



Companies Act 1948

1948 CHAPTER 38 11 and 12 Geo 6

PART II

SHARE CAPITAL AND DEBENTURES.

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:

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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 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

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- (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.

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.

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- (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 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—

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- (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 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.