
STATUTORY INSTRUMENTS

2001 No. 3649

The Financial Services and Markets Act 2000
(Consequential Amendments and Repeals) Order 2001

PART 2

AMENDMENTS TO THE COMPANIES LEGISLATION

Companies Act 1985 (c. 6)

Meaning of “offer to the public”, “banking company”, “insurance company” and “authorised insurance company”

29. After section 742 of the 1985 Act, insert—

“Meaning of “offer to the public”

742A.—(1) Any reference in Part IV (allotment of shares and debentures) or Part VII (accounts) to offering shares or debentures to the public is to be read as including a reference to offering them to any section of the public, however selected.

(2) This section does not require an offer to be treated as made to the public if it can properly be regarded, in all the circumstances—

- (a) as not being calculated to result, directly or indirectly, in the shares or debentures becoming available for subscription or purchase by persons other than those receiving the offer; or
- (b) as being a domestic concern of the persons receiving and making it.

(3) An offer of shares in or debentures of a private company (other than an offer to which subsection (5) applies) is to be regarded (unless the contrary is proved) as being a domestic concern of the persons making and receiving it if—

- (a) it is made to—
 - (i) an existing member of the company making the offer,
 - (ii) an existing employee of that company,
 - (iii) the widow or widower of a person who was a member or employee of that company,
 - (iv) a member of the family of a person who is or was a member or employee of that company, or
 - (v) an existing debenture holder; or
- (b) it is an offer to subscribe for shares or debentures to be held under an employee’s share scheme.

(4) Subsection (5) applies to an offer—

- (a) which falls within paragraph (a) or (b) of subsection (3); but
 - (b) which is made on terms which permit the person to whom it is made to renounce his right to the allotment of shares or issue of debentures.
- (5) The offer is to be regarded (unless the contrary is proved) as being a domestic concern of the persons making and receiving it if the terms are such that the right may be renounced only in favour—
- (a) of any person mentioned in subsection (3)(a); or
 - (b) in the case of an employee’s share scheme, of a person entitled to hold shares or debentures under the scheme.
- (6) For the purposes of subsection (3)(a)(iv), the members of a person’s family are—
- (a) the person’s spouse and children (including step-children) and their descendants, and
 - (b) any trustee (acting in his capacity as such) of a trust the principal beneficiary of which is the person him or herself or of any of those relatives.
- (7) Where an application has been made to the competent authority in any EEA State for the admission of any securities to official listing, then an offer of those securities for subscription or sale to a person whose ordinary business it is to buy or sell shares or debentures (whether as principal or agent) is not to be regarded as an offer to the public for the purposes of this Part.
- (8) For the purposes of subsection (7)—
- (a) “competent authority” means a competent authority appointed for the purposes of the Council Directive of 28 May 2001 on the admission of securities to official stock exchange listing and on information to be published on those securities; and
 - (b) “official listing” means official listing pursuant to that directive.

Meaning of “banking company”

- 742B.**—(1) Subject to subsection (2), “banking company” means a person who has permission under Part 4 of the Financial Services and Markets Act 2000 to accept deposits.
- (2) A banking company does not include—
- (a) a person who is not a company, and
 - (b) a person who has permission to accept deposits only for the purpose of carrying on another regulated activity in accordance with that permission.
- (3) This section must be read with—
- (a) section 22 of the Financial Services and Markets Act 2000;
 - (b) any relevant order under that section; and
 - (c) Schedule 2 to that Act.

Meaning of “insurance company” and “authorised insurance company”

- 742C.**—(1) For the purposes of this Act, “insurance company” has the meaning given in subsection (2) and “authorised insurance company” has the meaning given in subsection (4).
- (2) Subject to subsection (3), “insurance company” means a person (whether incorporated or not)—
- (a) who has permission under Part 4 of the Financial Services and Markets Act 2000 to effect or carry out contracts of insurance; or

- (b) who carries on insurance market activity; or
 - (c) who may effect or carry out contracts of insurance under which the benefits provided by that person are exclusively or primarily benefits in kind in the event of accident to or breakdown of a vehicle, and does not fall within paragraph (a).
- (3) An insurance company does not include a friendly society, within the meaning of section 116 of the Friendly Societies Act 1992.
- (4) An “authorised insurance company” means a person falling within paragraph (a) of subsection (2).
- (5) References in this section to contracts of insurance and the effecting or carrying out of such contracts must be read with -
- (a) section 22 of the Financial Services and Markets Act 2000;
 - (b) any relevant order under that section; and
 - (c) Schedule 2 to that Act.”.