent of any entitlements held for that account holder by a controller) and the consent of the manager is, by or under the enactment or Order, required to the transfer of units of a security held by the account holder;
- (b) the rights of an account holder to enforce the duties of the controller owed to that account holder have become vested in another ("the successor") by operation of law;
- (c) by or under any enactment or Order of a court of competent jurisdiction or any rule of law, the title to a unit of an uncertificated security, or the right to transfer the unit or be registered with it, has devolved upon, is vested in, or has been transmitted to or otherwise howsoever become held by a person ("the successor") by operation of law; or
- (d) (in the case of shares) by or under the company's memorandum and articles of association or (in the case of any securities) by the terms of issue of the security, the right to transfer a unit of a security has become vested in a person ("the successor")

any such circumstances being referred to below as a "relevant circumstance".

(2) A controller, having received actual notice of a relevant circumstance affecting an entitlement held by him or it or a unit of an uncertificated security the entitlement to which is held by him or it (together referred to below as "an affected entitlement") is under a duty not to consent to any transfer of an affected entitlement or to act upon any instruction to hold such an entitlement for another or

otherwise act in relation to such an entitlement without the consent of the manager or successor or upon the instructions of the successor.

This paragraph shall not be construed as invalidating, or requiring any such consent for, an instruction received by the controller prior to receiving such actual notice, provided that the instruction has by then been acted upon by the controller or is otherwise irrevocable.

(3) A controller shall, however, having received such notice continue to regard the person for whom an affected entitlement is or has been held as the account holder with respect to that entitlement (even though a person (if an individual) is dead or (if a body of persons corporate or unincorporate) has been dissolved), in particular by continuing to instruct the registration of that person when he or it is required to issue proper instructions to register under the system, until he or it receives an instruction with respect to the entitlement from the successor under the following provisions of this regulation or (as the case may be) a notification from the manager under paragraph (7).

Accordingly, if a commercial controller is no longer authorised to hold entitlements for the account holder after receipt of actual notice of a relevant circumstance, regulation 13(1) and (2) shall not apply.

(4) The procedures set out in paragraphs (5) and (6) may be followed in order that a successor may become registered as the holder of a unit to which an affected entitlement relates or otherwise transfer it or deal with the affected entitlement.

(5) A successor may instruct the controller to hold an affected entitlement for the successor or may give such instruction with respect to a transfer of the entitlement or the holding of the entitlement for another as if the successor were the account holder with respect to the entitlement (in the case of a commercial controller as if there were no agreement under regulation 13(1)) and the instruction shall have effect accordingly.

(6) Subject to paragraph (7), a controller need not give effect to an instruction under paragraph (5), unless he or it has received such evidence as the controller may reasonably require of the relevant circumstance; in particular he or it may require production of the following:

- (a) where an enactment or Order of a court constitutes the relevant circumstance, a copy of the enactment or an office copy of the Order; and
- (b) where the title to a unit of an uncertificated security or the rights of an account holder to enforce the duties of a controller has or have devolved as a result of the death of a person, any document:
 - (i) which (in England and Wales or Northern Ireland) is by law sufficient evidence of probate or the will, or letters of administration of the estate, or confirmation as executor, of a deceased person having been granted to the successor;
 - (ii) which (in Scotland) is by law sufficient evidence of confirmation as executor of a deceased person having been granted to the successor with respect to the rights of the person against the controller in connection with an entitlement or to a unit of an uncertificated security, the entitlement to which is held by the controller.

(7) A manager shall notify the controller if the affairs of the account holder have ceased to be under his management or control.

(8) Unless on actual notice to the contrary with respect to a particular purported instruction, a company controller shall be entitled and bound to act upon an instruction issued by means of the Operator's part of the system with respect to an affected entitlement as being issued with the authority of the successor by an approved person and the successor shall be bound accordingly, provided that the successor has, prior to the controller's receipt of the instruction, given the controller such evidence as the controller may reasonably require of the relevant circumstance (including any matter referred to in paragraph (6)(a) or (b)).

(9) Where instructions have been received by a controller from an account holder prior to the controller receiving actual notice of a relevant circumstance, the controller may, notwithstanding any provision of this regulation, act on those instructions if, as a result of the manner in which communications received by the controller are processed, it is not practicable for the controller to halt the processing of the instruction.

(10) Subject to paragraph (11) paragraphs (1) to (9) shall (so far as applicable) apply with any necessary modifications where a relevant circumstance occurs in respect of a person amongst two or more persons acting jointly who are together an account holder or jointly registered as the holder of a unit of an uncertificated security.

(11) This paragraph applies where an entitlement held by a controller is held for two or more persons acting jointly and the controller receives actual notice of the vesting, by operation of law, of the unit of an uncertificated security to which the entitlement relates, or otherwise the rights of those persons to enforce the duties of the controller, in the survivor or survivors of those persons.

The controller shall hold the entitlement for the survivor or survivors who shall be the account holder with respect to the entitlement.

(12) In this regulation “enactment” includes, in relation to paragraph (1)(a) and (c), any legislation in any country which is effective to achieve the circumstances therein referred to.

(13) This regulation is subject to regulation 53.

CHAPTER III

Injunctions, Intedicts and other Orders

Injunctions, interdicts and other Orders

52.—(1) This regulation applies where in, or in connection with, any judicial proceedings before a court of competent jurisdiction (whether or not in the United Kingdom) an injunction, interdict, charging order, warrant for arrestment or other Order (all referred to in the regulation as an “Order”) is made (and if necessary served) which has the effect of:

- (a) restraining the transfer of a unit of an uncertificated security by a person; or
- (b) restraining any dealing by a person in connection with an entitlement to a unit of a security held for a person.

This regulation applies (if the Order so applies) whether or not the Order relates to units or entitlements held by or for the person at the date of the Order.

(2) Where a controller receives actual notice of such an Order relating either to a unit of a security the entitlement to which is held by him or it or to an entitlement held by him or it, the controller shall be under a duty (notwithstanding any other provision of these Regulations and in addition to any other effect such notice may have) not to do any act which would have the effect of frustrating the effect of the Order or which is otherwise inconsistent with its terms and in addition to do any act which is open to it under the system (by way of withdrawal of any consent to a transfer of the entitlement or otherwise), to prevent the Order being so frustrated or the occurrence of circumstances inconsistent with its terms.

(3) No such Order shall however have effect to the extent that it would prevent a periodic update of the appropriate register for an uncertificated security under these Regulations; in particular it shall not require a company to maintain the registration of a person as the holder of a unit where the company has no proper instruction to register that person as holder of the unit.

(4) Where instructions have been received by a controller from an account holder prior to the controller receiving actual notice of such an Order, the controller may, notwithstanding any provision of this regulation, act on those instructions if, as a result of the manner in which communications

received by the controller are processed, it is not practicable for the controller to halt the processing of the instruction.

(5) This regulation is subject to regulation 53.

CHAPTER IV

Restrictions Avoiding Transfer

Restrictions avoiding the transfer of title to securities arising from an enactment

53.—(1) This regulation applies where there exists a restriction (other than a restriction resulting from the winding up of the company which has issued the security concerned) on the transfer of the title to a unit of an uncertificated security (“the restricted unit”) held by an account holder (“the affected holder”) arising by virtue of the provisions of any enactment (including any enactment relating to insolvency), or an Order of a court of competent jurisdiction, to the extent that it has the effect of avoiding (whether *ab initio* or subsequently) a transfer of a unit of a security not in accordance with the terms of the restriction.

(2) Nothing in these Regulations shall be construed as rendering valid a transfer of a restricted unit which has been so avoided and the enactment or Order shall, where a transfer has been so avoided, in addition have the effect of prohibiting an entitlement held for the affected holder being held for another person where this would have the effect of causing the registration of a person other than the affected holder in respect of a restricted unit.

(3) Subject to the following provisions of this regulation, upon receiving actual notice that a unit of an uncertificated security is a restricted unit, it is the duty of the Operator and the controller which instructed the registration of the affected holder as holder of the restricted unit (“the registering controller”) to take such steps as may be appropriate and practicable (to take precedence, in the case of a controller, over any other duty of his or its under these Regulations) to prevent any act prohibited under paragraph (2).

(4) Without prejudice to regulation 73, where the registering controller is unable to continue to issue a proper instruction to register an affected holder in respect of a restricted unit, or is or was required to cancel a standing instruction to register to that effect, as a result of a transfer of an entitlement, any transferee of that entitlement shall, upon receiving actual notice of the circumstances, be under a duty (notwithstanding any other provision of these Regulations) to hold the entitlement for the effected holder or issue a notification of a transaction whereby the entitlement is transferred back to the registering controller to be held for the affected holder.

(5) A registering controller shall, once he or it has received actual notice of the circumstances, be deemed to hold an entitlement held by him or it to a restricted unit for the affected holder, notwithstanding any instructions which the controller has received under regulation 33, even if he or it has acted upon the instruction by expressly re-allocating the entitlement to another.

(6) Notwithstanding that a proper instruction to register may not be effective to transfer the title to a unit of a security by reason of an enactment or Order to which this regulation applies, a company shall be entitled and bound to act upon a proper instruction to register a person as holder of a unit of a security, unless the company has actual notice that the entitlement concerned is to a restricted unit and an identified person other than the affected holder is the subject of the instruction.

Where a company has acted on a proper instruction to register under this paragraph, it shall not be liable in any civil or criminal proceedings solely by reason of the fact that it treated a person registered by it as the holder of the unit of a security concerned (and, in the case of shares, as a member) unless the company had, at the relevant time, actual notice that the entitlement concerned was to a restricted unit.

(7) Where instructions have been received by a controller from an account holder prior to the controller receiving actual notice that an entitlement concerned is to a restricted unit, the controller

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may, notwithstanding any provision of this regulation, act on those instructions if, as a result of the manner in which communications received by the controller are processed, it is not practicable for the controller to halt the processing of the instruction; this paragraph is otherwise without prejudice to paragraphs (4) and (5).