



Companies Act 1985

1985 CHAPTER 6

PART IV

ALLOTMENT OF SHARES AND DEBENTURES

General provisions as to allotment

80 Authority of company required for certain allotments

- (1) The directors of a company shall not exercise any power of the company to allot relevant securities, unless they are, in accordance with this section, authorised to do so by—
- (a) the company in general meeting; or
 - (b) the company's articles.

- (2) In this section "relevant securities" means—

- (a) shares in the company other than shares shown in the memorandum to have been taken by the subscribers to it or shares allotted in pursuance of an employees' share scheme, and
- (b) any right to subscribe for, or to convert any security into, shares in the company (other than shares so allotted);

and a reference to the allotment of relevant securities includes the grant of such a right but (subject to subsection (6) below), not the allotment of shares pursuant to such a right.

- (3) Authority under this section may be given for a particular exercise of the power or for its exercise generally, and may be unconditional or subject to conditions.
- (4) The authority must state the maximum amount of relevant securities that may be allotted under it and the date on which it will expire, which must be not more than 5 years from whichever is relevant of the following dates—
- (a) in the case of an authority contained in the company's articles at the time of its original incorporation, the date of that incorporation ; and

Status: This is the original version (as it was originally enacted).

- (b) in any other case, the date on which the resolution is passed by virtue of which the authority is given;

but such an authority (including an authority contained in the articles) may be previously revoked or varied by the company in general meeting.
- (5) The authority may be renewed or further renewed by the company in general meeting for a further period not exceeding 5 years; but the resolution must state (or restate) the amount of relevant securities which may be allotted under the authority or, as the case may be, the amount remaining to be allotted under it, and must specify the date on which the renewed authority will expire.
- (6) In relation to authority under this section for the grant of such rights as are mentioned in subsection (2)(b), the reference in subsection (4) (as also the corresponding reference in subsection (5)) to the maximum amount of relevant securities that may be allotted under the authority is to the maximum amount of shares which may be allotted pursuant to the rights.
- (7) The directors may allot relevant securities, notwithstanding that authority under this section has expired, if they are allotted in pursuance of an offer or agreement made by the company before the authority expired and the authority allowed it to make an offer or agreement which would or might require relevant securities to be allotted after the authority expired.
- (8) A resolution of a company to give, vary, revoke or renew such an authority may, notwithstanding that it alters the company's articles, be an ordinary resolution; but it is in any case subject to section 380 of this Act (copy to be forwarded to registrar within 15 days).
- (9) A director who knowingly and wilfully contravenes, or permits or authorises a contravention of, this section is liable to a fine.
- (10) Nothing in this section affects the validity of any allotment.
- (11) This section does not apply to any allotment of relevant securities by a company, other than a public company registered as such on its original incorporation, if it is made in pursuance of an offer or agreement made before the earlier of the following two dates—
 - (a) the date of the holding of the first general meeting of the company after its registration or re-registration as a public company, and
 - (b) 22nd June 1982;

but any resolution to give, vary or revoke an authority for the purposes of section 14 of the Companies Act 1980 or this section has effect for those purposes if passed at any time after the end of April 1980.

81 Restriction on public offers by private company

- (1) A private limited company (other than a company limited by guarantee and not having a share capital) commits an offence if it—
 - (a) offers to the public (whether for cash or otherwise) any shares in or debentures of the company; or
 - (b) allots or agrees 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 (within the meaning given to that expression by sections 58 to 60).

- (2) A company guilty of an offence under this section, and any officer of it who is in default, is liable to a fine.
- (3) Nothing in this section affects the validity of any allotment or sale of shares or debentures, or of any agreement to allot or sell shares or debentures.

82 Application for, and allotment of, shares and debentures

- (1) No allotment shall be made of a company's shares or debentures in pursuance of a prospectus issued generally, and no proceedings shall be taken on applications made in pursuance of a prospectus so issued, until the beginning of the third day after that on which the prospectus is first so issued or such later time (if any) as may be specified in the prospectus.
- (2) The beginning of that third day, or that later time, is " the time of the opening of the subscription lists ".
- (3) In subsection (1), the reference to the day on which the prospectus is first issued generally is to the day when it is first so issued as a newspaper advertisement; and if it is not so issued as a newspaper advertisement before the third day after that on which it is first so issued in any other manner, the reference is to the day on which it is first so issued in any manner.
- (4) In reckoning for this purpose the third day after another day—
 - (a) any intervening day which is a Saturday or Sunday, or is a bank holiday in any part of Great Britain, is to be disregarded; and
 - (b) if the third day (as so reckoned) is itself a Saturday or Sunday, or a bank holiday, there is to be substituted the first day after that which is none of them.
- (5) The validity of an allotment is not affected by any contravention of subsections (1) to (4); but in the event of contravention, the company and every officer of it who is in default is liable to a fine.
- (6) As applying to a prospectus offering shares or debentures for sale, the above provisions are modified as follows—
 - (a) for references to allotment, substitute references to sale; and
 - (b) for the reference to the company and every officer of it who is in default, substitute a reference to any person by or through whom the offer is made and who knowingly and wilfully authorises or permits the contravention.
- (7) An application for shares in or debentures of a company which is made in pursuance of a prospectus issued generally is not revocable until after the expiration of the third day after the time of the opening of the subscription lists, or the giving before the expiration of that day of the appropriate public notice ; and that notice is one given by some person responsible under sections 67 to 69 for the prospectus and having the effect under those sections of excluding or limiting the responsibility of the giver.

83 No allotment unless minimum subscription received

- (1) No allotment shall be made of any share capital of a company offered to the public for subscription unless—
 - (a) there has been subscribed the amount stated in the prospectus as the minimum amount which, in the opinion of the directors, must be raised by the issue

Status: This is the original version (as it was originally enacted).

of share capital in order to provide for the matters specified in paragraph 2 of Schedule 3 (preliminary expenses, purchase of property, working capital, etc.); and

- (b) the sum payable on application for the amount so stated has been paid to and received by the company.
- (2) For purposes of subsection (1)(b), a sum is deemed paid to the company, and received by it, if a cheque for that sum has been received in good faith by the company and the directors have no reason for suspecting that the cheque will not be paid.
 - (3) The amount so stated in the prospectus is to be reckoned exclusively of any amount payable otherwise than in cash and is known as "the minimum subscription".
 - (4) If the above conditions have not been complied with on the expiration of 40 days after the first issue of the prospectus, all money received from applicants for shares shall be forthwith repaid to them without interest.
 - (5) If any of the money is not repaid within 48 days after the issue of the prospectus, the directors of the company are jointly and severally liable to repay it with interest at the rate of 5 per cent, per annum from the expiration of the 48th day; except that a director is not so liable if he proves that the default in the repayment of the money was not due to any misconduct or negligence on his part.
 - (6) Any condition requiring or binding an applicant for shares to waive compliance with any requirement of this section is void.
 - (7) This section does not apply to an allotment of shares subsequent to the first allotment of shares offered to the public for subscription.

84 Allotment where issue not fully subscribed

- (1) No allotment shall be made of any share capital of a public company offered for subscription unless—
 - (a) that capital is subscribed for in full; or
 - (b) the offer states that, even if the capital is not subscribed for in full, the amount of that capital subscribed for may be allotted in any event or in the event of the conditions specified in the offer being satisfied;

and, where conditions are so specified, no allotment of the capital shall be made by virtue of paragraph (b) unless those conditions are satisfied.

This is without prejudice to section 83.

- (2) If shares are prohibited from being allotted by subsection (1) and 40 days have elapsed after the first issue of the prospectus, all money received from applicants for shares shall be forthwith repaid to them without interest.
- (3) If any of the money is not repaid within 48 days after the issue of the prospectus, the directors of the company are jointly and severally liable to repay it with interest at the rate of 5 per cent, per annum from the expiration of the 48th day; except that a director is not so liable if he proves that the default in repayment was not due to any misconduct or negligence on his part.
- (4) This section applies in the case of shares offered as wholly or partly payable otherwise than in cash as it applies in the case of shares offered for subscription (the word "subscribed" in subsection (1) being construed accordingly).

- (5) In subsections (2) and (3) as they apply to the case of shares offered as wholly or partly payable otherwise than in cash, references to the repayment of money received from applicants for shares include—
- (a) the return of any other consideration so received (including, if the case so requires, the release of the applicant from any undertaking), or
 - (b) if it is not reasonably practicable to return the consideration, the payment of money equal to its value at the time it was so received,
- and references to interest apply accordingly.
- (6) Any condition requiring or binding an applicant for shares to waive compliance with any requirement of this section is void.

85 Effect of irregular allotment

- (1) An allotment made by a company to an applicant in contravention of section 83 or 84 is voidable at the instance of the applicant within one month after the date of the allotment, and not later, and is so voidable notwithstanding that the company is in the course of being wound up.
- (2) If a director of a company knowingly contravenes, or permits or authorises the contravention of, any provision of either of those sections with respect to allotment, he is liable to compensate the company and the allottee respectively for any loss, damages or costs which the company or the allottee may have sustained or incurred by the contravention.
- (3) But proceedings to recover any such loss, damages or costs shall not be commenced after the expiration of 2 years from the date of the allotment

86 Allotment of shares, etc. to be dealt in on stock exchange

- (1) The following applies where a prospectus, whether issued generally or not states that application has been or will be made for permission for the shares or debentures offered by it to be listed on any stock exchange.
- (2) An allotment made on an application in pursuance of the prospectus is, whenever made, void if the permission has not been applied for before the third day after the first issue of the prospectus or if the permission has been refused before the expiration of 3 weeks from the date of the closing of the subscription lists or such longer period (not exceeding 6 weeks) as may, within those 3 weeks, be notified to the applicant for permission by or on behalf of the stock exchange.
- (3) In reckoning for this purpose the third day after another day—
- (a) any intervening day which is a Saturday or Sunday, or is a bank holiday in any part of Great Britain, is to be disregarded; and
 - (b) if the third day (as so reckoned) is itself a Saturday or Sunday, or a bank holiday, there is to be substituted the first day after that which is none of them.
- (4) Where permission has not been applied for as above, or has been refused as above, the company shall forthwith repay (without interest) all money received from applicants in pursuance of the prospectus.
- (5) If any of the money is not repaid within 8 days after the company becomes liable to repay it, the directors of the company are jointly and severally liable to repay the

Status: This is the original version (as it was originally enacted).

money with interest at the rate of 5 per cent, per annum from the expiration of the 8th day, except that a director is not liable if he proves that the default in the repayment of the money was not due to any misconduct or negligence on his part

- (6) All money received from applicants in pursuance of the prospectus shall be kept in a separate bank account so long as the company may become liable to repay it under subsection (4); and if default is made in complying with this subsection, the company and every officer of it who is in default is liable to a fine.
- (7) Any condition requiring or binding an applicant for shares or debentures to waive compliance with any requirement of this section is void.
- (8) For purposes of this section, permission is not deemed to be refused if it is intimated that the application for it though not at present granted, will be given further consideration.
- (9) This section has effect in relation to shares or debentures agreed to be taken by a person underwriting an offer of them by a prospectus as if he had applied for them in pursuance of the prospectus.

87 Operation of s. 86 where prospectus offers shares for sale

- (1) The following has effect as regards the operation of section 86 in relation to a prospectus offering shares for sale.
- (2) Subsections (1) and (2) of that section apply, but with the substitution for the reference in subsection (2) to allotment of a reference to sale.
- (3) Subsections (4) and (5) of that section do not apply; but—
 - (a) if the permission referred to in section 86(2) has not been applied for as there mentioned, or has been refused as there mentioned, the offeror of the shares shall forthwith repay (without interest) all money received from applicants in pursuance of the prospectus, and
 - (b) if any such money is not repaid within 8 days after the offeror becomes liable to repay it he becomes liable to pay interest on the money due, at the rate of 5 per cent, per annum from the end of the 8th day.
- (4) Subsections (6) to (9) apply, except that in subsection (6)—
 - (a) for the first reference to the company there is substituted a reference to the offeror, and
 - (b) for the reference to the company and every officer of the company who is in default there is substituted a reference to any person by or through whom the offer is made and who knowingly and wilfully authorises or permits the default.

88 Return as to allotments, etc.

- (1) This section applies to a company limited by shares and to a company limited by guarantee and having a share capital.
- (2) When such a company makes an allotment of its shares, the company shall within one month thereafter deliver to the registrar of companies for registration—
 - (a) a return of the allotments (in the prescribed form) stating the number and nominal amount of the shares comprised in the allotment, the names and

Status: This is the original version (as it was originally enacted).

addresses of the allottees, and the amount (if any) paid or due and payable on each share, whether on account of the nominal value of the share or by way of premium ; and

- (b) in the case of shares allotted as fully or partly paid up otherwise than in cash—
 - (i) a contract in writing constituting the title of the allottee to the allotment together with any contract of sale, or for services or other consideration in respect of which that allotment was made (such contracts being duly stamped), and
 - (ii) a return stating the number and nominal amount of shares so allotted, the extent to which they are to be treated as paid up, and the consideration for which they have been allotted.
- (3) Where such a contract as above mentioned is not reduced to writing, the company shall within one month after the allotment deliver to the registrar of companies for registration the prescribed particulars of the contract stamped with the same stamp duty as would have been payable if the contract had been reduced to writing.
- (4) Those particulars are deemed an instrument within the meaning of the Stamp Act 1891; and the registrar may, as a condition of filing the particulars, require that the duty payable on them be adjudicated under section 12 of that Act.
- (5) If default is made in complying with this section, every officer of the company who is in default is liable to a fine and, for continued contravention, to a daily default fine, but subject as follows.
- (6) In the case of default in delivering to the registrar within one month after the allotment any document required by this section to be delivered, the company, or any officer liable for the default, may apply to the court for relief; and the court, if satisfied that the omission to deliver the document was accidental or due to inadvertence, or that it is just and equitable to grant relief, may make an order extending the time for the delivery of the document for such period as the court thinks proper.