

Financial assistance for acquisition of shares

82. (1) In subsection (2) “acquisition”, in relation to shares, means acquisition by subscription, purchase, exchange or otherwise.

(2) It shall not be lawful for a company to give any financial assistance for the purpose of an acquisition made or to be made by any person of any shares in the company, or, where the company is a subsidiary, in its holding company.

(3) Subsection (2) is subject to subsections (5) and (6).

(4) The prohibition in subsection (2) applies whether the financial assistance is given—

(a) directly or indirectly; or

(b) by means of a loan or guarantee, the provision of security or otherwise.

(5) Subsection (2) does not prohibit the giving of financial assistance in relation to the acquisition of shares in a company 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.

(6) Without prejudice to the generality of subsection (5), subsection (2) does not prohibit—

(a) the giving of financial assistance in accordance with the Summary Approval Procedure;

(b) the payment by a company of a dividend or making by it of any distribution out of profits of the company available for distribution;

(c) the discharge by a company of a liability lawfully incurred by it;

(d) the—

(i) purchase under section 105; or

(ii) redemption under section 105 or 108,

of own shares or the giving of financial assistance, by means of a loan or guarantee, the provision of security or otherwise, for the purpose of such purchase or redemption;

(e) where the lending of money is part of the ordinary business of the company, the lending of money by a company in the ordinary course of its business;

(f) the provision by a company, in accordance with any scheme for the time being in force, of money for the purchase of, or subscription for, fully paid shares in the company or its holding company, being a purchase or subscription of or for shares to be held by or for the benefit of employees or former employees of the company or of any subsidiary of the company including any person who is or was a director holding a salaried employment or office in the company or any subsidiary of the company;

(g) the making by a company of loans to persons, other than directors, bona fide in the employment of the company or any subsidiary of the company with a view to enabling those persons to purchase or subscribe for fully paid shares in the company or its holding company to be held by themselves as beneficial owners thereof;

(h) the giving of financial assistance—

(i) by means of a loan or guarantee, the provision of security or otherwise to discharge the liability under, or effect that which is commonly known as a refinancing of, any arrangement or transaction that gave rise to the provision of financial assistance, being financial assistance referred to in subsection (2) that has already been given by the company in accordance with the Summary Approval Procedure or section 60(2) of the Act of 1963; or

(ii) by means of any subsequent loan or guarantee, provision of security or otherwise to effect a refinancing of—

(I) refinancing referred to subparagraph (i); or

(II) refinancing referred to in this subparagraph that has been previously effected (and this subparagraph shall be read as permitting the giving of financial assistance to effect such subsequent refinancing any number of times);

(i) the making or giving by a company of one or more representations, warranties or indemnities to a person (or any affiliate of, or person otherwise connected with, the first-mentioned person or a director of such an affiliate or connected person that is a body corporate) who has purchased or subscribed for, or proposes to purchase or subscribe for, shares in the company or its holding company for the purpose of or in connection with that purchase or subscription;

(j) the payment by a company of fees and expenses of—

(i) the advisers to any subscriber for, or purchaser of, shares in the company that are incurred in connection with his or her subscription for, or purchase of, such shares; or

(ii) the advisers to the company or its holding company that are incurred in connection with that subscription or purchase;

(k) the incurring of any expense by a company in order to facilitate the admission to, or the continuance of, a trading facility of securities of its holding company on a stock exchange or securities market, including the expenses associated with the preparation and filing of documents required under the laws of any jurisdiction in which the securities in question are admitted to trading or are afforded a trading facility;

(l) the incurring of any expenses by a company in order to ensure compliance by the company or its holding company with the Irish Takeover Panel Act 1997 or an instrument thereunder or any measures for the time being adopted by the State to implement Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids;

(m) the reimbursement by a private limited subsidiary of an offeree) of expenses of an offeror (within the meaning of that Act) pursuant to an agreement approved by, or on terms approved by, the Irish Takeover Panel;

(n) in connection with an allotment of shares by a parent public company, the payment by a private limited subsidiary of that company of commissions, not exceeding 10 per cent of the money received in respect of such allotment, to intermediaries, and the payment by that subsidiary of professional fees;

(o) to the extent that provision of this kind is not authorised by paragraph (f) or (g), the provision of financial assistance by a holding company or a subsidiary of it in connection with the holding company or subsidiary purchasing or subscribing for shares in the holding company on behalf of—

(i) the present or former employees of the holding company or any subsidiary of it;

(ii) an employees' share scheme; or

(iii) an employee share ownership trust referred to in section 519 of the Taxes Consolidation Act 1997 .

(7) Subject to subsection (8), a private limited subsidiary shall not provide financial assistance in accordance with the Summary Approval Procedure for the purpose of the acquisition of shares in its parent public company.

(8) The Minister may, by regulations, specify circumstances in which a private limited subsidiary, in cases falling within subsection (7), may avail itself of the Summary Approval Procedure.

(9) Any transaction in contravention of this section shall be voidable at the instance of the company against any person (whether a party to the transaction or not) who had notice of the facts which constitute such contravention.

(10) Nothing in this section shall affect the operation of sections 84 to 87.

(11) If a company contravenes this section, the company and any officer of it who is in default shall be guilty of a category 2 offence.