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Companies Act 2006

2006 CHAPTER 46

PART 18

ACQUISITION BY LIMITED COMPANY OF ITS OWN SHARES

VALID FROM 01/10/2009

CHAPTER 2

FINANCIAL ASSISTANCE FOR PURCHASE OF OWN SHARES

Introductory

677 Meaning of “financial assistance”

- (1) In this Chapter “financial assistance” means—
- (a) financial assistance given by way of gift,
 - (b) financial assistance given—
 - (i) by way of guarantee, security or indemnity (other than an indemnity in respect of the indemnifier's own neglect or default), or
 - (ii) by way of release or waiver,
 - (c) financial assistance given—
 - (i) 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
 - (ii) by way of the novation of, or the assignment (in Scotland, assignation) of rights arising under, a loan or such other agreement, or
 - (d) any other financial assistance given by a company where—

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- (i) the net assets of the company are reduced to a material extent by the giving of the assistance, or
 - (ii) the company has no net assets.
- (2) “Net assets” here means the aggregate amount of the company's assets less the aggregate amount of its liabilities.
- (3) For this purpose a company's liabilities include—
- (a) where the company draws up Companies Act individual accounts, any provision of a kind specified for the purposes of this subsection by regulations under section 396, and
 - (b) where the company draws up IAS individual accounts, any provision made in those accounts.

Circumstances in which financial assistance prohibited

678 Assistance for acquisition of shares in public company

- (1) Where a person is acquiring or proposing to acquire shares in a public company, it is not lawful for that company, or a company that is a subsidiary of that company, to give financial assistance directly or indirectly for the purpose of the acquisition before or at the same time as the acquisition takes place.
- (2) Subsection (1) does not prohibit a company from giving financial assistance for the acquisition of shares in it or its holding company if—
- (a) the company's principal purpose in giving the assistance is not to give it for the purpose of any such acquisition, or
 - (b) the giving of the assistance for that purpose is only an incidental part of some larger purpose of the company,
- and the assistance is given in good faith in the interests of the company.
- (3) Where—
- (a) a person has acquired shares in a company, and
 - (b) a liability has been incurred (by that or another person) for the purpose of the acquisition,
- it is not lawful for that company, or a company that is a subsidiary of that company, to give financial assistance directly or indirectly for the purpose of reducing or discharging the liability if, at the time the assistance is given, the company in which the shares were acquired is a public company.
- (4) Subsection (3) 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
 - (b) the reduction or discharge of any such liability is only an incidental part of some larger purpose of the company,
- and the assistance is given in good faith in the interests of the company.
- (5) This section has effect subject to sections 681 and 682 (unconditional and conditional exceptions to prohibition).

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679 Assistance by public company for acquisition of shares in its private holding company

- (1) Where a person is acquiring or proposing to acquire shares in a private company, it is not lawful for a public company that is a subsidiary of that company to give financial assistance directly or indirectly for the purpose of the acquisition before or at the same time as the acquisition takes place.
- (2) Subsection (1) does not prohibit a company from giving financial assistance for the acquisition of shares in its holding company if—
 - (a) the company's principal purpose in giving the assistance is not to give it for the purpose of any such acquisition, or
 - (b) the giving of the assistance for that purpose is only an incidental part of some larger purpose of the company,and the assistance is given in good faith in the interests of the company.
- (3) Where—
 - (a) a person has acquired shares in a private company, and
 - (b) a liability has been incurred (by that or another person) for the purpose of the acquisition,it is not lawful for a public company that is a subsidiary of that company to give financial assistance directly or indirectly for the purpose of reducing or discharging the liability.
- (4) Subsection (3) 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 its holding company, or
 - (b) the reduction or discharge of any such liability is only an incidental part of some larger purpose of the company,and the assistance is given in good faith in the interests of the company.
- (5) This section has effect subject to sections 681 and 682 (unconditional and conditional exceptions to prohibition).

680 Prohibited financial assistance an offence

- (1) If a company contravenes section 678(1) or (3) or section 679(1) or (3) (prohibited financial assistance) an offence is committed by—
 - (a) the company, and
 - (b) every officer of the company who is in default.
- (2) A person guilty of an offence under this section is liable—
 - (a) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine (or both);
 - (b) on summary conviction—
 - (i) in England and Wales, to imprisonment for a term not exceeding twelve months or to a fine not exceeding the statutory maximum (or both);
 - (ii) in Scotland or Northern Ireland, to imprisonment for a term not exceeding six months, or to a fine not exceeding the statutory maximum (or both).

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Exceptions from prohibition

681 Unconditional exceptions

- (1) Neither section 678 nor section 679 prohibits a transaction to which this section applies.
- (2) Those transactions are—
 - (a) a distribution of the company's assets by way of—
 - (i) dividend lawfully made, or
 - (ii) distribution in the course of a company's winding up;
 - (b) an allotment of bonus shares;
 - (c) a reduction of capital under Chapter 10 of Part 17;
 - (d) a redemption of shares under Chapter 3 or a purchase of shares under Chapter 4 of this Part;
 - (e) anything done in pursuance of an order of the court under Part 26 (order sanctioning compromise or arrangement with members or creditors);
 - (f) anything done under an arrangement made in pursuance of section 110 of the Insolvency Act 1986 (c. 45) or Article 96 of the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)) (liquidator in winding up accepting shares as consideration for sale of company's property);
 - (g) anything done under an arrangement made between a company and its creditors that is binding on the creditors by virtue of Part 1 of the Insolvency Act 1986 or Part 2 of the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)).

682 Conditional exceptions

- (1) Neither section 678 nor section 679 prohibits a transaction to which this section applies—
 - (a) if the company giving the assistance is a private company, or
 - (b) if the company giving the assistance is a public company and—
 - (i) the company has net assets that are not reduced by the giving of the assistance, or
 - (ii) to the extent that those assets are so reduced, the assistance is provided out of distributable profits.
- (2) The transactions to which this section applies are—
 - (a) where the lending of money is part of the ordinary business of the company, the lending of money in the ordinary course of the company's business;
 - (b) the provision by the company, in good faith in the interests of the company or its holding company, of financial assistance for the purposes of an employees' share scheme;
 - (c) the provision of financial assistance by the company for the purposes of or in connection with anything done by the company (or another company in the same group) for the purpose of enabling or facilitating transactions in shares in the first-mentioned company or its holding company between, and involving the acquisition of beneficial ownership of those shares by—
 - (i) bona fide employees or former employees of that company (or another company in the same group), or

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- (ii) spouses or civil partners, widows, widowers or surviving civil partners, or minor children or step-children of any such employees or former employees;
 - (d) the making by the company of loans to persons (other than directors) employed in good faith by the company with a view to enabling those persons to acquire fully paid shares in the company or its holding company to be held by them by way of beneficial ownership.
- (3) The references in this section to “net assets” are to the amount by which the aggregate of the company's assets exceeds the aggregate of its liabilities.
- (4) For this purpose—
- (a) the amount of both assets and liabilities shall be taken to be as stated in the company's accounting records immediately before the financial assistance is given, and
 - (b) “liabilities” includes any amount retained as reasonably necessary for the purpose of providing for a liability the nature of which is clearly defined and that 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.
- (5) For the purposes of subsection (2)(c) 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.

Supplementary

683 Definitions for this Chapter

- (1) In this Chapter—
- “distributable profits”, in relation to the giving of any financial assistance—
- (a) means those profits out of which the company could lawfully make a distribution equal in value to that assistance, and
 - (b) includes, in a case where the financial assistance consists of or includes, or is treated as arising in consequence of, the sale, transfer or other disposition of a non-cash asset, any profit that, if the company were to make a distribution of that character would be available for that purpose (see section 846); and
- “distribution” has the same meaning as in Part 23 (distributions) (see section 829).
- (2) 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 purposes 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.

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