

Restriction of section 71 (5) in the case of shares allotted in return for acquisition of issued shares of body corporate

75. (1) This section applies where—

(a) a company (the “issuer”) allots and issues shares to the shareholders of a body corporate in consideration for the acquisition by the issuer of all of the issued shares in the body corporate (the “acquired shares”) such that the body corporate becomes the wholly-owned subsidiary of the issuer;

(b) the consolidated assets and liabilities of the issuer immediately after those shares are issued are exactly, except for any permitted cash payments, the same as—

(i) if the body corporate was itself a holding company, the consolidated assets and liabilities of the body corporate immediately before those shares were issued, or

(ii) if the body corporate was not a holding company, the assets and liabilities of the body corporate immediately before those shares were issued;

(c) the absolute and relative interests that the shareholders in the body corporate have in the consolidated assets and liabilities of the issuer are in proportion to (or as nearly as may be in proportion to) the interest they had in—

(i) if the body corporate was itself a holding company, the consolidated assets and liabilities of the body corporate immediately before the shares were issued;

(ii) if the body corporate was not a holding company, the assets and liabilities of the body corporate immediately before the shares were issued;

and

(d) the issuer does not account for its investment in the body corporate at fair value in the issuer's entity financial statements.

(2) Where the shares in the issuer allotted in consideration for the acquisition of the acquired shares are issued at a premium, the issuer—

(a) is not required by section 71 (5) to credit to undenominated capital any amount in excess of the minimum premium value; and

(b) may disregard any such amount in determining the amount at which the shares or other consideration provided for the acquired shares is to be included in the issuer's entity financial statements and, if such are prepared, group financial statements.

(3) Nothing in this section shall permit any share in the issuer to be issued at a discount to the share's nominal value.

(4) In this section—

“base value of the consideration”, in relation to shares allotted by an issuer, means the carrying value of the assets and liabilities that would be shown in the balance sheet of the body corporate if that body corporate were to prepare entity financial statements in accordance with Part 6 immediately before the issue of the shares;

“consolidated assets and liabilities”, in relation to a holding company, means the assets and liabilities included in the group financial statements of the holding company prepared under section 293;

“minimum premium value”, in relation to shares allotted, means the amount (if any) by which the base value of the consideration for the acquisition of the acquired shares exceeds the aggregate nominal value of the shares issued;

“permitted cash payments” means—

(a) cash payments to shareholders of the body corporate in relation to fractional share entitlements in the body corporate that are not being replicated in the issuer, whether on account of different nominal values of shares or otherwise;

(b) such cash payments as may be ordered or permitted by the court, including by reason of the imposition on the issuer of disproportionate expense arising from compliance with requirements with respect to a prospectus or similar requirements.