



# Companies Act 2006

## 2006 CHAPTER 46

### PART 23

#### DISTRIBUTIONS

### CHAPTER 3

#### SUPPLEMENTARY PROVISIONS

##### *Accounting matters*

#### **841 Realised losses and profits and revaluation of fixed assets**

- (1) The following provisions have effect for the purposes of this Part.
- (2) The following are treated as realised losses—
  - (a) in the case of Companies Act accounts, provisions of a kind specified for the purposes of this paragraph by regulations under section 396 (except revaluation provisions);
  - (b) in the case of IAS accounts, provisions of any kind (except revaluation provisions).
- (3) A “revaluation provision” means a provision 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.
- (4) For the purpose of subsections (2) and (3) any consideration by the directors of the value at a particular time of a fixed asset is treated as a revaluation provided—
  - (a) the directors are satisfied that the aggregate value at that time of the fixed assets of the company that have not actually been revalued is not less than the aggregate amount at which they are then stated in the company's accounts, and
  - (b) it is stated in a note to the accounts—

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- (i) that the directors have considered the value of some or all of the fixed assets of the company without actually revaluing them,
- (ii) that they are satisfied that the aggregate value of those assets at the time of their consideration was not less than the aggregate amount at which they were then stated in the company's accounts, and
- (iii) that accordingly, by virtue of this subsection, amounts are stated in the accounts on the basis that a revaluation of fixed assets of the company is treated as having taken place at that time.

(5) Where—

- (a) on the revaluation of a fixed asset, an unrealised profit is shown to have been made, and
- (b) on or after the revaluation, a sum is written off or retained for depreciation of that asset over a period,

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 as a realised profit made over that period.

**Annotations:**

**Commencement Information**

- I1** S. 841 wholly in force at 6.4.2008; s. 841 not in force at Royal Assent see s. 1300; s. 841 in force at 6.4.2008 by [S.I. 2007/3495](#), [art. 3\(1\)\(k\)](#) (with savings in [arts. 7, 12](#) and subject to transitional adaptations in [Sch. 1 paras. 14-20](#) and with savings in [Sch. 4 paras. 33-35](#))

**842 Determination of profit or loss in respect of asset where records incomplete**

In determining for the purposes of this Part whether a company has made a profit or loss in respect of an asset where—

- (a) there is no record of the original cost of the asset, or
- (b) a record cannot be obtained without unreasonable expense or delay,

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.

**Annotations:**

**Commencement Information**

- I2** S. 842 wholly in force at 6.4.2008; s. 842 not in force at Royal Assent see s. 1300; s. 842 in force at 6.4.2008 by [S.I. 2007/3495](#), [art. 3\(1\)\(k\)](#) (with savings in [arts. 7, 12](#) and subject to transitional adaptations in [Sch. 1 paras. 14-20](#) and with savings in [Sch. 4 paras. 33-35](#))

**843 Realised profits and losses of long-term insurance business [<sup>F1</sup>of certain insurance companies]**

[<sup>F2</sup>(1) The provisions of this section have effect for the purposes of this Part as it applies in relation to an authorised insurance company carrying on long-term business, other than—

- (a) a person to whom section 833A applies; or
- (b) an insurance special purpose vehicle.]

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- (2) An amount included in the relevant part of the company's balance sheet that—
- (a) represents a surplus in the fund or funds maintained by it in respect of its long-term business, and
  - (b) has not been allocated to policy holders or, as the case may be, carried forward unappropriated in accordance with asset identification rules made under section 142(2) of the Financial Services and Markets Act 2000 (c. 8),
- is treated as a realised profit.
- (3) For the purposes of subsection (2)—
- (a) the relevant part of the balance sheet is that part of the balance sheet that represents accumulated profit or loss;
  - (b) a surplus in the fund or funds maintained by the company in respect of its long-term business means an excess of the assets representing that fund or those funds over the liabilities of the company attributable to its long-term business, as shown by an actuarial investigation.
- (4) A deficit in the fund or funds maintained by the company in respect of its long-term business is treated as a realised loss.

For this purpose a deficit in any such fund or funds means an excess of the liabilities of the company attributable to its long-term business over the assets representing that fund or those funds, as shown by an actuarial investigation.

- (5) Subject to subsections (2) and (4), any profit or loss arising in the company's long-term business is to be left out of account.
- (6) For the purposes of this section an “actuarial investigation” means an investigation made into the financial condition of an authorised insurance company in respect of its long-term business—
- (a) carried out once in every period of twelve months in accordance with rules made under Part 10 of the Financial Services and Markets Act 2000, or
  - (b) carried out in accordance with a requirement imposed under section 166 of that Act,
- by an actuary appointed as actuary to the company.
- (7) In this section “long-term business” means business that consists of effecting or carrying out contracts of long-term insurance.

This definition must be read with section 22 of the Financial Services and Markets Act 2000, any relevant order under that section and Schedule 2 to that Act.

- [<sup>F3</sup>(8) In this section “ insurance special purpose vehicle ” means a special purpose vehicle within the meaning of [<sup>F4</sup>Article 13(26) of [Directive 2009/138/EC](#) of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II)] . ]

#### Annotations:

#### Amendments (Textual)

- F1** Words in s. 843 heading inserted (30.12.2016) by [The Companies Act 2006 \(Distributions of Insurance Companies\) Regulations 2016](#) (S.I. 2016/1194), regs. 1(2), **2(5)(a)**
- F2** S. 843(1) substituted (30.12.2016) by [The Companies Act 2006 \(Distributions of Insurance Companies\) Regulations 2016](#) (S.I. 2016/1194), regs. 1(2), **2(5)(b)**

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- F3** S. 843(8) inserted (10.12.2007) by [The Reinsurance Directive Regulations 2007 \(S.I. 2007/3253\)](#), reg. 2(3), [Sch. 3 para. 2\(1\)\(b\)](#)
- F4** Words in s. 843(8) substituted (1.1.2016) by [The Solvency 2 Regulations 2015 \(S.I. 2015/575\)](#), reg. 1(2), [Sch. 1 para. 25](#)

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**Commencement Information**

- I3** S. 843 wholly in force at 6.4.2008; s. 843 not in force at Royal Assent see s. 1300; s. 843 in force at 6.4.2008 by [S.I. 2007/3495](#), [art. 3\(1\)\(k\)](#) (with savings in [arts. 7, 12](#) and subject to transitional adaptations in [Sch. 1 paras. 14-20](#) and with savings in [Sch. 4 paras. 33-35](#))

## 844 Treatment of development costs

- (1) Where development costs are shown or included as an asset in a company's accounts, any amount shown or included in respect of those costs is treated—
- (a) for the purposes of section 830 (distributions to be made out of profits available for the purpose) as a realised loss, and
  - (b) for the purposes of section 832 (distributions by investment companies out of accumulated revenue profits) as a realised revenue loss.

This is subject to the following exceptions.

- (2) Subsection (1) does not apply to any part of that amount representing an unrealised profit made on revaluation of those costs.
- (3) Subsection (1) does not apply if—
- (a) there are special circumstances in the company's case justifying the directors in deciding that the amount there mentioned is not to be treated as required by subsection (1),
  - (b) it is stated—
    - (i) in the case of Companies Act accounts, in the note required by regulations under section 396 as to the reasons for showing development costs as an asset, or
    - (ii) in the case of IAS accounts, in any note to the accounts, that the amount is not to be so treated, and
  - (c) the note explains the circumstances relied upon to justify the decision of the directors to that effect.

**Annotations:**

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**Commencement Information**

- I4** S. 844 wholly in force at 6.4.2008; s. 844 not in force at Royal Assent see s. 1300; s. 844 in force at 6.4.2008 by [S.I. 2007/3495](#), [art. 3\(1\)\(k\)](#) (with savings in [arts. 7, 12](#) and subject to transitional adaptations in [Sch. 1 paras. 14-20](#) and with savings in [Sch. 4 paras. 33-35](#))

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### *Distributions in kind*

#### **845 Distributions in kind: determination of amount**

- (1) This section applies for determining the amount of a distribution consisting of or including, or treated as arising in consequence of, the sale, transfer or other disposition by a company of a non-cash asset where—
  - (a) at the time of the distribution the company has profits available for distribution, and
  - (b) if the amount of the distribution were to be determined in accordance with this section, the company could make the distribution without contravening this Part.
- (2) The amount of the distribution (or the relevant part of it) is taken to be—
  - (a) in a case where the amount or value of the consideration for the disposition is not less than the book value of the asset, zero;
  - (b) in any other case, the amount by which the book value of the asset exceeds the amount or value of any consideration for the disposition.
- (3) For the purposes of subsection (1)(a) the company's profits available for distribution are treated as increased by the amount (if any) by which the amount or value of any consideration for the disposition exceeds the book value of the asset.
- (4) In this section “book value”, in relation to an asset, means—
  - (a) the amount at which the asset is stated in the relevant accounts, or
  - (b) where the asset is not stated in those accounts at any amount, zero.
- (5) The provisions of Chapter 2 (justification of distribution by reference to accounts) have effect subject to this section.

#### **Annotations:**

##### **Commencement Information**

- I5** S. 845 wholly in force at 6.4.2008; s. 845 not in force at Royal Assent see s. 1300; s. 845 in force at 6.4.2008 by [S.I. 2007/3495](#), [art. 3\(1\)\(k\)](#) (with savings in [arts. 7, 12](#) and subject to transitional adaptations in [Sch. 1 paras. 14-20](#) and with savings in [Sch. 4 paras. 33-35](#))

#### **846 Distributions in kind: treatment of unrealised profits**

- (1) This section applies where—
  - (a) a company makes a distribution consisting of or including, or treated as arising in consequence of, the sale, transfer or other disposition by the company of a non-cash asset, and
  - (b) any part of the amount at which that asset is stated in the relevant accounts represents an unrealised profit.
- (2) That profit is 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, in relation to anything done with a view to or in connection with the making of the distribution, of any provision of

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regulations under section 396 under which only realised profits are to be included in or transferred to the profit and loss account.

**Annotations:**

**Commencement Information**

- I6** S. 846 wholly in force at 6.4.2008; s. 846 not in force at Royal Assent see s. 1300; s. 846 in force at 6.4.2008 by [S.I. 2007/3495](#), [art. 3\(1\)\(k\)](#) (with savings in [arts. 7, 12](#) and subject to transitional adaptations in [Sch. 1 paras. 14-20](#) and with savings in [Sch. 4 paras. 33-35](#))

*Consequences of unlawful distribution*

**847 Consequences of unlawful distribution**

- (1) This section applies where a distribution, or part of one, made by a company to one of its members is made in contravention of this Part.
- (2) If at the time of the distribution the member knows or has reasonable grounds for believing that it is so made, he is liable—
  - (a) to repay it (or that part of it, as the case may be) to the company, or
  - (b) in the case of a distribution made otherwise than in cash, to pay the company a sum equal to the value of the distribution (or part) at that time.
- (3) This is without prejudice to any obligation imposed apart from this section on a member of a company to repay a distribution unlawfully made to him.
- (4) This section does not apply in relation to—
  - (a) financial assistance given by a company in contravention of section 678 or 679, or
  - (b) any payment made by a company in respect of the redemption or purchase by the company of shares in itself.

**Annotations:**

**Commencement Information**

- I7** S. 847 wholly in force at 6.4.2008; s. 847 not in force at Royal Assent see s. 1300; s. 847 in force at 6.4.2008 by [S.I. 2007/3495](#), [art. 3\(1\)\(k\)](#) (with savings in [arts. 7, 12](#) and subject to transitional adaptations in [Sch. 1 paras. 14-20](#) and with savings in [Sch. 4 paras. 33-35](#))

*Other matters*

**848 Saving for certain older provisions in articles**

- (1) Where immediately before the relevant date a company was authorised by a provision of its articles to apply its unrealised profits in paying up in full or in part unissued shares to be allotted to members of the company as fully or partly paid bonus shares, that provision continues (subject to any alteration of the articles) as authority for those profits to be so applied after that date.
- (2) For this purpose the relevant date is—

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- (a) for companies registered in Great Britain, 22nd December 1980;
- (b) for companies registered in Northern Ireland, 1st July 1983.

**Annotations:**

**Commencement Information**

- I8** S. 848 wholly in force at 6.4.2008; s. 848 not in force at Royal Assent see s. 1300; s. 848 in force at 6.4.2008 by [S.I. 2007/3495](#), [art. 3\(1\)\(k\)](#) (with savings in [arts. 7, 12](#) and subject to transitional adaptations in [Sch. 1 paras. 14-20](#) and with savings in [Sch. 4 paras. 33-35](#))

**849 Restriction on application of unrealised profits**

A company must not apply an unrealised profit in paying up debentures or any amounts unpaid on its issued shares.

**Annotations:**

**Commencement Information**

- I9** S. 849 wholly in force at 6.4.2008; s. 849 not in force at Royal Assent see s. 1300; s. 849 in force at 6.4.2008 by [S.I. 2007/3495](#), [art. 3\(1\)\(k\)](#) (with savings in [arts. 7, 12](#) and subject to transitional adaptations in [Sch. 1 paras. 14-20](#) and with savings in [Sch. 4 paras. 33-35](#))

**850 Treatment of certain older profits or losses**

- (1) Where the directors of a company are, after making all reasonable enquiries, unable to determine whether a particular profit made before the relevant date is realised or unrealised, they may treat the profit as realised.
- (2) Where the directors of a company, after making all reasonable enquiries, are unable to determine whether a particular loss made before the relevant date is realised or unrealised, they may treat the loss as unrealised.
- (3) For the purposes of this section the relevant date is—
  - (a) for companies registered in Great Britain, 22nd December 1980;
  - (b) for companies registered in Northern Ireland, 1st July 1983.

**Annotations:**

**Commencement Information**

- I10** S. 850 wholly in force at 6.4.2008; s. 850 not in force at Royal Assent see s. 1300; s. 850 in force at 6.4.2008 by [S.I. 2007/3495](#), [art. 3\(1\)\(k\)](#) (with savings in [arts. 7, 12](#) and subject to transitional adaptations in [Sch. 1 paras. 14-20](#) and with savings in [Sch. 4 paras. 33-35](#))

**851 Application of rules of law restricting distributions**

- (1) Except as provided in this section, the provisions of this Part are without prejudice to any rule of law restricting the sums out of which, or the cases in which, a distribution may be made.

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- (2) For the purposes of any rule of law requiring distributions to be paid out of profits or restricting the return of capital to members—
- (a) section 845 (distributions in kind: determination of amount) applies to determine the amount of any distribution or return of capital consisting of or including, or treated as arising in consequence of the sale, transfer or other disposition by a company of a non-cash asset; and
  - (b) section 846 (distributions in kind: treatment of unrealised profits) applies as it applies for the purposes of this Part.
- (3) In this section references to distributions are to amounts regarded as distributions for the purposes of any such rule of law as is referred to in subsection (1).

**Annotations:**

**Commencement Information**

- I11** S. 851 wholly in force at 6.4.2008; s. 851 not in force at Royal Assent see s. 1300; s. 851 in force at 6.4.2008 by [S.I. 2007/3495](#), [art. 3\(1\)\(k\)](#) (with savings in [arts. 7, 12](#) and subject to transitional adaptations in [Sch. 1 paras. 14-20](#) and with savings in [Sch. 4 paras. 33-35](#))

## 852 Saving for other restrictions on distributions

The provisions of this Part are without prejudice to any enactment, or any provision of a company's articles, restricting the sums out of which, or the cases in which, a distribution may be made.

**Annotations:**

**Commencement Information**

- I12** S. 852 wholly in force at 6.4.2008; s. 852 not in force at Royal Assent see s. 1300; s. 852 in force at 6.4.2008 by [S.I. 2007/3495](#), [art. 3\(1\)\(k\)](#) (with savings in [arts. 7, 12](#) and subject to transitional adaptations in [Sch. 1 paras. 14-20](#) and with savings in [Sch. 4 paras. 33-35](#))

## 853 Minor definitions

- (1) The following provisions apply for the purposes of this Part.
- (2) References to profit or losses of any description—
- (a) are to profits or losses of that description made at any time, and
  - (b) except where the context otherwise requires, are to profits or losses of a revenue or capital character.
- (3) “Capitalisation”, in relation to a company's profits, means any of the following operations (whenever carried out)—
- (a) applying the profits in wholly or partly paying up unissued shares in the company to be allotted to members of the company as fully or partly paid bonus shares, or
  - (b) transferring the profits to capital redemption reserve.
- (4) References to “realised profits” and “realised losses”, in relation to a company's accounts, are to such profits or losses of the company as fall to be treated as realised



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in accordance with principles generally accepted at the time when the accounts are prepared, with respect to the determination for accounting purposes of realised profits or losses.

- (5) Subsection (4) is without prejudice to—
- (a) the construction of any other expression (where appropriate) by reference to accepted accounting principles or practice, or
  - (b) any specific provision for the treatment of profits or losses of any description as realised.
- (6) “Fixed assets” means assets of a company which are intended for use on a continuing basis in the company's activities.

**Annotations:**

**Commencement Information**

**I13** S. 853 wholly in force at 6.4.2008; s. 853 not in force at Royal Assent see s. 1300; s. 853 in force at 6.4.2008 by [S.I. 2007/3495](#), [art. 3\(1\)\(k\)](#) (with savings in [arts. 7, 12](#) and subject to transitional adaptations in [Sch. 1 paras. 14-20](#) and with savings in [Sch. 4 paras. 33-35](#))

**Changes to legislation:**

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

- Act amendment to earlier affecting provision S.I. 2008/373 reg. 11(1) by [S.I. 2013/1971 reg. 9\(a\)](#) (This amendment not applied to legislation.gov.uk. Amending Regulations revoked (1.10.2013) without ever being in force by S.I. 2013/2224, reg. 2)
- Act amendment to earlier affecting provision S.I. 2008/373 reg. 3(4) by [S.I. 2013/1971 reg. 4](#) (This amendment not applied to legislation.gov.uk. Amending Regulations revoked (1.10.2013) without ever being in force by S.I. 2013/2224, reg. 2)
- Act amendment to earlier affecting provision SI 2008/373 reg. 11 by [S.I. 2017/1164 reg. 11](#)

**Whole provisions yet to be inserted into this Act (including any effects on those provisions):**

- s. 156A-156C inserted by [2015 c. 26 s. 87\(4\)](#)
- s. 444(8) inserted by [S.I. 2017/1164 Sch. 1 para. 8](#)
- s. 444A(4A) inserted by [S.I. 2017/1164 Sch. 1 para. 9](#)
- s. 445(6A) inserted by [S.I. 2017/1164 Sch. 1 para. 10](#)
- s. 446(4A) inserted by [S.I. 2017/1164 Sch. 1 para. 11](#)
- s. 447(5) inserted by [S.I. 2017/1164 Sch. 1 para. 12](#)
- s. 463(1)(d) inserted by [S.I. 2017/1164 Sch. 1 para. 13\(a\)\(ii\)](#)
- s. 474(1)(a) amendment to earlier affecting provision SI 2017/701 Sch. 4 para. 9(2) (b) by [S.I. 2017/1255 reg. 37](#)
- s. 474(1)(b) amendment to earlier affecting provision SI 2017/701 Sch. 4 para. 9(2) (c) by [S.I. 2017/1255 reg. 37](#)
- s. 474(1)(b) substituted by [S.I. 2017/1255 reg. 7\(a\)](#)
- s. 474(1)(c) word substituted by [S.I. 2017/1255 reg. 7\(b\)](#)
- s. 486A applied (with modifications) by SI 2008/565 reg. 6(1)(1A) (as substituted) by [S.I. 2017/1164 Sch. 2 para. 6\(a\)](#)
- s. 486A inserted by [S.I. 2017/1164 Sch. 1 para. 16](#)
- s. 490A inserted by [S.I. 2017/1164 Sch. 1 para. 19](#)
- s. 1099(3)(f)(g) inserted by [S.I. 2017/1233 art. 2](#)
- s. 1221(1A)(1B) substituted for s. 1221(1A) by [S.I. 2017/1164 Sch. 1 para. 21\(a\)](#)
- s. 1221(7C)(7D) inserted by [S.I. 2017/1164 Sch. 1 para. 21\(e\)](#)
- Sch. 10 para. 7A inserted by [S.I. 2017/1164 Sch. 1 para. 22](#)