

Contents

Preface	v
Acknowledgment	vii
Table of Cases	xv
Table of Legislation	xix
Introduction	xxv
Chapter One The Use of Nominee Shareholders to Conceal Ownership	1
A Nominee Shareholder	1
History of Companies Legislation Relating to Nominees	2
The Relationship Between Company Law and the Law of Trusts	2
The Non-recognition of Trusts	4
The Concept of Separate Legal Personality	5
Differing Uses of Nominees	6
(1) Subsidiaries of Banking or Financial Institutions	6
(2) Family and Private Investment Companies	8
(3) Confidentiality	8
(4) Stockbrokers	9
(5) Concealing Identity to Assist in Obtaining Control	9
The Advantages of Nominees	10
Is There a Case to Answer?	11
The Number of Nominee Shareholdings	11
Examples of Concealment: Re North Broken Hill Holdings Ltd	14
Warehousing	15
The Hong Kong Position	16
The Consolidated Gold Fields Incident	16
The Australian Position	17
Effect on the Share Register	18

Chapter Two The Legislative Approach to Disclosure: a Historical Analysis	22
The Development of a Legislative Scheme	22
The Cohen Committee	23
Declaration of the Nature of Holdings	23
Substantial Shareholders	24
Definition of Beneficial Owner	25
Enforcement and the Role of the Board of Trade	26
(UK) Companies Act 1948	27
Board of Trade's Investigative Powers	27
'Arrangement or Understanding'	28
Power to Examine Witnesses	28
Insider Trading	29
Development of the Concept of Control	29
'The Enemy Test'	30
Control Under Other Legislation	34
Control by the Board of Directors and Control over Subsidiaries	41
The Berle and Means Conceptualisation of Control.....	43
The Jenkins Committee	44
The London Clearing Banks Submission.....	45
'Ownership'	46
Board of Trade's Investigative Powers	47
The Jenkins Committee's Recommendations.....	49
Relationship Between Nominees, Disclosure and the Takeover Provisions	51
The Development of Legislative Intervention	53
Australian Legislation	54
Substantial Shareholders	55
The Company's Role: Keeping Registers and Tracing Provisions	55
The Three Mechanisms	56
 Chapter Three The Operation of Substantial Shareholder Provisions	57
The History of the Provisions	57
'Associate'	59
Automatic Associations: Officers of a Corporation	60
Factual Associations: Arrangements and Control	60
Control Over Disposition of Shares	67
Control Over the Conduct of Affairs of the Company	69
Association in 'Any Other Way'	70
Relations which will Not Amount to an Association	70
Division 5: Relevant Interest	71
Nature of Control	71
(a) <i>The Existence of a Trust</i>	73

(b) <i>Options</i>	74
(c) <i>Proxies</i>	75
(d) <i>Relevant Interest in Itself</i>	76
(e) <i>Unissued Shares</i>	77
(f) <i>Common Directorships</i>	78
(g) <i>Pre-emptive Rights</i>	79
(h) <i>Interposed Companies</i>	79
(i) <i>Voting Arrangements</i>	81
(j) <i>Pre-bid Understandings</i>	82
Relevant Interests to be disregarded	85
Information to be Disclosed Under Part 6.7	85
The Name and Address of the Holder	85
Particulars Regarding the Voting Shares	86
Particulars of Each Interest.....	86
Registers of Substantial Shareholders: Public Awareness	86
Penalties	87
'Unfair Prejudice'	90
What is Meant by Unfair Prejudice	91
Is Section 744(4) Limited by Section 744(2)?	93
Conclusion	94
Complexity	95
Failure to Reveal Appropriate Information	95
Defects of Enforceability	96

 Chapter Four Investigation of Share Ownership:	
The History and Operations of the Tracing Provisions	97
History of Investigation into Share Ownership	97
Powers of Investigation by the Board of Trade	98
The (UK) Companies Act 1948	100
Investigation of Ownership	102
'Interest' in Shares	104
Penalties	105
Restrictions on Shares.....	105
The Jenkins Committee	106
The (UK) Companies Act 1967	107
The Board of Trade Report	108
The (UK) Companies Act 1976	109
'Interest'	109
Further Enquiries	110
Register of Information Received	110
Penalties	110
The (Aus) Corporations Law	111
The Sending of a Primary Notice by the Australian Securities Commission	112
The Sending of a Primary Notice by the Company	114
The Notice	114

<i>Relevant Interests and Instructions</i>	115
<i>The Time within which to respond</i>	116
<i>Right to Exclude Information</i>	116
<i>Special Reasons</i>	116
The Secondary Notices	118
Register of Notices	120
Review of Australian Securities Commissions Decisions	120
Penalties and Powers of Court	121
Re North Broken Hill Holdings	123
At First Instance	124
On Appeal	126
<i>Was the Decision of the Full Court Correct?</i>	127
Chapter Five The Hong Kong Position	130
Early History of Hong Kong's Securities Markets	131
The Hay Davidson Report	131
<i>Importance of Disclosure</i>	132
<i>Self-Regulation</i>	133
The Legislative History of the Securities (Disclosure of Interests) Ordinance	135
The Main Features of the Securities (Disclosure of Interests) Bill	135
Extraterritorial Effect	136
Disclosure Level	137
Exemptions Under the Ordinance	137
Warrants	138
Legislative Council Division	139
The Securities (Disclosure of Interests) Ordinance 1991 Amendments	142
Purpose of the 1991 Amendments	142
Exemption from the Provisions	143
SFC Guidelines	143
Power to Freeze Shares	144
The Securities (Disclosure of Interests) Ordinance	147
Interest	147
Directors	156
Duty of Disclosure	157
Company's Right to make Enquiry	158
Penalties for Non-compliance	159
Removing the Restrictions Re World Trade Centre	159
Investigation into Asia Securities International Ltd	164
Conclusion	165
Chapter Six The Present English Legislation	167
Interpretation of Interests	167
Tracing Provisions	168

Information	169
Register of Interests	169
Requisitioning an Enquiry	169
Company's Report of the Investigation	170
Penalties for Non-Compliance with Company's Notice	171
Investigation by the Secretary for State	173
Penalties for Non-Compliance with Secretary's Notice	173
Chapter Seven The Position in Other Jurisdictions	176
United States of America	176
Information to be Provided	179
(a) <i>Background of the Beneficial Owner</i>	179
(b) <i>The Source of the Funding for the Acquisition</i>	179
(c) <i>The Post-Control Plans</i>	180
(d) <i>Details of Associates</i>	180
(e) <i>Details of any Arrangements in Relation to the Shares</i>	180
Shareholding Groups	181
Obligation to Notify Changes to Particulars	182
False and Misleading	183
Remedies for Non-Compliance	184
European Union	186
Belgium	188
Chapter Eight Conclusion	190
Appendices	197
Index	303