

CHAPTER 2 Offers of securities to the public

Limitation on offers of securities to the public

68. (1) Subject to the provisions of this section, a company shall not—

(a) make—

(i) any invitation to the public to subscribe for; or

(ii) any offer to the public of,

any shares, debentures or other securities of the company; or

(b) allot, or agree to allot, (whether for cash or otherwise) any shares in or debentures of the company with a view to all or any of those shares or debentures being offered for sale to the public or being the subject of an invitation to the public to subscribe for them.

(2) A company shall—

(a) neither apply to have securities (or interests in them) admitted to trading or to be listed on; nor

(b) have securities (or interests in them) admitted to trading or listed on,

any market, whether a regulated market or not, in the State or elsewhere.

(3) Subsection (1) shall not apply to any of the following offers or allotments of debentures by a company (wherever they may be made)—

(a) an offer of debentures addressed solely to qualified investors;

(b) an offer of debentures addressed to fewer than 150 persons, other than qualified investors;

(c) an offer of debentures addressed to investors who acquire securities for a total consideration of at least €100,000 per investor, for each separate offer;

(d) an offer of debentures whose denomination per unit amounts to at least €100,000;

(e) an offer of debentures with a total consideration in the European Union less than €100,000, which shall be calculated over a period of 12 months;

(f) an allotment of debentures, or an agreement to make such an allotment, with a view to those debentures being the subject of any one or more of the offers referred to in paragraphs (a) to (e),

and the reference in this subsection to an offer of debentures includes an invitation to subscribe for them.

(4) Subsection (1) shall not apply to—

(a) an offer of shares by a company (of any amount or wherever it may be made), being an offer addressed to—

(i) qualified investors; or

(ii) 149 or fewer persons; or

(iii) both qualified investors and 149 or fewer other persons;

or

(b) an allotment of shares, or an agreement to make such an allotment, with a view to those shares being the subject of an offer referred to in paragraph (a),

and the reference in this subsection to an offer of shares includes an invitation to subscribe for them.

(5) Subsection (1) shall not apply to an offer by a company of those classes of instruments which are normally dealt in on the money market (such as treasury bills, certificates of deposit and commercial papers) having a maturity of less than 12 months, and the reference in this subsection to an offer of instruments includes an invitation to subscribe for them.

(6) A word or expression that is used in this section and is also used in the Prospectus (Directive 2003/71/EC) Regulations 2005) shall have in this section the same meaning as it has in those Regulations.

(7) For the purposes of subsection (6), the Regulations referred to in that subsection shall have effect as if Regulation 8 were omitted therefrom.

(8) Nothing in this section shall affect the validity of any allotment or sale of securities or of any agreement to allot or sell securities.

(9) If a company contravenes subsection (1) or (2), the company and any officer of it who is in default shall be guilty of a category 2 offence.