



Companies Act 1985

1985 CHAPTER 6

PART VIII

DISTRIBUTION OF PROFITS AND ASSETS

Limits of company's power of distribution

263 Certain distributions prohibited

- (1) A company shall not make a distribution except out of profits available for the purpose.
- (2) In this Part, " distribution " means every description of distribution of a company's assets to its members, whether in cash or otherwise, except distribution by way of—
 - (a) an issue of shares as fully or partly paid bonus shares,
 - (b) 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 VII of Part V,
 - (c) the reduction of share capital 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 by paying off paid up share capital, and
 - (d) a distribution of assets to members of the company on its winding up.
- (3) For purposes of this Part, 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.

This is subject to the provision made by sections 265 and 266 for investment and other companies.

- (4) A company shall not apply an unrealised profit in paying up debentures, or any amounts unpaid on its issued shares.
- (5) Where the directors of a company are, after making all reasonable enquiries, unable to determine whether a particular profit made before 22nd December 1980 is realised or

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unrealised, they may treat the profit as realised; and where after making such enquiries they are unable to determine whether a particular loss so made is realised or unrealised, they may treat the loss as unrealised.

264 Restriction on distribution of assets

- (1) A public company may only make a distribution at any time—
- (a) if at that time 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.

This is subject to the provision made by sections 265 and 266 for investment and other companies.

- (2) In subsection (1), "net assets" means the aggregate of the company's assets less the aggregate of its liabilities ("liabilities" to include any provision for liabilities or charges within paragraph 89 of Schedule 4).

- (3) A company's undistributable reserves are—
- (a) the share premium account,
 - (b) the capital redemption reserve,
 - (c) the amount by which the company's accumulated, un realised profits, so far as not previously utilised by capitalisation of a description to which this paragraph applies, exceed its accumulated, unrealised losses (so far as not previously written off in a reduction or reorganisation of capital duly made), and
 - (d) any other reserve which the company is prohibited from distributing by any enactment (other than one contained in this Part) or by its memorandum or articles;

and paragraph (c) applies to every description of capitalisation except a transfer of profits of the company to its capital redemption reserve on or after 22nd December 1980.

- (4) A public company shall not include any uncalled share capital as an asset in any accounts relevant for purposes of this section.

265 Other distributions by investment companies

- (1) Subject to the following provisions of this section, an investment company (defined in section 266) may also make a distribution at any time out of its accumulated, realised revenue profits, so far as not previously utilised by distribution or capitalisation, less its accumulated revenue losses (whether realised or unrealised), so far as not previously written off in a reduction or reorganisation of capital duly made—
- (a) if at that time the amount of its assets is at least equal to one and a half times the aggregate of its liabilities, 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.
- (2) In subsection (1)(a), "liabilities" includes any provision for liabilities or charges (within the meaning of paragraph 89 of Schedule 4).

- (3) The company shall not include any uncalled share capital as an asset in any accounts relevant for purposes of this section.
- (4) An investment company may not make a distribution by virtue of subsection (1) unless—
 - (a) its shares are listed on a recognised stock exchange, and
 - (b) during the relevant period it has not—
 - (i) distributed any of its capital profits, or
 - (ii) applied any unrealised profits or any capital profits (realised or unrealised) in paying up debentures or amounts unpaid on its issued shares.
- (5) The " relevant period " under subsection (4) is the period beginning with—
 - (a) the first day of the accounting reference period immediately preceding that in which the proposed distribution is to be made, or
 - (b) 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.
- (6) An investment company may not make a distribution by virtue of subsection (1) unless the company gave to the registrar of companies the requisite notice (that is, notice under section 266(1)) of the company's intention to carry on business as an investment company—
 - (a) before the beginning of the relevant period under subsection (4), or
 - (b) in the case of a company incorporated on or after 22nd December 1980, as soon as may have been reasonably practicable after the date of its incorporation.

266 Meaning of " investment company "

- (1) In section 265 "investment company" means a public company which has given notice in the prescribed form (which has not been revoked) to the registrar of companies of its intention to carry on business as an investment company, and has since the date of that notice complied with the requirements specified below.
- (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 none of the company's holdings in companies (other than those which are for the time being in investment companies) represents more than 15 per cent, by value of the investing company's investments,
 - (c) that distribution of the company's capital profits is prohibited by its memorandum or articles of association,
 - (d) that the company has not retained, otherwise than in compliance with this Part, in respect of any accounting reference period more than 15 per cent, of the income it derives from securities.
- (3) Notice to the registrar of companies under subsection (1) may be revoked at any time by the company on giving notice in the prescribed form to the registrar that it no longer

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wishes to be an investment company within the meaning of this section; and, on giving such notice, the company ceases to be such a company.

- (4) Section 359(2) and (3) of the Income and Corporation Taxes Act 1970 and section 93(6)(b) of the Finance Act 1972 apply for purposes of subsection (2)(b) as for those of section 359(1)(b) of the Act first mentioned.

267 Extension of ss. 265, 266 to other companies

- (1) The Secretary of State may by regulations in a statutory instrument extend the provisions of sections 265 and 266 (with or without modifications) to 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—
- (a) may make different provision for different classes of companies and may contain such transitional and supplemental provisions as the Secretary of State considers necessary, and
 - (b) shall not be made unless a draft of the statutory instrument containing them has been laid before Parliament and approved by a resolution of each House.

268 Realised profits of insurance company with long term business

- (1) Where an insurance company to which Part II of the Insurance Companies Act 1982 applies carries on long term business—
- (a) any amount properly transferred to the profit and loss account of the company from a surplus in the fund or funds maintained by it in respect of that business, and
 - (b) any deficit in that fund or those funds,
- are to be (respectively) treated, for purposes of this Part, as a realised profit and a realised loss ; and. subject to this, any profit or loss arising in that business is to be left out of account for those purposes.
- (2) In subsection (1)—
- (a) the reference to a surplus in any fund or funds of an insurance company is to 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, and
 - (b) the reference to a deficit in any such fund or funds is to the excess of those liabilities over those assets, as so shown.
- (3) In this section—
- (a) "actuarial investigation" means an investigation to which section 18 of the Insurance Companies Act 1982 (periodic actuarial investigation of company with long term business) applies or which is made in pursuance of a requirement imposed by section 42 of that Act (actuarial investigation required by Secretary of State); and
 - (b) "long term business" has the same meaning as in that Act.

269 Treatment of development costs

- (1) Subject as follows, where development costs are shown as an asset in a company's accounts, any amount shown in respect of those costs is to be treated—
 - (a) under section 263, as a realised loss, and
 - (b) under section 265, as a realised revenue loss.
- (2) This does not apply to any part of that amount representing an unrealised profit made on revaluation of those costs ; nor does it 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), and
 - (b) the note to the accounts required by paragraph 20 of Schedule 4 (reasons for showing development costs as an asset) states that the amount is not to be so treated and explains the circumstances relied upon to justify the decision of the directors to that effect.