



Faversham Oyster Fishery Company Act 2017

2017 CHAPTER i

PART 3

MISSING SHAREHOLDERS AND CLAIMS

12 Interpretation of Part 3

(1) In this Part—

a “claimant” means a person who has served a written notice on the Company and paid a deposit in accordance with section 13(5) during the notification period;

a “missing shareholder” means a shareholder of the Company whose name is listed in the register of shareholders kept by the Company, and in respect of whom the conditions of subsection (2) have been met and includes a person entitled to the shares of that shareholder by transmission;

“the notification period” means, in relation to a shareholder, the period beginning with the date of the first publication of the notice under section 13(1) and expiring at the end of the period of 18 months beginning with the day on which the further notice is first published under section 13(3);

a “shareholder notice” means a notice that—

- (a) is sent after the publication of a notice under section 13(1);
- (b) is sent by post to the address of the shareholder shown on the register of shareholders held by the Company;
- (c) explains the effect of this Part;
- (d) contains a notice for the recipient to complete and return which enables the recipient to claim in accordance with section 13(5) that the recipient is entitled to the interest of the shareholder in the shares in question; and
- (e) (in the case of a third notice) sets out the date on which the notification period expires.

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- (2) These are the conditions referred to in the definition of “missing shareholder” in subsection (1)—
- (a) the Company has sent the shareholder three shareholder notices in accordance with subsection (3);
 - (b) the notification period has expired;
 - (c) in the case of each such notice—
 - (i) the notice has been returned to the Company marked undelivered (or some similar indication was given that the notice could not be delivered to the shareholder at the address to which the notice had been sent), or
 - (ii) the notice has not been returned;
 - (d) before the first of those shareholder notices was sent, a period of 12 years had passed since the date on which a dividend or other sum became due for payment to the shareholder; and
 - (e) the shareholder has not claimed that dividend or other sum.
- (3) For the purposes of subsection (2)(a), the shareholder notices are sent in accordance with this subsection if the second and third of those notices are each sent no sooner than Day A and no later than Day B.
- (4) In subsection (3)—
- (a) “Day A” means the day following the last day of the period of six months beginning with the day on which the previous notice was sent; and
 - (b) “Day B” means the day following the last day of the period of 18 months beginning with the day on which the previous notice was sent.
- (5) For the purposes of this Part a person is entitled to a share by transmission if that person is the heir, successor or assign of the shareholder whose name is listed in the register of shareholders kept by the Company.

13 Notices and procedure for claims

- (1) Before sending a first shareholder notice to a shareholder, the Company must publish a notice containing an explanation of the effect of this Part, mentioning the name of the shareholder in question.
- (2) A shareholder notice may—
- (a) in the case of a body corporate, be sent to an officer of that body;
 - (b) in the case of a partnership, be sent to any partner;
 - (c) in the case of an unincorporated association other than a partnership, be sent to any member of the governing body of that association.
- (3) As soon as reasonably practicable following the sending of a third shareholder notice to a shareholder, the Company must publish a further notice containing an explanation of the effect of this Part, mentioning the name of the shareholder in question and setting out the date on which the notification period will expire.
- (4) A notice published under subsection (1) or (3)—
- (a) must be published in each of two successive weeks in a local newspaper circulating in the district of Swale and in the London Gazette; and
 - (b) may mention more than one shareholder.

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- (5) Any person may at any time during the notification period serve a written notice on the Company claiming that he or she is entitled to the interest of a shareholder in the shares in question, and any such notice shall be accompanied by a £50 deposit payable to the Company which shall be returned to the claimant in the event that the claimant succeeds in establishing the claim.
- (6) A notice under subsection (5) may be served on the Company—
- (a) by delivering it to the Company at the address given on the shareholder notice; or
 - (b) by sending it by registered post or the recorded delivery service to the Company at that address.
- (7) If, within a period of 56 days commencing on the receipt of a notice under subsection (5), any claimant establishes to the satisfaction of the Company in accordance with the provisions of the 1930 Act or the 2006 Act that he or she is the shareholder in respect of the shares in question or that the interest of the shareholder in the shares in question has been transmitted to the claimant, the Company shall, subject to subsection (9)—
- (a) enter the name of the claimant in the register of shareholders; and
 - (b) pay the claimant so much of the arrears of dividends or other sums for the relevant period (which shall bear no interest) as are owing to the claimant in respect of the shares to which the claimant is entitled.
- (8) If it is necessary for a claimant to make any application for the purpose of establishing a claim to any shares, the period for establishment of the claim shall be extended until the expiry of 30 days after the date on which—
- (a) proceedings on that application (including any proceedings on or in consequence of an appeal) have been determined and any time for appealing or further appealing has expired; or
 - (b) that application or appeal is abandoned or withdrawn; or
 - (c) a notice is served by post by the Company on the applicant indicating that in the reasonable opinion of the Company the applicant has failed to take any steps required of him in relation to that application or appeal,
- whichever happens first.
- (9) Before entering any claimant in the register of shareholders or paying the claimant any arrears of dividends or other sums, the Company may require the claimant to provide an indemnity in respect of any subsequent claims made against the Company in respect of that registration or that payment.
- (10) In subsection (7)(b), the “relevant period” means the period of 12 years expiring at the end of the day on which the Company is satisfied under subsection (7).
- (11) In subsection (8), an “application” includes any application to the court under section 125 or Part 30 of the 2006 Act.

14 Sale of shares

- (1) The Company may sell any share of a missing shareholder in accordance with this section.
- (2) The Company may purchase any share of a missing shareholder to be sold under this section.

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(3) The sale price of any shares to be sold under this section shall be determined by the Company's auditor or accountant on the basis set out in subsection (4).

(4) The share value shall be determined by using the following formula—

$$\frac{xy}{z} + A$$

where—

x is the value, on the date of the sale, of the whole of the Company's issued share capital of the same class as the shares to be sold, calculated on the basis of an open market sale between a willing buyer and willing seller dealing with each other at arm's length;

y is the number of the shares to be sold;

z is the number, on that date, of issued shares in the same class; and

A is the total value of any dividends or other sums due for payment to the missing shareholder in respect of the shares to be sold.

(5) To give effect to any sale of shares under this section, the Company may—

- (a) authorise some person to transfer the shares in question;
- (b) enter the name of the transferee in respect of the transferred shares in the register of shareholders even if no share certificate has been lodged for such shares; and
- (c) issue a new certificate to the transferee.

(6) An instrument of transfer executed by the person authorised under subsection (5)(a) shall be as effective as if it had been executed by the holder of, or the person entitled by transmission to, the shares.

(7) The transferee shall not be bound to see to the application of the purchase monies, nor shall the transferee's title to the shares be affected by any irregularity or invalidity in the proceedings in reference to the sale.

(8) If, during the further issue period, any additional shares have been issued in respect of—

- (a) shares held at the beginning of that period; or
- (b) additional shares previously issued during that period,

the Company may sell those additional shares.

(9) In subsection (8), "the further issue period" means the period that—

- (a) begins with the date referred to in section 12(2)(d); and
- (b) ends with the expiry of the notification period.

(10) The Company shall account to the missing shareholder for the net proceeds of a sale under this section by carrying all monies relating to the sale to a separate account.

(11) The Company shall be deemed to be a debtor to, and not a trustee for, the missing shareholder in respect of such monies.

(12) Monies carried to a separate account in accordance with subsection (10) may either be employed in the business of the Company or invested in such investments as the Board may think fit.

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- (13) If a person establishes to the Company's satisfaction that he is the missing shareholder in respect of any shares sold under this section the Company must pay that person the monies carried to the separate account in accordance with subsection (10).
- (14) No interest shall be payable to the missing shareholder in respect of monies carried to a separate account in accordance with subsection (10) and the Company shall not be obliged to account for any money earned on those monies.

15 Notices in electronic form

- (1) This section applies in relation to the serving of a notice under section 13(5) where the notice is transmitted to the Company—
- (a) by means of an electronic communications network; or
 - (b) by other means but in a form that requires the use of apparatus by the recipient to render it intelligible.
- (2) The transmission has effect for the purposes of this Part as service of the notice on the Company, but only if the Company has indicated to the person making the transmission its willingness to receive the notice in the form and manner used.
- (3) An indication to a person for the purposes of subsection (2)—
- (a) must be given to the person in such manner as he may require;
 - (b) must state the address to be used;
 - (c) must be accompanied by such other information as the person requires for the making of the transmission; and
 - (d) may be modified or withdrawn at any time by a notice given to the person in such manner as he may require.
- (4) In this section “electronic communications network” has the same meaning as in the Communications Act 2003.

16 Saving for section 125 of 2006 Act

This Part is without prejudice to section 125 of the 2006 Act (power of court to rectify register).