

The relevant financial statements

121. (1) Subject to the following provisions of this section, the question whether a distribution may be made by a company without contravening section 117 and the amount of any distribution which may be so made shall be determined by reference to the relevant items as stated in the relevant entity financial statements, and section 117 shall be treated as contravened in the case of a distribution unless the requirements of this section in relation to those statements are complied with in the case of that distribution.

(2) The relevant entity financial statements for any company in the case of any particular distribution are—

(a) except in a case falling within paragraph (b) or (c), the last entity financial statements, that is to say, the statutory financial statements, respecting the company alone, prepared in accordance with the requirements of Part 6 (and, where applicable, in accordance with the requirements of Article 4 of the IAS Regulation (within the meaning of that Part)) which were laid in respect of the last preceding financial year in respect of which statutory financial statements so prepared were laid;

(b) if that distribution would be found to contravene section 117 if reference were made only to the last statutory financial statements, such financial statements (“interim financial statements”), respecting the company alone, as are necessary to enable a reasonable judgement to be made as to the amounts of any of the relevant items;

(c) if that distribution is proposed to be declared during the company's first financial year or before any statutory financial statements are laid in respect of that financial year, such financial statements (“initial financial statements”), respecting the company alone, as are necessary as mentioned in paragraph (b).

(3) The following requirements apply where the last financial statements of a company constitute the only relevant entity financial statements in the case of any distribution, that is to say—

(a) those financial statements shall have been properly prepared or have been so prepared subject only to matters which are not material for the purpose of determining, by reference to the relevant items as stated in those statements, whether that distribution would be in contravention of section 117;

(b) unless the company is entitled to and has availed itself of the audit exemption under section 360 or 365, the statutory auditors of the company shall have made a report under section 391 in respect of those financial statements;

(c) if, by virtue of anything referred to in that report, the report is not an unqualified report, the statutory auditors shall also have stated in writing (either at the time the report was made or subsequently) whether, in their opinion, that thing is material for the purpose of determining, by reference to the relevant items as stated in those financial statements, whether that distribution would be in contravention of section 117; and

(d) a copy of any such statement shall have been laid before the company in general meeting.

(4) A statement under subsection (3)(c) suffices for the purposes of a particular distribution, not only if it relates to a distribution which has been proposed, but also if it relates to distributions of any description which include that particular distribution, notwithstanding that at the time of the statement it has not been proposed.

(5) For the purpose of determining by reference to particular financial statements whether a proposed distribution may be made by a company, this section shall have effect, in any case where one or more distributions have already been made in pursuance of determinations made by reference to those same financial statements, as if the amount of the proposed distribution was increased by the amount of the distributions so made.

(6) Where subsection (3)(a) applies to the relevant entity financial statements, section 117 (5) shall not apply for the purposes of determining whether any revaluation of the company's fixed assets affecting the amount of the relevant items as stated in those statements has taken place, unless it is stated in a note to those statements—

(a) that the directors have considered the value at any time of any fixed assets of the company without actually revaluing those assets;

(b) that they are satisfied that the aggregate value of those assets at the time in question is or was not less than the aggregate amount at which they are or were for the time being stated in the company's statutory financial statements; and

(c) that the relevant items affected are accordingly stated in the relevant financial statements on the basis that a revaluation of the company's fixed assets that, by virtue of section 117 (5), is deemed to have included a revaluation of the assets in question, took place at that time.

(7) In this section—

“properly prepared” means, in relation to any financial statements of a company, that they have been properly prepared in accordance with the provisions of Part 6;

“relevant item” means any of the following, that is to say profits, losses, assets, liabilities, provisions), share capital and reserves;

“reserves” includes undistributable reserves, that is to say—

(a) the company's undenominated capital;

(b) the amount by which the company's accumulated, unrealised profits, so far as not previously utilised by any capitalisation, exceed its accumulated, unrealised losses, so far as not previously written off in a reduction or reorganisation of capital duly made; and

(c) any other reserve which the company is prohibited from distributing by any enactment, other than one contained in this Part, or by its constitution.

“unqualified report”, in relation to any financial statements of a company, means a report without qualification, to the effect that, in the opinion of the person making the report, the financial statements have been properly prepared, and for the purposes of this section, financial statements are laid if section 290 has been complied with in relation to those statements.