



# Companies Act 2006

## 2006 CHAPTER 46

### PART 23

#### DISTRIBUTIONS

### CHAPTER 3

#### SUPPLEMENTARY PROVISIONS

#### *Other matters*

#### **848 Saving for certain older provisions in articles**

- (1) Where immediately before the relevant date a company was authorised by a provision of its articles to apply its unrealised profits in paying up in full or in part unissued shares to be allotted to members of the company as fully or partly paid bonus shares, that provision continues (subject to any alteration of the articles) as authority for those profits to be so applied after that date.
- (2) For this purpose the relevant date is—
  - (a) for companies registered in Great Britain, 22nd December 1980;
  - (b) for companies registered in Northern Ireland, 1st July 1983.

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#### **Commencement Information**

- II** S. 848 wholly in force at 6.4.2008; s. 848 not in force at Royal Assent see s. 1300; s. 848 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)

*Status: Point in time view as at 06/04/2008.*

*Changes to legislation: There are currently no known outstanding effects for the Companies Act 2006, Cross Heading: Other matters. (See end of Document for details)*

## 849 Restriction on application of unrealised profits

A company must not apply an unrealised profit in paying up debentures or any amounts unpaid on its issued shares.

### Commencement Information

**I2** S. 849 wholly in force at 6.4.2008; s. 849 not in force at Royal Assent see s. 1300; s. 849 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)

## 850 Treatment of certain older profits or losses

- (1) Where the directors of a company are, after making all reasonable enquiries, unable to determine whether a particular profit made before the relevant date is realised or unrealised, they may treat the profit as realised.
- (2) Where the directors of a company, after making all reasonable enquiries, are unable to determine whether a particular loss made before the relevant date is realised or unrealised, they may treat the loss as unrealised.
- (3) For the purposes of this section the relevant date is—
  - (a) for companies registered in Great Britain, 22nd December 1980;
  - (b) for companies registered in Northern Ireland, 1st July 1983.

### Commencement Information

**I3** S. 850 wholly in force at 6.4.2008; s. 850 not in force at Royal Assent see s. 1300; s. 850 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)

## 851 Application of rules of law restricting distributions

- (1) Except as provided in this section, the provisions of this Part are without prejudice to any rule of law restricting the sums out of which, or the cases in which, a distribution may be made.
- (2) For the purposes of any rule of law requiring distributions to be paid out of profits or restricting the return of capital to members—
  - (a) section 845 (distributions in kind: determination of amount) applies to determine the amount of any distribution or return of capital consisting of or including, or treated as arising in consequence of the sale, transfer or other disposition by a company of a non-cash asset; and
  - (b) section 846 (distributions in kind: treatment of unrealised profits) applies as it applies for the purposes of this Part.
- (3) In this section references to distributions are to amounts regarded as distributions for the purposes of any such rule of law as is referred to in subsection (1).

*Status: Point in time view as at 06/04/2008.*

*Changes to legislation: There are currently no known outstanding effects for the Companies Act 2006, Cross Heading: Other matters. (See end of Document for details)*

#### Commencement Information

- 14** S. 851 wholly in force at 6.4.2008; s. 851 not in force at Royal Assent see s. 1300; s. 851 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)

### 852 Saving for other restrictions on distributions

The provisions of this Part are without prejudice to any enactment, or any provision of a company's articles, restricting the sums out of which, or the cases in which, a distribution may be made.

#### Commencement Information

- 15** S. 852 wholly in force at 6.4.2008; s. 852 not in force at Royal Assent see s. 1300; s. 852 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)

### 853 Minor definitions

- (1) The following provisions apply for the purposes of this Part.
- (2) References to profit or losses of any description—
  - (a) are to profits or losses of that description made at any time, and
  - (b) except where the context otherwise requires, are to profits or losses of a revenue or capital character.
- (3) “Capitalisation”, in relation to a company's profits, means any of the following operations (whenever carried out)—
  - (a) applying the profits in wholly or partly paying up unissued shares in the company to be allotted to members of the company as fully or partly paid bonus shares, or
  - (b) transferring the profits to capital redemption reserve.
- (4) References to “realised profits” and “realised losses”, in relation to a company's accounts, are to such profits or losses of the company as fall to be treated as realised in accordance with principles generally accepted at the time when the accounts are prepared, with respect to the determination for accounting purposes of realised profits or losses.
- (5) Subsection (4) is without prejudice to—
  - (a) the construction of any other expression (where appropriate) by reference to accepted accounting principles or practice, or
  - (b) any specific provision for the treatment of profits or losses of any description as realised.
- (6) “Fixed assets” means assets of a company which are intended for use on a continuing basis in the company's activities.

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#### **Commencement Information**

- I6** [S. 853](#) wholly in force at 6.4.2008; [s. 853](#) not in force at Royal Assent see [s. 1300](#); [s. 853](#) 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](#))

**Status:**

Point in time view as at 06/04/2008.

**Changes to legislation:**

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