

Profits or assets available for distribution. CTA76 s109; FA77 s42 and Sch1 PtIV par1(b) 413.—(1) In this Chapter, “fixed-rate preference shares” means shares which—

(a) are issued for consideration which is or includes new consideration,

(b) do not carry any right either to conversion into shares or securities of any other description or to the acquisition of any additional shares or securities,

(c) do not carry any right to dividends other than dividends which—

(i) are of a fixed amount or at a fixed rate per cent of the nominal value of the shares, and

(ii) represent no more than a reasonable commercial return on the new consideration received by the company in respect of the issue of the shares,

and

(d) on repayment do not carry any rights to an amount exceeding that new consideration except in so far as those rights are reasonably comparable with those general for fixed dividend shares quoted on a stock exchange in the State.

(2) In this section, “new consideration” has the same meaning as in section 135.

(3) (a) In this subsection—

“normal commercial loan” means a loan of or including new consideration and—

(i) which does not carry any right either to conversion into shares or securities of any other description or to the acquisition of additional shares or securities,

(ii) which does not entitle the loan creditor to any amount by means of interest which depends to any extent on the results of the company's business or any part of it or on the value of any of the company's assets or which exceeds a reasonable commercial return on the new consideration loaned, and

(iii) in respect of which the loan creditor is entitled on repayment to an amount which either does not exceed the new consideration loaned or is reasonably comparable with the amount generally repayable (in respect of an equal amount of new consideration) under the terms of issue of securities quoted on a stock exchange in the State;

“ordinary shares” means all shares other than fixed-rate preference shares.

(b) For the purposes of this Chapter, an equity holder of a company shall be any person who—

(i) holds ordinary shares in the company, or

(ii) is a loan creditor of the company in respect of a loan which is not a normal commercial loan,

and any reference in this Chapter to profits or assets available for distribution to a company's equity holders shall not include a reference to any profits or assets available for distribution to any equity holder otherwise than as an equity holder.

(4) Subsection (6) of section 433 apart from paragraph (b) of that subsection shall apply for the purposes of subsection (3)(b)(ii) as it applies for the purposes of Part 13.

(5) Notwithstanding anything in subsections (1) to (4) but subject to subsection (6), where—

(a) any person has directly or indirectly provided new consideration for any shares or securities in the company, and

(b) that person or any person connected with that person uses for the purposes of such person's trade assets which belong to the company and in respect of which there is made to the company any of the allowances specified in Chapter 2 of Part 9 or section 670, 673, 674, 677, 680 or 765,

then, for the purposes of this Chapter, that person and no other person shall be treated as being an equity holder in respect of those shares or securities and as being beneficially entitled to any distribution of profits or assets attributable to those shares or securities.

(6) In any case where subsection (5) applies in relation to a bank in such circumstances that—

(a) the only new consideration provided by the bank as mentioned in subsection (5)(a) is provided in the normal course of its banking business by means of a normal commercial loan within the meaning of subsection (3), and

(b) the cost to the company concerned of the assets within subsection (5)(b) which are used as mentioned in that subsection by the bank or a person connected with the bank is less than the amount of that new consideration,

references in subsection (5), other than the reference in subsection (5)(a), to shares or securities in the company shall be construed as a reference to so much only of the loan referred to in paragraph (a) as is equal to the cost referred to in paragraph (b).