



# Companies Act 2006

## 2006 CHAPTER 46

### PART 17

#### A COMPANY'S SHARE CAPITAL

### CHAPTER 6

#### PUBLIC COMPANIES: INDEPENDENT VALUATION OF NON-CASH CONSIDERATION

#### *Supplementary provisions*

#### **605 Liability of subsequent holders of shares**

- (1) If a person becomes a holder of shares in respect of which—
- (a) there has been a contravention of section 593 (public company: valuation of non-cash consideration for shares), and
  - (b) by virtue of that contravention another is liable to pay any amount under the provision contravened,
- that person is also liable to pay that amount (jointly and severally with any other person so liable), unless he is exempted from liability under subsection (3) below.
- (2) If a company enters into an agreement in contravention of section 598 (public company: agreement for transfer of non-cash asset in initial period) and—
- (a) the agreement is or includes an agreement for the allotment of shares in the company,
  - (b) a person becomes a holder of shares allotted under the agreement, and
  - (c) by virtue of the agreement and allotment under it another person is liable to pay an amount under section 604,

the person who becomes the holder of the shares is also liable to pay that amount (jointly and severally with any other person so liable), unless he is exempted from liability under subsection (3) below.

*Status: Point in time view as at 03/09/2020.*

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This applies whether or not the agreement also contravenes section 593.

- (3) A person otherwise liable under subsection (1) or (2) is exempted from that liability if either—
- (a) he is a purchaser for value and, at the time of the purchase, he did not have actual notice of the contravention concerned, or
  - (b) he derived title to the shares (directly or indirectly) from a person who became a holder of them after the contravention and was not liable under subsection (1) or (2).
- (4) References in this section to a holder, in relation to shares in a company, include any person who has an unconditional right—
- (a) to be included in the company's register of members<sup>F1</sup>(or, as the case may be, to have his name and other particulars delivered to the registrar under Chapter 2A of Part 8 and registered by the registrar)] in respect of those shares, or
  - (b) to have an instrument of transfer of the shares executed in his favour.

#### Textual Amendments

- F1** Words in s. 605(4)(a) inserted (30.6.2016) by [Small Business, Enterprise and Employment Act 2015](#) (c. 26), s. 164(1), [Sch. 5 para. 22](#); S.I. 2016/321, reg. 6(c)

## 606 Power of court to grant relief

- (1) A person who—
- (a) is liable to a company under any provision of this Chapter in relation to payment in respect of any shares in the company, or
  - (b) is liable to a company by virtue of an undertaking given to it in, or in connection with, payment for any shares in the company,
- may apply to the court to be exempted in whole or in part from the liability.
- (2) In the case of a liability within subsection (1)(a), the court may exempt the applicant from the liability only if and to the extent that it appears to the court just and equitable to do so having regard to—
- (a) whether the applicant has paid, or is liable to pay, any amount in respect of—
    - (i) any other liability arising in relation to those shares under any provision of this Chapter or Chapter 5, or
    - (ii) any liability arising by virtue of any undertaking given in or in connection with payment for those shares;
  - (b) whether any person other than the applicant has paid or is likely to pay, whether in pursuance of any order of the court or otherwise, any such amount;
  - (c) whether the applicant or any other person—
    - (i) has performed in whole or in part, or is likely so to perform any such undertaking, or
    - (ii) has done or is likely to do any other thing in payment or part payment for the shares.
- (3) In the case of a liability within subsection (1)(b), the court may exempt the applicant from the liability only if and to the extent that it appears to the court just and equitable to do so having regard to—

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- (a) whether the applicant has paid or is liable to pay any amount in respect of liability arising in relation to the shares under any provision of this Chapter or Chapter 5;
  - (b) whether any person other than the applicant has paid or is likely to pay, whether in pursuance of any order of the court or otherwise, any such amount.
- (4) In determining whether it should exempt the applicant in whole or in part from any liability, the court must have regard to the following overriding principles—
- (a) that a company that has allotted shares should receive money or money's worth at least equal in value to the aggregate of the nominal value of those shares and the whole of any premium or, if the case so requires, so much of that aggregate as is treated as paid up;
  - (b) subject to this, that where such a company would, if the court did not grant the exemption, have more than one remedy against a particular person, it should be for the company to decide which remedy it should remain entitled to pursue.
- (5) If a person brings proceedings against another (“the contributor”) for a contribution in respect of liability to a company arising under any provision of this Chapter or Chapter 5 and it appears to the court that the contributor is liable to make such a contribution, the court may, if and to the extent that it appears to it, just and equitable to do so having regard to the respective culpability (in respect of the liability to the company) of the contributor and the person bringing the proceedings—
- (a) exempt the contributor in whole or in part from his liability to make such a contribution, or
  - (b) order the contributor to make a larger contribution than, but for this subsection, he would be liable to make.
- (6) Where a person is liable to a company under section 604(2) (agreement for transfer of non-cash asset: effect of contravention), the court may, on application, exempt him in whole or in part from that liability if and to the extent that it appears to the court to be just and equitable to do so having regard to any benefit accruing to the company by virtue of anything done by him towards the carrying out of the agreement mentioned in that subsection.

## **607 Penalty for contravention of this Chapter**

- (1) This section applies where a company contravenes—
- section 593 (public company allotting shares for non-cash consideration), or
  - section 598 (public company entering into agreement for transfer of non-cash asset).
- (2) An offence is committed by—
- (a) the company, and
  - (b) every officer of the company who is in default.
- (3) A person guilty of an offence under this section is liable—
- (a) on conviction on indictment, to a fine;
  - (b) on summary conviction, to a fine not exceeding the statutory maximum.

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## **608 Enforceability of undertakings to do work etc**

- (1) An undertaking given by any person, in or in connection with payment for shares in a company, to do work or perform services or to do any other thing, if it is enforceable by the company apart from this Chapter, is so enforceable notwithstanding that there has been a contravention in relation to it of a provision of this Chapter or Chapter 5.
- (2) This is without prejudice to section 606 (power of court to grant relief etc in respect of liabilities).

## **609 The appropriate rate of interest**

- (1) For the purposes of this Chapter the “appropriate rate” of interest is 5% per annum or such other rate as may be specified by order made by the Secretary of State.
- (2) An order under this section is subject to negative resolution procedure.

### **Commencement Information**

- II** S. 609 wholly in force at 1.10.2009; s. 609 not in force at Royal Assent, see s. 1300; s. 609 in force for specified purposes at 20.1.2007 by S.I. 2006/3428, **art. 3(3)** (subject to **art. 5, Sch. 1** and with **arts. 6, 8, Sch. 5**); s. 609 otherwise in force at 1.10.2009 by S.I. 2008/2860, **art. 3(k)** (with **arts. 5, 7, 8, Sch. 2**) (as amended by S.I. 2009/1802, **art. 18**)

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