



Companies Act 2006

2006 CHAPTER 46

PART 23

DISTRIBUTIONS

CHAPTER 1

RESTRICTIONS ON WHEN DISTRIBUTIONS MAY BE MADE

Introductory

829 Meaning of “distribution”

- (1) In this Part “distribution” means every description of distribution of a company’s assets to its members, whether in cash or otherwise, subject to the following exceptions.
- (2) The following are not distributions for the purposes of this Part—
 - (a) an issue of shares as fully or partly paid bonus shares;
 - (b) the reduction of share capital—
 - (i) by extinguishing or reducing the liability of any of the members on any of the company’s shares in respect of share capital not paid up, or
 - (ii) by repaying paid-up share capital;
 - (c) the redemption or purchase of any of the company’s own shares out of capital (including the proceeds of any fresh issue of shares) or out of unrealised profits in accordance with Chapter 3, 4 or 5 of Part 18;
 - (d) a distribution of assets to members of the company on its winding up.

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General rules

830 Distributions to be made only out of profits available for the purpose

- (1) A company may only make a distribution out of profits available for the purpose.
- (2) A company's profits available for distribution are its accumulated, realised profits, so far as not previously utilised by distribution or capitalisation, less its accumulated, realised losses, so far as not previously written off in a reduction or reorganisation of capital duly made.
- (3) Subsection (2) has effect subject to sections 832 and 835 (investment companies etc: distributions out of accumulated revenue profits).

831 Net asset restriction on distributions by public companies

- (1) A public company may only make a distribution—
 - (a) if the amount of its net assets is not less than the aggregate of its called-up share capital and undistributable reserves, and
 - (b) if, and to the extent that, the distribution does not reduce the amount of those assets to less than that aggregate.
- (2) For this purpose a company's "net assets" means the aggregate of the company's assets less the aggregate of its liabilities.
- (3) "Liabilities" here includes—
 - (a) where the relevant accounts are Companies Act accounts, provisions of a kind specified for the purposes of this subsection by regulations under section 396;
 - (b) where the relevant accounts are IAS accounts, provisions of any kind.
- (4) A company's undistributable reserves are—
 - (a) its share premium account;
 - (b) its capital redemption reserve;
 - (c) the amount by which its accumulated, unrealised profits (so far as not previously utilised by capitalisation) exceed its accumulated, unrealised losses (so far as not previously written off in a reduction or reorganisation of capital duly made);
 - (d) any other reserve that the company is prohibited from distributing—
 - (i) by any enactment (other than one contained in this Part), or
 - (ii) by its articles.

The reference in paragraph (c) to capitalisation does not include a transfer of profits of the company to its capital redemption reserve.

- (5) A public company must not include any uncalled share capital as an asset in any accounts relevant for purposes of this section.
- (6) Subsection (1) has effect subject to sections 832 and 835 (investment companies etc: distributions out of accumulated revenue profits).

Distributions by investment companies

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—
 - (a) the company's shares must be listed on a recognised UK investment exchange;
 - (b) during the relevant period it must not have—
 - (i) distributed any capital profits otherwise than by way of the redemption or purchase of any of the company's own shares in accordance with Chapter 3 or 4 of Part 18, or
 - (ii) applied any unrealised profits or any capital profits (realised or unrealised) 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) “recognised UK investment exchange” means a recognised investment exchange within the meaning of Part 18 of the Financial Services and Markets Act 2000 (c. 8), other than an overseas investment exchange within the meaning of that Part; and
 - (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.

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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 requirements.
- (2) Those requirements are—
 - (a) that the business of the company consists of investing its funds mainly in securities, 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) that the condition in section 834 is met as regards holdings in other companies;
 - (c) that distribution of the company’s capital profits is prohibited by its articles;
 - (d) that the company has not retained, otherwise than in compliance with this Part, in respect of any accounting reference period more than 15% of the income it derives from securities.
- (3) Subsection (2)(c) does not require an investment company to be prohibited by its articles from redeeming or purchasing its own shares in accordance with Chapter 3 or 4 of Part 18 out of its capital profits.
- (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.

834 Investment company: condition as to holdings in other companies

- (1) The condition referred to in section 833(2)(b) (requirements to be complied with by investment company) is that none of the company’s holdings in companies (other than those that are for the time being investment companies) represents more than 15% by value of the company’s investments.
- (2) For this purpose—
 - (a) holdings in companies that—
 - (i) are members of a group (whether or not including the investing company), and
 - (ii) are not for the time being investment companies,
 are treated as holdings in a single company; and
 - (b) where the investing company is a member of a group, money owed to it by another member of the group—
 - (i) is treated as a security of the latter held by the investing company, and
 - (ii) is accordingly treated as, or as part of, the holding of the investing company in the company owing the money.
- (3) The condition does not apply—
 - (a) to a holding in a company acquired before 6th April 1965 that on that date represented not more than 25% by value of the investing company’s investments, or
 - (b) to a holding in a company that, when it was acquired, represented not more than 15% by value of the investing company’s investments,

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so long as no addition is made to the holding.

(4) For the purposes of subsection (3)—

- (a) “holding” means the shares or securities (whether or one class or more than one class) held in any one company;
- (b) an addition is made to a holding whenever the investing company acquires shares or securities of that one company, otherwise than by being allotted shares or securities without becoming liable to give any consideration, and if an addition is made to a holding that holding is acquired when the addition or latest addition is made to the holding; and
- (c) where in connection with a scheme of reconstruction a company issues shares or securities to persons holding shares or securities in a second company in respect of and in proportion to (or as nearly as may be in proportion to) their holdings in the second company, without those persons becoming liable to give any consideration, a holding of the shares or securities in the second company and a corresponding holding of the shares or securities so issued shall be regarded as the same holding.

(5) In this section—

“company” and “shares” shall be construed in accordance with sections 99 and 288 of the Taxation of Chargeable Gains Act 1992 (c. 12);

“group” means a company and all companies that are its 51% subsidiaries (within the meaning of section 838 of the Income and Corporation Taxes Act 1988 (c. 1)); and

“scheme of reconstruction” has the same meaning as in section 136 of the Taxation of Chargeable Gains Act 1992.

835 Power to extend provisions relating to investment companies

- (1) The Secretary of State may by regulations extend the provisions of sections 832 to 834 (distributions by investment companies out of accumulated profits), with or without modifications, to other companies whose principal business consists of investing their funds in securities, land or other assets with the aim of spreading investment risk and giving their members the benefit of the results of the management of the assets.
- (2) Regulations under this section are subject to affirmative resolution procedure.