



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.

Private companies

155 Relaxation of s. 151 for private companies

- (1) Section 151 does not prohibit a private company from giving financial assistance in a case where the acquisition of shares in question is or was an acquisition of shares in the company or, if it is a subsidiary of another private company, in that other company if the following provisions of this section, and sections 156 to 158, are complied with as respects the giving of that assistance.
- (2) The financial assistance may only be given if the company has net assets which are not thereby reduced or, to the extent that they are reduced, if the assistance is provided out of distributable profits.

Section 154(2) applies for the interpretation of this subsection.

- (3) This section does not permit financial assistance to be given by a subsidiary, in a case where the acquisition of shares in question is or was an acquisition of shares in its holding company, if it is also a subsidiary of a public company which is itself a subsidiary of that holding company.
- (4) Unless the company proposing to give the financial assistance is a wholly-owned subsidiary, the giving of assistance under this section must be approved by special resolution of the company in general meeting.
- (5) Where the financial assistance is to be given by the company in a case where the acquisition of shares in question is or was an acquisition of shares in its holding company, that holding company and any other company which is both the company's holding company and a subsidiary of that other holding company (except, in any case, a company which is a wholly-owned subsidiary) shall also approve by special resolution in general meeting the giving of the financial assistance.
- (6) The directors of the company proposing to give the financial assistance and, where the shares acquired or to be acquired are shares in its holding company, the directors of that company and of any other company which is both the company's holding company and a subsidiary of that other holding company shall before the financial assistance is given make a statutory declaration in the prescribed form, complying with the section next following.

156 Statutory declaration under s. 155

- (1) A statutory declaration made by a company's directors under section 155(6) shall contain such particulars of the financial assistance to be given, and of the business of the company of which they are directors, as may be prescribed, and shall identify the person to whom the assistance is to be given.
- (2) The declaration shall state that the directors have formed the opinion, as regards the company's initial situation immediately following the date on which the assistance is proposed to be given, that there will be no ground on which it could then be found to be unable to pay its debts; and either—
 - (a) if it is intended to commence the winding up of the company within 12 months of that date, that the company will be able to pay its debts in full within 12 months of the commencement of the winding up, or

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- (b) in any other case, that the company will be able to pay its debts as they fall due during the year immediately following that date.
- (3) In forming their opinion for purposes of subsection (2), the directors shall take into account the same liabilities (including contingent and prospective liabilities) as would be relevant under section 517 (winding up by the court) to the question whether the company is unable to pay its debts.
- (4) The directors' statutory declaration shall have annexed to it a report addressed to them by their company's auditors stating that—
 - (a) they have enquired into the state of affairs of the company, and
 - (b) they are not aware of anything to indicate that the opinion expressed by the directors in the declaration as to any of the matters mentioned in subsection (2) of this section is unreasonable in all the circumstances.
- (5) The statutory declaration and auditors' report shall be delivered to the registrar of companies—
 - (a) together with a copy of any special resolution passed by the company under section 155 and delivered to the registrar in compliance with section 380, or
 - (b) where no such resolution is required to be passed, within 15 days after the making of the declaration.
- (6) If a company fails to comply with subsection (5), the company and every officer of it who is in default is liable to a fine and, for continued contravention, to a daily default fine.
- (7) A director of a company who makes a statutory declaration under section 155 without having reasonable grounds for the opinion expressed in it is liable to imprisonment or a fine, or both.

157 Special resolution under s. 155

- (1) A special resolution required by section 155 to be passed by a company approving the giving of financial assistance must be passed on the date on which the directors of that company make the statutory declaration required by that section in connection with the giving of that assistance, or within the week immediately following that date.
- (2) Where such a resolution has been passed, an application may be made to the court for the cancellation of the resolution—
 - (a) by the holders of not less in the aggregate than 10 per cent, in nominal value of the company's issued share capital or any class of it, or
 - (b) if the company is not limited by shares, by not less than 10 per cent, of the company's members;but the application shall not be made by a person who has consented to or voted in favour of the resolution.
- (3) Subsections (3) to (10) of section 54 (litigation to cancel resolution under section 53) apply to applications under this section as to applications under section 54.
- (4) A special resolution passed by a company is not effective for purposes of section 155—
 - (a) unless the declaration made in compliance with subsection (6) of that section by the directors of the company, together with the auditors' report annexed to it, is available for inspection by members of the company at the meeting at which the resolution is passed,

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- (b) if it is cancelled by the court on an application under this section.

158 Time for giving financial assistance under s. 155

- (1) This section applies as to the time before and after which financial assistance may not be given by a company in pursuance of section 155.
- (2) Where a special resolution is required by that section to be passed approving the giving of the assistance, the assistance shall not be given before the expiry of the period of 4 weeks beginning with—
- (a) the date on which the special resolution is passed, or
 - (b) where more than one such resolution is passed, the date on which the last of them is passed,
- unless, as respects that resolution (or, if more than one, each of them), every member of the company which passed the resolution who is entitled to vote at general meetings of the company voted in favour of the resolution.
- (3) If application for the cancellation of any such resolution is made under section 157, the financial assistance shall not be given before the final determination of the application unless the court otherwise orders.
- (4) The assistance shall not be given after the expiry of the period of 8 weeks beginning with—
- (a) the date on which the directors of the company proposing to give the assistance made their statutory declaration under section 155, or
 - (b) where that company is a subsidiary and both its directors and the directors of any of its holding companies made such a declaration, the date on which the earliest of the declarations is made,
- unless the court, on an application under section 157, otherwise orders.