



# 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

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- (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.