

Relief

1036. (1) Where any person is liable to a PLC under section 1025, 1027, 1028, 1029 or 1034 in relation to payment in respect of any shares in the PLC or is liable by virtue of any undertaking given to the PLC in, or in connection with, payment for any such shares, the person so liable may make an application to the court under this subsection to be exempted in whole or in part from that liability.

(2) Where the liability mentioned in subsection (1) arises under any of the foregoing sections in relation to payment in respect of any shares, the court may, on an application under that subsection, exempt the applicant from that liability only—

(a) if and to the extent that it appears to the court just and equitable to do so having regard to the following, namely:

(i) whether the applicant has paid, or is liable to pay, any amount in respect of any other liability arising in relation to those shares under any of the foregoing sections or of any liability arising by virtue of any undertaking given in or in connection with payment for those shares;

(ii) whether any person other than the applicant has paid or is likely to pay (whether in pursuance of an order of the court or otherwise) any such amount; and

(iii) whether the applicant or any other person has performed, in whole or in part, or is likely so to perform any such undertaking or has done or is likely to do any other thing in payment or part payment in respect of those shares;

(b) if and to the extent that it appears to the court just and equitable to do so in respect of any interest which he or she is liable to pay to the PLC under any of the foregoing sections.

(3) Where the liability mentioned in subsection (1) arises by virtue of an undertaking given to the PLC in or in connection with, payment for any shares in the PLC, the court may, on an application under that subsection, exempt the applicant from that liability only if and to the extent that it appears to the court just and equitable to do so having regard to the following, namely:

(a) whether the applicant has paid or is liable to pay any amount in respect of any liability arising in relation to those shares under section 1025, 1027, 1028, 1029 or 1034; and

(b) whether any person other than the applicant has paid or is likely to pay (whether in pursuance of an order of the court or otherwise) any such amount.

(4) In determining in pursuance of an application under subsection (1) whether it should exempt the applicant in whole or in part from any liability, the court shall have regard to the following overriding principles, namely:

(a) that a PLC which 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; and

(b) subject to paragraph (a), that where such a PLC would, if the court did not grant that exemption, have more than one remedy against a particular person, it should be for the PLC to decide which remedy it should remain entitled to pursue.

(5) Where a person brings any proceedings against another (the “contributor”) for a contribution in respect of any liability to a company arising under any of sections 1025 to 1029 and 1034 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 the court, having regard to the respective culpability in respect of the liability to the PLC of the contributor and the person bringing the proceedings, that it is just and equitable to do so—

(a) exempt the contributor in whole or in part from his or her liability to make such a contribution, or

(b) order the contributor to make a larger contribution than, but for this subsection, he or she would be liable to make.

(6) Where a person is liable to a PLC by virtue of subsection (7)(a) of section 1034 the court may, on an application under this subsection, exempt that person in whole or in part from that liability if and to the extent that it appears to the court just and equitable to do so having regard to any benefit accruing to the PLC by virtue of anything done by that person towards the carrying out of the agreement mentioned in that subsection (7)(a).