

Supplementary provisions in relation to sections 457 and 458 (including provision for applications to court)

459. (1) Subject to subsections (3) and (4), a call notice and an information notice shall—

(a) be signed by or on behalf of the offeror,

(b) be given to the shareholder—

(i) by delivering it to the shareholder, or

(ii) by leaving it at the address of the shareholder as entered in the register of members of the offeree company; or

(iii) by sending it by post in a prepaid letter—

(I) to the address of the shareholder as entered in the foregoing register, or

(II) to the address, if any, within the State supplied by the shareholder in writing to the offeree company for the giving of notices to him or her;

or

(iv) if the conditions specified in subsection (2) are satisfied, by electronic means.

(2) The conditions referred to in subsection (1)(b)(iv) are—

(a) the shareholder has consented in writing to the offeror's using electronic means to give notices in relation to him or her,

(b) at the time the electronic means are used to give the notice or notices in relation to the shareholder, no notice in writing has been received by the offeror from the shareholder stating he or she has withdrawn the consent referred to in paragraph (a), and

(c) the particular means used to give the notice or notices electronically are those that the shareholder has consented to.

(3) Where there are several like call notices or information notices given, one or more of which has been signed by or on behalf of the offeror (being a body corporate), the call notices or the information notices not so signed shall, for the purposes of subsection (1)(a), be deemed to be so signed if such unsigned call or information notices state the name of the director who has so signed at least one of those call or, as the case may be, information notices.

(4) Call notices and information notices shall be deemed to be correctly given for the purposes of

subsection (1)(b)—

(a) to the joint holders of a share, by giving the notice to the joint holder first named in the register of members in respect of the share,

(b) to the persons entitled to a share in consequence of the death or bankruptcy of a shareholder—

(i) by delivering it to the persons claiming to be so entitled, or

(ii) by leaving it at the address supplied to the offeree company by the persons claiming to be so entitled, or

(iii) by sending it by post in a prepaid letter to the persons claiming to be so entitled by name or by the title of representatives of the deceased or the assignee in bankruptcy or by any like description at the address supplied to the offeree company by the persons claiming to be so entitled, or

(iv) where such persons have not notified the company in writing of such death or bankruptcy—

(I) by leaving it at the address of the shareholder as entered in the register of members of the offeree company, or

(II) by sending it by post in a prepaid letter to—

(A) the address of the shareholder as entered in the foregoing register, or

(B) the address, if any, within the State supplied in writing by the shareholder to the offeree company for the giving of notices to him or her,

or

(c) to shareholders with addresses entered in the register of members of the offeree company or who have supplied in writing to the offeree company addresses for the giving of notices to them, being (in either case) addresses which are in jurisdictions outside the State whose laws regulate the communication into those jurisdictions of schemes, contracts or offers to which this Chapter applies, by advertisement published in *Iris Oifigiúil*.

(5) A dissenting shareholder may—

(a) following receipt of a call notice, apply to the court for an order permitting the shareholder to retain his or her shares or varying the terms of the scheme, contract or offer as they apply to that shareholder, or

(b) in a case where the offeror is bound to acquire his or her shares by virtue of section 457 (7)(a), apply to the court for an order varying the terms of the scheme, contract or offer as they apply to that dissenting shareholder,

and the court may, on such an application, make such order as it thinks fit (including one providing for a variation such as to require payment to the dissenting shareholder of a cash consideration).

(6) Where an offeror has become bound to acquire the shares of dissenting shareholders, the offeror shall, within 30 days after the date on which the offeror becomes so bound or, if an application to the court by a dissenting shareholder is then pending, as soon as may be after that application is disposed of—

(a) deliver to the offeree company—

(i) a copy of the form of any call notice or information notice given,

(ii) a list of the persons served with any call notice or information notice and the number of shares affected held by them,

(iii) an instrument of transfer of the shares of the dissenting shareholders executed—

(I) on behalf of the dissenting shareholders as transferor by any person appointed by the offeror, and

(II) by the transferee (being either the offeror or a subsidiary of the offeror or a nominee of the offeror or of such a subsidiary),

(b) pay to or vest in the offeree company the amount or other consideration representing the price payable by the offeror for the shares, the beneficial ownership of which by virtue of this Chapter the offeror is entitled to acquire.

(7) Where an offeror has complied with subsection (6), the offeree company shall—

(a) thereupon register as the holder of those shares the person who executed such instrument as the transferee,

(b) pay any sums received by the offeree company under this section into a separate bank account and, for a period of 7 years after the date of such receipt, hold any such sums and any other consideration so received on trust for the several persons entitled to the shares in respect of which those sums or other consideration were respectively received,

(c) after the expiry of the foregoing period of 7 years, transfer any money standing to the credit of that bank account and any shares, other securities or other property vested in it as consideration, together with the names of the persons believed by the company to be entitled thereto to the Minister for Public Expenditure and Reform, who shall indemnify the company in respect of such sums, shares, securities or property and any claim which may be made therefor by the persons entitled thereto,

(d) for as long as shares in the offeror are vested in the offeree company (where shares in the offeror have been issued as all or part of the consideration) not be entitled to exercise any right of voting conferred by those shares except by and in accordance with instructions given by the shareholder in respect of whom those shares were so issued or his or her successor-in-title.

(8) Where the relevant scheme, contract or offer becomes binding on or is approved or accepted by a person in respect of a part only of the shares held by him or her, he or she shall be treated as an assenting shareholder as regards that part of his or her holding and as a dissenting shareholder as regards the remainder of his or her holding.