
STATUTORY INSTRUMENTS

1986 No. 1032

The Companies (Northern Ireland) Order 1986

PART V

ALLOTMENT OF SHARES AND DEBENTURES

General provisions as to allotment

Authority of company required for certain allotments

90.—(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 Article^{[F1} or Article 90A], authorised to do so by—

- (a) the company in general meeting; or
- (b) the company's articles.

(2) In this Article “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 paragraph (6)) not the allotment of shares pursuant to such a right.

(3) Authority under this Article 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
- (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 company's 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 an authority under this Article for the grant of such rights as are mentioned in paragraph (2)(b), the reference in paragraph (4) (as also the corresponding reference in paragraph (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 any authority under this Article 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; [^{F2}but in any case Chapter 3 of Part 3 of the Companies Act 2006 (resolutions affecting a company's constitution) applies to it.]

(9) A director who knowingly and wilfully contravenes, or permits or authorises a contravention of, this Article is liable to a fine.

(10) Nothing in this Article affects the validity of any allotment.

(11) This Article 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) 1st January 1985;

but any resolution to give, vary or revoke an authority for the purposes of Article 16 of the Order of 1981 or this Article has effect for those purposes if passed at any time on or after 10th June 1981.

Annotations:

F1 1990 NI 10

F2 Art. 90(8): word beginning "but it is in any case subject to Article 388" to the end omitted and substituted (1.10.2007) by virtue of [Companies Act 2006 \(Commencement No. 3, Consequential Amendments, Transitional Provisions and Savings\) Order 2007 \(S.I. 2007/2194\)](#), arts. 1(3), 10(1), [Sch. 4 para. 17\(3\)](#) (with art. 12)

[^{F3}Election by private company as to duration of authority

[^{F3}90A.—(1) A private company may elect (by elective resolution in accordance with Article 387A) that the provisions of this Article shall apply, instead of the provisions of Article 90(4) and (5), in relation to the giving or renewal, after the election, of an authority under that Article.

(2) The authority must state the maximum amount of relevant securities that may be allotted under it and may be given—

- (a) for an indefinite period, or
- (b) for a fixed period, in which case it must state the date on which it will expire.

(3) In either case an authority (including an authority contained in the articles) may be revoked or varied by the company in general meeting.

(4) An authority given for a fixed period may be renewed or further renewed by the company in general meeting.

(5) A resolution renewing an authority—

- (a) must state, or re-state, 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
- (b) must state whether the authority is renewed for an indefinite period or for a fixed period, in which case it must state the date on which the renewed authority will expire.

(6) The references in this Article to the maximum amount of relevant securities that may be allotted shall be construed in accordance with Article 90(6).

(7) If an election under this Article ceases to have effect, an authority then in force which was given for an indefinite period or for a fixed period of more than five years—

- (a) if given five years or more before the election ceases to have effect, shall expire forthwith, and
- (b) otherwise, shall have effect as if it had been given for a fixed period of five years.]]

Annotations:

F3 [1990 NI 10](#)

Restriction on public offers by private company

91. ^{F4}

Annotations:

F4 [Art. 91](#) repealed (6.4.2008) by [Companies Act 2006 \(c. 46\)](#), ss. 1284(2), 1295, 1300(2), [Sch. 16](#); S.I. 2007/3495, [art. 8\(a\)](#), Sch. 2 Pt. 2 (with arts. 7, 12, Sch. 4 para. 24(2))

^{F5}***Application for, and allotment of, shares and debentures***

92.—(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 paragraph (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 which is a bank holiday, 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 paragraphs (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, paragraphs (1) to (5) 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

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public notice; and that notice is one given by some person responsible under Articles 77 to 79 for the prospectus and having the effect under those Articles of excluding or limiting the responsibility of the giver.

Annotations:

F5 prosp. in part rep. by [1986 c. 60](#)

^{F6}**No allotment unless minimum subscription received**

93.—(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 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 the purposes of paragraph (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 Article is void.

(7) This Article does not apply to an allotment of shares subsequent to the first allotment of shares offered to the public for subscription.

Annotations:

F6 prosp. in part rep. by [1986 c. 60](#)

Allotment where issue not fully subscribed

94.—(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 subparagraph (b) unless those conditions are satisfied.

^{F7}This is without prejudice to Article 93.

(2) If shares are prohibited from being allotted by paragraph (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 Article 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 paragraph (1) being construed accordingly).

(5) In paragraphs (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 Article is void.

Annotations:

F7 prosp. in part rep. by 1986 c. 60

Effect of irregular allotment

95.—(1) An allotment made by a company to an applicant in contravention of Article^{F8} 93 or 94 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 Articles 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.

Annotations:

F8 prosp. in part rep. by 1986 c. 60

^{F9}Allotment of shares, etc. to be listed on a stock exchange

96.—(1) This Article 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

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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 which is a bank holiday, 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 mentioned in paragraph (2), or has been refused as so mentioned, 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 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 paragraph (4); and if default is made in complying with this paragraph, 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 Article is void.

(8) For the purposes of this Article, 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 Article 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.

Annotations:

F9 prosp. in part rep. by [1986 c. 60](#)

F10 Operation of Article 96 where prospectus offers shares for sale

97.—(1) This Article has effect as regards the operation of Article 96 in relation to a prospectus offering shares for sale.

(2) Paragraphs (1) and (2) of that Article apply, but with the substitution for the reference in paragraph (2) to allotment of a reference to sale.

- (3) Paragraphs (4) and (5) of that Article do not apply; but—
- (a) if the permission referred to in paragraph (2) of that Article 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 has not been 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) Paragraphs (6) to (9) of that Article apply, except that in paragraph (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.

Annotations:

F10 prosp. in part rep. by [1986 c. 60](#)

Return as to allotments, etc.

98.—(1) This Article 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 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 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 mentioned in paragraph (2) is not reduced to writing, the company shall within one month after the allotment deliver to the registrar for registration the prescribed particulars of the contract^{F11}. . . .

Para.(4) rep. by SI 2005/1634

(5) If default is made in complying with this Article, 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 Article 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.

Annotations:

F11 SI 2005/1634

Pre-emption rights

Offers to shareholders to be on pre-emptive basis

99.—(1) Subject to the provisions of this Article and Articles 100 to 106, a company proposing to allot equity securities (as defined in Article 104)—

- (a) shall not allot any of them on any terms to a person unless it has made an offer to each person who holds relevant shares or relevant employee shares to allot to him on the same

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or more favourable terms a proportion of those securities which is as nearly as practicable equal to the proportion in nominal value held by him of the aggregate of relevant shares and relevant employee shares, and

- (b) shall not allot any of those securities to a person unless the period during which any such offer may be accepted has expired or the company has received notice of the acceptance or refusal of every offer so made.

(2) Paragraph (3) applies to any provision of a company's memorandum or articles which requires the company, when proposing to allot equity securities consisting of relevant shares of any particular class, not to allot those securities on any terms unless it has complied with the condition that it makes such an offer as is described in paragraph (1) to each person who holds relevant shares or relevant employee shares of that class.

(3) If in accordance with a provision to which this paragraph applies—

(a) a company makes an offer to allot securities to such a holder, and

(b) he or anyone in whose favour he has renounced his right to their allotment accepts the offer, paragraph (1) does not apply to the allotment of those securities, and the company may allot them accordingly; but this is without prejudice to the application of paragraph (1) in any other case.

(4) Paragraph (1) does not apply to a particular allotment of equity securities if these are, or are to be, wholly or partly paid up otherwise than in cash; and securities which a company has offered to allot to a holder of relevant shares or relevant employee shares may be allotted to him, or anyone in whose favour he has renounced his right to their allotment, without contravening paragraph (1)(b).

(5) Paragraph (1) does not apply to the allotment of securities which would, apart from a renunciation or assignment of the right to their allotment, be held under an employees' share scheme.

[^{F12}(6) Where a company holds relevant shares as treasury shares—

(a) for the purposes of paragraphs (1) and (2), the company is not a “person who holds relevant shares”; and

(b) for the purposes of paragraph (1), the shares held as treasury shares do not form part of “the aggregate of relevant shares and relevant employee shares”.]

Annotations:

F12 SR 2004/275

Communication of pre-emption offers to shareholders

100.—(1) This Article has effect as to the manner in which offers required by Article 99(1), or by a provision to which Article 99(3) applies, are to be made to holders of a company's shares.

(2) Subject to paragraphs (3) to (7), an offer shall be in writing and shall be made to a holder of shares either personally or by sending it by post (that is to say, prepaying and posting a letter containing the offer) to him or to his registered address or, if he has no registered address in the United Kingdom, to the address in the United Kingdom supplied by him to the company for the giving of notice to him.

If sent by post, the offer is deemed to be made at the time at which the letter would be delivered in the ordinary course of post.

(3) Where shares are held by 2 or more persons jointly, the offer may be made to the joint holder first named in the register of members in respect of the shares.

(4) In the case of a holder's death or bankruptcy, the offer may be made—

(a) by sending it by post in a prepaid letter addressed to the persons claiming to be entitled to the shares in consequence of the death or bankruptcy by name, or by the title of

representatives of the deceased, or assignee in bankruptcy, or by any like description, at the address in the United Kingdom supplied for the purpose by those so claiming, or

- (b) until such an address has been so supplied, by giving the notice in any manner in which it might have been given if the death or bankruptcy had not occurred.

(5) If the holder—

- (a) has no registered address in the United Kingdom and has not given to the company an address in the United Kingdom for the service of notices on him, or

- (b) is the holder of a share warrant,

the offer may be made by causing it, or a notice specifying where a copy of it can be obtained or inspected, to be published in the Belfast Gazette.

(6) The offer must state a period of not less than 21 days during which it may be accepted; and the offer shall not be withdrawn before the end of that period.

(7) This Article does not invalidate a provision to which Article 99(3) applies by reason that that provision requires or authorises an offer under it to be made in contravention of any of paragraphs (1) to (6); but, to the extent that the provision requires or authorises such an offer to be so made, it is of no effect.

Exclusion of Articles 99 and 100 by private company

101.—(1) Article 99(1), 100(1) to (5) or 100(6) may, as applying to allotments by a private company of equity securities or to such allotments of a particular description, be excluded by a provision contained in the memorandum or articles of that company.

(2) A requirement or authority contained in the memorandum or articles of a private company, if it is inconsistent with any of those Articles, has effect as a provision excluding that Article; but a provision to which Article 99(3) applies is not to be treated as inconsistent with Article 99(1).

Consequences of contravening Articles 99 and 100

102.—(1) If there is a contravention of Article 99(1), or of Article 100(1) to (5) or of Article 100(6), or of a provision to which Article 99(3) applies, the company, and every officer of it who knowingly authorised or permitted the contravention, are jointly and severally liable to compensate any person to whom an offer should have been made under the Article or provision contravened for any loss, damage, costs or expenses which the person has sustained or incurred by reason of the contravention.

(2) However, no proceedings to recover any such loss, damage, costs or expenses shall be commenced after the expiration of 2 years from the delivery to the registrar of the return of allotments in question or, where equity securities other than shares are granted, from the date of the grant.

Saving for other restrictions as to offers

103.—(1) Articles 99 to 102 are without prejudice to any statutory provision by virtue of which a company is prohibited (whether generally or in specified circumstances) from offering or allotting equity securities to any person.

(2) Where a company cannot by virtue of such a statutory provision offer or allot equity securities to a holder of relevant shares or relevant employee shares, those Articles have effect as if the shares held by that holder were not relevant shares or relevant employee shares.

Interpretation for Articles 99 to 106

104.—(1) The following paragraphs apply for the interpretation of Articles 99 to 106.

(2) “Equity security”, in relation to a company, means a relevant share in the company (other than a share shown in the memorandum to have been taken by a subscriber to the memorandum or a bonus share), or a right to subscribe for, or to convert securities into, relevant shares in the company.

(3) A reference to the allotment of equity securities or of equity securities consisting of relevant shares of a particular class includes the grant of a right to subscribe for, or to convert any securities into, relevant shares in the company or (as the case may be) relevant shares of a particular class; but such a reference does not include the allotment of relevant shares pursuant to such a right.

[^{F13}(3A) A reference to the allotment of equity securities or of equity securities consisting of relevant shares of a particular class also includes the sale of any relevant shares in the company or (as the case may be) relevant shares of a particular class if, immediately before the sale, the shares were held by the company as treasury shares.]

(4) “Relevant employee shares”, in relation to a company, means shares of the company which would be relevant shares in it but for the fact that they are held by a person who acquired them in pursuance of an employees' share scheme.

(5) “Relevant shares”, in relation to a company, means shares in the company other than—

- (a) shares which as respects dividends and capital carry a right to participate only up to a specified amount in a distribution, and
- (b) shares which are held by a person who acquired them in pursuance of an employees' share scheme or, in the case of shares which have not been allotted, are to be allotted in pursuance of such a scheme [^{F13} or, in the case of shares held by the company as treasury shares, are to be transferred in pursuance of such a scheme].

(6) A reference to a class of shares is to shares to which the same rights are attached as to voting and as to participation, both as respects dividends and as respects capital, in a distribution.

(7) In relation to an offer to allot securities required by Article 99(1) or by any provision to which Article 99(3) applies, a reference in Articles 99 to 103 and this Article (however expressed) to the holder of shares of any description is to whoever was at the close of business on a date, to be specified in the offer and to fall in the period of 28 days immediately before the date of the offer, the holder of shares of that description.

Annotations:

F13 SR 2004/275

Disapplication of pre-emption rights

105.—(1) Where the directors of a company are generally authorised for the purposes of Article 90, they may be given power by the articles of association, or by a special resolution of the company, to allot equity securities pursuant to that authority as if—

- (a) Article 99(1) did not apply to the allotment, or
- (b) that Article applied to the allotment with such modifications as the directors may determine;

and where the directors make an allotment under this paragraph, Articles 99 to 104 have effect accordingly.

(2) Where the directors of a company are authorised for the purposes of Article 90 (whether generally or otherwise), the company may by special resolution resolve either—

- (a) that Article 99(1) shall not apply to a specified allotment of equity securities to be made pursuant to that authority, or

- (b) that that Article shall apply to the allotment with such modifications as may be specified in the resolution;

and where such a resolution is passed, Articles 99 to 104 have effect accordingly.

[^{F14}(2A) Paragraphs (1) and (2) apply in relation to a sale of shares which is an allotment of equity securities by virtue of Article 104(3A) as if—

- (a) in paragraph (1) for “Where the directors of a company are generally authorised for the purposes of Article 90, they” there were substituted “ The directors of a company ” and the words “pursuant to that authority” were omitted, and
- (b) in paragraph (2), the words from “Where” to “otherwise), the” there were substituted “ The ” and, in sub-paragraph (a), the words “to be made pursuant to that authority” were omitted.]

(3) The powers conferred by paragraph (1) or a special resolution under paragraph (2) ceases to have effect when the authority to which it relates is revoked or would (if not renewed) expire; but if the authority is renewed, the power or (as the case may be) the resolution may also be renewed, for a period not longer than that for which the authority is renewed, by a special resolution of the company.

(4) Notwithstanding that any such power or resolution has expired, the directors may allot equity securities in pursuance of an offer or agreement previously made by the company, if the power or resolution enabled the company to make an offer or agreement which would or might require equity securities to be allotted after it expired.

(5) A special resolution under paragraph (2), or a special resolution to renew such a resolution, shall not be proposed unless it is recommended by the directors and there has been circulated, with the notice of the meeting at which the resolution is proposed, to the members entitled to have that notice a written statement by the directors setting out—

- (a) their reasons for making the recommendation,
- (b) the amount to be paid to the company in respect of the equity securities to be allotted, and
- (c) the directors' justification of that amount.

(6) A person who knowingly or recklessly authorises or permits the inclusion in a statement circulated under paragraph (5) of any matter which is misleading, false or deceptive in a material particular is liable to imprisonment or a fine, or both.

Annotations:

F14 SR 2004/275

Saving for company's pre-emption procedure operative before 1985

106.—(1) Where a company which is re-registered or registered as a public company is or, but for the provisions of the Order of 1981 and the statutory provisions replacing it, would be subject at the time of re-registration or (as the case may be) registration to a pre-1985 pre-emption requirement, Articles 99 to 105 do not apply to an allotment of the equity securities which are subject to that requirement.

(2) A “pre-1985 pre-emption requirement” is a requirement imposed (whether by the company's memorandum or articles, or otherwise) before the relevant date by virtue of which the company must, when making an allotment of equity securities, make an offer to allot those securities or some of them in a manner which (otherwise than because involving a contravention of Article 100(1) to (5) or 100(6)) is inconsistent with Articles 99 to 104; and “the relevant date” is—

- (a) except in a case falling within sub-paragraph (b), 1st January 1985, and

Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to The Companies (Northern Ireland) Order 1986. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)

- (b) in the case of a company which was re-registered or registered as a public company on an application made before that date, the date on which the application was made.
- (3) A requirement which—
 - (a) is imposed on a private company (having been so imposed before the relevant date) otherwise than by the company's memorandum or articles, and
 - (b) if contained in the company's memorandum or articles, would have effect under Article 101 to the exclusion of any provisions of Articles 99 to 104,
 has effect, so long as the company remains a private company as if it were contained in its memorandum or articles.
- (4) If on the relevant date a company, other than a public company registered as such on its original incorporation, was subject to such a requirement as is mentioned in Article 99(2) imposed otherwise than by its memorandum or articles, the requirement is to be treated for the purposes of Articles 99 to 104 as if it were contained in the company's memorandum or articles.

Commissions and discounts

Power of company to pay commissions

- 107.**—(1) It is lawful for a company to pay a commission to any person in consideration of his subscribing or agreeing to subscribe (whether absolutely or conditionally) for any shares in the company, or procuring or agreeing to procure subscriptions (whether absolute or conditional) for any shares in the company, if the following conditions^{F15} are satisfied.
- (2) The payment of the commission must be authorised by the company's articles; and—
 - (a) the commission paid or agreed to be paid must not exceed 10 per cent. of the price at which the shares are issued or the amount or rate authorised by the articles, whichever is the less;^{F16} and
 - (b) the amount or rate per cent. of commission paid or agreed to be paid, and the number of shares which persons have agreed for a commission to subscribe absolutely, must be disclosed in the manner required by paragraph (3).
 - (3) Those matters must, in the case of shares offered to the public for subscription, be disclosed in the prospectus; and in the case of shares not so offered—
 - (a) they must be disclosed in a statement in the prescribed form signed by every director of the company or by his agent authorised in writing, and delivered (before payment of the commission) to the registrar for registration; and
 - (b) where a circular or notice (not being a prospectus) inviting subscription for the shares is issued, they must also be disclosed in that circular or notice.
 - (4) If default is made in complying with paragraph (3)(a) as regards delivery to the registrar of the statement in prescribed form, the company and every officer of it who is in default is liable to a fine.

Annotations:

F15 prosp. 1986 c. 60

F16 prosp. in part rep. by 1986 c. 60

Apart from Article 107, commissions and discounts barred

- 108.**—(1) Except as permitted by Article 107, no company shall apply any of its shares or capital money either directly or indirectly in payment of any commission, discount or allowance to any person in consideration of his subscribing or agreeing to subscribe (whether absolutely or

conditionally) for any shares in the company, or procuring or agreeing to procure subscriptions (whether absolute or conditional) for any shares in the company.

(2) This applies whether the shares or money be so applied by being added to the purchase money of any property acquired by the company or to the contract price of any work to be executed for the company, or the money be paid out of the nominal purchase money or contract price, or otherwise.

(3) Nothing in Article 107 or this Article affects the power of a company to pay such brokerage as has heretofore been lawful.

(4) A vendor to, or promoter of, or other person who receives payment in money or shares from, a company has and is deemed always to have had power to apply any part of the money or shares so received in payment of any commission, the payment of which, if made directly by the company, would have been lawful under Article 107 and this Article.

Amount to be paid for shares; the means of payment

General rules as to payment for shares on allotment

109.—(1) Subject to the following provisions of this Part, shares allotted by a company, and any premium on them, may be paid up in money or money's worth (including goodwill and know-how).

(2) A public company shall not accept at any time, in payment up of its shares or any premium on them, an undertaking given by any person that he or another should do work or perform services for the company or any other person.

(3) If a public company accepts such an undertaking in payment up of its shares or any premium on them, the holder of the shares when they or the premium are treated as paid up (in whole or in part) by the undertaking is liable—

(a) to pay the company in respect of those shares an amount equal to their nominal value, together with the whole or any premium or, if the case so requires, such proportion of that amount as is treated as paid up by the undertaking; and

(b) to pay interest at the appropriate rate on the amount payable under sub-paragraph (a).

(4) This Article does not prevent a company from allotting bonus shares to its members or from paying up, with sums available for the purpose, any amounts for the time being unpaid on any of its shares (whether on account of the nominal value of the shares or by way of premium).

(5) The reference in paragraph (3) to the holder of shares includes any person who has an unconditional right to be included in the company's register of members in respect of those shares or to have an instrument of transfer of them executed in his favour.

Prohibition on allotment of shares at a discount

110.—(1) A company's shares shall not be allotted at a discount.

(2) If shares are allotted in contravention of this Article, the allottee is liable to pay the company an amount equal to the amount of the discount, with interest at the appropriate rate.

Shares to be allotted as at least one-quarter paid-up

111.—(1) A public company shall not allot a share except as paid up at least as to one-quarter of its nominal value and the whole of any premium on it.

(2) Paragraph (1) does not apply to shares allotted in pursuance of an employees' share scheme.

(3) If a company allots a share in contravention of paragraph (1), the share is to be treated as if one-quarter of its nominal value, together with the whole of any premium on it, had been received.

(4) But the allottee is liable to pay the company the minimum amount which should have been received in respect of the share under paragraph (1) (less the value of any consideration actually applied in payment up, to any extent, of the share and any premium on it), with interest at the appropriate rate.

(5) Paragraphs (3) and (4) do not apply to the allotment of bonus shares, unless the allottee knew or ought to have known that the shares were allotted in contravention of paragraph (1).

Restriction on payment by long-term undertaking

112.—(1) A public company shall not allot shares as fully or partly paid up (as to their nominal value or any premium on them) otherwise than in cash if the consideration for the allotment is or includes an undertaking which is to be, or may be, performed more than 5 years after the date of the allotment.

(2) If a company allots shares in contravention of paragraph (1), the allottee is liable to pay the company an amount equal to the aggregate of their nominal value and the whole of any premium (or, if the case so requires, so much of that aggregate as is treated as paid up by the undertaking), with interest at the appropriate rate.

(3) Where a contract for the allotment of shares does not contravene paragraph (1), any variation of the contract which has the effect that the contract would have contravened that paragraph, if the terms of the contract as varied had been its original terms, is void.

(4) Paragraph (3) applies also to the variation by a public company of the terms of a contract entered into before the company was re-registered as a public company.

(5) Paragraph (6) applies where a public company allots shares for a consideration which consists of or includes (in accordance with paragraph (1)) an undertaking which is to be performed within 5 years of the allotment, but the undertaking is not performed within the period allowed by the contract for the allotment of the shares.

(6) The allottee is then liable to pay the company, at the end of the period so allowed, an amount equal to the aggregate of the nominal value of the shares and the whole of any premium (or, if the case so requires, so much of that aggregate as is treated as paid up by the undertaking), with interest at the appropriate rate.

(7) A reference in this Article to a contract for the allotment of shares includes an ancillary contract relating to payment in respect of them.

Non-cash consideration to be valued before allotment

113.—(1) A public company shall not allot shares as fully or partly paid up (as to their nominal value or any premium on them) otherwise than in cash unless—

- (a) the consideration for the allotment has been independently valued under Article 118; and
- (b) a report with respect to its value has been made to the company by a person appointed by the company (in accordance with that Article) during the 6 months immediately preceding the allotment of the shares; and
- (c) a copy of the report has been sent to the proposed allottee.

(2) Where an amount standing to the credit of any of a company's reserve accounts, or of its profit and loss account, is applied in paying up (to any extent) any shares allotted to members of the company or any premiums on shares so allotted, the amount applied does not count as consideration for the allotment, and accordingly paragraph (1) does not apply in that case.

(3) Paragraph (1) does not apply to the allotment of shares by a company in connection with an arrangement providing for the allotment of shares in that company on terms that the whole or part of the consideration for the shares allotted is to be provided by the transfer to that company (or the

cancellation) of all or some of the shares, or of all or some of the shares of a particular class, in another company (with or without the issue to that company of shares, or of shares of any particular class, in that other company).

(4) But paragraph (3) does not exclude the application of paragraph (1) unless under the arrangement it is open to all the holders of the shares in the other company in question^[F17] ("the relevant company") (or, where the arrangement applies only to shares of a particular class, to all the holders of shares in^[F17] the relevant company], being holders of shares of that class) to take part in the arrangement.

^[F17]In determining whether that is the case, the following shall be disregarded—

- (a) shares held by or by a nominee of the company proposing to allot the shares in connection with the arrangement ("the allotting company");
- (b) shares held by or by a nominee of a company which is—
 - (i) the holding company or a subsidiary of the allotting company, or
 - (ii) a subsidiary of that holding company; and
- (c) shares held as treasury shares by the relevant company.]

(5) Paragraph (1) also does not apply to the allotment of shares by a company in connection with its proposed merger with another company; that is, where one of the companies proposes to acquire all the assets and liabilities of the other in exchange for the issue of shares or other securities in that one to shareholders of the other, with or without any cash payment to those shareholders.

(6) If a company allots shares in contravention of paragraph (1) and either—

- (a) the allottee has not received the valuer's report required by that paragraph to be sent to him; or
- (b) there has been some other contravention of this Article or Article 118 which the allottee knew or ought to have known amounted to a contravention,

the allottee is liable to pay the company an amount equal to the aggregate of the nominal value of the shares and the whole of any premium (or, if the case so requires, so much of that aggregate as is treated as paid up by the consideration), with interest at the appropriate rate.

(7) In this Article—

- (a) "arrangement" means any agreement, scheme or arrangement (including an arrangement sanctioned in accordance with ^[F18]section 899 of the Companies Act 2006] (company compromise with creditors and members) or^[F19] Article 96 of the Insolvency Order] (liquidator in winding up accepting shares as consideration for sale of company property)), and
- (b) any reference to a company, except where it is or is to be construed as a reference to a public company, includes any body corporate and any body to which letters patent have been issued under the Chartered Companies Act 1837.

Annotations:

F17 SR 2004/275

F18 Words in art. 113(7)(a) in definition of "arrangement" substituted (6.4.2008) by Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2008/948), arts. 2(2), 3(1)(b), Sch. 1 para. 122 (with arts. 6, 11, 12)

F19 1989 NI 19

Transfer to public company of non-cash asset in initial period

114.—(1) A public company formed as such shall not, unless the conditions of this Article have been complied with, enter into an agreement with a person for the transfer by him during the initial period of one or more non-cash assets to the company or another, if—

- (a) that person is a subscriber to the company's memorandum; and
- (b) the consideration for the transfer to be given by the company is equal in value at the time of the agreement to one-tenth or more of the nominal value of the company's share capital issued at that time.

(2) “The initial period” for this purpose is 2 years beginning with the date of the company being issued with a certificate under [F20section 761 of the Companies Act 2006] (or the previous corresponding provision) that it was entitled to do business.

(3) This Article applies also to a company re-registered as a public company (except one re-registered under Article 10 of the Order of 1981 or Article 4 of the Consequential Provisions Order), or registered under Article 634 (joint stock company) or the previous corresponding provision; but in that case—

- (a) there is substituted a reference in paragraph (1)(a) to a person who is a member of the company on the date of registration or re-registration, and
- (b) the initial period is then 2 years beginning with that date.

In this paragraph the reference to a company re-registered as a public company includes a private company so re-registered which was a public company before it was a private company.

(4) The conditions of this Article are as follows—

- (a) the consideration to be received by the company, and any consideration other than cash to be given by the company, must have been independently valued under Article 119;
- (b) a report with respect to the consideration to be so received and given must have been made to the company in accordance with that Article during the 6 months immediately preceding the date of the agreement;
- (c) the terms of the agreement must have been approved by an ordinary resolution of the company; and
- (d) not later than the giving of the notice of the meeting at which the resolution is proposed, copies of the resolution and report must have been circulated to the members of the company entitled to receive the notice and, if the person with whom the agreement in question is proposed to be made is not then a member of the company so entitled, to that person.

(5) In paragraph (4)(a)—

- (a) the reference to the consideration to be received by the company is to the asset to be transferred to it or the advantage to the company of the asset's transfer to another person; and
- (b) the specified condition is without prejudice to any requirement to value any consideration for the purposes of Article 113.

(6) In the case of the following agreements, this Article does not apply—

- (a) where it is part of the company's ordinary business to acquire, or arrange for others to acquire, assets of a particular description, an agreement entered into by the company in the ordinary course of its business for the transfer of an asset of that description to it or to such a person, as the case may be; or

- (b) an agreement entered into by the company under the supervision of the court, or of an officer authorised by the court for the purpose, for the transfer of an asset to the company or to another.

Annotations:

F20 Words in [art. 114\(2\)](#) in the definition of "initial period" substituted (6.4.2008) by virtue of [Companies Act 2006 \(Consequential Amendments etc\) Order 2008 \(S.I. 2008/948\)](#), arts. 2(2), 3(1)(b), [Sch. 1 para. 123](#) (with arts. 6, 11, 12)

Agreements contravening Article 114

115.—(1) Paragraph (2) applies if a public company enters into an agreement contravening Article 114, the agreement being made with the person referred to in paragraph (1)(a) or (as the case may be) paragraph (3) of that Article, and either—

- (a) that person has not received the valuer's report required for compliance with the conditions of that Article, or
- (b) there has been some other contravention of that Article or of Article 118(1), (2) or (5) or Article 119, which he knew or ought to have known amounted to a contravention.

(2) The company is then entitled to recover from that person any consideration given by it under the agreement, or an amount equal to the value of the consideration at the time of the agreement; and the agreement, so far as not carried out, is void.

(3) However, if the agreement is or includes an agreement for the allotment of shares in the company, then—

- (a) whether or not the agreement also contravenes Article 113, paragraph (2) does not apply to it in so far as it is for the allotment of shares; and
- (b) the allottee is liable to pay the company an amount equal to the aggregate of the nominal value of the shares and the whole of any premium (or, if the case so requires, so much of that aggregate as is treated as paid up by the consideration), with interest at the appropriate rate.

Shares issued to subscribers of memorandum

116. Shares taken by a subscriber to the memorandum of a public company in pursuance of an undertaking of his in the memorandum, and any premium on the shares, shall be paid up in cash.

Meaning of “the appropriate rate”

117. In Articles 109 to 115 “the appropriate rate”, in relation to interest, means 5 per cent. per annum or such other rate as may be specified by order made by the Department subject to negative resolution.

Valuation provisions

Valuation and report (Articles 54 and 113)

118.—(1) The valuation and report required by Article 113 (or, where applicable, Article 54) shall be made by an independent person, that is to say a person qualified at the time of the report to be appointed, or continue to be, an auditor of the company.

(2) However, where it appears to the independent person (from here on referred to as “the valuer”) to be reasonable for the valuation of the consideration, or part of it, to be made (or for him to accept such a valuation) by another person who—

- (a) appears to him to have the requisite knowledge and experience to value the consideration or that part of it; and
- (b) is not an officer or servant of the company or any other body corporate which is that company's subsidiary or holding company or a subsidiary of that company's holding company or a partner or employee of such an officer or servant,

he may arrange for or accept such a valuation, together with a report which will enable him to make his own report under this Article and provide the note required by paragraph (6).

(3) The reference in paragraph (2)(b) to an officer or servant does not include an auditor.

(4) The valuer's report shall state—

- (a) the nominal value of the shares to be wholly or partly paid for by the consideration in question;
- (b) the amount of any premium payable on the shares;
- (c) the description of the consideration and, as respects so much of the consideration as he himself has valued, a description of that part of the consideration, the method used to value it and the date of the valuation;
- (d) the extent to which the nominal value of the shares and any premium are to be treated as paid up—
 - (i) by the consideration;
 - (ii) in cash.

(5) Where the consideration or part of it is valued by a person other than the valuer himself, the latter's report shall state that fact and shall also—

- (a) state the former's name and what knowledge and experience he has to carry out the valuation; and
- (b) describe so much of the consideration as was valued by the other person, and the method used to value it, and specify the date of the valuation.

(6) The valuer's report shall contain or be accompanied by a note by him—

- (a) in the case of a valuation made by a person other than himself, that it appeared to himself reasonable to arrange for it to be so made or to accept a valuation so made;
- (b) whoever made the valuation, that the method of valuation was reasonable in all the circumstances;
- (c) that it appears to the valuer that there has been no material change in the value of the consideration in question since the valuation; and
- (d) that on the basis of the valuation the value of the consideration, together with any cash by which the nominal value of the shares or any premium payable on them is to be paid up, is not less than so much of the aggregate of the nominal value and the whole of any such premium as is treated as paid up by the consideration and any such cash.

(7) Where the consideration to be valued is accepted partly in payment up of the nominal value of the shares and any premium and partly for some other consideration given by the company, Article 113 (and, where applicable, Article 54) and the foregoing provisions of this Article apply as if references to the consideration accepted by the company included the proportion of that consideration which is properly attributable to the payment up of that value and any premium; and—

- (a) the valuer shall carry out, or arrange for, such other valuations as will enable him to determine that proportion; and

- (b) his report shall state what valuations have been made under this paragraph and also the reason for, and method and date of, any such valuation and any other matters which may be relevant to that determination.

Valuation and report (Article 114)

119.—(1) Article 118(1) to (3) and (5) applies also as respects the valuation and report for the purposes of Article 114.

(2) The valuer's report for those purposes shall—

- (a) state the consideration to be received by the company, describing the asset in question (specifying the amount to be received in cash) and the consideration to be given by the company (specifying the amount to be given in cash);
- (b) state the method and date of valuation;
- (c) contain or be accompanied by a note as to the matters mentioned in Article 118(6)(a) to (c); and
- (d) contain or be accompanied by a note that on the basis of the valuation the value of the consideration to be received by the company is not less than the value of the consideration to be given by it.

(3) A reference in Article 114 or this Article to consideration given for the transfer of an asset includes consideration given partly for its transfer; but—

- (a) the value of any consideration partly so given is to be taken as the proportion of the consideration properly attributable to its transfer;
- (b) the valuer shall carry out or arrange for such valuations of anything else as will enable him to determine that proportion; and
- (c) his report for the purposes of Article 114 shall state what valuation has been made under this paragraph and also the reason for, and method and date of, any such valuation and any other matters which may be relevant to that determination.

Entitlement of valuer to full disclosure

120.—(1) A person carrying out a valuation or making a report under Article 113 or 114, with respect to any consideration proposed to be accepted or given by a company, is entitled to require from the officers of the company such information and explanation as he thinks necessary to enable him to carry out the valuation or make the report and provide a note under Article 118(6) or (as the case may be) Article 119(2)(c).

(2) A person who knowingly or recklessly makes a statement which—

- (a) is misleading, false or deceptive in a material particular, and
- (b) is a statement to which this paragraph applies,

is guilty of an offence and liable to imprisonment or a fine, or both.

(3) Paragraph (2) applies to any statement made (whether orally or in writing) to a person carrying out a valuation or making a report under Article 118 or 119, being a statement which conveys or purports to convey any information or explanation which that person requires, or is entitled to require, under paragraph (1).

Matters to be communicated to registrar

121.—(1) A company to which a report is made under Article 118 as to the value of any consideration for which, or partly for which, it proposes to allot shares shall deliver a copy of the

report to the registrar for registration at the same time that it files the return of the allotments of those shares under Article 98.

(2) A company which has passed a resolution under Article 114 with respect to the transfer of an asset shall, within 15 days of so doing, deliver to the registrar a copy of the resolution together with the valuer's report required by that Article.

(3) If default is made in complying with paragraph (1), every officer of the company who is in default is liable to a fine and, for continued contravention, to a daily default fine; but this is subject to the same exception as is made by Article 98(6) (relief on application to the court) in the case of default in complying with that Article.

(4) If a company fails to comply with paragraph (2), it and every officer of it who is in default is liable to a fine and, for continued contravention, to a daily default fine.

Other matters arising out of allotment, etc.

[^{F21}Right to damages, etc. not affected

121A. A person is not debarred from obtaining damages or other compensation from a company by reason only of his holding or having held shares in the company or any right to apply or subscribe for shares or to be included in the company's register in respect of shares.]

Annotations:

F21 1990 NI 10

Liability of subsequent holders of shares allotted

122.—(1) If a person becomes a holder of shares in respect of which—

- (a) there has been a contravention of Article 109, 110, 111 or 113; and
- (b) by virtue of that contravention, another is liable to pay any amount under the Article contravened,

that person is also liable to pay that amount (jointly and severally with any other person so liable), unless he is exempted from liability by paragraph (3).

(2) If a company enters into an agreement in contravention of Article 114 and—

- (a) the agreement is or includes an agreement for the allotment of shares in the company; and
- (b) a person becomes a holder of shares allotted under the agreement; and
- (c) by virtue of the agreement and allotment under it, another person is liable to pay any amount under Article 115,

the person who becomes the holder of the shares is also liable to pay that amount (jointly and severally with any other person so liable), unless he is exempted from liability by paragraph (3); and this applies whether or not the agreement also contravenes Article 113.

(3) A person otherwise liable under paragraph (1) or (2) is exempted from that liability if either—

- (a) he is a purchaser for value and, at the time of the purchase, he did not have actual notice of the contravention concerned; or
- (b) he derived title to the shares (directly or indirectly) from a person who became a holder of them after the contravention and was not liable under paragraph (1) or (as the case may be) paragraph (2).

(4) References in this Article to a holder, in relation to shares in a company, include any person who has an unconditional right to be included in the company's register of members in respect of those shares or to have an instrument of transfer of the shares executed in his favour.

(5) As paragraphs (1) and (3) apply in relation to the contraventions there mentioned, they also apply—

- (a) to a contravention of Article 112; and
- (b) to a failure to carry out a term of contract as mentioned in paragraphs (5) and (6) of that Article.

Relief in respect of certain liabilities under Articles 109ff.

123.—(1) Where a person is liable to a company under—

- (a) Article 109, 112, 113 or 115;
- (b) Article 122(1) by reference to a contravention of Article 109 or 113; or
- (c) Article 122(2) or (5),

in relation to payment in respect of any shares in the company, or is liable by virtue of an undertaking given to it in, or in connection with, payment for any such shares, the person so liable may make an application to the court to be exempted in whole or in part from the liability.

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

- (a) if and to the extent that it appears to the court just and equitable to do so having regard to the matters mentioned in paragraph (3);
- (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 is liable to pay to the company under any of the relevant Articles.

(3) The matters to be taken into account by the court under paragraph (2)(a) are—

- (a) 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 relevant Articles, or of any liability arising by virtue of any undertaking given in or in connection with a payment for those shares;
- (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; and
- (c) 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 for the shares.

(4) Where the liability arises by virtue of an undertaking given to the company in, or in connection with, payment for shares in it, the court may, on an application under paragraph (1), exempt the applicant from the liability only if and to the extent that it appears to the court just and equitable to do so having regard to—

- (a) whether the applicant has paid or is liable to pay any amount in respect of liability arising in relation to the shares under any of the provisions mentioned in that paragraph; 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.

(5) In determining 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 company 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

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

(6) If a person brings proceedings against another (“the contributor”) for a contribution in respect of liability to a company arising under any of Articles 109 to 115 or 122 and it appears to the court that the contributor is liable to make such a contribution, the court may exercise the powers of paragraph (7).

(7) The court may, if and to the extent that it appears to it, having regard to the respective culpability (in respect of the liability to the company) 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 liability to make such a contribution; or
- (b) order the contributor to make a larger contribution than, but for this paragraph, he would be liable to make.

(8) Where a person is liable to a company under paragraph (2) of Article 115, the court may, on application, exempt him 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 company by virtue of anything done by him towards the carrying out of the agreement mentioned in that paragraph.

Penalty for contravention

124. If a company contravenes any of the provisions of Articles 109 to 114 and 116 the company and any officer of it who is in default is liable to a fine.

Undertakings to do work, etc.

125.—(1) Subject to Article 123, an undertaking given by any person, in or in connection with payment for shares in a company, to do work or perform services or to do any other thing, if it is enforceable by the company apart from this Order, is so enforceable notwithstanding that there has been a contravention in relation to it of Article 109, 112 or 113.

(2) Where such an undertaking is given in contravention of Article 114 in respect of the allotment of shares, it is so enforceable notwithstanding the contravention.

Application of Articles 109ff. to special cases

126. Except as provided by Article 11 of the Consequential Provisions Order (transitional cases dealt with by Article 33 of the Order of 1981), Articles 109, 111 to 113, 116, 118^{F22}, 120, 121 and 122 to 125] apply—

- (a) to a company which has passed and not revoked a resolution to be re-registered under Article 53 as a public company, and
- (b) to a joint stock company which has passed, and not revoked, a resolution that the company be a public company,

as those Articles apply to a public company.

Annotations:

F22 1990 NI 10

Changes to legislation:

There are outstanding changes not yet made by the legislation.gov.uk editorial team to The Companies (Northern Ireland) Order 1986. Any changes that have already been made by the team appear in the content and are referenced with annotations.

Changes and effects yet to be applied to the whole Order associated Parts and Chapters:

- Order applied (with modifications) by S.I. 2011/245 Sch. 6 Pt. 1
- Order modified by S.I. 2009/317 art. 3 Sch.
- Order savings for effects of 2006 c. 46 Sch. 16 by S.I. 2009/1801 Sch. 8
- Order savings for effects of 2006 c. 46 Sch. 16 by S.I. 2009/1804 Sch. 1 2

Whole provisions yet to be inserted into this Order (including any effects on those provisions):

- s. 172D(3) words substituted by S.I. 2007/1093 Sch. 3 para. 2
- Sch. 4 para. 89 savings for effects of 2006 c. 46 Sch. 16 by S.I. 2008/948 art. 9(1)
- Sch. 4 para. 88 savings for effects of 2006 c. 46 Sch. 16 by S.I. 2008/948 art. 9(1)(2)
- Sch. 4 para. 87 savings for effects of 2006 c. 46 Sch. 16 by S.I. 2008/948 art. 9(2)
- Sch. 6 para. 15(a)(b) words repealed by S.I. 2008/948 Sch. 1 para. 147(1)(a) Sch. 2
- Sch. 6 para. 16(a)(b) words repealed by S.I. 2008/948 Sch. 1 para. 147(1)(b) Sch. 2
- Sch. 15D para. 16(j)(k) inserted by S.I. 2008/1277 Sch. 2 para. 79(b)
- Sch. 15D para. 16(h) revoked by S.I. 2008/1277 Sch. 2 para. 79(a) Sch. 4 Pt. 2
- Sch. 15D para. 36 words substituted by S.I. 2007/1093 Sch. 4 para. 54(a)
- Sch. 15D para. 36 words substituted by S.I. 2007/1093 Sch. 4 para. 54(b)
- Sch. 15D para. 1 words substituted by S.I. 2008/948 Sch. 1 para. 149
- art. 21(2)(ba)(bb) substituted for art. 21(2)(b) by S.I. 2008/948 Sch. 1 para. 113
- art. 250A(2A) inserted by S.R. 2008/133 reg. 2(2)
- art. 372(1)(j) added by S.R. 2008/379 reg. 2(2)
- art. 372A heading text amended by S.R. 2008/379 reg. 3(a)
- art. 372B-372D inserted by S.R. 2008/379 reg. 4
- art. 446D and cross-heading inserted by S.I. 2008/948 Sch. 1 para. 141

Commencement Orders yet to be applied to the The Companies (Northern Ireland) Order 1986

Commencement Orders bringing legislation that affects this Order into force:

- S.I. 2007/1093 art. 2 5 Sch. 2 commences (2006 c. 46)
- S.I. 2007/2194 art. 2-5 8 Sch. 2 commences (2006 c. 46)
- S.I. 2007/2607 art. 2 commences (2006 c. 46)
- S.I. 2007/3495 art. 3-5 8 Sch. 2 3 commences (2006 c. 46)
- S.I. 2008/674 art. 2 commences (2006 c. 46)
- S.I. 2008/1886 art. 2 commences (2006 c. 46)
- S.I. 2008/2860 art. 3 4 Sch. 1 commences (2006 c. 46)
- S.I. 2009/296 art. 2 3 Sch. commences (2009 c. 1)
- S.I. 2009/1604 art. 2 commences (2005 c. 4)
- S.R. 2007/95 art. 2 commences (S.I. 1986/1032 (N.I.))
- S.R. 2007/194 art. 2 Sch. commences (S.I. 2006/3336 (N.I.))
- S.R. 2013/145 art. 2 Sch. commences (2008 c. 12 (N.I.))