



# Companies Act 2006

## 2006 CHAPTER 46

### PART 20

#### PRIVATE AND PUBLIC COMPANIES

##### **Modifications etc. (not altering text)**

- C1** Pts. 1-39 modified (31.12.2020) by Regulation (EC) No. 2157/2001, Art. AAA1(3) (as inserted by [The European Public Limited-Liability Company \(Amendment etc.\) \(EU Exit\) Regulations 2018](#) (S.I. 2018/1298), regs. 1, 97 (with regs. 140-145) (as amended by [S.I. 2020/523](#), regs. 1(2), 5(a)-(f)); 2020 c. 1, Sch. 5 para. 1(1))
- C2** Pts. 1-39 (except for Pt. 7 and ss. 662-669), 45-47 extended (12.5.2011) by [The Companies Act 2006 \(Consequential Amendments and Transitional Provisions\) Order 2011](#) (S.I. 2011/1265), art. 5(1), [Sch. 1 para. 2](#)

### 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—
- offer to the public any securities of the company, or
  - 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—
- within six months after the allotment or agreement to allot, or

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- (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).
- (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).

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- (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.
- (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.

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### **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.
- (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.

## **CHAPTER 2**

### MINIMUM SHARE CAPITAL REQUIREMENT FOR PUBLIC COMPANIES

### **761 Public company: requirement as to minimum share capital**

- (1) A company that is a public company (otherwise than by virtue of re-registration as a public company) must not do business or exercise any borrowing powers unless the registrar has issued it with a certificate under this section (a “trading certificate”).
- (2) The registrar shall issue a trading certificate if, on an application made in accordance with section 762, he is satisfied that the nominal value of the company's allotted share capital is not less than the authorised minimum.
- (3) For this purpose a share allotted in pursuance of an employees' share scheme shall not be taken into account unless paid up as to—
  - (a) at least one-quarter of the nominal value of the share, and
  - (b) the whole of any premium on the share.

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- (4) A trading certificate has effect from the date on which it is issued and is conclusive evidence that the company is entitled to do business and exercise any borrowing powers.

## 762 Procedure for obtaining certificate

- (1) An application for a certificate under section 761 must—
- (a) state that the nominal value of the company's allotted share capital is not less than the authorised minimum,
  - (b) specify the amount, or estimated amount, of the company's preliminary expenses,
  - (c) specify any amount or benefit paid or given, or intended to be paid or given, to any promoter of the company, and the consideration for the payment or benefit,<sup>F1</sup>...
  - (d) be accompanied by a statement of compliance [<sup>F2</sup>and
  - (e) be accompanied by a statement of the aggregate amount paid up on the shares of the company on account of their nominal value.]
- (2) The statement of compliance is a statement that the company meets the requirements for the issue of a certificate under section 761.
- (3) The registrar may accept the statement of compliance as sufficient evidence of the matters stated in it.

### Textual Amendments

- F1** Word in s. 762(1) omitted (30.6.2016) by virtue of [Small Business, Enterprise and Employment Act 2015 \(c. 26\), ss. 98\(3\)\(a\), 164\(1\); S.I. 2016/321, reg. 6\(f\)](#)
- F2** S. 762(1)(e) and word inserted (30.6.2016) by [Small Business, Enterprise and Employment Act 2015 \(c. 26\), ss. 98\(3\)\(b\), 164\(1\); S.I. 2016/321, reg. 6\(f\)](#)

## 763 The authorised minimum

- (1) “The authorised minimum”, in relation to the nominal value of a public company's allotted share capital is—
- (a) £50,000, or
  - (b) the prescribed euro equivalent.
- (2) The Secretary of State may by order prescribe the amount in euros that is for the time being to be treated as equivalent to the sterling amount of the authorised minimum.
- (3) This power may be exercised from time to time as appears to the Secretary of State to be appropriate.
- (4) The amount prescribed shall be determined by applying an appropriate spot rate of exchange to the sterling amount and rounding to the nearest 100 euros.
- (5) An order under this section is subject to negative resolution procedure.
- (6) This section has effect subject to any exercise of the power conferred by section 764 (power to alter authorised minimum).

*Changes to legislation: There are currently no known outstanding effects for the Companies Act 2006, Part 20. (See end of Document for details)*

#### Commencement Information

- II** S. 763 wholly in force at 6.4.2008; s. 763 not in force at Royal Assent, see s. 1300; s. 763 in force for specified purposes at 20.1.2007 by S.I. 2006/3428, **art. 3(3)** (subject to **art. 5, Sch. 1** and with **arts. 6, 8, Sch. 5**); s. 763 in force at 6.4.2008 by S.I. 2007/3495, **art. 3(1)(h)** (with savings in **arts. 7, 12**, subject to transitional adaptations in **Sch. 1 para. 13** and with savings in **Sch. 4 paras. 24-29**)

### 764 Power to alter authorised minimum

- (1) The Secretary of State may by order—
  - (a) alter the sterling amount of the authorised minimum, and
  - (b) make a corresponding alteration of the prescribed euro equivalent.
- (2) The amount of the prescribed euro equivalent shall be determined by applying an appropriate spot rate of exchange to the sterling amount and rounding to the nearest 100 euros.
- (3) An order under this section that increases the authorised minimum may—
  - (a) require a public company having an allotted share capital of which the nominal value is less than the amount specified in the order to—
    - (i) increase that value to not less than that amount, or
    - (ii) re-register as a private company;
  - (b) make provision in connection with any such requirement for any of the matters for which provision is made by this Act relating to—
    - (i) a company's registration, re-registration or change of name,
    - (ii) payment for shares comprised in a company's share capital, and
    - (iii) offers to the public of shares in or debentures of a company,
 including provision as to the consequences (in criminal law or otherwise) of a failure to comply with any requirement of the order;
  - (c) provide for any provision of the order to come into force on different days for different purposes.
- (4) An order under this section is subject to affirmative resolution procedure.

#### Commencement Information

- I2** S. 764 wholly in force at 6.4.2008; s. 764 not in force at Royal Assent, see s. 1300; s. 764 in force for specified purposes at 20.1.2007 by S.I. 2006/3428, **art. 3(3)** (subject to **art. 5, Sch. 1** and with **arts. 6, 8, Sch. 5**); s. 764 in force at 6.4.2008 by S.I. 2007/3495, **art. 3(1)(h)** (with savings in **arts. 7, 12** and subject to transitional adaptations in **Sch. 1 para. 13** and with savings in **Sch. 4 paras. 24-29**)

### 765 Authorised minimum: application of initial requirement

- (1) The initial requirement for a public company to have allotted share capital of a nominal value not less than the authorised minimum, that is—
  - (a) the requirement in section 761(2) for the issue of a trading certificate, or
  - (b) the requirement in section 91(1)(a) for re-registration as a public company,

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must be met either by reference to allotted share capital denominated in sterling or by reference to allotted share capital denominated in euros (but not partly in one and partly in the other).

- (2) Whether the requirement is met is determined in the first case by reference to the sterling amount and in the second case by reference to the prescribed euro equivalent.
- (3) No account is to be taken of any allotted share capital of the company denominated in a currency other than sterling or, as the case may be, euros.
- (4) If the company could meet the requirement either by reference to share capital denominated in sterling or by reference to share capital denominated in euros, it must elect in its application for a trading certificate or, as the case may be, for re-registration as a public company which is to be the currency by reference to which the matter is determined.

**Modifications etc. (not altering text)**

- C3** S. 765 applied (6.4.2008) by 1985 c. 9, s. 3(2A) (as inserted by [The Companies Act 2006 \(Consequential Amendments etc\) Order 2008 \(S.I. 2008/948\)](#), art. 3(1), **Sch. 1 para. 95(3)** (with arts. 6, 11, 12))
- C4** S. 765 applied (6.4.2008) by [S.I.1986/1032 \(N.I. 6\)](#), art. 22(b) (as substituted by [The Companies Act 2006 \(Consequential Amendments etc\) Order 2008 \(S.I. 2008/948\)](#), art. 3(1), **Sch. 1 para. 114** (with arts. 6, 11, 12))

**Commencement Information**

- I3** S. 765 wholly in force at 6.4.2008; s. 765 not in force at Royal Assent, see s. 1300; s. 765 in force for specified purposes at 20.1.2007 by [S.I. 2006/3428](#), **art. 3(3)** (subject to [art. 5](#), [Sch. 1](#) and with [arts. 6, 8](#), [Sch. 5](#)); s. 765 in force at 6.4.2008 by [S.I. 2007/3495](#), **art. 3(1)(h)** (with savings in [arts. 7, 12](#) and subject to transitional adaptations in [Sch. 1 para. 12](#) and with savings in [Sch. 4 paras. 24-29](#))

**766 Authorised minimum: application where shares denominated in different currencies etc**

- (1) The Secretary of State may make provision by regulations as to the application of the authorised minimum in relation to a public company that—
  - [<sup>F3</sup>(a) has shares denominated—
    - (i) in more than one currency, or
    - (ii) in a currency other than sterling or euros,]
  - (b) redenominates the whole or part of its allotted share capital, or
  - (c) allots new shares.
- (2) The regulations may make provision as to the currencies, exchange rates and dates by reference to which it is to be determined whether the nominal value of the company's allotted share capital is less than the authorised minimum.
- (3) The regulations may provide that where—
  - (a) a company has redenominated the whole or part of its allotted share capital, and
  - (b) the effect of the redenomination is that the nominal value of the company's allotted share capital is less than the authorised minimum,the company must re-register as a private company.

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- (4) Regulations under subsection (3) may make provision corresponding to any provision made by sections 664 to 667 (re-registration as private company in consequence of cancellation of shares).
- (5) Any regulations under this section have effect subject to section 765 (authorised minimum: application of initial requirement).
- (6) Regulations under this section are subject to negative resolution procedure.

#### Textual Amendments

- F3** S. 766(1)(a) substituted (12.5.2011) by [The Companies Act 2006 \(Consequential Amendments and Transitional Provisions\) Order 2011 \(S.I. 2011/1265\)](#), [art. 28\(2\)](#)

#### Commencement Information

- I4** S. 766 wholly in force at 6.4.2008; s. 766 not in force at Royal Assent, see s. 1300; s. 766 in force for specified purposes at 20.1.2007 by [S.I. 2006/3428](#), [art. 3\(3\)](#) (subject to [art. 5](#), [Sch. 1](#) and with [arts. 6, 8](#), [Sch. 5](#)); s. 766 in force at 6.4.2008 by [S.I. 2007/3495](#), [art. 3\(1\)\(h\)](#) (with savings in [arts. 7, 12](#) and subject to transitional adaptations in [Sch. 1 para. 13](#) and with savings in [Sch. 4 paras. 24-29](#))

### 767 Consequences of doing business etc without a trading certificate

- (1) If a company does business or exercises any borrowing powers in contravention of section 761, 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 subsection (1) is liable—
  - (a) on conviction on indictment, to a fine;
  - (b) on summary conviction, to a fine not exceeding the statutory maximum.
- (3) A contravention of section 761 does not affect the validity of a transaction entered into by the company, but if a company—
  - (a) enters into a transaction in contravention of that section, and
  - (b) fails to comply with its obligations in connection with the transaction within 21 days from being called on to do so,
 the directors of the company are jointly and severally liable to indemnify any other party to the transaction in respect of any loss or damage suffered by him by reason of the company's failure to comply with its obligations.
- (4) The directors who are so liable are those who were directors at the time the company entered into the transaction.



**Changes to legislation:**

There are currently no known outstanding effects for the Companies Act 2006, Part 20.