STATUTORY RULES OF NORTHERN IRELAND

1994 No. 2

COMPANIES

Disclosure of Interests in Shares (Amendment) Regulations (Northern Ireland) 1994

Made - - - - *10th January 1994*

Coming into operation *11th March 1994*

The Department of Economic Development, in exercise of the powers conferred on it by Article 218A of the Companies (Northern Ireland) Order 1986(**1**) and of every other power enabling it in that behalf, hereby makes the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Disclosure of Interests in Shares (Amendment) Regulations (Northern Ireland) 1994 and shall come into operation on 11th March 1994.

Amendments of Part VII of the Companies (Northern Ireland) Order 1986

2. Part VII of the Companies (Northern Ireland) Order 1986 shall be amended in accordance with regulations 3 to 9.

Article 206

3. In Article 206(1) (obligation of disclosure) for the words "of the interests which he has, or had" there shall be substituted "with respect to his interests (if any)".

Article 207

4.—(1) In Article 207(**2**) (interests to be disclosed) for paragraph (2) there shall be substituted the following paragraphs—

"(2) Where a person is interested in shares comprised in relevant share capital, then—

(a) if in some or all of those shares he has interests which are material interests, he has a notifiable interest at any time when the aggregate nominal value of the shares

(**1**) S.I. 1986/1032 (N.I. 6); Article 218A was inserted by Article 69(5) of the Companies (No. 2) (Northern Ireland) Order 1990 (S.I. 1990/1504 (N.I. 10))

(**2**) Article 207(2) was amended by Article 69(2) of the Companies (No. 2) (Northern Ireland) Order 1990

in which those material interests subsist is equal to or more than 3 per cent. of the nominal value of that share capital; and

(b) he has a notifiable interest at any time when, not having such an interest by virtue of sub-paragraph (a), the aggregate nominal value of the shares in which he has interests (whether or not including material interests) is equal to or more than 10 per cent. of the nominal value of the relevant share capital.

(2A) For the purposes of this Part, a material interest is any interest other than—

(a) an interest which a person authorised to manage investments belonging to another has by virtue of having the management of such investments under an agreement in or evidenced in writing;

(b) an interest which a person has by virtue of being the operator of—

(i) an authorised unit trust scheme;

(ii) a recognised scheme; or

(iii) a UCITS (as defined in paragraph (8)); or

(c) an interest in shares in a listed company which, if that company were not listed, would fall to be disregarded by virtue of Article 217(10);

(d) an interest of another which a person is taken to have by virtue of the application of Article 211 (notification of family and corporate interests) or 213 (obligation of disclosure arising under Article 212) where the interest of that other person falls within sub-paragraph (a), (b) or (c).".

(2) In paragraph (5) of that Article, after the words "Article 206(1)" there shall be inserted "or (3)".

(3) After paragraph (5) of that Article there shall be inserted the following paragraphs—

"(6) For the purposes of paragraph 2A, a person is authorised to manage investments belonging to another if—

(a) he is an authorised person under Chapter III of Part I of the Financial Services Act 1986(**3**) and may manage that other's investments without contravening any prohibition mentioned in paragraph (7); or

(b) he is an authorised credit institution which may manage that other's investments without being in breach of its authorisation.

(7) The prohibitions referred to in paragraph (6)(a) are—

(a) any prohibition contained in rules—

(i) which make provision of a description mentioned in section 48(2)(a) and (b) of the Financial Services Act 1986; and

(ii) which are made by the Secretary of State, the Treasury, a designated agency, a recognised professional body or a recognised self-regulating organisation, and

(b) any prohibition imposed under section 65 of that Act.

(8) In this Part "UCITS" means a collective investment scheme which—

(a) is constituted in a member State other than the United Kingdom; and

(b) complies with the conditions necessary for it to enjoy the rights conferred by Council Directive 85/611/EEC(**4**) co-ordinating the laws, regulations and

(**3**) 1986 c. 60
(**4**) OJ No. L375 31.12.85 p. 3

administrative provisions relating to undertakings for collective investment in transferable securities;

and sub-section (8) of section 86 of the Financial Services Act 1986 (meaning of "constituted in a Member State") applies for the purposes of sub-paragraph (a) as it applies for the purposes of that section.".

Article 208

5. For Article 208 ("percentage level" in relation to notifiable interests) there shall be substituted the following Article—

""**"Percentage level" in relation to notifiable interests**

208.—(l) Subject to the qualifications mentioned in paragraphs (2) and (3), "percentage level", in Article 207(5)(b), means the percentage figure found by expressing the aggregate nominal value of all the shares comprised in the share capital concerned in which the person has material interests immediately before or (as the case may be) immediately after the relevant time as a percentage of the nominal value of that share capital and rounding that figure down, if it is not a whole number, to the next whole number.

(2) In relation to a notifiable interest which a person has when the aggregate nominal value of the shares in which he is interested is equal to or more than 10 per cent. of the nominal value of that relevant share capital, paragraph (1) shall have effect as if for the words "has material interests" there were substituted "is interested".

(3) Where the nominal value of the share capital is greater immediately after the relevant time than it was immediately before, the percentage level of the person's interest immediately before (as well as immediately after) that time is determined by reference to the larger amount.".

Article 210

6.—(1) In Article 210 (particulars to be contained in notification), in paragraph (2), for sub-paragraph (a) there shall be substituted the following sub-paragraph—

"(a) subject to paragraphs (2A) and (2B), state the number of shares comprised in that share capital in which the person making the notification knows he had material interests immediately after the time when the obligation arose, or".

(2) After that paragraph there shall be inserted the following paragraphs—

"(2A) Where, immediately after the relevant time, the aggregate nominal value of the shares in which the person making the notification is interested is equal to or more than 10 per cent. of the nominal value of that relevant share capital, paragraph (2)(a) shall have effect as if for the words "had material interests" there were substituted the words "was interested.".

(2B) Nothing in paragraph (2) or (2A) requires a notification to state, in relation to any shares, whether the interest of the person making the notification is (or is not) a material interest.".

Article 214

7.—(l) In Article 214 (obligation of persons acting together to keep each other informed) in paragraph (3)(a), for the words "if he were under the obligation of disclosure with respect to that interest" there shall be substituted "if he were under the wide obligation of disclosure with respect to that interest" and after sub-paragraph (b) there shall be inserted—

"and

(c) except in the circumstance mentioned in paragraph (3A), the number of shares (if any) out of the number given under sub-paragraph (a) in which he knows that, immediately after the time when the obligation to give the notice arose, he had interests (apart from the agreement) which were not material interests.".

(2) After Article 214(3) there shall be inserted the following paragraphs—

"(3A) The circumstance referred to in paragraph (3)(c) is that the aggregate nominal value of the shares comprised in relevant share capital in which the person is interested (apart from the agreement) is equal to or more than 10 per cent. of the nominal value of the relevant share capital.

(3B) For the purposes of paragraph (3)(a) "the wide obligation of disclosure" means the obligation to disclose the number of shares in which the person concerned has any interest (material or otherwise).".

Article 217

8. For Article 217 (interests to be disregarded) there shall be substituted the following Article—

"**Interests to be disregarded**

217.—(l) Subject to paragraphs (5) and (6), the following interests in shares are disregarded for the purposes of Articles 206 to 210—

(a) where property is held on trust and an interest in shares is comprised in that property, an interest of a person, being a discretionary interest or an interest in reversion or remainder or an interest of a bare trustee;

(b) an interest which a person has by virtue of holding units in—

(i) an authorised unit trust scheme;

(ii) a recognised scheme; or

(iii) a UCITS;

(c) an interest of a person which is an exempt security interest within the meaning of paragraph (2);

(d) an interest which a person has by virtue of his being a beneficiary under a retirement benefits scheme as defined in section 611 of the Income and Corporation Taxes Act 1988(**5**);

(e) an interest which a person has in shares as a result of the acceptance of a takeover offer made by him (either alone or jointly with one or more other persons) for shares where—

(i) the offer is subject to a threshold acceptance condition; and

(ii) the threshold acceptance condition is not fulfilled;

(f) an interest of a person which is an exempt custodian interest within the meaning of paragraph (4);

(g) an interest which a person has by virtue of his being a personal representative of any estate;

(h) an interest which a person has—

(i) by virtue of his being a trustee of an authorised unit trust scheme, or

(**5**) 1988 c. 1

(ii) in relation to a recognised scheme or a UCITS, by virtue of his being entrusted with the custody of the property in question (whether or not under a trust).

(2) An interest in shares is an exempt security interest for the purposes of paragraph (1)(c)—

(a) if it is held by a person who is—

(i) a person authorised under Part I of the Banking Act 1987(**6**), an authorised credit institution, a person authorised under the law of a member State other than the United Kingdom to accept deposits who would, if he were to accept such deposits in the United Kingdom require authorisation under Part I of that Act, or an authorised insurance undertaking; or

(ii) a person authorised under the law of a member State to deal in securities or derivatives, who deals in securities or derivatives on a relevant stock exchange or on a relevant investment exchange, whether as a member or otherwise; or

(iii) a relevant stock exchange, a relevant investment exchange or a recognised clearing house; or

(b) if it is held by the Bank of England or by the central bank of a member State other than the United Kingdom;

and it is held by way of security only for the purposes of a transaction entered into in the ordinary course of his or its business as such a person.

(3) For the purposes of paragraph (l)(e)—

(a) "takeover offer" has the same meaning as in Part XIVA(**7**); and

(b) "a threshold acceptance condition" means a condition that acceptances are received in respect of such proportion of the shares for which the takeover offer is made as is specified in or determined in accordance with the terms of the takeover offer.

(4) For the purposes of paragraph (l)(f) an interest of a person is an exempt custodian interest if it is held by him—

(a) as a custodian (whether under a trust or by a contract); or

(b) under an arrangement pursuant to which he has issued, or is to issue, depositary receipts in respect of the shares concerned.

(5) An interest referred to in any sub-paragraph of paragraph (l) (except for sub-paragraph (c)) is disregarded only if the person referred to in the relevant sub-paragraph or in paragraph (4) is not entitled to exercise or control the exercise of voting rights in respect of the shares concerned; and for this purpose he is not so entitled if he is bound (whether by contract or otherwise) not to exercise the voting rights, or not to exercise them otherwise than in accordance with the instructions of another.

(6) In the case of an interest referred to in paragraph (1)(c), an interest of a person referred to in paragraph (2) is disregarded only if that person—

(a) is not entitled (within the meaning of paragraph (5)) to exercise or control the exercise of voting rights in respect of the shares concerned; or,

(**6**) 1987 c. 22
(**7**) Part XIVA was substituted for Articles 421, 422 and 423 of the Companies (Northern Ireland) Order 1986 by Article 26 of the Companies (Northern Ireland) Order 1989 (S.I. 1989/2404 (N.I. 18))