

Summary Approval Procedure: Allow Financial Assistance of Own Shares

SAP Step Plan

Part 1

Step Plan / Action Help Sheet

Name of procedure: Summary approval procedure to allow financial assistance of own shares

Sectional references: Section 82 of CA 2014 (financial assistance for acquisition of own shares); Section 202 of CA 2014 (Summary Approval Procedure) & Section 203 of CA 2014 (declaration required for financial assistance for acquisition of own shares); Section 92 (Notice to registrar of certain alterations of share capital), Section 181 (notice of general meetings), Section 193 (unanimous written resolution) & Section 194 (majority written resolution) of CA 2014

Date:

Steps:

Step	Commentary	Legislative Reference	Done
1	<p>Assess whether the transaction comes within the remit of the provision of financial assistance to purchase the company's own shares.</p> <p>Examples of where this will arise are:</p> <ul style="list-style-type: none"> - The company providing shares to another person or company to allow that company to purchase the shares of the company who has given the loan; - The company providing a loan to one company or person and that person then providing a loan to another person or company to purchase the shares of the company who first provided the loan (this is an example of a loan given indirectly) <p>If the answer to this question is yes, move to step 2.</p>	S82 CA 2014	
2	<p>Assess whether there will be tax consequences as a result of the provision of financial assistance.</p> <p>Where the financial assistance is provided to another company, then there should not be any tax consequences unless there is interest charged on the loan in which case the interest earned will be taxable at the passive rate of corporation tax of 25%.</p> <p>Where the loan is provided to a director then BIK will need to be applied by the company providing the loan and the income tax on this BIK should be paid over the revenue. Income tax would also need to be paid over to the revenue by that company at an amount of 20/80ths of the loan which is refundable to the company if it is repaid within a set period of time. Where the loan is 10% or greater of the net assets of the company as per the last</p>		

	set of financial statements then a Section 239 Summary approval procedure will be required in order to ensure that it is lawful.		
3	Draft the proposed loan agreement		
4	Arrange to hold a board meeting no longer than 12 months from the carrying out of the provision of financial assistance. At this meeting:	S202(1) CA 2014	
4a	- approve the reduction of share capital and the summary approval procedure	S202(1) CA 2014	
4b	- the majority of directors or all of the directors agree to recommend to the members to allow the company to reduce its share capital and a special resolution be passed to permit the activity.	S201 & S202(1) CA 2014	
4c	At this meeting or a meeting held not earlier than 30 days before the approval of the members by special resolution (where an initial meeting discussed in step 2 has been held after this 30 day period), the directors should make a declaration in writing declaring that having made full enquiry, the company will be able to pay its debts as they fall due for the 12 months period following the date the restricted activity was carried out (Section 201 & 202 CA 2014). See step 4 below for further items to be included in this declaration. The special resolution can be in writing under Section 193 (unanimous resolution)/ Section 194 (majority resolution) or passed at an extraordinary general meeting. Where the resolution is passed in writing then the director's declaration must be attached to the written resolution.	S202(6) CA 2014	
5	The minutes of the board meeting in step 4 should detail:	Section 201, 202 & 203 of CA 2014	
5a	the name of the company and the company number		
5b	the date, location and time of the meeting and the members present at the meeting		
5c	details of who was appointed chairman of the meeting		
5d	that the directors have disclosed their interest in the decisions been taken under Section 231 of CA 2014; Note that notwithstanding the disclosures, was pursuant to the companies Constitution, entitled to vote and be counted in the quorum in relation to any matter in which he/she has an interest. It should also disclose whether a quorum is present where a set quorum is required by the constitution.	S231, 228 & 229 of CA 2014	
5e	Ensure and state the fact that at least one director is a resident in the European Economic Area as required by Section 137 CA 2014 and that no director present holds more than 25 directorships for the purposes of and in accordance with Sections 228 and 229 CA 2014.	S137 CA 2014	

5f	Ensure that it records (and ensure it is a fact) the fact that no director is restricted from acting as a directors as detailed in Section 819, 839, 840 841, 842 and 828 of CA 2014.	Section 819, 839, 840 841, 842 and 828 of CA 2014	
5g	<p>Include a paragraph for 'Background' providing details of the proposed financial assistance to be provided by the company giving details of the other parties involved and the reasons why it is considered to be for the benefit of the company to engage in the activity.</p> <p>Detail the fact that such a transaction is not permitted under Section 84 unless Section 204 of CA 2014, SAP approval procedure is applied.</p>		
5h	<p>Include a paragraph for 'Purpose of meeting' providing exact details for the reason why the meeting was held e.g. to consider and if thought fit to approve the granting of financial assistance and provide a declaration of directors as required by Section 202 & 203 of CA 2014 in order to allow the financial assistance to proceed and to recommend to the shareholders to pass a special resolution to effect the transaction.</p> <p>Detail the fact that such a transaction is not permitted under Section 82 unless Section 203 of CA 2014, SAP approval procedure is applied.</p>	S202 & 203 CA 2014	
5i	Detail the fact that the loan agreement in relation to the provision of financial assistance was submitted to the directors for review	S82 CA 2014	
5j	Detail the fact that the directors were advised of the serious nature of the Section 82 declaration and the penalties that the directors were liable for if the directors make the declaration without unreasonable grounds for doing so (i.e. they may be liable for all liabilities that arise within the 12 month period).	S210 CA 2014	
5k	Detail the fact that the directors took account of the financial position and liabilities of the company (including prospective and contingent). There is no requirement to assume either that the company will be called upon to pay moneys on foot of a guarantee or that security will be realised where these items are applicable.	S203(1) CA 2014	
5l	<p>Provide details of the requirements of the summary approval procedure (requirement for a special resolution) with reference to Section 82 and what is to be included in the directors declaration under Section 203 in the minutes. That being:</p> <p>1) The majority of directors must make a declaration stating:</p> <ul style="list-style-type: none"> - the circumstances in which the transaction or arrangement is to be entered into; - the nature of the transaction or arrangement; 	S203(1) CA 2014	

	<ul style="list-style-type: none"> - the person or persons to or for whom the transaction or arrangement is to be made; - the purpose for which the company is entering into the transaction or arrangement; - the nature of the benefit which will accrue to the company directly or indirectly from entering into the transaction or arrangement as outlined above; and - that the declarants have made full inquiry into the affairs of the Company and that, having done so, they have formed the opinion that the Company, having carried out the transaction whereby such assistance is to be given, will be able to pay its debts in full as they become due during the period of 12 months after the date of the relevant act; <p>2) that a special resolution is required to be passed by the shareholders approving the reduction in capital.</p> <p>Note the directors declaration is filed in the form SAP-203 which should be signed by all the directors making the declaration.</p>		
5m	<p>Detail the transaction itself (i.e. the provision of a loan which equates to the provision of financial assistance to purchase the company's own shares which unless the SAP is carried out it would be unlawful, the amount of the loan and the proposed terms of the loan and the reason why it is in the best interest of the company to provide the loan), the parties to the transaction (i.e. name the party for which the loan is provided to).</p> <p>Detail the fact that such a transaction is not permitted under Section 82 unless Section 203 of CA 2014, SAP approval procedure is applied.</p>		
5n	Draft up the directors declaration to be signed by all or a majority of directors which addresses:	S203(1)	
	<ul style="list-style-type: none"> - the circumstances in which the transaction or arrangement is to be entered into; 		
	<ul style="list-style-type: none"> - the nature of the transaction or arrangement; 		
	<ul style="list-style-type: none"> - the person or persons to or for whom the transaction or arrangement is to be made; 		
	<ul style="list-style-type: none"> - the purpose for which the company is entering into the transaction or arrangement; 		
	<ul style="list-style-type: none"> - the nature of the benefit which will accrue to the company directly or indirectly from entering into the transaction or arrangement as outlined above; and 		
	<ul style="list-style-type: none"> - that the declarants have made full inquiry into the affairs of the Company and that, having done so, they have formed the opinion that the Company, having carried out the transaction whereby such assistance is to be given, 		

	will be able to pay its debts in full as they become due during the period of 12 months after the date of the relevant act		
5o	Detail the acknowledgement of the directors of the obligations imposed under Section 203 and they acknowledge that the draft declaration was true and correct.	S203 2014	CA
5p	Detail the fact that the directors declaration was produced to the directors for their review and after consideration it was signed by all or a majority of directors on the basis that all the conditions required by Section 203 as detailed above had been met they were happy to proceed to deem the Section 203 Declaration executed. It was agreed that the form SAP-203 (directors' declaration) be signed by all directors making the declaration.	S203(1) 2014	CA
5q	Detail the wording of the special resolution to allow the provision of financial assistance which will be provided to the shareholders for approval. This wording should state that the giving of the loan referred to in the directors' declaration was approved for the purposes of S82 CA 2014 the fact that the directors are authorised to sign the loan agreement.	S202 2014	CA
5r	Detail the fact that it was resolved that an extraordinary general meeting be held to allow the shareholders to vote on the special resolution and that the required notice be given to all members together with a copy of the sign directors' declaration. THIS STEP IS ONLY PERFORMED WHERE A WRITTEN RESOLUTION IS NOT BEING PASSED I.E. WHERE A MEETING IS HELD.	S92 2014	CA
5s	Recommend that the directors' declaration and the special resolution when passed be filed with the CRO within 21 days of providing the financial assistance through the SAP-203 form.	S203(3) 2014	CA
5t	Unanimously agree that the directors recommend to the shareholder that the directors be given authority to sign the loan agreement on the company's behalf		
5u	Declare the meeting closed		
5v	Have the chairperson sign and date the board minute and insert it into the minute book of the company.		
6	Draft the written special resolution based on the resolutions detailed in the board meeting above and reference the fact that the directors resolution is attached the written resolution itself and have this resolution signed by all members entitled to vote where a unanimous resolution has been passed in accordance with Section 193(1) CA 2014. Ensure the company name and number is included at the top of this resolution and the narrative at the top specifically states that they are special resolutions and pursuant to S193(1) of CA 2014 for all purposes be as valid and effective as if a general meeting had been convened. Where a written majority resolution has been passed ensure this resolution is signed by the required majority of members and it refers to S194 with wording similar to the aforementioned. Where a written majority resolution is obtained ensure the notice as detailed in step 7 below	S193 2014 S194 2014	CA CA

7	<p>Where a written resolution is not utilised there is no need for the resolution to be signed. In addition it should not refer to Section 193/194 in any way and the wording in relation to it being valid and effective as if a general meeting had been convened because effectively an extraordinary meeting has to be convened for a resolution that is not written.</p> <p>Ensure all members entitled to attend and vote at the meeting/on the written resolution have been informed of the meeting within the required notice period (this is also applicable for a majority written resolution). The required notice period of not less than 21 clear days' notice should be given unless a consent to short notice is obtained from all its members and auditor where applicable in which case a shorter period can be given as dictated by Section 181 of CA 2014.</p> <p>This notice should include: the date, time, location of the meeting, give details of the special resolutions to be considered for approval, the fact that a proxy can be utilised which does not have to be a member and the date by which the member must notify the company of a proxy being used. A consent to short notice should be signed by all members including the auditor (if applicable) where less than the statutory notice is provided which is a signed confirmation from all parties that they consent to the short notice. A copy of the directors' declaration should be attached to the notice of the meeting.</p>	S181 CA 2014 S181(5) 183 CA 2014	
8	<p>Where an extraordinary meeting is held (as opposed to a written resolution), draft the minutes of the extraordinary general meeting with the usual requirements (as per steps 5(a) to 5(c)) and detail the approval of the special resolution to approve the provision of financial assistance. Ensure the minutes document the fact that the consent to short notice was given if this option was utilised.</p> <p>Ensure the minutes are signed by the chairperson.</p>	S202 CA 2014	
9	<p>Hold a board meeting to advise that the shareholders had passed the resolutions at the extraordinary general meeting held earlier in the day and to instruct the secretary to file the Form G1 within 15 days and the directors' declaration/Form SAP-203 within 21 days to the CRO.</p> <p>Document in the board minutes the aforementioned facts in addition to the standard confirmations detailed in step 5(a) to 5(f) above.</p> <p>NOTE THIS IS ONLY REQUIRED WHERE AN EXTRAORDINARY GENERAL MEETING HAD BEEN HELD</p>	Section 201(3) & 203 of CA 2014	
10	<p>Ensure a copy of the declaration/Form SAP-203 is delivered to the CRO not later than 21 days after the date on which the restricted activity commenced. If it is not submitted within this period it will invalidate the summary approval process</p>	Section 201(3) of CA 2014	

11	File the Form G1 with the CRO ensuring that the directors' declaration is attached to the G1 (ideally within 15 days of passing the special resolution).	S191 CA 2014	
11a	in the effective date on the G1, date this the date the special resolution was dated. Include the company number and Company name on page one of Form G1		
11b	In the resolution details section of the Form G1, type the resolutions passed into the resolution text area on the form G1 which is an exact replicate of the resolution prepared at step 6 or 7 above or alternatively attach a copy of the resolution prepared and state 'see resolution attached'. Also attach the directors declaration		
11c	In the resolution passed section of the Form G1, insert 'In writing' if done by a written resolution as opposed to by a formal meeting. If by meeting select the general meeting option.		
11d	In the writing type section of the Form G1, insert 'Pursuant to section 193(1) (unanimous written resolution) if it is done by written resolution under S193 CA 2014. If done by majority written resolution (under S194) insert 'Pursuant to Section 194'. If it is passed by meeting then insert 'extraordinary general meeting'.		
11e	In the section 'particulars of persons verifying the contents of the form', under revenue online section include 'No' where it is being filed on core		
11f	Complete the information of the person/director that will sign the signature page at 'particulars of persons verifying the contents of the form' of the Form G1 on CORE or if done hard copy in the certification section of the form		
11g	Include details of the agent presenting/filing the From G1 in the detail of presenter section of the Form G1		
11k	File the Form G1 on CORE or send to the CRO with the directors' declaration where a hard copy is filed out		
11l	Arrange for a director to sign the electronic G1 signature page once filed on core (where core is used) and send this to the CRO with the directors' declaration.		
<p>In my professional opinion in my capacity as the professional advisor, the summary approval procedure and related company secretarial documentation comply with the Company Law requirements.</p> <p>Signed: _____ Date: _____</p>			

Linked documents

None

Forms

Form G1

Form SAP-203 – Directors declaration

