



# Companies Act 1985

## 1985 CHAPTER 6

### PART V

#### SHARE CAPITAL, ITS INCREASE, MAINTENANCE AND REDUCTION

### CHAPTER VI

#### FINANCIAL ASSISTANCE BY A COMPANY FOR ACQUISITION OF ITS OWN SHARES

*Provisions applying to both public and private companies*

#### **151 Financial assistance generally prohibited**

- (1) Subject to the following provisions of this Chapter, where a person is acquiring or is proposing to acquire shares in a company, it is not lawful for the company or any of its subsidiaries to give financial assistance directly or indirectly for the purpose of that acquisition before or at the same time as the acquisition takes place.
- (2) Subject to those provisions, where a person has acquired shares in a company and any liability has been incurred (by that or any other person), for the purpose of that acquisition, it is not lawful for the company or any of its subsidiaries to give financial assistance directly or indirectly for the purpose of reducing or discharging the liability so incurred.
- (3) If a company acts in contravention of this section, it is liable to a fine, and every officer of it who is in default is liable to imprisonment or a fine, or both.

#### **152 Definitions for this Chapter**

- (1) In this Chapter—
  - (a) " financial assistance " means—
    - (i) financial assistance given by way of gift,

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- (ii) financial assistance given by way of guarantee, security or indemnity, other than an indemnity in respect of the indemnifier's own neglect or default, or by way of release or waiver,
  - (iii) financial assistance given by way of a loan or any other agreement under which any of the obligations of the person giving the assistance are to be fulfilled at a time when in accordance with the agreement any obligation of another party to the agreement remains unfulfilled, or by way of the novation of, or the assignment of rights arising under, a loan or such other agreement, or
  - (iv) any other financial assistance given by a company the net assets of which are thereby reduced to a material extent or which has no net assets ;
- (b) " distributable profits ", in relation to the giving of any financial assistance—
- (i) means those profits out of which the company could lawfully make a distribution equal in value to that assistance, and
  - (ii) includes, in a case where the financial assistance is or includes a non-cash asset, any profit which, if the company were to make a distribution of that asset, would under section 276 (distributions in kind) be available for that purpose. and
- (c) " distribution " has the meaning given by section 263(2).
- (2) In subsection (1)(a)(iv), " net assets " means the aggregate of the company's assets, less the aggregate of its liabilities (" liabilities " to include any provision for liabilities or charges within paragraph 89 of Schedule 4).
- (3) In this Chapter—
- (a) a reference to a person incurring a liability includes his changing his financial position by making an agreement or arrangement (whether enforceable or unenforceable, and whether made on his own account or with any other person) or by any other means, and
  - (b) a reference to a company giving financial assistance for the purpose of reducing or discharging a liability incurred by a person for the purpose of the acquisition of shares includes its giving such assistance for the purpose of wholly or partly restoring his financial position to what it was before the acquisition took place.

### **153 Transactions not prohibited by s. 151**

- (1) Section 151(1) does not prohibit a company from giving financial assistance for the purpose of an acquisition of shares in it or its holding company if—
- (a) the company's principal purpose in giving that assistance is not to give it for the purpose of any such acquisition, or the giving of the assistance for that purpose is but an incidental part of some larger purpose of the company, and
  - (b) the assistance is given in good faith in the interests of the company.
- (2) Section 151(2) does not prohibit a company from giving financial assistance if—
- (a) the company's principal purpose in giving the assistance is not to reduce or discharge any liability incurred by a person for the purpose of the acquisition of shares in the company or its holding company, or the reduction or discharge of any such liability is but an incidental part of some larger purpose of the company, and

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- (b) the assistance is given in good faith in the interests of the company.
- (3) Section 151 does not prohibit—
- (a) a distribution of a company's assets by way of dividend lawfully made or a distribution made in the course of the company's winding up,
  - (b) the allotment of bonus shares ,
  - (c) a reduction of capital confirmed by order of the court under section 137,
  - (d) a redemption or purchase of shares made in accordance with Chapter VII of this Part,
  - (e) anything done in pursuance of an order of the court under section 425 (compromises and arrangements with creditors and members),
  - (f) anything done under an arrangement made in pursuance of section 582 (acceptance of shares by liquidator in winding up as consideration for sale of property), or
  - (g) anything done under an arrangement made between a company and its creditors which is binding on the creditors by virtue of section 601 (winding up imminent or in progress).
- (4) Section 151 does not prohibit—
- (a) where the lending of money is part of the ordinary business of the company, the lending of money by the company in the ordinary course of its business,
  - (b) the provision by a company in accordance with an employees' share scheme of money for the acquisition of fully paid shares in the company or its holding company,
  - (c) the making by a company of loans to persons (other than directors) employed in good faith by the company with a view to enabling those persons to acquire fully paid shares in the company or its holding company to be held by them by way of beneficial ownership.

#### **154 Special restriction for public companies**

- (1) In the case of a public company, section 153(4) authorises the giving of financial assistance only if the company has net assets which are not thereby reduced or, to the extent that those assets are thereby reduced, if the assistance is provided out of distributable profits.
- (2) For this purpose the following definitions apply—
- (a) " net assets " means the amount by which the aggregate of the company's assets exceeds the aggregate of its liabilities (taking the amount of both assets and liabilities to be as stated in the company's accounting records immediately before the financial assistance is given);
  - (b) " liabilities " includes any amount retained as reasonably necessary for the purpose of providing for any liability or loss which is either likely to be incurred, or certain to be incurred but uncertain as to amount or as to the date on which it will arise.