

Application of certain provisions of section 82 (6) in relation to PLCs

1043. (1) Without prejudice to subsections (2) to (4), in its application to a PLC giving financial assistance, section 82 (6) shall apply—

(a) as if, in paragraph (k), “of it or its holding company” were substituted for “of its holding company”;

(b) as if, in paragraph (m), “by an offeree ) or a private limited subsidiary of an offeree” were substituted for “by a private limited subsidiary of an offeree )”; and

(c) as if the following paragraph were substituted for paragraph (n):

“(n) in connection with an allotment of shares by a company or its holding company, the payment by the company of commissions, not exceeding 10 per cent of the money received in respect of such allotment, to intermediaries, and the payment by the company of professional fees;”.

(2) Subject to subsection (3), section 82 (6)(a) shall not apply to a PLC.

(3) In either of the following 2 cases, namely:

(a) a case in which the giving of particular financial assistance by a company (not being a PLC) has been authorised by the company's use of the Summary Approval Procedure; or

(b) a case in which, before the commencement of this section, the giving of particular financial assistance by an existing company (not being a PLC) has been authorised by the company's use of the procedure contained in subsection (2) of section 60 of the Act of 1963 (and that subsection and subsections (3) to (11) of that section shall remain in force for the purposes of the particular transaction and for the purposes of, and incidental to, the court's jurisdiction to cancel the special resolution concerned);

and—

(i) following such authorisation, the company has applied to re-register, and has re-registered ), as a PLC; and

(ii) save where, by reason of the operation of Chapter 7 of Part 4 or, as the case may be, the foregoing subsections (3) to (11), the particular transaction may not be proceeded with;

then the giving by the PLC of the financial assistance (pursuant to the foregoing authority) shall be lawful.

(4) A PLC may, in accordance with paragraph (e), (f) or (g) of section 82 (6), give financial assistance to any person only if the PLC's net assets are not thereby reduced or, to the extent that those assets are

thereby reduced, if the financial assistance is provided out of profits which are available for distribution.

(5) In subsection (4) “net assets” means the aggregate of the PLC's assets less the aggregate of its liabilities; and “liabilities” includes—

(a) where the PLC prepares Companies Act entity financial statements, any provision for liabilities ) that is made in those financial statements;

(b) where the PLC prepares IFRS entity financial statements, any provision that is made in those financial statements;

except to the extent that that provision is taken into account in calculating the value of any asset to the PLC.