Companies Act 2006

2006 CHAPTER 46

PART 23

DISTRIBUTIONS

CHAPTER 1

RESTRICTIONS ON WHEN DISTRIBUTIONS MAY BE MADE

*Distributions by investment companies **[**[F1]or Solvency 2 insurance companies**]***

Textual Amendments

F1 Words in s. 832 cross-heading inserted (30.12.2016) by The Companies Act 2006 (Distributions of Insurance Companies) Regulations 2016 (S.I. 2016/1194), regs. 1(2), **2(3)**

832 Distributions by investment companies out of accumulated revenue profits

(1) An investment company may make a distribution out of its accumulated, realised revenue profits if the following conditions are met.

(2) It may make such a distribution only if, and to the extent that, its accumulated, realised revenue profits, so far as not previously utilised by a distribution or capitalisation, exceed its accumulated revenue losses (whether realised or unrealised), so far as not previously written off in a reduction or reorganisation of capital duly made.

(3) It may make such a distribution only—

(a) if the amount of its assets is at least equal to one and a half times the aggregate of its liabilities to creditors, and

(b) if, and to the extent that, the distribution does not reduce that amount to less than one and a half times that aggregate.

(4) For this purpose a company's liabilities to creditors include—

(a) in the case of Companies Act accounts, provisions of a kind specified for the purposes of this subsection by regulations under section 396;

(b) in the case of IAS accounts, provisions for liabilities to creditors.

(5) The following conditions must also be met—

[F2(a) the company's shares must be shares admitted to trading on a [F3UK regulated market];]

(b) during the relevant period it must not have—

(i) F4. . . . .

(ii) applied any unrealised profits F5. . . in paying up debentures or amounts unpaid on its issued shares;

(c) it must have given notice to the registrar under section 833(1) (notice of intention to carry on business as an investment company)—

(i) before the beginning of the relevant period, or

(ii) as soon as reasonably practicable after the date of its incorporation.

(6) For the purposes of this section—

(a) F6. . . . .

(b) the "relevant period" is the period beginning with—

(i) the first day of the accounting reference period immediately preceding that in which the proposed distribution is to be made, or

(ii) where the distribution is to be made in the company's first accounting reference period, the first day of that period,

and ending with the date of the distribution.

(7) The company must not include any uncalled share capital as an asset in any accounts relevant for purposes of this section.

Textual Amendments

F2 S. 832(5)(a) substituted (6.4.2012) by The Companies Act 2006 (Amendment of Part 23) (Investment Companies) Regulations 2012 (S.I. 2012/952), regs. 1, **2(2)(a)**

F3 Words in s. 832(5)(a) substituted (31.12.2020) by The Companies, Limited Liability Partnerships and Partnerships (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/348), reg. 2, **Sch. 1 para. 12** (with Sch. 4 para. 3) (as amended by S.I. 2020/523, regs. 1(2), 20); 2020 c. 1, Sch. 5 para. 1(1)

F4 S. 832(5)(b)(i) and following word omitted (6.4.2012) by virtue of The Companies Act 2006 (Amendment of Part 23) (Investment Companies) Regulations 2012 (S.I. 2012/952), regs. 1, **2(2)(b)**

F5 Words in s. 832(5)(b)(ii) omitted (6.4.2012) by virtue of The Companies Act 2006 (Amendment of Part 23) (Investment Companies) Regulations 2012 (S.I. 2012/952), regs. 1, **2(2)(c)**

F6 S. 832(6)(a) and following word omitted (6.4.2012) by virtue of The Companies Act 2006 (Amendment of Part 23) (Investment Companies) Regulations 2012 (S.I. 2012/952), regs. 1, **2(3)**

Commencement Information

I1 S. 832 wholly in force at 6.4.2008; s. 832 not in force at Royal Assent see s. 1300; s. 832 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)

833 Meaning of "investment company"

(1) In this Part an "investment company" means a public company that—

(a) has given notice (which has not been revoked) to the registrar of its intention to carry on business as an investment company, and

(b) since the date of that notice has complied with the following **[**[F7]requirement**]**.

(2) **[**[F8]The requirement is**]**—

(a) that the business of the company consists of investing its funds **[**[F9]in shares, land or other assets**]**, with the aim of spreading investment risk and giving members of the company the benefit of the results of the management of its funds;

(b) [F10]. . . . .

(c) [F10]. . . . .

(d) [F10]. . . . .

(3) [F11]. . . . .

(4) Notice to the registrar under this section may be revoked at any time by the company on giving notice to the registrar that it no longer wishes to be an investment company within the meaning of this section.

(5) On giving such a notice, the company ceases to be such a company.

Textual Amendments

F7 Word in s. 833(1)(b) substituted (6.4.2012) by The Companies Act 2006 (Amendment of Part 23) (Investment Companies) Regulations 2012 (S.I. 2012/952), regs. 1, **2(4)**

F8 Words in s. 833(2) substituted (6.4.2012) by The Companies Act 2006 (Amendment of Part 23) (Investment Companies) Regulations 2012 (S.I. 2012/952), regs. 1, **2(5)(a)**

F9 Words in s. 833(2)(a) substituted (6.4.2012) by The Companies Act 2006 (Amendment of Part 23) (Investment Companies) Regulations 2012 (S.I. 2012/952), regs. 1, **2(5)(b)**

F10 S. 833(2)(b)(c)(d) omitted (6.4.2012) by virtue of The Companies Act 2006 (Amendment of Part 23) (Investment Companies) Regulations 2012 (S.I. 2012/952), regs. 1, **2(5)(c)** (with reg. 3)

F11 S. 833(3) omitted (6.4.2012) by virtue of The Companies Act 2006 (Amendment of Part 23) (Investment Companies) Regulations 2012 (S.I. 2012/952), regs. 1, **2(6)**

Commencement Information

I2 S. 833 wholly in force at 6.4.2008; s. 833 not in force at Royal Assent see s. 1300; s. 833 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)

[[F12]833A Distributions by insurance companies authorised under the Solvency 2 Directive

(1) This section applies in relation to any authorised insurance company carrying on long-term business that is authorised in accordance with Article 14 of the Solvency 2 Directive.

(2) For the purposes of section 830(2), the realised profit or loss of the company for the period in respect of which its relevant accounts (within the meaning of section 836) are prepared is taken to be the amount given by the formula in subsection (4) (with a positive figure taken to be a realised profit and a negative figure taken to be a realised loss).

(3) But the company's profits available for distribution are limited to an amount that does not exceed its accumulated profits (whether realised or not), so far as not previously utilised by distribution or capitalisation, less its accumulated losses (whether realised or not), so far as not previously written off in a reduction or reorganisation of capital duly made.

(4) The formula is

$$A - L - D$$

,

where—

"A" is the total value of the company's assets;

"L" is the total value of the company's liabilities; and

"D" is the total value of the items within subsection (5) relating to the company;

and, in each case, the value is to be determined as at the date of the company's balance sheet that forms part of the accounts mentioned in subsection (2).

(5) The items within this subsection are—

(a) if the value of shares held by the company in a qualifying investment subsidiary exceeds the value of the consideration given by it for their acquisition, the amount of that excess;

(b) any asset of the company representing a surplus in a defined benefit pension scheme;

(c) if the value of the assets held by the company in a ring-fenced fund exceeds the value of the liabilities incurred by the company in respect of that fund, the amount of that excess;

(d) the amount of any liability of the company in respect of deferred tax shown in the company's balance sheet that relates to any asset within paragraph (a), (b) or (c);

(e) if—

(i) the company has permission under regulation 42 of the Solvency 2 Regulations 2015 to apply a matching adjustment to a relevant risk-free interest rate term structure to calculate the best estimate of a portfolio of the company's life insurance or reinsurance obligations, and

(ii) the value of the portfolio of the company's assets assigned by the company to cover the best estimate exceeds the value of the portfolio of the company's life insurance or reinsurance obligations,

the amount of that excess; and

(f) the following capital items of the company—

(i) paid-in ordinary share capital together with any related share premium account;

(ii) paid-in preference shares which are not liabilities of the company together with any related share premium account;

(iii) capital redemption reserve; and

(iv) any other reserve that the company is prohibited from distributing (ignoring this Part for this purpose).

(6) So far as anything falls within more than one of the above paragraphs of subsection (5), its value is to be taken into account only once.

(7) The company's assets and liabilities must be valued in accordance with—
 (a) rules made by the Prudential Regulation Authority under Part 9A of the Financial Services and Markets Act 2000 implementing Articles 75 to 85, and 308b to 308e, of the Solvency 2 Directive; and
 (b) Articles 7 to 61 of Commission Delegated Regulation (EU) 2015/35 supplementing that directive.

(8) If the company carries on both long-term business and other insurance business—
 (a) this section is to be applied on the assumption that the company carries on only the long-term business; and
 (b) the remainder of this Part is to be applied on the assumption that the company carries on only that other insurance business;

and, in applying paragraph (a) or (b), such apportionments of amounts referable to the long-term business or other insurance business are to be made as are just and reasonable.

(9) In this section—

"best estimate", "paid-in ordinary share capital", "paid-in preference shares", "relevant risk-free interest rate term structure" and "ring-fenced fund" have the same meaning as in the Solvency 2 Directive and any directly applicable regulations made under it;

"defined benefit pension scheme" means a pension scheme (as defined by section 1(5) of the Pension Schemes Act 1993) which is a defined benefits scheme within the meaning given by section 2 of the Pension Schemes Act 2015;

"long-term business" means business that consists of effecting or carrying out contracts of long-term insurance (and 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);

"qualifying investment subsidiary" means an undertaking in which the company holds a participation within the meaning given by Article 13(20) of the Solvency 2 Directive and which is not held by the company as part of its portfolio of investments;

"Solvency 2 Directive" means Directive 2009/138/EC of the European Parliament and of the Council on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II).**]**

Textual Amendments

F12 S. 833A inserted (30.12.2016) by The Companies Act 2006 (Distributions of Insurance Companies) Regulations 2016 (S.I. 2016/1194), regs. 1(2), **2(4)**

834 Investment company: condition as to holdings in other companies

F13 . . . .

Textual Amendments

F13 S. 834 omitted (6.4.2012) by virtue of The Companies Act 2006 (Amendment of Part 23) (Investment Companies) Regulations 2012 (S.I. 2012/952), regs. 1, **2(7)**

835 Power to extend provisions relating to investment companies

F14 . . . .

Textual Amendments

F14 S. 835 omitted (6.4.2012) by virtue of The Companies Act 2006 (Amendment of Part 23) (Investment Companies) Regulations 2012 (S.I. 2012/952), regs. 1, **2(7)**

Status:
Point in time view as at 31/12/2020.

Changes to legislation:
There are currently no known outstanding effects for the Companies Act 2006, Cross Heading: Distributions by investment companies or Solvency 2 insurance companies.