

“Existing legal obligation”— definition and other provisions in relation to sections 251 to 253

254. (1) “Existing legal obligation” for the purposes of—

(a) section 251 (3), means an obligation of the company concerned, or any body corporate associated with it, that was not entered into in connection with, or in consequence of, the event giving rise to the payment for loss of office in question,

(b) sections 252 (4) and 253 (3), means an obligation of the person making, or proposing to make, the payment that was not entered into for the purposes of, in connection with or in consequence of, the transfer in question.

(2) In the case of a payment to which both sections 251 and 252 apply, or to which both sections 251 and 253 apply, paragraph (a) of subsection (1) and not paragraph (b) of it shall have effect.

(3) Where in proceedings for the recovery of any payment which it is alleged is recoverable as having, by virtue of—

(a) subsections (1) and (3) of section 252, or

(b) subsections (1), (2) and (5) of section 253,

been received by any person in trust, it is shown that—

(i) the payment was made in pursuance of any arrangement entered into as part of the agreement for the transfer in question or within one year before or 2 years after the date of that agreement or the offer leading to it, and

(ii) the company or any person to whom the transfer was made was privy to that arrangement,

the payment shall be deemed, except in so far as the contrary is shown, to be one to which the subsections concerned apply.

(4) If, in connection with any such transfer as is mentioned in section 252 or 253—

(a) the price to be paid to a director of the company for any shares in the company held by him or her is in excess of the price which could at the time have been obtained by other holders of the like shares, or

(b) any valuable consideration is given to any such director,

the excess or the money value of the consideration, as the case may be, shall, for the purposes of that section, be deemed to have been a payment made to him or her by way of compensation for loss of office or as consideration for or in connection with his or her retirement from office.

(5) References in sections 251 to 253 to payments to any director of a company by way of compensation for loss of office or as consideration for or in connection with his or her retirement from office include references to payments to him or her by way of compensation for—

(a) loss of office as director of the company,

(b) the loss, while director of the company, or on or in connection with his or her ceasing to be a director of the company, of any other office in connection with the management of the company's affairs or of any office as director or otherwise in connection with the management of the affairs of any subsidiary,

but do not include references to any bona fide payment by way of—

(i) damages for breach of contract, or

(ii) pension in respect of past services,

and, for the purposes of this subsection, “pension” includes any superannuation allowance, superannuation gratuity or similar payment.

(6) Nothing in section 251 or 252 shall be taken to prejudice—

(a) the operation of any rule of law requiring disclosure to be made with respect to any such payments as are mentioned in that section or with respect to any other like payments made or to be made to the directors of a company, or

(b) the operation of any rule of law or enactment in relation to the accountability (if any) of any director for any such payment received by him or her.

(7) References in sections 251 to 253 and this section to a director include references to a past director.

(8) For the purposes of subsection (1)(a) a body corporate is associated with a company if one is the subsidiary of the other or both are subsidiaries of the same body corporate.