Companies Act 2006

2006 CHAPTER 46

PART 23

DISTRIBUTIONS

CHAPTER 2

JUSTIFICATION OF DISTRIBUTION BY REFERENCE TO ACCOUNTS

Justification of distribution by reference to accounts

836 Justification of distribution by reference to relevant accounts

(1) Whether a distribution may be made by a company without contravening this Part is determined by reference to the following items as stated in the relevant accounts—
   (a) profits, losses, assets and liabilities;
   (b) provisions of the following kinds—
       (i) where the relevant accounts are Companies Act accounts, provisions of a kind specified for the purposes of this subsection by regulations under section 396;
       (ii) where the relevant accounts are IAS accounts, provisions of any kind;
   (c) share capital and reserves (including undistributable reserves).

(2) The relevant accounts are the company's last annual accounts, except that—
   (a) where the distribution would be found to contravene this Part by reference to the company's last annual accounts, it may be justified by reference to interim accounts, and
   (b) where the distribution is proposed to be declared during the company's first accounting reference period, or before any accounts have been circulated in respect of that period, it may be justified by reference to initial accounts.

(3) The requirements of—
Companies Act 2006 (c. 46)
Part 23 – Distributions
Chapter 2 – Justification of distribution by reference to accounts

Changes to legislation: Companies Act 2006, Chapter 2 is up to date with all changes known to be in force on or before 06 January 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

section 837 (as regards the company's last annual accounts),
section 838 (as regards interim accounts), and
section 839 (as regards initial accounts),
must be complied with, as and where applicable.

(4) If any applicable requirement of those sections is not complied with, the accounts may not be relied on for the purposes of this Part and the distribution is accordingly treated as contravening this Part.

Commencement Information

S. 836 wholly in force at 6.4.2008; s. 836 not in force at Royal Assent see s. 1300; s. 836 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)

Requirements applicable in relation to relevant accounts

837 Requirements where last annual accounts used

(1) The company's last annual accounts means the company's individual accounts—
   (a) that were last circulated to members in accordance with section 423 (duty to circulate copies of annual accounts and reports), or

   (b) 

(2) The accounts must have been properly prepared in accordance with this Act, or have been so prepared subject only to matters that are not material for determining (by reference to the items mentioned in section 836(1)) whether the distribution would contravene this Part.

(3) Unless the company is exempt from audit and the directors take advantage of that exemption, the auditor must have made his report on the accounts.

(4) If that report was qualified—
   (a) the auditor must have stated in writing (either at the time of his report or subsequently) whether in his opinion the matters in respect of which his report is qualified are material for determining whether a distribution would contravene this Part, and

   (b) a copy of that statement must—
      (i) in the case of a private company, have been circulated to members in accordance with section 423, or
      (ii) in the case of a public company, have been laid before the company in general meeting.

(5) An auditor's statement is sufficient for the purposes of a distribution if it relates to distributions of a description that includes the distribution in question, even if at the time of the statement it had not been proposed.
838 Requirements where interim accounts used

(1) Interim accounts must be accounts that enable a reasonable judgment to be made as to the amounts of the items mentioned in section 836(1).

(2) Where interim accounts are prepared for a proposed distribution by a public company, the following requirements apply.

(3) The accounts must have been properly prepared, or have been so prepared subject to matters that are not material for determining (by reference to the items mentioned in section 836(1)) whether the distribution would contravene this Part.

(4) “Properly prepared” means prepared in accordance with sections 395 to 397 (requirements for company individual accounts), applying those requirements with such modifications as are necessary because the accounts are prepared otherwise than in respect of an accounting reference period.

(5) The balance sheet comprised in the accounts must have been signed in accordance with section 414.

(6) A copy of the accounts must have been delivered to the registrar.

Any requirement of Part 35 of this Act as to the delivery of a certified translation into English of any document forming part of the accounts must also have been met.

839 Requirements where initial accounts used

(1) Initial accounts must be accounts that enable a reasonable judgment to be made as to the amounts of the items mentioned in section 836(1).

(2) Where initial accounts are prepared for a proposed distribution by a public company, the following requirements apply.

(3) The accounts must have been properly prepared, or have been so prepared subject to matters that are not material for determining (by reference to the items mentioned in section 836(1)) whether the distribution would contravene this Part.
“Properly prepared” means prepared in accordance with sections 395 to 397 (requirements for company individual accounts), applying those requirements with such modifications as are necessary because the accounts are prepared otherwise than in respect of an accounting reference period.

(5) The company's auditor must have made a report stating whether, in his opinion, the accounts have been properly prepared.

(6) If that report was qualified—

   (a) the auditor must have stated in writing (either at the time of his report or subsequently) whether in his opinion the matters in respect of which his report is qualified are material for determining whether a distribution would contravene this Part, and

   (b) a copy of that statement must have been laid before the company in general meeting.

(7) A copy of the accounts, of the auditor's report and of any auditor's statement must have been delivered to the registrar.

Any requirement of Part 35 of this Act as to the delivery of a certified translation into English of any of those documents must also have been met.

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**Textual Amendments**

F2 S. 839(6)(b) substituted (1.10.2009) by The Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009 (S.I. 2009/1941), art. 2(1), Sch. 1 para. 260(4) (with art. 10)

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**Commencement Information**

I4 S. 839 wholly in force at 6.4.2008; s. 839 not in force at Royal Assent see s. 1300; s. 839 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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**Application of provisions to successive distributions etc**

**840 Successive distributions etc by reference to the same accounts**

(1) In determining whether a proposed distribution may be made by a company in a case where—

   (a) one or more previous distributions have been made in pursuance of a determination made by reference to the same relevant accounts, or

   (b) relevant financial assistance has been given, or other relevant payments have been made, since those accounts were prepared,

the provisions of this Part apply as if the amount of the proposed distribution was increased by the amount of the previous distributions, financial assistance and other payments.

(2) The financial assistance and other payments that are relevant for this purpose are—

   (a) financial assistance lawfully given by the company out of its distributable profits;
(b) financial assistance given by the company in contravention of section 678 or 679 (prohibited financial assistance) in a case where the giving of that assistance reduces the company's net assets or increases its net liabilities;

(c) payments made by the company in respect of the purchase by it of shares in the company, except a payment lawfully made otherwise than out of distributable profits;

(d) payments of any description specified in section 705 (payments apart from purchase price of shares to be made out of distributable profits).

(3) In this section “financial assistance” has the same meaning as in Chapter 2 of Part 18 (see section 677).

(4) For the purpose of applying subsection (2)(b) in relation to any financial assistance—

(a) “net assets” means the amount by which the aggregate amount of the company's assets exceeds the aggregate amount of its liabilities, and

(b) “net liabilities” means the amount by which the aggregate amount of the company's liabilities 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.

(5) For this purpose a company's liabilities include any amount retained as reasonably necessary for the purposes of providing for any liability—

(a) the nature of which is clearly defined, and

(b) 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.

Commencement Information

S. 840 wholly in force at 6.4.2008; s. 840 not in force at Royal Assent see s. 1300; s. 840 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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Changes and effects yet to be applied to:

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)

Whole provisions yet to be inserted into this Act (including any effects on those provisions):
- Ch. 1 Pt. 28 extended (Isle of Man) (with modifications) by S.I. 2019/567 Sch.
- s. 156A-156C inserted by 2015 c. 26 s. 87(4)
- s. 479A(2)(c)(zi) inserted by S.I. 2019/177 reg. 4(b)(i) (This amendment not applied to legislation.gov.uk. Reg. 4 substituted by regs. 4, 4A immediately before exit day by S.I. 2019/1392, regs. 1(2), 4)
- s. 494ZA(5)(a)(iii)(iv) substituted for s. 494ZA(5)(a)(iii) by S.I. 2019/177 reg. 5(b)
- s. 835E(6) words substituted by S.I. 2019/348 Sch. 1 para. 13
- s. 943(1A) inserted by S.I. 2019/217 reg. 3(b)
- s. 966(3)-(3G) substituted for s. 966(3) by S.I. 2019/217 reg. 7(4)
- s. 1047(4)(ba) inserted by S.I. 2019/348 Sch. 1 para. 14(b)(ii)
- s. 1099(3)(c)(ca) substituted for s. 1099(3)(c) by S.I. 2018/1299 reg. 62(2)
- s. 1253B(1A) inserted by S.I. 2019/177 reg. 18(c)
- s. 1286(1)(c) inserted by S.I. 2018/1299 reg. 62(3)(c)
- Sch 1C applied by 2009/2436 Sch. 1 para 14(A1) (as inserted) by S.I. 2019/217 reg. 20
- Sch. 2 Pt. 2 s. Epara. 5 omitted by S.I. 2019/217 reg. 15
- Sch. 10 para. 20A(1) Sch. 10 para. 20A renumbered as Sch. 10 para. 20A(1) by S.I. 2019/177 reg. 32(a)
- Sch. 10 para. 6(2D) inserted by S.I. 2019/177 reg. 28(e)
- Sch. 10 para. 7(2A) inserted by S.I. 2019/177 reg. 29(b)
- Sch. 10 para. 20A(2) inserted by S.I. 2019/177 reg. 32(h)
- Sch. 10 para. 13(5)(b)(ii)(iii) substituted for Sch. 10 para. 13(5)(b)(ii) by S.I. 2019/177 reg. 30(b)
- Sch. 10 para. 20A(1) words inserted by S.I. 2019/177 reg. 32(b)
- Sch. 10 para. 20A(1) words inserted by S.I. 2019/177 reg. 32(c)
- Sch. 10 para. 20A(1) words omitted by S.I. 2019/177 reg. 32(e)
- Sch. 10 para. 20A(1) words omitted by S.I. 2019/177 reg. 32(f)
- Sch. 10 para. 20A(1) words substituted by S.I. 2019/177 reg. 32(d)(i)
- Sch. 10 para. 20A(1) words substituted by S.I. 2019/177 reg. 32(d)(ii)
- Sch. 10 para. 20A(1) words substituted by S.I. 2019/177 reg. 32(d)(iii)
- Sch. 10 para. 20A(1) words substituted by S.I. 2019/177 reg. 32(f)(i)
- Sch. 10 para. 20A(1) words substituted by S.I. 2019/177 reg. 32(f)(ii)
- Sch. 10 para. 20A(1) words substituted by S.I. 2019/177 reg. 32(f)(iii)
– Sch. 11 para. 9(5) inserted by S.I. 2019/177 reg. 34(b)