



Companies Act 2006

2006 CHAPTER 46

PART 8

A COMPANY'S MEMBERS

CHAPTER 4

PROHIBITION ON SUBSIDIARY BEING MEMBER OF ITS HOLDING COMPANY

Modifications etc. (not altering text)

- C1** Pts. 1-39 modified (31.12.2020) by Regulation (EC) No. 2157/2001, Art. AAA1(3) (as inserted by [The European Public Limited-Liability Company \(Amendment etc.\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1298\)](#), regs. 1, **97** (with regs. 140-145) (as amended by [S.I. 2020/523](#), regs. 1(2), 5(a)-(f)); 2020 c. 1, Sch. 5 para. 1(1))

General prohibition

136 Prohibition on subsidiary being a member of its holding company

- (1) Except as provided by this Chapter—
- (a) a body corporate cannot be a member of a company that is its holding company, and
 - (b) any allotment or transfer of shares in a company to its subsidiary is void.
- (2) The exceptions are provided for in—
- section 138 (subsidiary acting as personal representative or trustee), and
 - section 141 (subsidiary acting as authorised dealer in securities).

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Modifications etc. (not altering text)

- C2** S. 136 excluded by [Commonhold and Leasehold Reform Act 2002 \(c. 15\)](#), Sch. 3 para. 15(2) (as substituted (1.10.2009) by [The Companies Act 2006 \(Consequential Amendments, Transitional Provisions and Savings\) Order 2009 \(S.I. 2009/1941\)](#), art. 2(1), **Sch. 1 para. 195(11)** (with art. 10)

137 Shares acquired before prohibition became applicable

- (1) Where a body corporate became a holder of shares in a company—
- (a) before the relevant date, or
 - (b) on or after that date and before the commencement of this Chapter in circumstances in which the prohibition in section 23(1) of the Companies Act 1985 or Article 33(1) of the Companies (Northern Ireland) Order 1986 (S.I. 1986/1032 (N.I. 6)) (or any corresponding earlier enactment), as it then had effect, did not apply, or
 - (c) on or after the commencement of this Chapter in circumstances in which the prohibition in section 136 did not apply,
- it may continue to be a member of the company.
- (2) The relevant date for the purposes of subsection (1)(a) is—
- (a) 1st July 1948 in the case of a company registered in Great Britain, and
 - (b) 1st April 1961 in the case of a company registered in Northern Ireland.
- (3) So long as it is permitted to continue as a member of a company by virtue of this section, an allotment to it of fully paid shares in the company may be validly made by way of capitalisation of reserves of the company.
- (4) But, so long as the prohibition in section 136 would (apart from this section) apply, it has no right to vote in respect of the shares mentioned in subsection (1) above, or any shares allotted as mentioned in subsection (3) above, on a written resolution or at meetings of the company or of any class of its members.

Modifications etc. (not altering text)

- C3** S. 137(3)(4) applied (with modifications) (31.12.2020) by [The Companies, Limited Liability Partnerships and Partnerships \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/348\)](#), reg. 2, **Sch. 4 para. 1**; 2020 c. 1, **Sch. 5 para. 1(1)**

Subsidiary acting as personal representative or trustee

138 Subsidiary acting as personal representative or trustee

- (1) The prohibition in section 136 (prohibition on subsidiary being a member of its holding company) does not apply where the subsidiary is concerned only—
- (a) as personal representative, or
 - (b) as trustee,
- unless, in the latter case, the holding company or a subsidiary of it is beneficially interested under the trust.

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- (2) For the purpose of ascertaining whether the holding company or a subsidiary is so interested, there shall be disregarded—
- (a) any interest held only by way of security for the purposes of a transaction entered into by the holding company or subsidiary in the ordinary course of a business that includes the lending of money;
 - (b) any interest within—
 - section 139 (interests to be disregarded: residual interest under pension scheme or employees' share scheme), or
 - section 140 (interests to be disregarded: employer's rights of recovery under pension scheme or employees' share scheme);
 - (c) any rights that the company or subsidiary has in its capacity as trustee, including in particular—
 - (i) any right to recover its expenses or be remunerated out of the trust property, and
 - (ii) any right to be indemnified out of the trust property for any liability incurred by reason of any act or omission in the performance of its duties as trustee.

139 Interests to be disregarded: residual interest under pension scheme or employees' share scheme

- (1) Where shares in a company are held on trust for the purposes of a pension scheme or employees' share scheme, there shall be disregarded for the purposes of section 138 any residual interest that has not vested in possession.
- (2) A “residual interest” means a right of the company or subsidiary (“the residual beneficiary”) to receive any of the trust property in the event of—
- (a) all the liabilities arising under the scheme having been satisfied or provided for, or
 - (b) the residual beneficiary ceasing to participate in the scheme, or
 - (c) the trust property at any time exceeding what is necessary for satisfying the liabilities arising or expected to arise under the scheme.
- (3) In subsection (2)—
- (a) the reference to a right includes a right dependent on the exercise of a discretion vested by the scheme in the trustee or another person, and
 - (b) the reference to liabilities arising under a scheme includes liabilities that have resulted, or may result, from the exercise of any such discretion.
- (4) For the purposes of this section a residual interest vests in possession—
- (a) in a case within subsection (2)(a), on the occurrence of the event mentioned there (whether or not the amount of the property receivable pursuant to the right is ascertained);
 - (b) in a case within subsection (2)(b) or (c), when the residual beneficiary becomes entitled to require the trustee to transfer to him any of the property receivable pursuant to the right.
- (5) In this section “pension scheme” means a scheme for the provision of benefits consisting of or including relevant benefits for or in respect of employees or former employees.

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(6) In subsection (5)—

- (a) “relevant benefits” means any pension, lump sum, gratuity or other like benefit given or to be given on retirement or on death or in anticipation of retirement or, in connection with past service, after retirement or death; and
- (b) “employee” shall be read as if a director of a company were employed by it.

140 Interests to be disregarded: employer's rights of recovery under pension scheme or employees' share scheme

- (1) Where shares in a company are held on trust for the purposes of a pension scheme or employees' share scheme, there shall be disregarded for the purposes of section 138 any charge or lien on, or set-off against, any benefit or other right or interest under the scheme for the purpose of enabling the employer or former employer of a member of the scheme to obtain the discharge of a monetary obligation due to him from the member.
- (2) ^{F1}In the case of a trust for the purposes of a pension scheme there shall also be disregarded any right to receive from the trustee of the scheme, or as trustee of the scheme to retain, an amount that can be recovered or retained, under ^{F2}... section 57 of the Pension Schemes (Northern Ireland) Act 1993 (c. 49) (deduction of contributions equivalent premium from refund of scheme contributions) or otherwise, as reimbursement or partial reimbursement for any contributions equivalent premium paid in connection with the scheme under Part 3 of that Act.]
- (3) In this section “pension scheme” means a scheme for the provision of benefits consisting of or including relevant benefits for or in respect of employees or former employees.

“Relevant benefits” here means any pension, lump sum, gratuity or other like benefit given or to be given on retirement or on death or in anticipation of retirement or, in connection with past service, after retirement or death.
- (4) In this section “employer” and “employee” shall be read as if a director of a company were employed by it.

Textual Amendments

- F1** S. 140(2) omitted (N.I.) (6.4.2016) by virtue of [Pensions Act \(Northern Ireland\) 2015 \(c. 5\), s. 53\(3\), Sch. 13 para. 73](#)
- F2** Words in s. 140(2) omitted (6.4.2016) by virtue of [Pensions Act 2014 \(c. 19\), s. 56\(4\), Sch. 13 para. 75](#)

Subsidiary acting as dealer in securities

141 Subsidiary acting as authorised dealer in securities

- (1) The prohibition in section 136 (prohibition on subsidiary being a member of its holding company) does not apply where the shares are held by the subsidiary in the ordinary course of its business as an intermediary.
- (2) For this purpose a person is an intermediary if he—
 - (a) carries on a bona fide business of dealing in securities,

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- (b) is a member of or has access to a [^{F3}UK regulated market], and
 - (c) does not carry on an excluded business.
- (3) The following are excluded businesses—
- (a) a business that consists wholly or mainly in the making or managing of investments;
 - (b) a business that consists wholly or mainly in, or is carried on wholly or mainly for the purposes of, providing services to persons who are connected with the person carrying on the business;
 - (c) a business that consists in insurance business;
 - (d) a business that consists in managing or acting as trustee in relation to a pension scheme, or that is carried on by the manager or trustee of such a scheme in connection with or for the purposes of the scheme;
 - (e) a business that consists in operating or acting as trustee in relation to a collective investment scheme, or that is carried on by the operator or trustee of such a scheme in connection with and for the purposes of the scheme.
- (4) For the purposes of this section—
- (a) the question whether a person is connected with another shall be determined in accordance with [^{F4}section 1122 of the Corporation Tax Act 2010];
 - (b) “collective investment scheme” has the meaning given in section 235 of the Financial Services and Markets Act 2000 (c. 8);
 - (c) “insurance business” means business that consists in the effecting or carrying out of contracts of insurance;
 - (d) “securities” includes—
 - (i) options,
 - (ii) futures, and
 - (iii) contracts for differences,and rights or interests in those investments;
 - (e) “trustee” and “the operator” in relation to a collective investment scheme shall be construed in accordance with section 237(2) of the Financial Services and Markets Act 2000 (c. 8).
- (5) Expressions used in this section that are also used in the provisions regulating activities under the Financial Services and Markets Act 2000 have the same meaning here as they do in those provisions.

See section 22 of that Act, orders made under that section and Schedule 2 to that Act.

Textual Amendments

- F3** Words in s. 141(2)(b) substituted (31.12.2020) by [The Companies, Limited Liability Partnerships and Partnerships \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/348\)](#), reg. 2, **Sch. 1 para. 2** (with [Sch. 4 para. 1](#)) (as amended by [S.I. 2020/523](#), regs. 1(2), 20); 2020 c. 1, [Sch. 5 para. 1\(1\)](#)
- F4** Words in s. 141(4)(a) substituted (1.4.2010 with effect in accordance with s. 1184 of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), ss. 1177, 1184(1), **Sch. 1 para. 488** (with [Sch. 2](#))

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142 Protection of third parties in other cases where subsidiary acting as dealer in securities

- (1) This section applies where—
- (a) a subsidiary that is a dealer in securities has purportedly acquired shares in its holding company in contravention of the prohibition in section 136, and
 - (b) a person acting in good faith has agreed, for value and without notice of the contravention, to acquire shares in the holding company—
 - (i) from the subsidiary, or
 - (ii) from someone who has purportedly acquired the shares after their disposal by the subsidiary.
- (2) A transfer to that person of the shares mentioned in subsection (1)(a) has the same effect as it would have had if their original acquisition by the subsidiary had not been in contravention of the prohibition.

Supplementary

143 Application of provisions to companies not limited by shares

In relation to a company other than a company limited by shares, the references in this Chapter to shares shall be read as references to the interest of its members as such, whatever the form of that interest.

144 Application of provisions to nominees

The provisions of this Chapter apply to a nominee acting on behalf of a subsidiary as to the subsidiary itself.

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

- Act amendment to earlier affecting provision S.I. 1989/638, Sch. 4 by [S.I. 2024/410 Sch. 2 para. 1](#)
- Act amendment to earlier affecting provision S.I. 2008/373 reg. 11(1) by [S.I. 2013/1971 reg. 9\(a\)](#) (This amendment not applied to legislation.gov.uk. Amending Regulations revoked (1.10.2013) without ever being in force by S.I. 2013/2224, reg. 2)
- Act amendment to earlier affecting provision S.I. 2008/373 reg. 3(4) by [S.I. 2013/1971 reg. 4](#) (This amendment not applied to legislation.gov.uk. Amending Regulations revoked (1.10.2013) without ever being in force by S.I. 2013/2224, reg. 2)

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 156A-156C inserted by [2015 c. 26 s. 87\(4\)](#)
- s. 156B(5) omitted by [2023 c. 56 Sch. 2 para. 26](#)
- s. 156C(2) words substituted by [2023 c. 56 s. 41\(2\)\(a\)](#)
- s. 156C(2A) inserted by [2023 c. 56 s. 41\(2\)\(b\)](#)
- s. 156C(3) substituted for s. 156C(3)-(5) by [2023 c. 56 Sch. 2 para. 27](#)
- s. 479A(2)(c)(zi) inserted by [S.I. 2019/177 reg. 4\(b\)\(i\)](#) (This amendment not applied to legislation.gov.uk. Reg. 4 substituted by regs. 4, 4A immediately before IP completion day by S.I. 2019/1392, regs. 1(2), 4)
- s. 479B(a)(iii) amendment to earlier affecting provision S.I.2008/1991 reg.34 by [S.R. 2024/78 reg. 31\(4\)](#)
- s. 479B(a)(iii) amendment to earlier affecting provision S.I.2008/1991 reg.34A by [S.R. 2024/78 reg. 31\(5\)](#)
- s. 1047(4)(i)(j) inserted by [2023 c. 56 s. 21\(2\)](#)
- s. 1087(da) substituted by [2023 c. 56 s. 52\(2\)](#)
- s. 1087A-1807C applied by S.I. 2009/2436, Sch. 1 para. 20(1)(ca) (as substituted) by [S.I. 2024/410 Sch. 2 para. 5\(d\)\(ii\)](#)
- s. 1110E-110G applied by S.I. 2009/1804, reg. 60 (as amended) by [S.I. 2024/234 reg. 26](#)
- s. 11989A applied (with modifications) by S.I. 2009/1804, reg. 79A (as inserted) by [S.I. 2024/234 reg. 46](#)
- Sch. 10 para. 6(2D) inserted by [S.I. 2019/177 reg. 28\(e\)](#) (This amendment not applied to legislation.gov.uk. Reg. 28(e) omitted immediately before IP completion day by virtue of S.I. 2020/523, regs. 1(2), 14(e)(iv))
- Sch. 10 para. 7(2A) inserted by [S.I. 2019/177 reg. 29\(b\)](#) (This amendment not applied to legislation.gov.uk. Reg. 29 substituted immediately before IP completion day by S.I. 2020/523, regs. 1(2), 14(f))