

CHAPTER 7 Distributions

Profits available for distribution

117. (1) A company shall not make a distribution except out of profits available for the purpose.

(2) For the 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.

(3) A company shall not apply an unrealised profit in paying up debentures or any amounts unpaid on any of its issued shares.

(4) For the purposes of subsections (2) and (3)—

(a) where the company prepares Companies Act entity financial statements, any provision) shall be treated as a realised loss other than such a provision in respect of any diminution in value of a fixed asset appearing on a revaluation of all the fixed assets or of all the fixed assets other than goodwill (and this qualification is referred to in subsections (5) and (6) as “the exception to subsection (4)(a)”; and

(b) where the company prepares IFRS entity financial statements, a provision of any kind shall be treated as a realised loss.

(5) Subject to section 121 (6) and the next subsection, any consideration by the directors of a company of the value at any particular time of any fixed asset of the company shall be treated as a revaluation of that asset for the purposes of determining whether any such revaluation of the company's fixed assets, as is required for the purposes of the exception to subsection (4)(a), has taken place at that time.

(6) However where any such assets which have not actually been revalued are treated as revalued for those purposes by virtue of the preceding subsection, the exception to subsection (4)(a) shall only apply if the directors are satisfied that the aggregate value of those assets at the time in question is not less than the aggregate amount at which they are for the time being stated in the company's Companies Act entity financial statements.

(7) If, on the revaluation of a fixed asset, an unrealised profit is shown to have been made and, on or after the revaluation, a sum is written off or retained for depreciation of that asset over a period, then an amount equal to the amount by which that sum exceeds the sum which would have been so written off or retained for depreciation of that asset over that period if that profit had not been made, shall be treated for the purposes of subsections (2) and (3) as a realised profit made over that period.

(8) Where there is no record of the original cost of an asset of a company or any such record cannot be obtained without unreasonable expense or delay, then, for the purposes of determining whether the company has made a profit or loss in respect of that asset, the cost of the asset shall be taken to be the value ascribed

to it in the earliest available record of its value made on or after its acquisition by the company.

(9) Notwithstanding anything in the preceding subsections of this section, but without prejudice to any contrary provision of—

(a) an order of, or undertaking given to, the court;

(b) the resolution for, or any other resolution relevant to, the reduction of company capital; or

(c) the company's constitution,

a reserve arising from the reduction of a company's company capital is to be treated, both for the purposes of this section and for purposes otherwise, as a realised profit.

(10) In this section “fixed asset” includes any other asset which is not a current asset.