



Companies Act 1985

1985 CHAPTER 6

PART VIII

DISTRIBUTION OF PROFITS AND ASSETS

Relevant accounts

270 Distribution to be justified by reference to company's accounts

- (1) This section and sections 271 to 276 below are for determining the question whether a distribution may be made by a company without contravening sections 263, 264 or 265.
- (2) The amount of a distribution which may be made is determined by reference to the following items as stated in the company's accounts—
 - (a) profits, losses, assets and liabilities,
 - (b) provisions of any of the kinds mentioned in paragraphs 88 and 89 of Schedule 4 (depreciation, diminution in value of assets, retentions to meet liabilities, etc.), and
 - (c) share capital and reserves (including undistributable reserves).
- (3) Except in a case falling within the next subsection, the company's accounts which are relevant for this purpose are its last annual accounts, that is to say those prepared under Part VII which were laid in respect of the last preceding accounting reference period in respect of which accounts so prepared were laid; and for this purpose accounts are laid if section 241 (1) has been complied with in relation to them.
- (4) In the following two cases—
 - (a) where the distribution would be found to contravene the relevant section if reference were made only to the company's last annual accounts, or
 - (b) where the distribution is proposed to be declared during the company's first accounting reference period, or before any accounts are laid in respect of that period,

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the accounts relevant under this section (called "interim accounts" in the first case, and "initial accounts" in the second) are those necessary to enable a reasonable judgment to be made as to the amounts of the items mentioned in subsection (2) above.

- (5) The relevant section is treated as contravened in the case of a distribution unless the statutory requirements about the relevant accounts (that is, the requirements of this and the following three sections, as and where applicable) are complied with in relation to that distribution.

271 Requirements for last annual accounts

- (1) If the company's last annual accounts constitute the only accounts relevant under section 270, the statutory requirements in respect of them are as follows.
- (2) The accounts must have been properly prepared in accordance with this Act, or have been so prepared subject only to matters which are not material for determining, by reference to items mentioned in section 270(2), whether the distribution would contravene the relevant section ; and, without prejudice to the foregoing—
 - (a) so much of the accounts as consists of a balance sheet must give a true and fair view of the state of the company's affairs as at the balance sheet date, and
 - (b) so much of the accounts as consists of a profit and loss account must give a true and fair view of the company's profit or loss for the period in respect of which the accounts were prepared.
- (3) The auditors must have made their report on the accounts under section 236; and the following subsection applies if the report is a qualified report, that is to say, it is not a report without qualification to the effect that in the auditors' opinion the accounts have been properly prepared in accordance with this Act.
- (4) The auditors must in that case also have stated in writing (either at the time of their report or subsequently) whether, in their opinion, the matter in respect of which their report is qualified is material for determining, by reference to items mentioned in section 270(2), whether the distribution would contravene the relevant section ; and a copy of the statement must have been laid before the company in general meeting.
- (5) A statement under subsection (4) suffices for purposes of a particular distribution not only if it relates to a distribution which has been proposed but also if it relates to distributions of any description which includes that particular distribution, notwithstanding that at the time of the statement it has not been proposed.

272 Requirements for interim accounts

- (1) The following are the statutory requirements in respect of interim accounts prepared for a proposed distribution by a public company.
- (2) The accounts must have been properly prepared, or have been so prepared subject only to matters which are not material for determining, by reference to items mentioned in section 270(2), whether the proposed distribution would contravene the relevant section.
- (3) " Properly prepared " means that the accounts must comply with section 228 (applying that section and Schedule 4 with such modifications as are necessary because the accounts are prepared otherwise than in respect of an accounting reference period)

and any balance sheet comprised in the accounts must have been signed in accordance with section 238 ; and, without prejudice to the foregoing—

- (a) so much of the accounts as consists of a balance sheet must give a true and fair view of the state of the company's affairs as at the balance sheet date, and
 - (b) so much of the accounts as consists of a profit and loss account must give a true and fair view of the company's profit or loss for the period in respect of which the accounts were prepared.
- (4) A copy of the accounts must have been delivered to the registrar of companies.
- (5) If the accounts are in a language other than English and section 241(3)(b) (translation) does not apply, a translation into English of the accounts, certified in the prescribed manner to be a correct translation, must also have been delivered to the registrar.

273 Requirements for initial accounts

- (1) The following are the statutory requirements in respect of initial accounts prepared for a proposed distribution by a public company.
- (2) The accounts must have been properly prepared, or they must have been so prepared subject only to matters which are not material for determining, by reference to items mentioned in section 270(2), whether the proposed distribution would contravene the relevant section.
- (3) Section 272(3) applies as respects the meaning of " properly prepared " .
- (4) The company's auditors must have made a report stating whether, in their opinion, the accounts have been properly prepared : and the following subsection applies if their report is a qualified report, that is to say it is not a report without qualification to the effect that in the auditors' opinion the accounts have been so prepared.
- (5) The auditors must in that case also have stated in writing whether, in their opinion, the matter in respect of which their report is qualified is material for determining, by reference to items mentioned in section 270(2), whether the distribution would contravene the relevant section.
- (6) A copy of the accounts, of the auditors' report under subsection (4) and of the auditors' statement (if any) under subsection (5) must have been delivered to the registrar of companies.
- (7) If the accounts are, or the auditors' report under subsection (4) or their statement (if any) under subsection (5) is, in a language other than English and section 241(3)(b) (translation) does not apply, a translation into English of the accounts, the report or the statement (as the case may be), certified in the prescribed manner to be a correct translation, must also have been delivered to the registrar.

274 Method of applying s. 270 to successive distributions

- (1) For the purpose of determining by reference to particular accounts whether a proposed distribution may be made by a company, section 270 has effect, in a case where one or more distributions have already been made in pursuance of determinations made by reference to those same accounts, as if the amount of the proposed distribution was increased by the amount of the distributions so made.
- (2) Subsection (1) of this section applies (if it would not otherwise do so) to—

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- (a) financial assistance lawfully given by a public company out of its distributable profits in a case where the assistance is required to be so given by section 154.
- (b) financial assistance lawfully given by a private company out of its distributable profits in a case where the assistance is required to be so given by section 155(2).
- (c) financial assistance given by a company in contravention of section 151. in a case where the giving of that assistance reduces the company's net assets or increases its net liabilities,
- (d) a payment made by a company in respect of the purchase by it of shares in the company (except a payment lawfully made otherwise than out of distributable profits), and
- (e) a payment of any description specified in section 168 (company's purchase of right to acquire its own shares, etc.),

being financial assistance given or payment made since the relevant accounts were prepared, as if any such financial assistance or payment were a distribution already made in pursuance of a determination made by reference to those accounts.

(3) In this section the following definitions apply—

" financial assistance " means the same as in Chapter VI of Part V;

"net assets" has the meaning given by section 154(2)(a); and

" net liabilities ", in relation to the giving of financial assistance by a company, means the amount by which the aggregate amount of the company's liabilities (within the meaning of section 154(2)(b)) exceeds the aggregate amount of its assets, taking the amount of the assets and liabilities to be as stated in the company's accounting records immediately before the financial assistance is given.

(4) Subsections (2) and (3) of this section are deemed to be included in Chapter VII of Part V for purposes of the Secretary of State's power to make regulations under section 179.

275 Treatment of assets in the relevant accounts

- (1) For purposes of sections 263 and 264, a provision of any kind mentioned in paragraphs 88 and 89 of Schedule 4, other than one in respect of a diminution in value of a fixed asset appearing on a revaluation of all the fixed assets of the company, or of all of its fixed assets other than goodwill, is treated as a realised loss.
- (2) If, on the revaluation of a fixed asset, an unrealised profit is shown to have been made and, on or after the revaluation, a sum is written off or retained for depreciation of that asset over a period, then an amount equal to the amount by which that sum exceeds the sum which would have been so written off or retained for the depreciation of that asset over that period, if that profit had not been made, is treated for purposes of sections 263 and 264 as a realised profit made over that period.
- (3) Where there is no record of the original cost of an asset, or a record cannot be obtained without unreasonable expense or delay, then for the purpose of determining whether the company has made a profit or loss in respect of that asset, its cost is taken to be the value ascribed to it in the earliest available record of its value made on or after its acquisition by the company.
- (4) Subject to subsection (6), any consideration by the directors of the value at a particular time of a fixed asset is treated as a revaluation of the asset for the purposes of

determining whether any such revaluation of the company's fixed assets as is required for purposes of the exception from subsection (1) has taken place at that time.

- (5) But where any such assets which have not actually been revalued are treated as revalued for those purposes under subsection (4), that exception applies only if the directors are satisfied that their aggregate value at the time in question is not less than the aggregate amount at which they are for the time being stated in the company's accounts.
- (6) Where section 271(2), 272(2) or 273(2) applies to the relevant accounts, subsections (4) and (5) above do not apply for the purpose of determining whether a revaluation of the company's fixed assets affecting the amount of the relevant items (that is, the items mentioned in section 270(2)) as stated in those accounts has taken place, unless it is stated in a note to the accounts—
- (a) that the directors have considered the value at any time of any fixed assets of the company, without actually revaluing those assets,
 - (b) that they are satisfied that the aggregate value of those assets at the time in question is or was not less than the aggregate amount at which they are or were for the time being stated in the company's accounts, and
 - (c) that the relevant items in question are accordingly stated in the relevant accounts on the basis that a revaluation of the company's fixed assets which by virtue of subsections (4) and (5) included the assets in question took place at that time.

276 Distributions in kind

Where a company makes a distribution of or including a non-cash asset, and any part of the amount at which that asset is stated in the accounts relevant for the purposes of the distribution in accordance with sections 270 to 275 represents an unrealised profit, that profit is to be treated as a realised profit—

- (a) for the purpose of determining the lawfulness of the distribution in accordance with this Part (whether before or after the distribution takes place), and
- (b) for the purpose of the application of paragraphs 12(a) and 34(4)(b) of Schedule 4 (only realised profits to be included in or transferred to the profit and loss account) in relation to anything done with a view to or in connection with the making of that distribution.