



Companies Act 2006

2006 CHAPTER 46

PART 17

A COMPANY'S SHARE CAPITAL

CHAPTER 6

PUBLIC COMPANIES: INDEPENDENT VALUATION OF NON-CASH CONSIDERATION

Non-cash consideration for shares

593 Public company: valuation of non-cash consideration for shares

- (1) A public company must not allot shares as fully or partly paid up (as to their nominal value or any premium on them) otherwise than in cash unless—
 - (a) the consideration for the allotment has been independently valued in accordance with the provisions of this Chapter,
 - (b) the valuer's report has been made to the company during the six months immediately preceding the allotment of the shares, and
 - (c) a copy of the report has been sent to the proposed allottee.
- (2) For this purpose the application of an amount standing to the credit of—
 - (a) any of a company's reserve accounts, or
 - (b) its profit and loss account,in paying up (to any extent) shares allotted to members of the company, or premiums on shares so allotted, does not count as consideration for the allotment.

Accordingly, subsection (1) does not apply in that case.
- (3) If a company allots shares in contravention of subsection (1) and either—
 - (a) the allottee has not received the valuer's report required to be sent to him, or

- (b) there has been some other contravention of the requirements of this section or section 596 that the allottee knew or ought to have known amounted to a contravention,

the allottee is liable to pay the company an amount equal to the aggregate of the nominal value of the shares and the whole of any premium (or, if the case so requires, so much of that aggregate as is treated as paid up by the consideration), with interest at the appropriate rate.

- (4) This section has effect subject to—
 - section 594 (exception to valuation requirement: arrangement with another company), and
 - section 595 (exception to valuation requirement: merger).

594 Exception to valuation requirement: arrangement with another company

- (1) Section 593 (valuation of non-cash consideration) does not apply to the allotment of shares by a company (“company A”) in connection with an arrangement to which this section applies.
- (2) This section applies to an arrangement for the allotment of shares in company A on terms that the whole or part of the consideration for the shares allotted is to be provided by—
 - (a) the transfer to that company, or
 - (b) the cancellation,
 of all or some of the shares, or of all or some of the shares of a particular class, in another company (“company B”).
- (3) It is immaterial whether the arrangement provides for the issue to company A of shares, or shares of any particular class, in company B.
- (4) This section applies to an arrangement only if under the arrangement it is open to all the holders of the shares in company B (or, where the arrangement applies only to shares of a particular class, to all the holders of shares of that class) to take part in the arrangement.
- (5) In determining whether that is the case, the following shall be disregarded—
 - (a) shares held by or by a nominee of company A;
 - (b) shares held by or by a nominee of a company which is—
 - (i) the holding company, or a subsidiary, of company A, or
 - (ii) a subsidiary of such a holding company;
 - (c) shares held as treasury shares by company B.
- (6) In this section—
 - (a) “arrangement” means any agreement, scheme or arrangement (including an arrangement sanctioned in accordance with—
 - (i) Part 26 (arrangements and reconstructions), or
 - (ii) section 110 of the Insolvency Act 1986 (c. 45) or Article 96 of the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)) (liquidator in winding up accepting shares as consideration for sale of company property)), and
 - (b) “company”, except in reference to company A, includes any body corporate.

595 Exception to valuation requirement: merger

- (1) Section 593 (valuation of non-cash consideration) does not apply to the allotment of shares by a company in connection with a proposed merger with another company.
- (2) A proposed merger is where one of the companies proposes to acquire all the assets and liabilities of the other in exchange for the issue of shares or other securities of that one to shareholders of the other, with or without any cash payment to shareholders.
- (3) In this section “company”, in reference to the other company, includes any body corporate.

596 Non-cash consideration for shares: requirements as to valuation and report

- (1) The provisions of sections 1150 to 1153 (general provisions as to independent valuation and report) apply to the valuation and report required by section 593 (public company: valuation of non-cash consideration for shares).
- (2) The valuer's report must state—
 - (a) the nominal value of the shares to be wholly or partly paid for by the consideration in question;
 - (b) the amount of any premium payable on the shares;
 - (c) the description of the consideration and, as respects so much of the consideration as he himself has valued, a description of that part of the consideration, the method used to value it and the date of the valuation;
 - (d) the extent to which the nominal value of the shares and any premium are to be treated as paid up—
 - (i) by the consideration;
 - (ii) in cash.
- (3) The valuer's report must contain or be accompanied by a note by him—
 - (a) in the case of a valuation made by a person other than himself, that it appeared to himself reasonable to arrange for it to be so made or to accept a valuation so made,
 - (b) whoever made the valuation, that the method of valuation was reasonable in all the circumstances,
 - (c) that it appears to the valuer that there has been no material change in the value of the consideration in question since the valuation, and
 - (d) that, on the basis of the valuation, the value of the consideration, together with any cash by which the nominal value of the shares or any premium payable on them is to be paid up, is not less than so much of the aggregate of the nominal value and the whole of any such premium as is treated as paid up by the consideration and any such cash.
- (4) Where the consideration to be valued is accepted partly in payment up of the nominal value of the shares and any premium and partly for some other consideration given by the company, section 593 and the preceding provisions of this section apply as if references to the consideration accepted by the company included the proportion of that consideration that is properly attributable to the payment up of that value and any premium.
- (5) In such a case—

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- (a) the valuer must carry out, or arrange for, such other valuations as will enable him to determine that proportion, and
- (b) his report must state what valuations have been made under this subsection and also the reason for, and method and date of, any such valuation and any other matters which may be relevant to that determination.

597 Copy of report to be delivered to registrar

- (1) A company to which a report is made under section 593 as to the value of any consideration for which, or partly for which, it proposes to allot shares must deliver a copy of the report to the registrar for registration.
- (2) The copy must be delivered at the same time that the company files the return of the allotment of those shares under section 555 (return of allotment by limited company).
- (3) If default is made in complying with subsection (1) or (2), an offence is committed by every officer of the company who is in default.
- (4) 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 and, for continued contravention, a daily default fine not exceeding one-tenth of the statutory maximum.
- (5) In the case of default in delivering to the registrar any document as required by this section, any person liable for the default may apply to the court for relief.
- (6) The court, if satisfied—
 - (a) that the omission to deliver the document was accidental or due to inadvertence, or
 - (b) that it is just and equitable to grant relief,
 may make an order extending the time for delivery of the document for such period as the court thinks proper.

Transfer of non-cash asset in initial period

598 Public company: agreement for transfer of non-cash asset in initial period

- (1) A public company formed as such must not enter into an agreement—
 - (a) with a person who is a subscriber to the company's memorandum,
 - (b) for the transfer by him to the company, or another, before the end of the company's initial period of one or more non-cash assets, and
 - (c) under which the consideration for the transfer to be given by the company is at the time of the agreement equal in value to one-tenth or more of the company's issued share capital,
 unless the conditions referred to below have been complied with.
- (2) The company's "initial period" means the period of two years beginning with the date of the company being issued with a certificate under section 761 (trading certificate).
- (3) The conditions are those specified in—
 - section 599 (requirement of independent valuation), and

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section 601 (requirement of approval by members).

- (4) This section does not apply where—
- (a) it is part of the company's ordinary business to acquire, or arrange for other persons to acquire, assets of a particular description, and
 - (b) the agreement is entered into by the company in the ordinary course of that business.
- (5) This section does not apply to an agreement entered into by the company under the supervision of the court or of an officer authorised by the court for the purpose.

599 Agreement for transfer of non-cash asset: requirement of independent valuation

- (1) The following conditions must have been complied with—
- (a) the consideration to be received by the company, and any consideration other than cash to be given by the company, must have been independently valued in accordance with the provisions of this Chapter,
 - (b) the valuer's report must have been made to the company during the six months immediately preceding the date of the agreement, and
 - (c) a copy of the report must have been sent to the other party to the proposed agreement not later than the date on which copies have to be circulated to members under section 601(3).
- (2) The reference in subsection (1)(a) to the consideration to be received by the company is to the asset to be transferred to it or, as the case may be, to the advantage to the company of the asset's transfer to another person.
- (3) The reference in subsection (1)(c) to the other party to the proposed agreement is to the person referred to in section 598(1)(a).
- If he has received a copy of the report under section 601 in his capacity as a member of the company, it is not necessary to send another copy under this section.
- (4) This section does not affect any requirement to value any consideration for purposes of section 593 (valuation of non-cash consideration for shares).

600 Agreement for transfer of non-cash asset: requirements as to valuation and report

- (1) The provisions of sections 1150 to 1153 (general provisions as to independent valuation and report) apply to the valuation and report required by section 599 (public company: transfer of non-cash asset).
- (2) The valuer's report must state—
- (a) the consideration to be received by the company, describing the asset in question (specifying the amount to be received in cash) and the consideration to be given by the company (specifying the amount to be given in cash), and
 - (b) the method and date of valuation.
- (3) The valuer's report must contain or be accompanied by a note by him—
- (a) in the case of a valuation made by a person other than himself, that it appeared to himself reasonable to arrange for it to be so made or to accept a valuation so made,

- (b) whoever made the valuation, that the method of valuation was reasonable in all the circumstances,
 - (c) that it appears to the valuer that there has been no material change in the value of the consideration in question since the valuation, and
 - (d) that, on the basis of the valuation, the value of the consideration to be received by the company is not less than the value of the consideration to be given by it.
- (4) Any reference in section 599 or this section to consideration given for the transfer of an asset includes consideration given partly for its transfer.
- (5) In such a case—
- (a) the value of any consideration partly so given is to be taken as the proportion of the consideration properly attributable to its transfer,
 - (b) the valuer must carry out or arrange for such valuations of anything else as will enable him to determine that proportion, and
 - (c) his report must state what valuations have been made for that purpose and also the reason for and method and date of any such valuation and any other matters which may be relevant to that determination.

601 Agreement for transfer of non-cash asset: requirement of approval by members

- (1) The following conditions must have been complied with—
- (a) the terms of the agreement must have been approved by an ordinary resolution of the company,
 - (b) the requirements of this section must have been complied with as respects the circulation to members of copies of the valuer's report under section 599, and
 - (c) a copy of the proposed resolution must have been sent to the other party to the proposed agreement.
- (2) The reference in subsection (1)(c) to the other party to the proposed agreement is to the person referred to in section 598(1)(a).
- (3) The requirements of this section as to circulation of copies of the valuer's report are as follows—
- (a) if the resolution is proposed as a written resolution, copies of the valuer's report must be sent or submitted to every eligible member at or before the time at which the proposed resolution is sent or submitted to him;
 - (b) if the resolution is proposed at a general meeting, copies of the valuer's report must be circulated to the members entitled to notice of the meeting not later than the date on which notice of the meeting is given.

602 Copy of resolution to be delivered to registrar

- (1) A company that has passed a resolution under section 601 with respect to the transfer of an asset must, within 15 days of doing so, deliver to the registrar a copy of the resolution together with the valuer's report required by that section.
- (2) If a company fails to comply with subsection (1), 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 on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, to a daily default fine not exceeding one-tenth of level 3 on the standard scale.

603 Adaptation of provisions in relation to company re-registering as public

The provisions of sections 598 to 602 (public companies: transfer of non-cash assets) apply with the following adaptations in relation to a company re-registered as a public company—

- (a) the reference in section 598(1)(a) to a person who is a subscriber to the company's memorandum shall be read as a reference to a person who is a member of the company on the date of re-registration;
- (b) the reference in section 598(2) to the date of the company being issued with a certificate under section 761 (trading certificate) shall be read as a reference to the date of re-registration.

604 Agreement for transfer of non-cash asset: effect of contravention

- (1) This section applies where a public company enters into an agreement in contravention of section 598 and either—
- (a) the other party to the agreement has not received the valuer's report required to be sent to him, or
 - (b) there has been some other contravention of the requirements of this Chapter that the other party to the agreement knew or ought to have known amounted to a contravention.
- (2) In those circumstances—
- (a) the company is entitled to recover from that person any consideration given by it under the agreement, or an amount equal to the value of the consideration at the time of the agreement, and
 - (b) the agreement, so far as not carried out, is void.
- (3) If the agreement is or includes an agreement for the allotment of shares in the company, then—
- (a) whether or not the agreement also contravenes section 593 (valuation of non-cash consideration for shares), this section does not apply to it in so far as it is for the allotment of shares, and
 - (b) the allottee is liable to pay the company an amount equal to the aggregate of the nominal value of the shares and the whole of any premium (or, if the case so requires, so much of that aggregate as is treated as paid up by the consideration), with interest at the appropriate rate.

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

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- (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.
 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 in respect of those shares, or
 - (b) to have an instrument of transfer of the shares executed in his favour.

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—
 - (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.

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.