



# Companies Act 1985

## 1985 CHAPTER 6

### PART V

#### SHARE CAPITAL, ITS INCREASE, MAINTENANCE AND REDUCTION

### CHAPTER VI

#### FINANCIAL ASSISTANCE BY A COMPANY FOR ACQUISITION OF ITS OWN SHARES

*Provisions applying to both public and private companies*

#### **151 Financial assistance generally prohibited.**

- (1) Subject to the following provisions of this Chapter, where a person is acquiring or is proposing to acquire shares in a company, it is not lawful for the company or any of its subsidiaries to give financial assistance directly or indirectly for the purpose of that acquisition before or at the same time as the acquisition takes place.
- (2) Subject to those provisions, where a person has acquired shares in a company and any liability has been incurred (by that or any other person), for the purpose of that acquisition, it is not lawful for the company or any of its subsidiaries to give financial assistance directly or indirectly for the purpose of reducing or discharging the liability so incurred.
- (3) If a company acts in contravention of this section, it is liable to a fine, and every officer of it who is in default is liable to imprisonment or a fine, or both.

#### **152 Definitions for this Chapter.**

- (1) In this Chapter—
  - (a) “financial assistance” means—
    - (i) financial assistance by way of gift,

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- (ii) financial assistance given by way of guarantee, security or indemnity, other than an indemnity in respect of the indemnifier's own neglect or default, or by way of release or waiver,
  - (iii) financial assistance given by way of a loan or any other agreement under which any of the obligations of the person giving the assistance are to be fulfilled at a time when in accordance with the agreement any obligation of another party to the agreement remains unfulfilled, or by way of the novation of, or the assignment of rights arising under, a loan or such other agreement, or
  - (iv) any other financial assistance given by a company the net assets of which are thereby reduced to a material extent or which has no net assets;
  - (b) “distributable profits”, in relation to the giving of any financial assistance—
    - (i) means those profits out of which the company could lawfully make a distribution equal in value to that assistance, and
    - (ii) includes, in a case where the financial assistance is or includes a non-cash asset, any profit which, if the company were to make a distribution of that asset, would under section 276 (distributions in kind) be available for that purpose,
 and
  - (c) “distribution” has the meaning given by section 263(2).
- (2) In subsection (1)(a)(iv), “net assets” means the aggregate of the company's assets, less the aggregate of its liabilities (“liabilities” to include any <sup>F1</sup>provision for liabilities] within paragraph 89 of Schedule 4 [<sup>F2</sup>that is made in Companies Act individual accounts and any provision that is made in IAS individual accounts]).
- (3) In this Chapter—
- (a) a reference to a person incurring a liability includes his changing his financial position by making an agreement or arrangement (whether enforceable or unenforceable, and whether made on his own account or with any other person) or by any other means, and
  - (b) a reference to a company giving financial assistance for the purpose of reducing or discharging a liability incurred by a person for the purpose of the acquisition of shares includes its giving such assistance for the purpose of wholly or partly restoring his financial position to what it was before the acquisition took place.

#### **Textual Amendments**

- F1** S. 152(2): words in definition of "net assets" substituted (12.11.2004 with effect as mentioned in reg. 1(2) of the amending S.I.) by [The Companies Act 1985 \(International Accounting Standards and Other Accounting Amendments\) Regulations 2004 \(S.I. 2004/2947\)](#), reg. 15, [Sch. 7 para. 2](#)
- F2** S. 152(2): words in definition of "net assets" inserted (12.11.2004 with effect as mentioned in reg. 1(2) of the amending S.I.) by [The Companies Act 1985 \(International Accounting Standards and Other Accounting Amendments\) Regulations 2004 \(S.I. 2004/2947\)](#), reg. 3, [Sch. 1 para. 2](#)

#### **Modifications etc. (not altering text)**

- C1** S. 152(2) applied (E.W.) (16.1.1990 as mentioned in [S.I. 1989/2445](#), [art. 4](#) and so far as not already in force 7.10.1993) by [Local Government and Housing Act 1989 \(c. 42, SIF 81:1\)](#), [s. 69\(4\)\(a\)](#); [S.I. 1989/2445](#), [art. 4](#); [S.I. 1993/2410](#), [art.3](#)

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### **153 Transactions not prohibited by s. 151.**

- (1) Section 151(1) does not prohibit a company from giving financial assistance for the purpose of an acquisition of shares in it or its holding company if—
  - (a) the company's principal purpose in giving that assistance is not to give it for the purpose of any such acquisition, or the giving of the assistance for that purpose is but an incidental part of some larger purpose of the company, and
  - (b) the assistance is given in good faith in the interests of the company.
- (2) Section 151(2) does not prohibit a company from giving financial assistance if—
  - (a) the company's principal purpose in giving the assistance is not to reduce or discharge any liability incurred by a person for the purpose of the acquisition of shares in the company or its holding company, or the reduction or discharge of any such liability is but an incidental part of some larger purpose of the company, and
  - (b) the assistance is given in good faith in the interests of the company.
- (3) Section 151 does not prohibit—
  - (a) a distribution of a company's assets by way of dividend lawfully made or a distribution made in the course of the company's winding up,
  - (b) the allotment of bonus shares,
  - (c) a reduction of capital confirmed by order of the court under section 137,
  - (d) a redemption or purchase of shares made in accordance with Chapter VII of this Part,
  - (e) anything done in pursuance of an order of the court under section 425 (compromises and arrangements with creditors and members),
  - (f) anything done under an arrangement made in pursuance of [<sup>F3</sup>section 110 of the Insolvency Act] (acceptance of shares by liquidator in winding up as consideration for sale of property), or
  - (g) anything done under an arrangement made between a company and its creditors which is binding on the creditors by virtue of [<sup>F4</sup>Part I of the Insolvency Act].
- (4) Section 151 does not prohibit—
  - (a) where the lending of money is part of the ordinary business of the company, the lending of money by the company in the ordinary course of its business,
  - [<sup>F5</sup>(b) the provision by a company, in good faith in the interests of the company, of financial assistance for the purposes of an employees' share scheme,]
  - [<sup>F6</sup>(bb) without prejudice to paragraph (b), the provision of financial assistance by a company or any of its subsidiaries for the purposes of or in connection with anything done by the company (or [<sup>F7</sup>a company in the same group]) for the purpose of enabling or facilitating transactions in shares in the first-mentioned company between, and involving the acquisition of beneficial ownership of those shares by, any of the following persons—
    - (i) the bona fide employees or former employees of that company or of another company in the same group; or
    - (ii) the [<sup>F8</sup>spouses, civil partners, surviving spouses, surviving civil partners], children or step-children under the age of eighteen of any such employees or former employees.]
  - (c) the making by a company of loans to persons (other than directors) employed in good faith by the company with a view to enabling those persons to acquire

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fully paid shares in the company or its holding company to be held by them by way of beneficial ownership.

[<sup>F9</sup>(5) For the purposes of subsection (4)(bb) a company is in the same group as another company if it is a holding company or subsidiary of that company, or a subsidiary of a holding company of that company.]

#### Textual Amendments

- F3** Words substituted by [Insolvency Act 1986 \(c. 45, SIF 66\)](#), s. 439(1), **Sch. 13 Pt. I**
- F4** Words substituted by virtue of [Insolvency Act 1986 \(c. 45, SIF 66\)](#), s. 439(1), **Sch. 13 Pt I**
- F5** [S. 153\(4\)\(b\)](#) substituted by [Companies Act 1989 \(c. 40, SIF 27\)](#), **ss. 132, 213(2)**
- F6** [S. 153\(4\)\(bb\)](#) inserted by [Financial Services Act 1986 \(c. 60, SIF 69\)](#), **s. 196(2)**
- F7** Words substituted by [Companies Act 1989 \(c. 40, SIF 27\)](#), ss. 144(4), 213(2), **Sch. 18 para. 33(2)**
- F8** Words in [s. 153\(4\)\(bb\)](#) substituted (23.12.2005) by [The Civil Partnership Act 2004 \(International Immunities and Privileges, Companies and Adoption\) Order 2005 \(S.I. 2005/3542\)](#), **art. 3(1)**
- F9** [S. 153\(5\)](#) inserted by [Financial Services Act 1986 \(c. 60, SIF 69\)](#), **s. 196(3)** and substituted by [Companies Act 1989 \(c. 40, SIF 27\)](#), ss. 144(4), 213(2), **Sch. 18 para. 33(3)**

#### 154 Special restriction for public companies.

- (1) In the case of a public company, section 153(4) authorises the giving of financial assistance only if the company has net assets which are not thereby reduced or, to the extent that those assets are thereby reduced, if the assistance is provided out of distributable profits.
- (2) For this purpose the following definitions apply—
  - (a) “net assets” means the amount by which the aggregate of the company’s assets exceeds the aggregate of its liabilities (taking the amount of both assets and liabilities to be as stated in the company’s accounting records immediately before the financial assistance is given);
  - (b) “liabilities” includes any amount retained as reasonably necessary for the purpose of providing for any liability [<sup>F10</sup>the nature of which is clearly defined and] 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.

#### Textual Amendments

- F10** Words in [s. 154\(2\)\(b\)](#) substituted (12.11.2004 with effect as mentioned in reg. 1(2) of the amending S.I.) by [The Companies Act 1985 \(International Accounting Standards and Other Accounting Amendments\) Regulations 2004 \(S.I. 2004/2947\)](#), reg. 15, **Sch. 7 para. 3**

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