



# Companies Act 1948

## 1948 CHAPTER 38

### PART II

#### SHARE CAPITAL AND DEBENTURES

##### *Prospectus*

#### **37 Dating of prospectus**

A prospectus issued by or on behalf of a company or in relation to an intended company shall be dated, and that date shall, unless the contrary is proved, be taken as the date of publication of the prospectus.

#### **38 Matters to be stated and reports to be set out in prospectus**

- (1) Subject to the provisions of the next following section, every prospectus issued by or on behalf of a company, or by or on behalf of any person who is or has been engaged or interested in the formation of the company, must state the matters specified in Part I of the Fourth Schedule to this Act and set out the reports specified in Part II of that Schedule, and the said Parts I and II shall have effect subject to the provisions contained in Part III of that Schedule.
- (2) A condition requiring or binding an applicant for shares in or debentures of a company to waive compliance with any requirement of this section, or purporting to affect him with notice of any contract, document or matter not specifically referred to in the prospectus, shall be void.
- (3) Subject to the provisions of the next following section, it shall not be lawful to issue any form of application for shares in or debentures of a company unless the form is issued with a prospectus which complies with the requirements of this section:  
Provided that this subsection shall not apply if it is shown that the form of application was issued either—
  - (a) in connection with a bona fide invitation to a person to enter into an underwriting agreement with respect to the shares or debentures; or

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- (b) in relation to shares or debentures which were not offered to the public. If any person acts in contravention of the provisions of this subsection, he shall be liable to a fine not exceeding five hundred pounds.
- (4) In the event of non-compliance with or contravention of any of the requirements of this section, a director or other person responsible for the prospectus shall not incur any liability by reason of the non-compliance or contravention, if—
- (a) as regards any matter not disclosed, he proves that he was not cognisant thereof; or
  - (b) he proves that the non-compliance or contravention arose from an honest mistake of fact on his part; or
  - (c) the non-compliance or contravention was in respect of matters which in the opinion of the court dealing with the case were immaterial or was otherwise such as ought, in the opinion of that court, having regard to all the circumstances of the case, reasonably to be excused:

Provided that, in the event of failure to include in a prospectus a statement with respect to the matters specified in paragraph 16 of the Fourth Schedule to this Act, no director or other person shall incur any liability in respect of the failure unless it be proved that he had knowledge of the matters not disclosed.

- (5) This section shall not apply—
- (a) to the issue to existing members or debenture holders of a company of a prospectus or form of application relating to snares in or debentures of the company, whether an applicant for shares or debentures will or will not have the right to renounce in favour of other persons; or
  - (b) to the issue of a prospectus or form of application relating to shares or debentures which are or are to be in all respects uniform with shares or debentures previously issued and for the time being dealt in or quoted on a prescribed stock exchange;
- but, subject as aforesaid, this section shall apply to a prospectus or a form of application whether issued on or with reference to the formation of a company or subsequently.
- (6) Nothing in this section shall limit or diminish any liability which any person may incur under the general law or this Act apart from this section.

### **39 Exclusion of foregoing section and relaxation of Fourth Schedule in case of certain prospectuses**

- (1) Where—
- (a) it is proposed to offer any shares in or debentures of a company to the public by a prospectus issued generally (that is to say, issued to persons who are not existing members or debenture holders of the company); and
  - (b) application is made to a prescribed stock exchange for permission for those shares or debentures to be dealt in or quoted on that stock exchange;

there may, on the request of the applicant, be given by or on behalf of that stock exchange a certificate of exemption, that is to say, a certificate that, having regard to the proposals (as stated in the request) as to the size and other circumstances of the issue of shares or debentures and as to any limitations on the number and class of persons to whom the offer is to be made, compliance with the requirements of the Fourth Schedule to this Act would be unduly burdensome.

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- (2) If a certificate of exemption is given, and if the proposals aforesaid are adhered to and the particulars and information required to be published in connection with the application for permission made to the stock exchange are so published, then—
- (a) a prospectus giving the particulars and information aforesaid in the form in which they are so required to be published shall be deemed to comply with the requirements of the Fourth Schedule to this Act; and
  - (b) the last foregoing section shall not apply to any issue, after the permission applied for is granted, of a prospectus or form of application relating to the shares or debentures.

#### **40 Expert's consent to issue of prospectus containing statement by him**

- (1) A prospectus inviting persons to subscribe for shares in or debentures of a company and including a statement purporting to be made by an expert shall not be issued unless—
- (a) he has given and has not, before delivery of a copy of the prospectus for registration, withdrawn his written consent to the issue thereof with the statement included in the form and context in which it is included; and
  - (b) a statement that he has given and has not withdrawn his consent as aforesaid appears in the prospectus.
- (2) If any prospectus is issued in contravention of this section the company and every person who is knowingly a party to the issue thereof shall be liable to a fine not exceeding five hundred pounds.
- (3) In this section the expression " expert " includes engineer, valuer, accountant and any other person whose profession gives authority to a statement made by him.

#### **41 Registration of prospectus**

- (1) No prospectus shall be issued by or on behalf of a company or in relation to an intended company unless, on or before the date of its publication, there has been delivered to the registrar of companies for registration a copy thereof signed by every person who is named therein as a director or proposed director of the company, or by his agent authorised in writing, and having endorsed thereon or attached thereto—
- (a) any consent to the issue of the prospectus required by the last foregoing section from any person as an expert; and
  - (b) in the case of a prospectus issued generally, also—
    - (i) a copy of any contract required by paragraph 14 of the Fourth Schedule to this Act to be stated in the prospectus or, in the case of a contract not reduced into writing, a memorandum giving full particulars thereof or, if in the case of a prospectus deemed by virtue of a certificate granted under section thirty-nine of this Act to comply with the requirements of that Schedule a contract or a copy thereof or a memorandum of a contract is required to be available for inspection in connection with the application made under that section to the stock exchange, a copy or, as the case may be, a memorandum of that contract; and
    - (ii) where the persons making any report required by Part II of that Schedule have made therein, or have, without giving the reasons, indicated therein, any such adjustments as are mentioned in paragraph

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29 of that Schedule, a written statement signed by those persons setting out the adjustments and giving the reasons therefor. The references in sub-paragraph (i) of paragraph (b) of this subsection to the copy of a contract required thereby to be endorsed on or attached to a copy of the prospectus shall, in the case of a contract wholly or partly in a foreign language, be taken as references to a copy of a translation of the contract in English or a copy embodying a translation in English of the parts in a foreign language, as the case may be, being a translation certified in the prescribed manner to be a correct translation, and the reference to a copy of a contract required to be available for inspection shall include a reference to a copy of a translation thereof or a copy embodying a translation of parts thereof.

- (2) Every prospectus shall, on the face of it,—
  - (a) state that a copy has been delivered for registration as required by this section; and
  - (b) specify, or refer to statements included in the prospectus which specify, any documents required by this section to be endorsed on or attached to the copy so delivered.
- (3) The registrar shall not register a prospectus unless it is dated and the copy thereof signed in manner required by this section and unless it has endorsed thereon or attached thereto the documents (if any) specified as aforesaid.
- (4) If a prospectus is issued without a copy thereof being delivered under this section to the registrar or without the copy so delivered having endorsed thereon or attached thereto the required documents, the company, and every person who is knowingly a party to the issue of the prospectus, shall be liable to a fine not exceeding five, pounds for every day from the date of the issue of the prospectus until a copy thereof is so delivered with the required documents endorsed thereon or attached thereto.

#### **42 Restriction on alteration of terms mentioned in prospectus or statement in lieu of prospectus**

- (1) A company limited by shares or a company limited by guarantee and having a share capital shall not previously to the statutory meeting vary the terms of a contract referred to in the prospectus, or statement in lieu of prospectus, except subject to the approval of the statutory meeting.
- (2) This section shall not apply to a private company.

#### **43 Civil liability for mis-statements in prospectus**

- (1) Subject to the provisions of this section, where a prospectus invites persons to subscribe for shares in or debentures of a company, the following persons shall be liable to pay compensation to all persons who subscribe for any shares or debentures on the faith of the prospectus for the loss or damage they may have sustained by reason of any untrue statement included therein, that is to say:—
  - (a) every person who is a director of the company at the time of the issue of the prospectus;
  - (b) every person who has authorised himself to be named and is named on the prospectus as a director or as having agreed to become a director either immediately or after an interval of time;

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- (c) every person being a promoter of the company; and
- (d) every person who has authorised the issue of the prospectus:

Provided that where, under section forty of this Act, the consent of a person is required to the issue of a prospectus and he has given that consent, he shall not by reason of his having given it be liable under this subsection as a person who has authorised the issue of the prospectus except in respect of an untrue statement purporting to be made by him as an expert.

- (2) No person shall be liable under subsection (1) of this section if he proves—
  - (a) that, having consented to become a director of the company, he withdrew his consent before the issue of the prospectus, and that it was issued without his authority or consent; or
  - (b) that the prospectus was issued without his knowledge or consent, and that on becoming aware of its issue he forthwith gave reasonable public notice that it was issued without his knowledge or consent; or
  - (c) that, after -the issue of the prospectus and before allotment thereunder, he, on becoming aware of any untrue statement therein, withdrew his consent thereto and gave reasonable public notice of the withdrawal and of the reason therefor; or
  - (d) that—
    - (i) as regards every untrue statement not purporting to be made on the authority of an expert or of a public official document or statement, he had reasonable ground to believe, and did up to the time of the allotment of the shares or debentures, as the case may be, believe, that the statement was true; and
    - (ii) as regards every untrue statement purporting to be a statement by an expert or contained in what purports to be a copy of or extract from a report or valuation of an expert, it fairly represented the statement, or was a correct and fair copy of or extract from the report or valuation, and he had reasonable ground to believe and did up to the time of the issue of the prospectus believe that the person making the statement was competent to make it and that person had given the consent required by section forty of this Act to the issue of the prospectus and had not withdrawn that consent before delivery of a copy of the prospectus for registration or, to the defendant's knowledge, before allotment thereunder; and
    - (iii) as regards every untrue statement purporting to be a statement made by an official person or contained in what purports to be a copy of or extract from a public official document, it was a correct and fair representation of the statement or copy of or extract from the document: Provided that this subsection shall not apply in the case of a person liable, by reason of his having given a consent required of him by the said section forty, as a person who has authorised the issue of the prospectus in respect of an untrue statement purporting to be made by him as an expert.
- (3) A person who, apart from this subsection would under subsection (1) of this section be liable, by reason of his having given a consent required of him by section forty of this Act, as a person who has authorised the issue of a prospectus in respect of an untrue statement purporting to be made by him as an expert shall not be so liable if he proves—

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- (a) that, having given his consent under the said section forty to the issue of the prospectus, he withdrew it in writing before delivery of a copy of the prospectus for registration; or
- (b) that, after delivery of a copy of the prospectus for registration and before allotment thereunder, he, on becoming aware of the untrue statement, withdrew his consent in writing and gave reasonable public notice of the withdrawal, and of the reason therefor; or
- (c) that he was competent to make the statement and that he had reasonable ground to believe and did up to the time of the allotment of the shares or debentures, as the case may be, believe that the statement was true.

(4) Where—

- (a) the prospectus contains the name of a person as a director of the company, or as having agreed to become a director thereof, and he has not consented to become a director, or has withdrawn his consent before the issue of the prospectus, and has not authorised or consented to the issue thereof; or
- (b) the consent of a person is required under section forty of this Act to the issue of the prospectus and he either has not given that consent or has withdrawn it before the issue of the prospectus;

the directors of the company, except any without whose knowledge or consent the prospectus was issued, and any other person who authorised the issue thereof shall be liable to indemnify the person named as aforesaid or whose consent was required as aforesaid, as the case may be, against all damages, costs and expenses to which he may be made liable by reason of his name having been inserted in the prospectus or of the inclusion therein of a statement purporting to be made by him as an expert, as the case may be, or in defending himself against any action or legal proceeding brought against him in respect thereof:

Provided that a person shall not be deemed for the purposes of this subsection to have authorised the issue of a prospectus by reason only of his having given the consent required by section forty of this Act to the inclusion therein of a statement purporting to be made by him as an expert.

(5) For the purposes of this section—

- (a) the expression " promoter " means a promoter who was a party to the preparation of the prospectus, or of the portion thereof containing the untrue statement, but does not include any person by reason of his acting in a professional capacity for persons engaged in procuring the formation of the company; and
- (b) the expression " expert " has the same meaning as in section forty of this Act.

#### **44 Criminal liability for mis-statements in prospectus**

(1) Where a prospectus issued after the commencement of this Act includes any untrue statement, any person who authorised the issue of the prospectus shall be liable—

- (a) on conviction on indictment, to imprisonment for a term not exceeding two years, or a fine not exceeding five hundred pounds, or both; or
- (b) on summary conviction, to imprisonment for a term not exceeding three months, or a fine not exceeding one hundred pounds, or both;

unless he proves either that the statement was immaterial or that he had reasonable ground to believe and did, up to the time of the issue of the prospectus, believe that the statement was true.

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- (2) A person shall not be deemed for the purposes of this section to have authorised the issue of a prospectus by reason only of his having given the consent required by section forty of this Act to the inclusion therein of a statement purporting to be made by him as an expert.

#### **45 Document containing offer of shares or debentures for sale to be deemed prospectus**

- (1) Where a company allots or agrees to allot 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, any document by which the offer for sale to the public is made shall for all purposes be deemed to be a prospectus issued by the company, and all enactments and rules of law as to the contents of prospectuses and to liability in respect of statements in and omissions from prospectuses, or otherwise relating to prospectuses, shall apply and have effect accordingly, as if the shares or debentures had been offered to the public for subscription and as if persons accepting the offer in respect of any shares or debentures were subscribers for those shares or debentures, but without prejudice to the liability, if any, of the persons by whom the offer is made, in respect of mis-statements contained in the document or otherwise in respect thereof.
- (2) For the purposes of this Act, it shall, unless the contrary is proved, be evidence that an allotment of, or an agreement to allot, shares or debentures was made with a view to the shares or debentures being offered for sale to the public if it is shown—
- (a) that an offer of the shares or debentures or of any of them for sale to the public was made within six months after the allotment or agreement to allot; or
  - (b) that at the date when the offer was made the whole consideration to be received by - the company in respect of the shares or debentures had not been so received.
- (3) Section thirty-eight of this Act as applied by this section shall have effect as if it required a prospectus to state in addition to the matters required by that section to be stated in a prospectus—
- (a) the net amount of the consideration received or to be received by the company in respect of the shares or debentures to which the offer relates," and
  - (b) the place and time at which the contract under which the said shares or debentures have been or are to be allotted may be inspected; and section forty-one of this Act as applied by this section shall have effect as though the persons making the offer were persons named in a prospectus as directors of a company.
- (4) Where a person making an offer to which this section relates is a company or a firm, it shall be sufficient if the document aforesaid is signed on behalf of the company or firm by two directors of the company or not less than half of the partners, as the case may be, and any such director or partner may sign by his agent authorised in writing.

#### **46 Interpretation of provisions relating to prospectuses**

For the purposes of the foregoing provisions of this Part of this Act—

- (a) a statement included in a prospectus shall be deemed to be untrue if it is misleading in the form and context in which it is included; and

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- (b) a statement shall be deemed to be included in a prospectus if it is contained therein or in any report or memorandum appearing on the face thereof or by reference incorporated therein or issued therewith.

### *Allotment*

#### **47 Prohibition of 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 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 4 of the Fourth Schedule to this Act has been subscribed, and the sum payable on application for the amount so stated has been paid to and received by the company. For the purposes of this subsection, a sum shall be deemed to have been paid to and received by the company if a cheque for that sum has been received in good faith by the company and the directors of the company have no reason for suspecting that the cheque will not be paid.
- (2) The amount so stated in the prospectus shall be reckoned exclusively of any amount payable otherwise than in cash and is in this Act referred to as "the minimum subscription".
- (3) The amount payable on application on each share shall not be less than five per cent. of the nominal amount of the share.
- (4) If the conditions aforesaid have not been complied with on the expiration of forty days after the first issue of the prospectus, all money received from applicants for shares shall be forthwith repaid to them without interest, and; if any such money is not so repaid within forty-eight days after the issue of the prospectus, the directors of the company shall be jointly and severally liable to repay that money with interest at the rate of five per cent. per annum from the expiration of the forty-eighth day:
- Provided that a director shall not be liable if he proves that the default in the repayment of the money was not due to any misconduct or negligence on his part.
- (5) Any condition requiring or binding any applicant for shares to waive compliance with any requirement of this section shall be void.
- (6) This section, except subsection (3) thereof, shall not apply to any allotment of shares subsequent to the first allotment of shares offered to the public for subscription.

#### **48 Prohibition of allotment in certain cases unless statement in lieu of prospectus delivered to registrar**

- (1) A company having a share capital, which does not issue a prospectus on or with reference to its formation, or which has issued such a prospectus but has not proceeded to allot any of the shares offered to the public for subscription, shall not allot any of its shares or debentures unless at least three days before the first allotment of either shares or debentures there has been delivered to the registrar of companies for registration a statement in lieu of prospectus signed by every person who is named therein as a director or a proposed director of the company or by his agent authorised in writing, in the form and containing the particulars set out in Part I of the Fifth Schedule to this Act and, in the cases mentioned in Part II of that Schedule, setting out the reports



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specified therein, and the said Parts I and II shall have effect subject to the provisions contained in Part III of that Schedule.

- (2) Every statement in lieu of prospectus delivered under the foregoing subsection shall, where the persons making any such report as aforesaid have made therein or have, without giving the reasons, indicated therein any such adjustments as are mentioned in paragraph 5 of the said Fifth Schedule, have endorsed thereon or attached thereto a written statement signed by those persons setting out the adjustments and giving the reasons therefor.
- (3) This section shall not apply to a private company.
- (4) If a company acts in contravention of subsection (1) or (2) of this section, the company and every director of the company who knowingly and wilfully authorises or permits the contravention shall be liable to a fine not exceeding one hundred pounds.
- (5) Where a statement in lieu of prospectus delivered to the registrar of companies under subsection (1) of this section includes any untrue statement, any person who authorised the delivery of the statement in lieu of prospectus for registration shall be liable—
  - (a) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine not exceeding five hundred pounds, or both; or
  - (b) on summary conviction, to imprisonment for a term not exceeding three months or a fine not exceeding one hundred pounds, or both; unless he proves either that the untrue statement was immaterial or that he had reasonable ground to believe and did up to the time of the delivery for registration of the statement in lieu of prospectus believe that the untrue statement was true.
- (6) For the purposes of this section—
  - (a) a statement included in a statement in lieu of prospectus shall be deemed to be untrue if it is misleading in the form and context in which it is included; and
  - (b) a statement shall be deemed to be included in a statement in lieu of prospectus if it is contained therein or in any report or memorandum appearing on the face thereof or by reference incorporated therein.

#### **49 Effect of irregular allotment**

- (1) An allotment made by a company to an applicant in contravention of the provisions of the two last foregoing sections shall be voidable at the instance of the applicant within one month after the holding of the statutory meeting of the company and not later, or, in any case where the company is not required to hold a statutory meeting, or where the allotment is made after the holding of the statutory meeting, within one month after the date of the allotment, and not later, and shall be so voidable notwithstanding that the company is in course of being wound up.
- (2) If any director of a company knowingly contravenes, or permits or authorises the contravention of, any of the provisions of the said sections with respect to allotment, he shall be 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 thereby:

Provided that proceedings to recover any such loss, damages, or costs shall not be commenced after the expiration of two years from the date of the allotment.

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## **50 Applications for, and allotment of, shares and debentures**

- (1) No allotment shall be made of any shares in or debentures of a company 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. The beginning of the said third day or such later time as aforesaid is hereafter in this Act referred to as " the time of the opening of the subscription lists ".
- (2) In the foregoing subsection, the reference to the day on which the prospectus is first issued generally shall be construed as referring to the day on which it is first so issued as a newspaper advertisement:  
  
Provided that, 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 said reference shall be construed as referring to the day on which it is first so issued in any manner.
- (3) The validity of an allotment shall not be affected by any contravention of the foregoing provisions of this section but, in the event of any such contravention, the company and every officer of the company who is in default shall be liable to a fine not exceeding five hundred pounds.
- (4) In the application of this section to a prospectus offering shares or debentures for sale, the foregoing subsections shall have effect with the substitution of references to sale for references to allotment, and with the substitution for the reference to the company and every officer of the company who is in default of a reference to any person by or through whom the offer is made and who knowingly and wilfully authorises or permits the contravention.
- (5) An application for shares in or debentures of a company which is made in pursuance of a prospectus issued generally shall not be 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 the said third day, by some person responsible under section forty-three of this Act for the prospectus, of a public notice having the effect under that section of excluding or limiting the responsibility of the person giving it.
- (6) In reckoning for the purposes of this and the next succeeding section the third day after another day, any intervening day which is a Saturday or Sunday or which is a bank holiday in any part of Great Britain shall be disregarded, and if the third day (as so reckoned) is itself a Saturday or Sunday or such a bank holiday there shall for the said purposes be substituted the first day thereafter which is none of them.
- (7) This section shall not apply in relation to a prospectus to which paragraph (a) or (b) of subsection (2) of section thirty-nine of this Act applies.

## **51 Allotment of shares and debentures to be dealt in on stock exchange**

- (1) 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 thereby to be dealt in on any stock exchange, any allotment made on an application in pursuance of the prospectus shall, whenever made, be 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 three weeks from the date of the closing of the subscription lists or such longer period not exceeding six weeks as may, within the

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said three weeks, be notified to the applicant for permission by or on behalf of the stock exchange.

- (2) Where the permission has not been applied for as aforesaid, or has been refused as aforesaid, the company shall forthwith repay without interest all money received from applicants in pursuance of the prospectus, and, if any such money is not repaid within eight days after the company becomes liable to repay it, the directors of the company shall be jointly and severally liable to repay that money with interest at the rate of five per cent. per annum from the expiration of the eighth day:

Provided that a director shall not be liable if he proves that the default in the repayment of the money was not due to any misconduct or negligence on his part.

- (3) Any money received as aforesaid shall be kept in a separate bank account so long as the company may become liable to repay it under the last foregoing subsection; and, if default is made in complying with this subsection, the company and every officer of the company who is in default shall be liable to a fine not exceeding five hundred pounds.
- (4) Any condition requiring or binding any applicant for shares or debentures to waive compliance with any requirement of this section shall be void.
- (5) For the purposes of this section, permission shall not be deemed to be refused if it is intimated that the application for it, though not at present granted, will be given further consideration.
- (6) This section shall have effect—
- (a) in relation to any shares or debentures agreed to be taken by a person underwriting an offer thereof by a prospectus as if he had applied therefor in pursuance of the prospectus; and
  - (b) in relation to a prospectus offering shares for sale with the following modifications, that is to say—
    - (i) references to sale shall be substituted for references to allotment;
    - (ii) the persons by whom the offer is made, and not the company, shall be liable under subsection (2) to repay money received from applicants, and references to the company's liability under that subsection shall be construed accordingly; and
    - (iii) for the reference in subsection (3) to the company and every officer of the company who is in default there shall be substituted a reference to any person by or through whom the offer is made and who knowingly and wilfully authorises or permits the default.

## **52 Return as to allotments**

- (1) Whenever a company limited by shares or a company limited by guarantee and having a share capital makes any 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, stating the number and nominal amount of the shares comprised in the allotment, the names, addresses and descriptions of the allottees, and the amount, if any, paid or due and payable on each share; and
  - (b) in the case of shares allotted as fully or partly paid up otherwise than in cash, a contract in writing constituting the title of the allottee to the allotment together

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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 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.

- (2) 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, and those particulars shall be deemed to be 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 thereon be adjudicated under section twelve of that Act.
- (3) If default is made in complying with this section, every officer of the company who is in default shall be liable to a fine not exceeding fifty pounds for every day during which the default continues:

Provided that, in case of default in delivering to the registrar of companies within one month after the allotment any document required to be delivered by this section, 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 may think proper.

#### *Commissions and Discounts, &c*

### **53 Power to pay certain commissions, and prohibition of payment of all other commissions, discounts, &c**

- (1) It shall be 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—
- (a) the payment of the commission is authorised by the articles; and
  - (b) the commission paid or agreed to be paid does not exceed ten per cent. of the price at which the shares are issued or the amount or rate authorised by the articles, whichever is the less; and
  - (c) the amount or rate per cent. of the commission paid or agreed to be paid is—
    - (i) in the case of shares offered to the public for subscription, disclosed in the prospectus; or
    - (ii) in the case of shares not offered to the public for subscription, disclosed in the statement in lieu of prospectus, or in a statement in the prescribed form signed in like manner as a statement in lieu of prospectus and delivered before the payment of the commission to the registrar of companies for registration, and, where a circular or notice, not being a prospectus, inviting subscription for the shares is issued, also disclosed in that circular or notice; and
  - (d) the number of shares which persons have agreed for a commission to subscribe absolutely is disclosed in manner aforesaid.

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- (2) Save as aforesaid, 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, 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 this section shall affect the power of any company to pay such brokerage as it has heretofore been lawful for a company to pay.
- (4) A vendor to, promoter of, or other person who receives payment in money or shares from, a company shall have and shall be 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 legal under this section.
- (5) If default is made in complying with the provisions of this section relating to the delivery to the registrar of the statement in the prescribed form, the company and every officer of the company who is in default shall be liable to a fine not exceeding twenty-five pounds.
- (6) Nothing in this section shall affect the operation of subsection (2) of section three of the Gas Undertakings Act, 1934 (which limits the rate at which commission may be paid by gas undertakers).

**54 Prohibition of provision of financial assistance by company for purchase of or subscription for its own, or its holding company's, shares**

- (1) Subject as provided in this section, it shall not be lawful for a company to give, whether directly or indirectly, and whether by means of a loan, guarantee, the provision of security or otherwise, any financial assistance for the purpose of or in connection with a purchase or subscription made or to be made by any person of or for any shares in the company, or, where the company is a subsidiary company, in its holding company:  
Provided that nothing in this section shall be taken to prohibit—
  - (a) where the lending of money is part of the ordinary business of a company, the lending of money by the company in the ordinary course of its business;
  - (b) the provision by a company, in accordance with any scheme for-the-time being in force, of money for the purchase of, or subscription for, fully-paid shares in the company or its holding company, being a purchase or subscription by trustees of or for shares to be held by or for the benefit of employees of the company, including any director holding a salaried employment or office in the company;
  - (c) the making by a company of loans to persons, other than directors, bona fide in the employment of the company with a view to enabling those persons to purchase or subscribe for fully-paid shares in the company or its holding company to be held by themselves by way of beneficial ownership.
- (2) If a company acts in contravention of this section, the company and every officer of the company who is in default shall be liable to a fine not exceeding one hundred pounds.

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*Construction of References to offering Shares or Debentures to the Public*

**55 Construction of references to offering shares or debentures to the public**

- (1) Any reference in this Act to offering shares or debentures to the public shall, subject to any provision to the contrary contained therein, be construed as including a reference to offering them to any section of the public, whether selected as members or debenture holders of the company concerned or as clients of the person issuing the prospectus or in any other manner, and references in this Act or in a company's articles to invitations to the public to subscribe for shares or debentures shall, subject as aforesaid, be similarly construed.
- (2) The foregoing subsection shall not be taken as requiring any offer or invitation to be treated as made to the public if it can properly be regarded, in all the circumstances, as not being calculated to result, directly or indirectly, in the shares or debentures becoming available for subscription or purchase by persons other than those receiving the offer or invitation, or otherwise as being a domestic concern of the persons making and receiving it, and in particular—
  - (a) a provision in a company's articles prohibiting invitations to the public to subscribe for shares or debentures shall not be taken as prohibiting the making to members or debenture holders of an invitation which can properly be regarded as aforesaid; and
  - (b) the provisions of this Act relating to private companies shall be construed accordingly.

*Issue of Shares at Premium and Discount and Redeemable Preference Shares*

**56 Application of premiums received on issue of shares**

- (1) Where a company issues shares at a premium, whether for cash or otherwise, a sum equal to the aggregate amount or value of the premiums on those shares shall be transferred to an account, to be called " the share premium account ", and the provisions of this Act relating to the reduction of the share capital of a company shall, except as provided in this section, apply as if the share premium account were paid up share capital of the company.
- (2) The share premium account may, notwithstanding anything in the foregoing subsection, be applied by the company in paying up unissued shares of the company to be issued to members of the company as fully paid bonus shares, in waiting off—
  - (a) the preliminary expenses of the company; or
  - (b) the expenses of, or the commission paid or discount allowed on, any issue of shares or debentures of the company;
 or in providing for the premium payable on redemption of any redeemable preference shares or of any debentures of the company.
- (3) Where a company has before the commencement of this Act issued any shares at a premium, this section shall apply as if the shares had been issued after the commencement of this Act:

Provided that any part of the premiums which has been so applied that it does not at the commencement of this Act form an identifiable part of the company's reserves within

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the meaning of the Eighth Schedule to this Act shall be disregarded in determining the sum to be included in the share premium account.

## **57 Power to issue shares at a discount**

- (1) Subject as provided in this section, it shall be lawful for a company to issue at a discount shares in the company of a class already issued:

Provided that—

- (a) the issue of the shares at a discount must be authorised by resolution passed in general meeting of the company, and must be sanctioned by the court;
  - (b) the resolution must specify the maximum rate of discount at which the shares are to be issued;
  - (c) not less than one year must at the date of the issue have elapsed since the date on which the company was entitled to commence business ;
  - (d) the shares to be issued at a discount must be issued within one month after the date on which the issue is sanctioned by the court or within such extended time as the court may allow.
- (2) Where a company has passed a resolution authorising the issue of shares at a discount, it may apply to the court for an order sanctioning the issue, and on any such application the court, if, having regard to all the circumstances of the case, it thinks proper so to do, may make an order sanctioning the issue on such terms and conditions as it thinks fit.
- (3) Every prospectus relating to the issue of the shares must contain particulars of the discount allowed on the issue of the shares or of so much of that discount as has not been written off at the date of the issue of the prospectus. If default is made in complying with this subsection, the company and every officer of the company who is in default shall be liable to a default fine.

## **58 Power to issue redeemable preference shares**

- (1) Subject to the provisions of this section, a company limited by shares may, if so authorised by its articles, issue preference shares which are, or at the option of the company are to be liable, to be redeemed:

Provided that—

- (a) no such shares shall be redeemed except out of profits of the company which would otherwise be available for dividend or out of the proceeds of a fresh issue of shares made for the purposes of the redemption;
- (b) no such shares shall be redeemed unless they are fully paid;
- (c) the premium, if any, payable on redemption, must have been provided for out of the profits of the company or out of the company's share premium account before the shares are redeemed;
- (d) where any such shares are redeemed otherwise than out of the proceeds of a fresh issue, there shall out of profits which would otherwise have been available for dividend be transferred to a reserve fund, to be called " the capital redemption reserve fund ", a sum equal to the nominal amount of the shares redeemed, and the provisions of this Act relating to the reduction of the share capital of a company shall, except as provided in this section, apply as if the capital redemption reserve fund were paid-up share capital of the company.

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- (2) Subject to the provisions of this section, the redemption of preference shares thereunder may be effected on such terms and in such manner as may be provided by the articles of the company.
- (3) The redemption of preference shares under this section by a company shall not be taken as reducing the amount of the company's authorised share capital.
- (4) Where in pursuance of this section a company has redeemed or is about to redeem any preference shares, it shall have power to issue shares up to the nominal amount of the shares redeemed or to be redeemed as if those shares had never been issued, and accordingly the share capital of the company shall not for the purposes of any enactments relating to stamp duty be deemed to be increased by the issue of shares in pursuance of this subsection:
 

Provided that, where new shares are issued before the redemption of the old shares, the new shares shall not, so far as relates to stamp duty, be deemed to have been issued in pursuance of this subsection unless the old shares are redeemed within one month after the issue of the new shares.
- (5) The capital redemption reserve fund may, notwithstanding anything in this section, be applied by the company in paying up unissued shares of the company to be issued to members of the company as fully paid bonus shares.

#### *Miscellaneous Provisions as to Share Capital*

### **59 Power of company to arrange for different amounts being paid on shares**

A company, if so authorised by its articles, may do any one or more of the following things—

- (a) make arrangements on the issue of shares for a difference between the shareholders in the amounts and times of payment of calls on their shares;
- (b) accept from any member the whole or a part of the amount remaining unpaid on any shares held by him, although no part of that amount has been called up;
- (c) pay dividend in proportion to the amount paid up on each share where a larger amount is paid up on some shares than on others.

### **60 Reserve liability of limited company**

A limited company may by special resolution determine that any portion of its share capital which has not been already called up shall not be capable of being called up except in the event and for the purposes of the company being wound up, and thereupon that portion of its share capital shall not be capable of being called up except in the event and for the purposes aforesaid.

### **61 Power of company limited by shares to alter its share capital**

- (1) A company limited by shares or a company limited by guarantee and having a share capital, if so authorised by its articles, may alter the conditions of its memorandum as follows, that is to say, it may—
  - (a) increase its share capital by new shares of such amount as it thinks expedient;
  - (b) consolidate and divide all or any of its share capital into shares of larger amount than its existing shares;



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- (c) convert all or any of its paid-up shares into stock, and reconvert that stock into paid-up shares of any denomination;
  - (d) subdivide its shares, or any of them, into shares of smaller amount than is fixed by the memorandum, so, however, that in the subdivision the proportion between the amount paid and the amount, if any, unpaid on each reduced share shall be the same as it was in the case of the share from which the reduced share is derived;
  - (e) cancel shares which, at the date of the passing of the resolution in that behalf, have not been taken or agreed to be taken by any person, and diminish the amount of its share, capital by the amount of the shares so cancelled.
- (2) The powers conferred by this section must be exercised by the company in general meeting.
- (3) A cancellation of shares in pursuance of this section shall not be deemed to be a reduction of share capital within the meaning of this Act.

## **62 Notice to registrar of consolidation of share capital, conversion of shares into stock, &c**

- (1) If a company having a share capital has—
- (a) consolidated and divided its share capital into shares of larger amount than its existing shares; or
  - (b) converted any shares into stock; or
  - (c) re-converted stock into shares; or
  - (d) subdivided its shares or any of them; or
  - (e) redeemed any redeemable preference shares; or
  - (f) cancelled any shares, otherwise than in connection with a reduction of share capital under section sixty-six of this Act;
- it shall within one month after so doing give notice thereof to the registrar of companies specifying, as the case may be, the shares consolidated, divided, converted, subdivided, redeemed or cancelled, or the stock re-converted.
- (2) If default is made in complying with this section, the company and every officer of the company who is in default shall be liable to a default fine.

## **63 Notice of increase of share capital**

- (1) Where a company having a share capital, whether its shares have or have not been converted into stock, has increased its share capital beyond the registered capital, it shall, within fifteen days after the passing of the resolution authorising the increase, give to the registrar of companies notice of the increase, and the registrar shall record the increase.
- (2) The notice to be given as aforesaid shall include such particulars as may be prescribed with respect to the classes of shares affected and the conditions subject to which the new shares have been or are to be issued, and there shall be forwarded to the registrar of companies together with the notice a printed copy of the resolution authorising the increase.
- (3) If default is made in complying with this section, the company and every officer of the company who is in default shall be liable to a default fine.

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#### **64 Power of unlimited company to provide for reserve share capital on re-registration**

An unlimited company having a share capital may, by its resolution for registration as a limited company in pursuance of this Act, do either or both of the following things, namely:—

- (a) increase the nominal amount of its share capital by increasing the nominal amount of each of its shares, but subject to the condition that no part of the increased capital shall be capable of being called up except in the event and for the purposes of the company being wound up;
- (b) provide that a specified portion of its uncalled share capital shall not be capable of being called up except in the event and for the purposes of the company being wound up.

#### **65 Power of company to pay interest out of capital in certain cases**

- (1) Where any shares of a company are issued for the purpose of raising money to defray the expenses of the construction of any works or buildings or the provision of any plant which cannot be made profitable for a lengthened period, the company may pay interest on so much of that share capital as is for the time being paid up for the period and subject to the conditions and restrictions in this section mentioned, and may charge the sum so paid by way of interest to capital as part of the cost of construction of the work or building, or the provision of plant:

Provided that—

- (a) no such payment shall be made unless it is authorised by the articles or by special resolution;
  - (b) no such payment, whether authorised by the articles or by special resolution, shall be made without the previous sanction of the Board of Trade;
  - (c) before sanctioning any such payment the Board of Trade may, at the expense of the company, appoint a person to inquire and report to them as to the circumstances of the case, and may, before making the appointment, require the company to give security for the payment of the costs of the inquiry;
  - (d) the payment shall be made only for such period as may be determined by the Board of Trade, and that period shall in no case extend beyond the close of the half year next after the half year during which the works or buildings have been actually completed or the plant provided;
  - (e) the rate of interest shall in no case exceed four per cent, per annum or such other rate as may for the time being be prescribed by order of the Treasury;
  - (f) the payment of the interest shall not operate as a reduction of the amount paid up on the shares in respect of which it is paid;
  - (g) nothing in this section shall affect any company to which the Indian Railways Act, 1894, as amended by any subsequent enactment, applies.
- (2) The power conferred by this section on the Treasury shall be exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

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### *Reduction of Share Capital*

#### **66 Special resolution for reduction of share capital**

(1) Subject to confirmation by the court, a company limited by shares or a company limited by guarantee and having a share capital may, if so authorised by its articles, by special resolution reduce its share capital in any way, and in particular, without prejudice to the generality of the foregoing power, may—

- (a) extinguish or reduce the liability on any of its shares in respect of share capital not paid up; or
- (b) either with or without extinguishing or reducing liability on any of its shares, cancel any paid-up share capital which is lost or unrepresented by available assets; or
- (c) either with or without extinguishing or reducing liability on any of its shares, pay off any paid-up share capital which is in excess of the wants of the company;

and may, if and so far as is necessary, alter its memorandum by reducing the amount of its share capital and of its shares accordingly.

(2) A special resolution under this section is in this Act referred to as "a resolution for reducing share capital".

#### **67 Application to court for confirming order, objections by creditors, and settlement of list of objecting creditors**

(1) Where a company has passed a resolution for reducing share capital, it may apply to the court for an order confirming the reduction.

(2) Where the proposed reduction of share capital involves either diminution of liability in respect of unpaid share capital or the payment to any shareholder of any paid-up share capital, and in any other case if the court so directs, the following provisions shall have effect, subject nevertheless to the next following subsection:—

- (a) every creditor of the company who at the date fixed by the court is entitled to any debt or claim which, if that date were the commencement of the winding up of the company, would be admissible in proof against the company, shall be entitled to object to the reduction;
- (b) the court shall settle a list of creditors so entitled to object, and for that purpose shall ascertain, as far as possible without requiring an application from any creditor, the names of those creditors and the nature and amount of their debts or claims, and may publish notices fixing a day or days within which creditors not entered on the list are to claim to be so entered or are to be excluded from the right of objecting to the reduction;
- (c) where a creditor entered on the list whose debt or claim is not discharged or has not determined does not consent to the reduction, the court may, if it thinks fit, dispense with the consent of that creditor, on the company securing payment of his debt or claim by appropriating, as the court may direct, the following amount:—

- (i) if the company admits the full amount of the debt or claim, or, though not admitting it, is willing to provide for it, then the full amount of the debt or claim;
- (ii) if the company does not admit and is not willing to provide for the full amount of the debt or claim, or if the amount is contingent or not

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ascertained, then an amount fixed by the court after the like inquiry and adjudication as if the company were being wound up by the court.

- (3) Where a proposed reduction of share capital involves either the diminution of any liability in respect of unpaid share capital or the payment to any shareholder of any paid-up share capital, the court may, if, having regard to any special circumstances of the case, it thinks proper so to do, direct that subsection (2) of this section shall not apply as regards any class or any classes of creditors.

## **68 Order confirming reduction and powers of court on making such order**

- (1) The court, if satisfied, with respect to every creditor of the company who under the last foregoing section is entitled to object to the reduction, that either his consent to the reduction has been obtained or his debt or claim has been discharged or has determined, or has been secured, may make an order confirming the reduction on such terms and conditions as it thinks fit.
- (2) Where the court makes any such order, it may—
  - (a) if for any special reason it thinks proper so to do, make an order directing that the company shall, during such period, commencing on or at any time after the date of the order, as is specified in the order, add to its name as the last words thereof the words  
“and reduced”; and
  - (b) make an order requiring the company to publish as the court directs the reasons for reduction or such other information in regard thereto as the court may think expedient with a view to giving proper information to the public, and, if the court thinks fit, the causes which led to the reduction.
- (3) Where a company is ordered to add to its name the words  
“and reduced”, those words shall, until the expiration of the period specified in the order, be deemed to be part of the name of the company.

## **69 Registration of order and minute of reduction**

- (1) The registrar of companies, on production to him of an order of the court confirming the reduction of the share capital of a company, and the delivery to him of a copy of the order and of a minute approved by the court showing, with respect to the share capital of the company as altered by the order, the amount of the share capital, the number of shares into which it is to be divided, and the amount of each share, and the amount, if any, at the date of the registration deemed to be paid up on each share, shall register the order and minute.
- (2) On the registration of the order and minute, and not before, the resolution for reducing share capital as confirmed by the order so registered shall take effect.
- (3) Notice of the registration shall be published in such manner as the court may direct.
- (4) The registrar shall certify under his hand the registration of the order and minute, and his certificate shall be conclusive evidence that all the requirements of this Act with respect to reduction of share capital have been complied with, and that the share capital of the company is such as is stated in the minute.

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- (5) The minute when registered shall be deemed to be substituted for the corresponding part of the memorandum, and shall be valid and alterable as if it had been originally contained therein.
- (6) The substitution of any such minute as aforesaid for part of the memorandum of the company shall be deemed to be an alteration of the memorandum within the meaning of section twenty-five of this Act.

## **70 Liability of members in respect of reduced shares**

- (1) In the case of a reduction of share capital, a member of the company, past or present, shall not be liable in respect of any share to any call or contribution exceeding in amount the difference, if any, between the amount of the share as fixed by the minute and the amount paid, or the reduced amount, if any, which is to be deemed to have been paid, on the share, as the case may be:

Provided that, if any creditor, entitled in respect of any debt or claim to object to the reduction of share capital, is, by reason of his ignorance of the proceedings for reduction, or of their nature and effect with respect to his claim, not entered on the list of creditors, and, after the reduction, the company is unable, within the meaning of the provisions of this Act with respect to winding up by the court, to pay the amount of his debt or claim, then—

- (a) every person who was a member of the company at the date of the registration of the order for reduction and minute, shall be liable to contribute for the payment of that debt or claim an amount not exceeding the amount which he would have been liable to contribute if the company had commenced to be wound up on the day before the said date; and
  - (b) if the company is wound up, the court, on the application of any such creditor and proof of his ignorance as aforesaid, may, if it thinks fit, settle accordingly a list of persons so liable to contribute, and make and enforce calls and orders on the contributories settled on the list, as if they were ordinary contributories in a winding up.
- (2) Nothing in this section shall affect the rights of the contributories among themselves.

## **71 Penalty for concealing name of creditor, &c**

If any officer of the company—

- (a) wilfully conceals the name of any creditor entitled to object to the reduction; or
- (b) wilfully misrepresents the nature or amount of the debt or claim of any creditor; or
- (c) aids, abets or is privy to any such concealment or misrepresentation as aforesaid,

he shall be guilty of a misdemeanour.

### *Variation of Shareholders' Rights*

## **72 Rights of holders of special classes of shares**

- (1) If, in the case of a company the share capital of which is divided into different classes of shares, provision is made by the memorandum or articles for authorising the variation

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of the rights attached to any class of shares in the company, subject to the consent of any specified proportion of the holders of the issued shares of that class or the sanction of a resolution passed at a separate meeting of the holders of those shares, and in pursuance of the said provision the rights attached to any such class of shares are at any time varied, the holders of not less in the aggregate than fifteen per cent. of the issued shares of that class, being persons who did not consent to or vote in favour of the resolution for the variation, may apply to the court to have the variation cancelled, and, where any such application is made, the variation shall not have effect unless and until it is confirmed by the court.

- (2) An application under this section must be made within twenty-one days after the date on which the consent was given or the resolution was passed, as the case may be, and may be made on behalf of the shareholders entitled to make the application by such one or more of their number as they may appoint in writing for the purpose.
- (3) On any such application the court, after hearing the applicant and any other persons who apply to the court to be heard and appear to the court to be interested in the application, may, if it is satisfied, having regard to all the circumstances of the case, that the variation would unfairly prejudice the shareholders of the class represented by the applicant, disallow the variation and shall, if not so satisfied, confirm the variation.
- (4) The decision of the court on any such application shall be final.
- (5) The company shall within fifteen days after the making of an order by the court on any such application forward a copy of the order to the registrar of companies, and, if default is made in complying with this provision, the company and every officer of the company who is in default shall be liable to a default fine.
- (6) The expression " variation " in this section includes abrogation and the expression " varied " shall be construed accordingly.

*Transfer of Shares and Debentures, Evidence of Title, &c*

**73 Nature of shares**

The shares or other interest of any member in a company shall be personal estate, transferable in manner provided by the articles of the company, and shall not be of the nature of real estate.

**74 Numbering of shares**

Each share in a company having a share capital shall be distinguished by its appropriate number:

Provided that, if at any time all the issued shares in a company, or all the issued shares therein of a particular class, are fully paid up and rank *pari passu* for all purposes, none of those shares need thereafter have a distinguishing number so long as it remains fully paid up and ranks *pari passu* for all purposes with all shares of the same class for the time being issued and fully paid up.

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**75 Transfer not to be registered except on production of instrument of transfer**

Notwithstanding anything in the articles of a company, it shall not be lawful for the company to register a transfer of shares in or debentures of the company unless a proper instrument of transfer has been delivered to the company:

Provided that nothing in this section shall prejudice any power of the company to register as shareholder or debenture holder any person to whom the right to any shares in or debentures of the company has been transmitted by operation of law.

**76 Transfer by personal representative**

A transfer of the share or other interest of a deceased member of a company made by his personal representative shall, although the personal representative is not himself a member of the company, be as valid as if he had been such a member at the time of the execution of the instrument of transfer.

**77 Registration of transfer at request of transferor**

On the application of the transferor of any share or interest in a company, the company shall enter in its register of members the name of the transferee in the same manner and subject to the same conditions as if the application for the entry were made by the transferee.

**78 Notice of refusal to register transfer**

- (1) If a company refuses to register a transfer of any shares or debentures, the company shall, within two months after the date on which the transfer was lodged with the company, send to the transferee notice of the refusal.
- (2) If default is made in complying with this section, the company and every officer of the company who is in default shall be liable to a default fine.

**79 Certification of transfers**

- (1) The certification by a company of any instrument of transfer of shares in or debentures of the company shall be taken as a representation by the company to any person acting on the faith of the certification that there have been produced to the company such documents as on the face of them show a prima facie title to the shares or debentures in the transferor named in the instrument of transfer, but not as a representation that the transferor has any title to the shares or debentures.
- (2) Where any person acts on the faith of a false certification by a company made negligently, the company shall be under the same liability to him as if the certification had been made fraudulently.
- (3) For the purposes of this section—
  - (a) an instrument of transfer shall be deemed to be certified if it bears the words " certificate lodged " or words to the like effect;
  - (b) the certification of an instrument of transfer shall be deemed to be made-by a company if—
    - (i) the person issuing the instrument is a person authorised to issue certificated instruments of transfer on the company's behalf; and

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- (ii) the certification is signed by a person authorised to certificate transfers on the company's behalf or by any officer or servant either of the company or of a body corporate so authorised;
- (c) a certification shall be deemed to be signed by any person if—
  - (i) it purports to be authenticated by his signature or initials (whether handwritten or not); and
  - (ii) it is not shown that the signature or initials was or were placed there neither by himself nor by any person authorised to use the signature or initials for the purpose of certificating transfers on the company's behalf.

### **80 Duties of company with respect to issue of certificates**

- (1) Every company shall, within two months after the allotment of any of its shares, debentures or debenture stock and within two months after the date on which a transfer of any such shares, debentures or debenture stock is lodged with the company, complete and have ready for delivery the certificates of all shares, the debentures and the certificates of all debenture stock allotted or transferred, unless the conditions of issue of the shares, debentures or debenture stock otherwise provide. The expression " transfer " for the purpose of this subsection means a transfer, duly stamped and otherwise valid, and does not include such a transfer as the company is for any reason entitled to refuse to register and does not register.
- (2) If default is made in complying with this section, the company and every officer of the company who is in default shall be liable to a default fine.
- (3) If any company on whom a notice has been served requiring the company to make good any default in complying with the provisions of subsection (1) of this section fails to make good the default within ten days after the service of the notice, the court may, on the application of the person entitled to have the certificates-or the debentures delivered to him, make an order directing the company and any officer of the company to make good the default within such time as may be specified in the order, and any such order may provide that all costs of and incidental to the application shall be borne by the company or by any officer of the company responsible for the default.

### **81 Certificate to be evidence of title**

A certificate, under the common seal of the company, specifying any shares held by any member, shall be prima facie evidence of the title of the member to the shares.

### **82 Evidence of grant of probate**

The production to a company of any document which is by law sufficient evidence of probate of the will, or letters of administration of the estate, or confirmation as executor, of a deceased person having been granted to some person shall be accepted by the company, notwithstanding anything in its articles, as sufficient evidence of the grant.

### **83 Issue and effect of share warrants to bearer**

- (1) A company limited by shares, if so authorised by its articles, may, with respect to any fully paid-up shares, issue under its common seal a warrant stating that the bearer of



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the warrant is entitled to the shares therein specified, and may provide, by coupons or otherwise, for the payment of the future dividends on the shares included in the warrant.

- (2) Such a warrant as aforesaid is in this Act termed a " share warrant ".
- (3) A share warrant shall entitle the bearer thereof to the shares therein specified, and the shares may be transferred by delivery of the warrant.

#### **84 Penalty for personation of shareholder**

If any person falsely and deceitfully personates any owner of any share or interest in any company, or of any share warrant or coupon, issued in pursuance of this Act, and thereby obtains or endeavours to obtain any such share or interest or share warrant or coupon, or receives or endeavours to receive any money due to any such owner, as if the offender were the true and lawful owner, he shall be guilty of felony, and shall on conviction thereof be liable, at the discretion of the court, to be kept in penal servitude for life or for any term not less than three years.

#### **85 Offences in connection with share warrants in Scotland**

- (1) If in Scotland any person—
  - (a) with intent to defraud, forges or alters, or offers, utters, disposes of, or puts off, knowing the same to be forged or altered, any share warrant or coupon, or any document purporting to be a share warrant or coupon, issued in pursuance of this Act; or
  - (b) by means of any such forged or altered share warrant, coupon, or document, purporting as aforesaid, demands or endeavours to obtain or receive any share or interest in any company under this Act, or to receive any dividend or money payable in respect thereof, knowing the warrant, coupon; or document to be forged or altered;he shall on conviction thereof be liable, at the discretion of the court, to be kept in penal servitude for life or for any term not less than three years.
- (2) If in Scotland any person without lawful authority or excuse, proof whereof shall lie on him,—
  - (a) engraves or makes on any plate, wood, stone, or other material, any share warrant or coupon purporting to be—
    - (i) a share warrant or coupon issued or made by any particular company in pursuance of this Act; or
    - (ii) a blank share warrant or coupon so issued or made; or
    - (iii) a part of such a share warrant or coupon; or
  - (b) uses any such plate, wood, stone, or other material, for the making or printing of any such share warrant or coupon, or of any such blank share warrant or coupon, or any part thereof respectively; or
  - (c) knowingly has in his custody or possession any such plate, wood, stone, or other material;

he shall on conviction thereof be liable, at the discretion of the court, to be kept in penal servitude for any term not exceeding fourteen years, and not less than three years.

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### *Special Provisions as to Debentures*

#### **86 Provisions as to registers of debenture holders**

- (1) A company registered in England shall not keep in Scotland and a company registered in Scotland shall not keep in England any register of holders of debentures of the company or any duplicate of any such register or part of any such register which is kept outside Great Britain.
- (2) Neither a register of holders of debentures of a company nor a duplicate of any such register or part of any such register which is kept outside Great Britain shall be kept in England, in the case of a company registered in England, or in Scotland, in the case of a company registered in Scotland, elsewhere than at the registered office of the company, any other office of the company at which the work of making it up is done, or, if the company arranges with some other person for the making up of the register or duplicate to be undertaken on behalf of the company by that other person, at the office of that other person at which the work is done, and where a company keeps in England or Scotland, as the case may be, both such a register and such a duplicate, it shall keep them at the same place.
- (3) Every company which keeps any such register or duplicate in England or Scotland shall send notice to the registrar of companies of the place where the register or duplicate is kept and of, any change in that place :

Provided that a company shall not be bound to send notice under this subsection where the register or duplicate has, at all times since it came into existence, or in the case of a company which came into existence after the commencement of this Act, at all times since then, been kept at the registered office of the company.

#### **87 Rights of inspection of register of debenture holders and to copies of register and trust deed**

- (1) Every register of holders of debentures of a company shall, except when duly closed (but subject to such reasonable restrictions as the company may in general meeting impose, so that not less than two hours in each day shall be allowed for inspection), be open to the inspection of the registered holder of any such debentures or any holder of shares in the company without fee, and of any other person on payment of a fee of one shilling or such less sum as may be prescribed by the company.
- (2) Any such registered holder of debentures or holder of shares as aforesaid or any other person may require a copy of the register of the holders of debentures of the company or any part thereof on payment of sixpence for every hundred words required to be copied.
- (3) A copy of any trust deed for securing any issue of debentures shall be forwarded to every holder of any such debentures at his request on payment in the case of a printed trust deed of the sum of one shilling or such less sum as may be prescribed by the company, or, where the trust deed has not been printed, on payment of sixpence for every hundred words required to be copied.
- (4) If inspection is refused, or a copy is refused or not forwarded, the company and every officer of the company who is in default shall be liable to a fine not exceeding five pounds, and further shall be liable to a default fine of two pounds.

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- (5) Where a company is in default as aforesaid, the court may by order compel an immediate inspection of the register or direct that the copies required shall be sent to the person requiring them.
- (6) For the purposes of this section, a register shall be deemed to be duly closed if closed in accordance with provisions contained in the articles or in the debentures or, in the case of debenture stock, in the stock certificates, or in the trust deed or other document securing the debentures or debenture stock, during such period or periods, not exceeding in the whole thirty days in any year, as may be therein specified.

## **88 Liability of trustees for debenture holders**

- (1) Subject to the following provisions of this section, any provision contained in a trust deed for securing an issue of debentures, or in any contract with the holders of debentures secured by a trust deed, shall be void in so far as it would have the effect of exempting a trustee thereof from or indemnifying him against liability for breach of trust where he fails to show the degree of care and diligence required of him as trustee, having regard to the provisions of the trust deed conferring on him any powers, authorities or discretions.
- (2) The foregoing subsection shall not invalidate—
  - (a) any release otherwise validly given in respect of anything done or omitted to be done by a trustee before the giving of the release; or
  - (b) any provision enabling such a release to be given—
    - (i) on the agreement thereto of a majority of not less than three-fourths in value of the debenture holders present and voting in person or, where proxies are permitted, by proxy at a meeting summoned for the purpose; and
    - (ii) either with respect to specific acts or omissions or on the trustee dying or ceasing to act.
- (3) Subsection (1) of this section shall not operate—
  - (a) to invalidate any provision in force at the commencement of this Act so long as any person then entitled to the benefit of that provision or afterwards given the benefit thereof under the next following subsection remains a trustee of the deed in question; or
  - (b) to deprive any person of any exemption or right to be indemnified in respect of anything done or omitted to be done by him while any such provision was in force.
- (4) While any trustee of a trust deed remains entitled to the benefit of a provision saved by the last foregoing subsection, the benefit of that provision may be given either—
  - (a) to all trustees of the deed, present and future; or
  - (b) to any named trustees or proposed trustees thereof;by a resolution passed by a majority of not less than three-fourths in value of the debenture holders present in person or, where proxies are permitted, by proxy at a meeting summoned for the purpose in accordance with the provisions of the deed or, if the deed makes no provision for summoning meetings, a meeting summoned for the purpose in any manner approved by the court.

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## **89 Perpetual debentures**

A condition contained in any debentures or in any deed for securing any debentures, whether issued or executed before or after the commencement of this Act, shall not be invalid by reason only that the debentures are thereby made irredeemable or redeemable only on the happening of a contingency, however remote, or on the expiration of a period, however long, any rule of equity to the contrary notwithstanding.

## **90 Power to re-issue redeemed debentures in certain cases**

(1) Where either before or after the commencement of this Act a company has redeemed any debentures previously issued, then—

- (a) unless any provision to the contrary, whether express or implied, is contained in the articles or in any contract entered into by the company; or
- (b) unless the company has, by passing a resolution to that effect or, by some other act, manifested its intention that the debentures shall be cancelled;

the company shall have, and shall be deemed always to have had, power to re-issue the debentures, either by re-issuing the same debentures or by issuing other debentures in their place.

(2) Subject to the provisions of the next following section, on a re-issue of redeemed debentures the person entitled to the debentures shall have, and shall be deemed always to have had, the same priorities as if the debentures had never been redeemed.

(3) Where a company has either before or after the commencement of this Act deposited any of its debentures to secure advances from time to time on current account or otherwise, the debentures shall not be deemed to have been redeemed by reason only of the account of the company having ceased to be in debit whilst the debentures remained so deposited.

(4) The re-issue of a debenture or the issue of another debenture in its place under the power by this section given to, or deemed to have been possessed by, a company, whether the re-issue or issue was made before or after the commencement of this Act, shall be treated as the issue of a new debenture for the purposes of stamp duty, but it shall not be so treated for the purposes of any provision limiting the amount or number of debentures to be issued:

Provided that any person lending money on the security of a debenture re-issued under this section which appears to be duly stamped may give the debenture in evidence in any proceedings for enforcing his security without payment of the stamp duty or any penalty in respect thereof, unless he had notice or, but for his negligence, might have discovered, that the debenture was not duly stamped, but in any such case the company shall be liable to pay the proper stamp duty and penalty.

## **91 Saving, in case of re-issued debentures, of rights of certain mortgagees**

Whereas by section one hundred and four of the Companies (Consolidation) Act, 1908, it was provided that, upon the re-issue of redeemed debentures, the person entitled to the debentures should have the same rights and priorities as if the debentures had not previously been issued:

And whereas section forty-five of the Companies Act, 1928, amended the said section one hundred and four so as to provide (amongst other things) that the said person

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should have the same priorities as if the debentures had never been redeemed, but saved, in the case Of debentures redeemed before, but re-issued after, the date of the commencement of that Act (that is to say, the first day of November, nineteen hundred and twenty-nine), the rights and priorities of persons under mortgages and charges created before that date:

Now, therefore, where any debentures which were redeemed before the said first day of November have been re-issued after that day and before the commencement of this Act, or are re-issued after the commencement of this Act, the re-issue of the debentures shall not prejudice and shall be deemed never to have prejudiced any right or priority which any person would have had under or by virtue of any such mortgage or charge as aforesaid if the said section one hundred and four, as originally enacted, had been enacted in this Act instead of the last foregoing section.

## **92 Specific performance of contracts to subscribe for debentures**

A contract with a company to take up and pay for any debentures of the company may be enforced by an order for specific performance.

## **93 Validity of debentures to bearer in Scotland**

It is hereby declared that, notwithstanding anything contained in the statute of the Scots Parliament of 1696, chapter twenty-five, debentures to bearer issued in Scotland are valid and binding according to their terms.

## **94 Payment of certain debts out of assets subject to floating charge in priority to claims under the charge**

- (1) Where, in the case of a company registered in England, either a receiver is appointed on behalf of the holders of any debentures of the company secured by a floating charge, or possession is taken by or on behalf of those debenture holders of any property comprised in or subject to the charge, then, if the company is not at the time in course of being wound up, the debts which in every winding up are under the provisions of Part V of this Act relating to preferential payments to be paid in priority to all other debts, shall be paid out of any assets coming to the hands of the receiver or other person taking possession as aforesaid in priority to any claim for principal or interest in respect of the debentures.
- (2) In the application of the said provisions, section three hundred and nineteen of this Act shall be construed as if the provision for payment of accrued holiday remuneration becoming payable on the termination of employment before or by the effect of the winding-up order or resolution were a provision for payment of such remuneration becoming payable on the termination of employment before or by the effect of the appointment of the receiver or possession being taken as aforesaid.
- (3) The periods of time mentioned in the said provisions of Part V of this Act shall be reckoned from the date of the appointment of the receiver or of possession being taken as aforesaid, as the case may be.
- (4) Where the date referred to in the last foregoing subsection occurred before the commencement of this Act, subsections (1) and (3) of this section shall have effect with the substitution, for references to the said provisions of Part V of this Act, of references to the provisions which, by virtue of subsection (9) of the said section three

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hundred and nineteen are deemed to remain in force in the case therein mentioned, and subsection (2) shall not apply.

- (5) Any payments made under this section shall be recouped as far as may be out of the assets of the company available for payment of general creditors.