

Duty of director to disclose to company payments to be made to him or her in connection with transfer of shares in company

253. (1) The following duty arises on the part of a director where, in connection with the transfer to any persons of all or any of the shares in a company being a transfer resulting from:

(a) an offer made to the general body of shareholders, or

(b) an offer made by or on behalf of some other body corporate with a view to the company becoming its subsidiary or a subsidiary of its holding company, or

(c) an offer made by or on behalf of an individual with a view to his or her obtaining the right to exercise or control the exercise of not less than one-third of the voting power at any general meeting of the company, or

(d) any other offer which is conditional on acceptance to a given extent,

a payment is to be made to that director of the company by way of compensation for loss of office or as a consideration for or in connection with his or her retirement from office.

(2) That duty on the part of that director is to take all reasonable steps to secure that particulars of the proposed payment (including the amount of it) are included in or sent with any notice of the offer made for their shares which is given to any shareholders.

(3) Without prejudice to the exceptions provided for by section 254 (5), a payment to be made, or that is made, bona fide in discharge of an existing legal obligation does not fall within this section.

(4) If—

(a) any such director fails to take reasonable steps as mentioned in subsection (2), or

(b) any person who has been properly required by any such director to include the particulars specified in that subsection in, or send them with, any such notice so mentioned fails to do so,

he or she shall be guilty of a category 3 offence.

(5) Unless—

(a) the requirements of subsections (1) and (2) are complied with in relation to any such payment as is mentioned in subsection (1), and

(b) the making of the proposed payment is, before the transfer of any shares in pursuance of the offer, approved by a meeting summoned for the purpose of the holders of the shares to which the offer relates and of

other holders of shares of the same class as any of those shares,

any sum received by the director on account of the payment shall be deemed to have been received by him or her in trust for any persons who have sold their shares as a result of the offer made and the expenses incurred by him or her in distributing that sum amongst those persons shall be borne by him or her and not retained out of that sum.

(6) Where the shareholders referred to in paragraph (b) of subsection (5) are not all the members of the company and no provision is made by the constitution for summoning or regulating such a meeting as is mentioned in that paragraph, the provisions of—

(a) this Part and the rest of Parts 1 to 14, and

(b) the company's constitution,

relating to general meetings of the company shall, for that purpose, apply to the meeting either without modification or with such modifications as the Director of Corporate Enforcement, on the application of any person concerned, may direct for the purpose of adapting them to the circumstances of the meeting.

(7) If at a meeting summoned for the purpose of approving any payment as required by paragraph (b) of subsection (5), a quorum is not present and after the meeting has been adjourned to a later date a quorum is again not present, the payment shall be deemed for the purposes of that subsection to have been approved.