



Companies Act 2006

2006 CHAPTER 46

PART 20

PRIVATE AND PUBLIC COMPANIES

CHAPTER 1

PROHIBITION OF PUBLIC OFFERS BY PRIVATE COMPANIES

755 Prohibition of public offers by private company

- (1) A private company limited by shares or limited by guarantee and having a share capital must not—
 - (a) offer to the public any securities of the company, or
 - (b) allot or agree to allot any securities of the company with a view to their being offered to the public.
- (2) Unless the contrary is proved, an allotment or agreement to allot securities is presumed to be made with a view to their being offered to the public if an offer of the securities (or any of them) to the public is made—
 - (a) within six months after the allotment or agreement to allot, or
 - (b) before the receipt by the company of the whole of the consideration to be received by it in respect of the securities.
- (3) A company does not contravene this section if—
 - (a) it acts in good faith in pursuance of arrangements under which it is to re-register as a public company before the securities are allotted, or
 - (b) as part of the terms of the offer it undertakes to re-register as a public company within a specified period, and that undertaking is complied with.
- (4) The specified period for the purposes of subsection (3)(b) must be a period ending not later than six months after the day on which the offer is made (or, in the case of an offer made on different days, first made).

Status: Point in time view as at 27/03/2019.

Changes to legislation: Companies Act 2006, Chapter 1 is up to date with all changes known to be in force on or before 03 September 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

(5) In this Chapter “securities” means shares or debentures.

756 Meaning of “offer to the public”

- (1) This section explains what is meant in this Chapter by an offer of securities to the public.
- (2) An offer to the public includes an offer to any section of the public, however selected.
- (3) An offer is not regarded as an offer to the public if it can properly be regarded, in all the circumstances, as—
 - (a) not being calculated to result, directly or indirectly, in securities of the company becoming available to persons other than those receiving the offer, or
 - (b) otherwise being a private concern of the person receiving it and the person making it.
- (4) An offer is to be regarded (unless the contrary is proved) as being a private concern of the person receiving it and the person making it if—
 - (a) it is made to a person already connected with the company and, where it is made on terms allowing that person to renounce his rights, the rights may only be renounced in favour of another person already connected with the company; or
 - (b) it is an offer to subscribe for securities to be held under an employees' share scheme and, where it is made on terms allowing that person to renounce his rights, the rights may only be renounced in favour of—
 - (i) another person entitled to hold securities under the scheme, or
 - (ii) a person already connected with the company.
- (5) For the purposes of this section “person already connected with the company” means—
 - (a) an existing member or employee of the company,
 - (b) a member of the family of a person who is or was a member or employee of the company,
 - (c) the widow or widower, or surviving civil partner, of a person who was a member or employee of the company,
 - (d) an existing debenture holder of the company, or
 - (e) a trustee (acting in his capacity as such) of a trust of which the principal beneficiary is a person within any of paragraphs (a) to (d).
- (6) For the purposes of subsection (5)(b) the members of a person's family are the person's spouse or civil partner and children (including step-children) and their descendants.

757 Enforcement of prohibition: order restraining proposed contravention

- (1) If it appears to the court—
 - (a) on an application under this section, or
 - (b) in proceedings under Part 30 (protection of members against unfair prejudice),
 that a company is proposing to act in contravention of section 755 (prohibition of public offers by private companies), the court shall make an order under this section.

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- (2) An order under this section is an order restraining the company from contravening that section.
- (3) An application for an order under this section may be made by—
 - (a) a member or creditor of the company, or
 - (b) the Secretary of State.

758 Enforcement of prohibition: orders available to the court after contravention

- (1) This section applies if it appears to the court—
 - (a) on an application under this section, or
 - (b) in proceedings under Part 30 (protection of members against unfair prejudice), that a company has acted in contravention of section 755 (prohibition of public offers by private companies).
- (2) The court must make an order requiring the company to re-register as a public company unless it appears to the court—
 - (a) that the company does not meet the requirements for re-registration as a public company, and
 - (b) that it is impractical or undesirable to require it to take steps to do so.
- (3) If it does not make an order for re-registration, the court may make either or both of the following—
 - (a) a remedial order (see section 759), or
 - (b) an order for the compulsory winding up of the company.
- (4) An application under this section may be made by—
 - (a) a member of the company who—
 - (i) was a member at the time the offer was made (or, if the offer was made over a period, at any time during that period), or
 - (ii) became a member as a result of the offer,
 - (b) a creditor of the company who was a creditor at the time the offer was made (or, if the offer was made over a period, at any time during that period), or
 - (c) the Secretary of State.

759 Enforcement of prohibition: remedial order

- (1) A “remedial order” is an order for the purpose of putting a person affected by anything done in contravention of section 755 (prohibition of public offers by private company) in the position he would have been in if it had not been done.
- (2) The following provisions are without prejudice to the generality of the power to make such an order.
- (3) Where a private company has—
 - (a) allotted securities pursuant to an offer to the public, or
 - (b) allotted or agreed to allot securities with a view to their being offered to the public,a remedial order may require any person knowingly concerned in the contravention of section 755 to offer to purchase any of those securities at such price and on such other terms as the court thinks fit.

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- (4) A remedial order may be made—
- (a) against any person knowingly concerned in the contravention, whether or not an officer of the company;
 - (b) notwithstanding anything in the company's constitution (which includes, for this purpose, the terms on which any securities of the company are allotted or held);
 - (c) whether or not the holder of the securities subject to the order is the person to whom the company allotted or agreed to allot them.
- (5) Where a remedial order is made against the company itself, the court may provide for the reduction of the company's capital accordingly.

760 Validity of allotment etc not affected

Nothing in this Chapter affects the validity of any allotment or sale of securities or of any agreement to allot or sell securities.

Status:

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