

## SECTIONS OF THE COMPANIES ACT NO. 71 (2008) (AS AMENDED)

### 44. Financial assistance for subscription of securities.-

(1) In this section, "financial assistance" does not include lending money in the ordinary course of business by a company whose primary business is the lending of money.

(2) Except to the extent that the Memorandum of Incorporation of a company provides otherwise, the board may authorise the company to provide financial assistance by way of a loan, guarantee, the provision of security or otherwise to any person for the purpose of, or in connection with, the subscription of any option, or any securities, issued or to be issued by the company or a related or inter-related company, or for the purchase of any securities of the company or a related or inter-related company, subject to [subsections \(3\) and \(4\)](#).

[[Sub-s. \(2\)](#) substituted by s. 30 (a) of [Act No. 3 of 2011](#).]

(3) Despite any provision of a company's Memorandum of Incorporation to the contrary, the board may not authorise any financial assistance contemplated in [subsection \(2\)](#), unless-

- (a) the particular provision of financial assistance is-
  - (i) pursuant to an employee share scheme that satisfies the requirements of [section 97](#); or
  - ) pursuant to a special resolution of the shareholders, adopted within the previous two years,
  - (ii) which approved such assistance either for the specific recipient, or generally for a
  - ) category of potential recipients, and the specific recipient falls within that category; and

(b) the board is satisfied that-

(i) immediately after providing the financial assistance, the company would satisfy the solvency and liquidity test; and

(ii) the terms under which the financial assistance is proposed to be given are fair and reasonable to the company.

(4) In addition to satisfying the requirements of [subsection \(3\)](#), the board must ensure that any conditions or restrictions respecting the granting of financial assistance set out in the company's Memorandum of Incorporation have been satisfied.

(5) A decision by the board of a company to provide financial assistance contemplated in [subsection \(2\)](#), or an agreement with respect to the provision of any such assistance, is void to the extent that the provision of that assistance would be inconsistent with-

(a) this section; or

(b) a prohibition, condition or requirement contemplated in [subsection \(4\)](#).

(6) If a resolution or an agreement is void in terms of [subsection \(5\)](#) a director of the company is liable to the extent set out in [section 77 \(3\) \(e\) \(iv\)](#) if the director-

(a) was present at the meeting when the board approved the resolution or agreement, or participated in the making of such a decision in terms of [section 74](#); and

(b) failed to vote against the resolution or agreement, despite knowing that the provision of financial assistance was inconsistent with this section or a prohibition, condition or requirement contemplated in [subsection \(4\)](#).

\_[\[Sub-s. \(6\) amended by s. 30 \(b\) of Act No. 3 of 2011.\]](#)\_