
STATUTORY INSTRUMENTS

1992 No. 3218

**The Banking Coordination (Second
Council Directive) Regulations 1992**

PART IV

AMENDMENTS OF BANKING ACT

Information and investigations

Notification of controllers

33. After section 36 of the Banking Act⁽¹⁾ there shall be inserted the following section—

“Annual notification of shareholder controllers.

36A.—(1) An authorised institution which is a credit institution incorporated in or formed under the law of any part of the United Kingdom shall at least once in each year give to the Bank written notice of the name of each person who, to the institution’s knowledge, is a shareholder controller of the institution at the date of the notice.

(2) A notice under subsection (1) above shall also, in relation to each such person, state to best of the institution’s knowledge—

- (a) whether he is a minority, 10 per cent., 20 per cent., 33 per cent. or 50 per cent. shareholder controller;
- (b) what percentage of the shares of the institution he holds either alone or with any associate or associates; and
- (c) what percentage of the voting power at a general meeting of the institution he is entitled to exercise, or control the exercise of, either alone or with any associate or associates;

and in this subsection 'share' has the same meaning as in Part VII of the Companies Act 1985⁽²⁾ or Part VIII of the Companies (Northern Ireland) Order 1986⁽³⁾.

(3) An institution which fails to give a notice required by this section shall be guilty of an offence and liable on summary conviction to a fine not exceeding the fifth level on the standard scale.”

(1) 1987 c. 22.

(2) 1985 c. 6; section 258 was inserted by the Companies Act 1989 (c. 40), section 21(2), and section 259 was inserted by section 22 of the Companies Act 1989.

(3) S.I.1986/1032 (N.I.6); Article 266 was inserted by the Companies (Northern Ireland) Order 1990 (S.I. 1990/593 (N.I.5)), Article 23(1), and Article 267 was inserted by Article 24 of the Companies (Northern Ireland) Order 1990.

Notification of acquisition of significant shareholding

34. For subsection (2) of section 37 of the Banking Act (notification of significant shareholding) there shall be substituted the following subsection—

“(2) For the purposes of this section 'a significant shareholder', in relation to an institution, means a person who is not a shareholder controller but who, either alone or with any associate or associates—

- (a) holds 5 per cent. or more of the shares in the institution or another institution of which it is a subsidiary undertaking; or
- (b) is entitled to exercise, or control the exercise of, 5 per cent. or more of the voting power at any general meeting of the institution or of another institution of which it is such an undertaking;

and in this subsection 'share' has the same meaning as in Part VII of the Companies Act 1985 or Part VIII of the Companies (Northern Ireland) Order 1986.”

Prior notification of ceasing to be a relevant controller

35. After section 37 of the Banking Act there shall be inserted the following section—

“Prior notification of ceasing to be a relevant controller.

37A.—(1) A person shall not cease to be a minority, 10 per cent., 20 per cent., 33 per cent. or 50 per cent. shareholder controller or a parent controller of an authorised institution which is a credit institution incorporated in or formed under the law of any part of the United Kingdom unless he has first given to the Bank written notice of his intention to cease to be such a controller of the institution.

(2) If, after ceasing to be such a controller of such an institution, a person will, either alone or with any associate or associates—

- (a) still hold 10 per cent. or more of the shares in the institution or another institution of which it is a subsidiary undertaking;
- (b) still be entitled to exercise or control the exercise of 10 per cent. or more of the voting power at any general meeting of the institution or of another institution of which it is such an undertaking; or
- (c) still be able to exercise a significant influence over the management of the institution or another institution of which it is such an undertaking by virtue of—
 - (i) a holding of shares in; or
 - (ii) an entitlement to exercise, or control the exercise of, the voting power at any general meeting of,

the institution or, as the case may be, the other institution concerned,

his notice under subsection (1) above shall state the percentage of the shares or voting power which he will (alone or with any associate or associates) hold or be entitled to exercise or control; and in this subsection 'share' has the same meaning as in Part VII of the Companies Act 1985 or Part VIII of the Companies (Northern Ireland) Order 1986.

(3) Subject to subsection (4) below, any person who contravenes subsection (1) or (2) above shall be guilty of an offence.

(4) Subject to subsection (5) below, a person shall not be guilty of an offence under subsection (3) above if he shows that he did not know of the acts or circumstances by virtue of which he ceased to be a controller of the relevant description in sufficient time to enable him to comply with subsection (1) above.

(5) Notwithstanding anything in subsection (4) above, a person who ceases to be a controller of a relevant description without having complied with subsection (1) above shall be guilty of an offence if, within fourteen days of becoming aware of the fact that he has ceased to be such a controller—

- (a) he fails to give the Bank written notice of that fact; or
- (b) he gives the Bank such a notice but the notice fails to comply with subsection (2) above.

(6) A person guilty of an offence under this section shall be liable on summary conviction to a fine not exceeding the fifth level on the standard scale.”

Information and production of documents

36. For subsections (6) and (7) of section 39 of the Banking Act (information and production of documents) there shall be substituted the following subsections—

“(6) If it appears to the Bank to be desirable in the interests of the depositors or potential depositors of an authorised institution to do so, it may also exercise the powers conferred by subsections (1) and (3) above in relation to any undertaking which is or has at any relevant time been—

- (a) a parent undertaking, subsidiary undertaking or related company of that institution;
- (b) a subsidiary undertaking of a parent undertaking of that institution;
- (c) a parent undertaking of a subsidiary undertaking of that institution; or
- (d) an undertaking in the case of which a shareholder controller of that institution, either alone or with any associate or associates, holds 50 per cent. or more of the shares or is entitled to exercise, or control the exercise of, more than 50 per cent. of the voting power at a general meeting;

or in relation to any partnership of which that institution is or has at any relevant time been a member.

(7) If it appears to the Bank to be desirable to do so in the interests of the depositors or potential depositors of an authorised institution which is a partnership ('the authorised partnership'), it may also exercise the powers conferred by subsections (1) and (3) above in relation to—

- (a) any other partnership having a member in common with the authorised partnership;
- (b) any undertaking which is or has at any time been a member of the authorised partnership;
- (c) any undertaking in the case of which the partners in the authorised partnership, either alone or with any associate or associates, hold 20 per cent. or more of the shares or are entitled to exercise, or control the exercise of, more than 50 per cent. of the voting power at a general meeting; or
- (d) any subsidiary undertaking or parent undertaking of any such undertaking as is mentioned in paragraph (b) or (c) above or any parent undertaking of any such subsidiary undertaking.

(7A) In subsections (6) and (7) above 'share' has the same meaning as in Part VII of the Companies Act 1985 or Part VIII of the Companies (Northern Ireland) Order 1986.”

Investigations on behalf of the Bank

37. For subsections (2) and (3) of section 41 of the Banking Act (investigations on behalf of the Bank) there shall be substituted the following subsections—

“(2) If a person appointed under subsection (1) above thinks it necessary for the purposes of his investigation, he may also investigate the business of any undertaking which is or has at any relevant time been—

- (a) a parent undertaking, subsidiary undertaking or related company of the institution under investigation;
- (b) a subsidiary undertaking or related company of a parent undertaking of that institution;
- (c) a parent undertaking of a subsidiary undertaking of that institution; or
- (d) an undertaking in the case of which a shareholder controller of that institution, either alone or with any associate or associates, holds 20 per cent. or more of the shares or is entitled to exercise, or control the exercise of, more than 20 per cent. of the voting power at a general meeting;

or the business of any partnership of which that institution is or has at any relevant time been a member.

(3) If a person appointed under subsection (1) above thinks it necessary for the purposes of his investigation in the case of an authorised institution which is a partnership ('the authorised partnership'), he may also investigate the business of—

- (a) any other partnership having a member in common with the authorised partnership;
- (b) any undertaking which is or has at any time been a member of the authorised partnership;
- (c) any undertaking in the case of which the partners in the authorised partnership, either alone or with any associate or associates, hold 20 per cent. or more of the shares or are entitled to exercise, or control the exercise of, more than 20 per cent. of the voting power at a general meeting; or
- (d) any subsidiary undertaking, related company or parent undertaking of any such undertaking as is mentioned in paragraph (b) or (c) above or any parent undertaking of any such subsidiary undertaking.

(3A) In subsections (2) and (3) above 'share' has the same meaning as in Part VII of the Companies Act 1985 or Part VIII of the Companies (Northern Ireland) Order 1986.”