



Companies Act 2006

2006 CHAPTER 46

PART 17

A COMPANY'S SHARE CAPITAL

CHAPTER 5

PAYMENT FOR SHARES

Supplementary provisions

588 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 any provision of this Chapter, 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), subject as follows.
- (2) A person otherwise liable under subsection (1) 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).
- (3) 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 in respect of those shares, or

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(b) to have an instrument of transfer of the shares executed in his favour.

(4) This section applies in relation to a failure to carry out a term of a contract as mentioned in section 587(4) (public companies: payment by long-term undertaking) as it applies in relation to a contravention of a provision of this Chapter.

589 Power of court to grant relief

- (1) This section applies in relation to liability under—
 section 585(2) (liability of allottee in case of breach by public company of prohibition on accepting undertaking to do work or perform services),
 section 587(2) or (4) (liability of allottee in case of breach by public company of prohibition on payment by long-term undertaking), or
 section 588 (liability of subsequent holders of shares),
 as it applies in relation to a contravention of those sections.
- (2) A person who—
 (a) is subject to any such liability to a company in relation to payment in respect of shares in the company, or
 (b) is subject to any such liability to a company by virtue of an undertaking given to it in, or in connection with, payment for shares in the company,
 may apply to the court to be exempted in whole or in part from the liability.
- (3) In the case of a liability within subsection (2)(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 6, 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.
- (4) In the case of a liability within subsection (2)(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—
 (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 6;
 (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.
- (5) 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—

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- (a) 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 that, where 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.
- (6) 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 6 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.

590 Penalty for contravention of this Chapter

- (1) If a company contravenes any of the provisions of this Chapter, an offence is committed by—
- (a) the company, and
 - (b) every officer of the company who is in default.
- (2) 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.

591 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 6.
- (2) This is without prejudice to section 589 (power of court to grant relief etc in respect of liabilities).

592 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.