# Companies Act 1985

## 1985 CHAPTER 6

## PART IV

ALLOTMENT OF SHARES AND DEBENTURES

*General provisions as to allotment*

### 80 Authority of company required for certain allotments.

(1) The directors of a company shall not exercise any power of the company to allot relevant securities, unless they are, in accordance with this section **[**[F1]or section 80A**]**, authorised to do so by—

(a) the company in general meeting; or

(b) the company's articles.

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

(a) shares in the company other than shares shown in the memorandum to have been taken by the subscribers to it or shares allotted in pursuance of an employees' share scheme, and

(b) any right to subscribe for, or to convert any security into, shares in the company (other than shares so allotted);

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

(3) Authority under this section may be given for a particular exercise of the power or for its exercise generally, and may be unconditional or subject to conditions.

(4) The authority must state the maximum amount of relevant securities that may be allotted under it and the date on which it will expire, which must be not more than 5 years from whichever is relevant of the following dates—

(a) in the case of an authority contained in the company's articles at the time of its original incorporation, the date of that incorporation; and

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

but such an authority (including an authority contained in the articles) may be previously revoked or varied by the company in general meeting.

(5) The authority may be renewed or further renewed by the company in general meeting for a further period not exceeding 5 years; but the resolution must state (or restate) the amount of relevant securities which may be allotted under the authority or, as the case may be, the amount remaining to be allotted under it, and must specify the date on which the renewed authority will expire.

(6) In relation to authority under this section for the grant of such rights as are mentioned in subsection (2)(b), the reference in subsection (4) (as also the corresponding reference in subsection (5)) to the maximum amount of relevant securities that may be allotted under the authority is to the maximum amount of shares which may be allotted pursuant to the rights.

(7) The directors may allot relevant securities, notwithstanding that authority under this section has expired, if they are allotted in pursuance of an offer or agreement made by the company before the authority expired and the authority allowed it to make an offer or agreement which would or might require relevant securities to be allotted after the authority expired.

(8) A resolution of a company to give, vary, revoke or renew such an authority may, notwithstanding that it alters the company's articles, be an ordinary resolution; **[**[F2]but in any case Chapter 3 of Part 3 of the Companies Act 2006 (resolutions affecting a company's constitution) applies to it.**]**

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

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

(11) This section does not apply to any allotment of relevant securities by a company, other than a public company registered as such on its original incorporation, if it is made in pursuance of an offer or agreement made before the earlier of the following two dates—

(a) the date of the holding of the first general meeting of the company after its registration or re-registration as a public company, and

(b) 22nd June 1982;

but any resolution to give, vary or revoke an authority for the purposes of section 14 of the [M1]Companies Act 1980 or this section has effect for those purposes if passed at any time after the end of April 1980.

**Textual Amendments**

**F1** Words inserted (subject to the transitional and savings provisions in S.I. 1990/355, arts. 4, 10, **Sch. 4**) by Companies Act 1989 (c. 40, SIF 27), **ss. 115(1)**, 213(2)

**F2** Words in s. 80(8) beginning "but it is in any case subject to section 380" to the end omitted and substituted (1.10.2007) by virtue of The Companies Act 2006 (Commencement No. 3, Consequential Amendments, Transitional Provisions and Savings) Order 2007 (S.I. 2007/2194), art. 10(1), **Sch. 4 para. 1(3)** (with art. 12)

**Marginal Citations**

**M1** 1980 c. 22.

## [F3 80A Election by private company as to duration of authority.

(1) A private company may elect (by elective resolution in accordance with section 379A) that the provisions of this section shall apply, instead of the provisions of section 80(4) and (5), in relation to the giving or renewal, after the election, of an authority under that section.

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

(a) for an indefinite period, or

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

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

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

(5) A resolution renewing an authority—

(a) must state, or re-state, the amount of relevant securities which may be allotted under the authority or, as the case may be, the amount remaining to be allotted under it, and

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

(6) The references in this section to the maximum amount of relevant securities that may be allotted shall be construed in accordance with section 80(6).

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

(a) if given five years or more before the election ceases to have effect, shall expire forthwith, and

(b) otherwise, shall have effect as if it had been given for a fixed period of five years.]

**Textual Amendments**

**F3** S. 80A inserted (subject to the transitional and savings provisions as mentioned in S.I. 1990/355, arts. 4, 10, **Sch. 4**) by Companies Act 1989 (c. 40, SIF 27), **ss. 115(1)**, 213(2)

## [F4 81 Restriction on public offers by private company.

(1) A private limited company (other than a company limited by guarantee and not having a share capital) commits an offence if it—

(a) offers to the public (whether for cash or otherwise) any shares in or debentures of the company; or

(b) allots or agrees to allot (whether for cash or otherwise) any shares in or debentures of the company with a view to all or any of those shares or debentures being offered for sale to the public (within the meaning given to that expression by **[**[F5]sections 58 and 742A**]** ).

(2) A company guilty of an offence under this section, and any officer of it who is in default, is liable to a fine.

(3) Nothing in this section affects the validity of any allotment or sale of shares or debentures, or of any agreement to allot or sell shares or debentures.**]**

**Textual Amendments**

**F4** S. 81 repealed (29.4.1988 except as mentioned in S.I. 1988/740, art. 2, **Sch.**) by Financial Services Act 1986 (c. 60, SIF 69), ss. 211(1), 212(3), **Sch. 17 Pt. I**

**F5** Words in s. 81(1)(b) substituted (4.3.2004) by The Financial Services and Markets Act 2000 (Consequential Amendments) Order 2004 (S.I. 2004/355), **art. 2(2)**

**Modifications etc. (not altering text)**

**C1** S. 81 extended by Companies Consolidation (Consequential Provisions) Act 1985 (c. 9, SIF 27), **s. 7**

## **[**[F6]**82 Application for, and allotment of, shares and debentures.**

(1) No allotment shall be made of a company's shares or debentures in pursuance of a prospectus issued generally, and no proceedings shall be taken on applications made in pursuance of a prospectus so issued, until the beginning of the third day after that on which the prospectus is first so issued or such later time (if any) as may be specified in the prospectus.

(2) The beginning of that third day, or that later time, is "the time of the opening of the subscription lists".

(3) In subsection (1), the reference to the day on which the prospectus is first issued generally is to the day when it is first so issued as a newspaper advertisement; and if it is not so issued as a newspaper advertisement before the third day after that on which it is first so issued in any other manner, the reference is to the day on which it is first so issued in any manner.

(4) In reckoning for this purpose the third day after another day—

(a) any intervening day which is a Saturday or Sunday, or is a bank holiday in any part of Great Britain, is to be disregarded; and

(b) if the third day (as so reckoned) is itself a Saturday or Sunday, or a bank holiday, there is to be substituted the first day after that which is none of them.

(5) The validity of an allotment is not affected by any contravention of subsections (1) to (4); but in the event of contravention, the company and every officer of it who is in default is liable to a fine.

(6) As applying to a prospectus offering shares or debentures for sale, the above provisions are modified as follows—

(a) for references to allotment, substitute references to sale; and

(b) for the reference to the company and every officer of it who is in default, substitute a reference to any person by or through whom the offer is made and who knowingly and wilfully authorises or permits the contravention.

(7) An application for shares in or debentures of a company which is made in pursuance of a prospectus issued generally is not revocable until after the expiration of the third day after the time of the opening of the subscription lists, or the giving before the expiration of that day of the appropriate public notice; and that notice is one given by some person responsible under sections 67 to 69 for the prospectus and having the effect under those sections of excluding or limiting the responsibility of the giver.**]**

**Textual Amendments**

**F6** Ss. 82, 83 repealed (29.4.1988 for specified purposes and 10.5.1999 for further specified purposes and otherwise*prosp.*) by Financial Services Act 1986 (c.60, SIF 69), ss. 211(1), 212(3), **Sch. 17 Pt. I**; S.I. 1988/740, art. 2, **Sch.**; S.I. 1999/727, **art. 2(a)**

**Modifications etc. (not altering text)**

**C2** S. 82 applied with modifications by S.I. 1985/680, regs. 4–6, **Sch.**

## [F7 83 No allotment unless minimum subscription received.

(1) No allotment shall be made of any share capital of a company offered to the public for subscription unless—

(a) there has been subscribed the amount stated in the prospectus as the minimum amount which, in the opinion of the directors, must be raised by the issue of share capital in order to provide for the matters specified in paragraph 2 of Schedule 3 (preliminary expenses, purchase of property, working capital, etc.); and

(b) the sum payable on application for the amount so stated has been paid to and received by the company.

(2) For purposes of subsection (1)(b), a sum is deemed paid to the company, and received by it, if a cheque for that sum has been received in good faith by the company and the directors have no reason for suspecting that the cheque will not be paid.

(3) The amount so stated in the prospectus is to be reckoned exclusively of any amount payable otherwise than in cash and is known as “the minimum subscription”.

(4) If the above conditions have not been complied with on the expiration of 40 days after the first issue of the prospectus, all money received from applicants for shares shall be forthwith repaid to them without interest.

(5) If any of the money is not repaid within 48 days after the issue of the prospectus, the directors of the company are jointly and severally liable to repay it with interest at the rate of 5 per cent. per annum from the expiration of the 48th day; except that a director is not so liable if he proves that the default in the repayment of the money was not due to any misconduct or negligence on his part.

(6) Any condition requiring or binding an applicant for shares to waive compliance with any requirement of this section is void.

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

**Textual Amendments**

**F7** Ss. 82, 83 repealed (29.4.1988 for specified purposes and 10.5.1999 for further specified purposes and otherwise*prosp.*) by Financial Services Act 1986 (c.60, SIF 69), ss. 211(1), 212(3), **Sch. 17 Pt. I**; S.I. 1988/740, art. 2, **Sch.**; S.I. 1999/727, **art. 2(a)**

## 84 Allotment where issue not fully subscribed.

(1) No allotment shall be made of any share capital of a public company offered for subscription unless—

(a) that capital is subscribed for in full; or

(b) the offer states that, even if the capital is not subscribed for in full, the amount of that capital subscribed for may be allotted in any event or in the event of the conditions specified in the offer being satisfied;

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

**[**[F8]This is without prejudice to section 83.**]**

(2) If shares are prohibited from being allotted by subsection (1) and 40 days have elapsed after the first issue of the prospectus, all money received from applicants for shares shall be forthwith repaid to them without interest.

(3) If any of the money is not repaid within 48 days after the issue of the prospectus, the directors of the company are jointly and severally liable to repay it with interest at the rate of 5 per cent. per annum from the expiration of the 48th day; except that a director is not so liable if he proves that the default in repayment was not due to any misconduct or negligence on his part.

(4) This section applies in the case of shares offered as wholly or partly payable otherwise than in cash as it applies in the case of shares offered for subscription (the word "subscribed" in subsection (1) being construed accordingly).

(5) In subsections (2) and (3) as they apply to the case of shares offered as wholly or partly payable otherwise than in cash, references to the repayment of money received from applicants for shares include—

(a) the return of any other consideration so received (including, if the case so requires, the release of the applicant from any undertaking), or

(b) if it is not reasonably practicable to return the consideration, the payment of money equal to its value at the time it was so received,

and references to interest apply accordingly.

(6) Any condition requiring or binding an applicant for shares to waive compliance with any requirement of this section is void.

**Textual Amendments**

**F8** Words repealed (29.4.1988 except as mentioned in S.I. 1988/740, art. 2, **Sch.**) by Financial Services Act 1986 (c. 60, SIF 69), ss. 211(1), 212(3), **Sch. 17 Pt. I**

## 85 Effect of irregular allotment.

(1) An allotment made by a company to an applicant in contravention of section **[**[F9]83 or**]** 84 is voidable at the instance of the applicant within one month after the date of the allotment, and not later, and is so voidable notwithstanding that the company is in the course of being wound up.

(2) If a director of a company knowingly contravenes, or permits or authorises the contravention of, any provision of either of those sections with respect to allotment, he is liable to compensate the company and the allottee respectively for any loss, damages or costs which the company or the allottee may have sustained or incurred by the contravention.

(3) But proceedings to recover any such loss, damages or costs shall not be commenced after the expiration of 2 years from the date of the allotment.

**Textual Amendments**

**F9** Words repealed (29.4.1988 except as mentioned in S.I. 1988/740, art. 2, **Sch.**) by Financial Services Act 1986 (c. 60, SIF 69), ss. 211(1), 212(3), **Sch. 17 Pt. I**

## [F10]86 . . . . . .

**Textual Amendments**

**F10** Ss. 86, 87 repealed (29.4.1988 for specified purposes and otherwise 10.5.1999) by Financial Services Act 1986 (c.60, SIF 69), s. 211(1), **Sch. 17 Pt. I**; S.I. 1988/740, art. 2, **Sch.**; S.I. 1999/727, **art. 2(b)**

## [F11]87 . . . . . .

**Textual Amendments**

**F11** Ss. 86, 87 repealed (29.4.1988 for specified purposes and otherwise 10.5.1999) by Financial Services Act 1986 (c.60, SIF 69), ss. 211(1), 212(3), **Sch. 17 Pt. I**; S.I. 1988/740, art. 2, **Sch.**; S.I. 1999/727, **art. 2(b)**

## 88 Return as to allotments, etc.

(1) This section applies to a company limited by shares and to a company limited by guarantee and having a share capital.

(2) When such a company makes an allotment of its shares, the company shall within one month thereafter deliver to the registrar of companies for registration—

(a) a return of the allotments (in the prescribed form) stating the number and nominal amount of the shares comprised in the allotment, the names and addresses of the allottees, and the amount (if any) paid or due and payable on each share, whether on account of the nominal value of the share or by way of premium; and

(b) in the case of shares allotted as fully or partly paid up otherwise than in cash—

(i) a contract in writing constituting the title of the allottee to the allotment together with any contract of sale, or for services or other consideration in respect of which that allotment was made (such contracts being duly stamped), and

(ii) a return stating the number and nominal amount of shares so allotted, the extent to which they are to be treated as paid up, and the consideration for which they have been allotted.

(3) Where such a contract as above mentioned is not reduced to writing, the company shall within one month after the allotment deliver to the registrar of companies for registration the prescribed particulars of the contract [F12]. . . .

(4) [F13]. . . . . .

(5) If default is made in complying with this section, every officer of the company who is in default is liable to a fine and, for continued contravention, to a daily default fine, but subject as follows.

(6) In the case of default in delivering to the registrar within one month after the allotment any document required by this section to be delivered, the company, or any officer liable for the default, may apply to the court for relief; and the court, if satisfied that the omission to deliver the document was accidental or due to inadvertence, or that it is just and equitable to grant relief, may make an order extending the time for the delivery of the document for such period as the court thinks proper.

**Textual Amendments**

**F12** Words in s. 88(3) omitted (with effect as mentioned in reg. 2(4) of the amending S.I.) by virtue of The Stamp Duty and Stamp Duty Land Tax (Consequential Amendment of Enactments) Regulations 2003 (S.I. 2003/2868), **reg. 2(2)**

**F13** S. 88(4) omitted (with effect as mentioned in reg. 2(4) of the amending S.I.) by virtue of The Stamp Duty and Stamp Duty Land Tax (Consequential Amendment of Enactments) Regulations 2003 (S.I. 2003/2868), **reg. 2(3)**

**Modifications etc. (not altering text)**

**C3** S. 88 excluded (27.7.1999) by 1999 c. 20, **s. 6(3)** (with s. 15)

*Pre-emption rights*

## 89 Offers to shareholders to be on pre-emptive basis.

(1) Subject to the provisions of this section and the seven sections next following, a company proposing to allot equity securities (defined in section 94)—

(a) shall not allot any of them on any terms to a person unless it has made an offer to each person who holds relevant shares or relevant employee shares to allot to him on the same or more favourable terms a proportion of those securities which is as nearly as practicable equal to the proportion in nominal value held by him of the aggregate of relevant shares and relevant employee shares, and

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

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

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

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

(b) he or anyone in whose favour he has renounced his right to their allotment accepts the offer,

subsection (1) does not apply to the allotment of those securities, and the company may allot them accordingly; but this is without prejudice to the application of subsection (1) in any other case.

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

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

**[**[F14](6) Where a company holds relevant shares as treasury shares—

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

(b) for the purposes of subsection (1), the shares held as treasury shares do not form part of "the aggregate of relevant shares and relevant employee shares".**]**

**Textual Amendments**

**F14** S. 89(6) substituted (18.12.2003) by The Companies (Acquisition of Own Shares) (Treasury Shares) No. 2 Regulations 2003 (S.I. 2003/3031), {reg. 2(1)}

**Modifications etc. (not altering text)**

**C4** S. 89(2) modified (18.12.2003) by The Companies (Acquisition of Own Shares) (Treasury Shares) No. 2 Regulations 2003 (S.I. 2003/3031), {reg. 2(2)}

## 90 Communication of pre-emption offers to shareholders.

(1) This section has effect as to the manner in which offers required by section 89(1), or by a provision to which section 89(3) applies, are to be made to holders of a company's shares.

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

**Status:** *Point in time view as at 01/10/2007.*
**Changes to legislation:** *There are currently no known outstanding effects for the Companies Act 1985, Part IV. (See end of Document for details)*

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

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

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

(a) by sending it by post in a prepaid letter addressed to the persons claiming to be entitled to the shares in consequence of the death or bankruptcy by name, or by the title of representatives of the deceased, or trustee of the bankrupt, or by any like description, at the address in the United Kingdom supplied for the purpose by those so claiming, or

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

(5) If the holder—

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

(b) is the holder of a share warrant,

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

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

(7) This section does not invalidate a provision to which section 89(3) applies by reason that that provision requires or authorises an offer under it to be made in contravention of any of subsections (1) to (6) above; but, to the extent that the provision requires or authorises such an offer to be so made, it is of no effect.

### 91 Exclusion of ss. 89, 90 by private company.

(1) Section 89(1), section 90(1) to (5) or section 90(6) may, as applying to allotments by a private company of equity securities or to such allotments of a particular description, be excluded by a provision contained in the memorandum or articles of that company.

(2) A requirement or authority contained in the memorandum or articles of a private company, if it is inconsistent with any of those subsections, has effect as a provision excluding that subsection; but a provision to which section 89(3) applies is not to be treated as inconsistent with section 89(1).

### 92 Consequences of contravening ss. 89, 90.

(1) If there is a contravention of section 89(1), or of section 90(1) to (5) or section 90(6), or of a provision to which section 89(3) applies, the company, and every officer of it who knowingly authorised or permitted the contravention, are jointly and severally liable to compensate any person to whom an offer should have been made under the subsection or provision contravened for any loss, damage, costs or expenses which the person has sustained or incurred by reason of the contravention.

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

**93 Saving for other restrictions as to offers.**

(1) Sections 89 to 92 are without prejudice to any enactment by virtue of which a company is prohibited (whether generally or in specified circumstances) from offering or allotting equity securities to any person.

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

**94 Definitions for ss. 89-96.**

(1) The following subsections apply for the interpretation of sections 89 to 96.

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

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

**[**[F15](3A) A reference to the allotment of equity securities or of equity securities consisting of relevant shares of a particular class also includes the sale of any relevant shares in the company or (as the case may be) relevant shares of a particular class if, immediately before the sale, the shares were held by the company as treasury shares.**]**

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

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

(a) shares which as respects dividends and capital carry a right to participate only up to a specified amount in a distribution, and

(b) shares which are held by a person who acquired them in pursuance of an employees' share scheme or, in the case of shares which have not been allotted, are to be allotted in pursuance of such a scheme **[**[F16]or, in the case of shares held by the company as treasury shares, are to be transferred in pursuance of such a scheme**]**.

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

(7) In relation to an offer to allot securities required by section 89(1) or by any provision to which section 89(3) applies, a reference in sections 89 to 94 (however expressed)

to the holder of shares of any description is to whoever was at the close of business on a date, to be specified in the offer and to fall in the period of 28 days immediately before the date of the offer, the holder of shares of that description.

**Textual Amendments**

**F15** S. 94(3A) inserted (1.12.2003) by The Companies (Acquisition of Own Shares)(Treasury Shares) Regulations 2003 (S.I. 2003/1116), reg. 4, {Sch. para. 5(3)}

**F16** Words in s. 94(5)(b) inserted (1.12.2003) by The Companies (Acquisition of Own Shares)(Treasury Shares) Regulations 2003 (S.I. 2003/1116), reg. 4, {Sch. para. 5(2)}

## 95 Disapplication of pre-emption rights.

(1) Where the directors of a company are generally authorised for purposes of section 80, they may be given power by the articles, or by a special resolution of the company, to allot equity securities pursuant to that authority as if—

(a) section 89(1) did not apply to the allotment, or

(b) that subsection applied to the allotment with such modifications as the directors may determine;

and where the directors make an allotment under this subsection, sections 89 to 94 have effect accordingly.

(2) Where the directors of a company are authorised for purposes of section 80 (whether generally or otherwise), the company may by special resolution resolve either—

(a) that section 89(1) shall not apply to a specified allotment of equity securities to be made pursuant to that authority, or

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

and where such a resolution is passed, sections 89 to 94 have effect accordingly.

**[**[F17](2A) Subsections (1) and (2) apply in relation to a sale of shares which is an allotment of equity securities by virtue of section 94(3A) as if—

(a) in subsection (1) for "Where the directors of a company are generally authorised for purposes of section 80, they" there were substituted The directors of a company and the words "pursuant to that authority" were omitted, and

(b) in subsection (2), the words from "Where" to "otherwise)," and, in paragraph (a), the words "to be made pursuant to that authority" were omitted.**]**

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

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

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

(a) their reasons for making the recommendation,

(b) the amount to be paid to the company in respect of the equity securities to be allotted, and

(c) the directors' justification of that amount.

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

**Textual Amendments**

**F17** S. 95(2A) inserted (1.12.2003) by The Companies (Acquisition of Own Shares)(Treasury Shares) Regulations 2003 (S.I. 2003/1116, reg. 4, **Sch. para. 6**

## 96 Saving for company's pre-emption procedure operative before 1982.

(1) Where a company which is re-registered or registered as a public company is or, but for the provisions of the [M2]Companies Act 1980 and the enactments replacing it, would be subject at the time of re-registration or (as the case may be) registration to a pre-1982 pre-emption requirement, sections 89 to 95 do not apply to an allotment of the equity securities which are subject to that requirement.

(2) A "pre-1982 pre-emption requirement" is a requirement imposed (whether by the company's memorandum or articles, or otherwise) before the relevant date in 1982 by virtue of which the company must, when making an allotment of equity securities, make an offer to allot those securities or some of them in a manner which (otherwise than because involving a contravention of section 90(1) to (5) or 90(6)) is inconsistent with sections 89 to 94; and "the relevant date in 1982" is—

(a) except in a case falling within the following paragraph, 22nd June in that year, and

(b) in the case of a company which was re-registered or registered as a public company on an application made before that date, the date on which the application was made.

(3) A requirement which—

(a) is imposed on a private company (having been so imposed before the relevant date in 1982) otherwise than by the company's memorandum or articles, and

(b) if contained in the company's memorandum or articles, would have effect under section 91 to the exclusion of any provisions of sections 89 to 94,

has effect, so long as the company remains a private company, as if it were contained in the memorandum or articles.

(4) If on the relevant date in 1982 a company, other than a public company registered as such on its original incorporation, was subject to such a requirement as is mentioned in section 89(2) imposed otherwise than by the memorandum or articles, the requirement

is to be treated for purposes of sections 89 to 94 as if it were contained in the memorandum or articles.

**Marginal Citations**

**M2** 1980 c. 22.

*Commissions and discounts*

**97 Power of company to pay commissions.**

(1) It is lawful for a company to pay a commission to any person in consideration of his subscribing or agreeing to subscribe (whether absolutely or conditionally) for any shares in the company, or procuring or agreeing to procure subscriptions (whether absolute or conditional) for any shares in the company, if the following conditions are satisfied.

(2) The payment of the commission must be authorised by the company's articles; and—

(a) the commission paid or agreed to be paid must not exceed 10 per cent. of the price at which the shares are issued or the amount or rate authorised by the articles, whichever is the less;

**[**[F18]and

(b) the amount or rate per cent. of commission paid or agreed to be paid, and the number of shares which persons have agreed for a commission to subscribe absolutely, must be disclosed in the manner required by the following subsection.

(3) Those matters must, in the case of shares offered to the public for subscription, be disclosed in the prospectus; and in the case of shares not so offered—

(a) they must be disclosed in a statement in the prescribed form signed by every director of the company or by his agent authorised in writing, and delivered (before payment of the commission) to the registrar of companies for registration; and

(b) where a circular or notice (not being a prospectus) inviting subscription for the shares is issued, they must also be disclosed in that circular or notice.

(4) If default is made in complying with subsection (3)(a) as regards delivery to the registrar of the statement in prescribed form, the company and every officer of it who is in default is liable to a fine**]**.

**Textual Amendments**

**F18** Word "and" and s. 97(2)(*b*),(3)(4) repealed (29.4.1988 except as mentioned in S.I. 1988/740, art. 2, **Sch.**) by Financial Services Act 1986 (c. 60, SIF 69), ss. 211(1), 212(3), **Sch. 17**

**Modifications etc. (not altering text)**

**C5** S. 97(3) modified by S.I. 1991/823, reg. 2(1), **Sch. 1**

**C6** S. 97(3) applied (19.6.1995) by S.I. 1995/1537, reg. 20, **Sch. 4 Pt. III para. 12**

**98 Apart from s. 97, commissions and discounts barred.**

(1) Except as permitted by section 97, no company shall apply any of its shares or capital money, either directly or indirectly in payment of any commission, discount or allowance to any person in consideration of his subscribing or agreeing to subscribe (whether absolutely or conditionally) for any shares in the company, or procuring or agreeing to procure subscriptions (whether absolute or conditional) for any shares in the company.

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

(3) Nothing in section 97 or this section affects the power of a company to pay such brokerage as has previously been lawful.

(4) A vendor to, or promoter of, or other person who receives payment in money or shares from, a company has, and is deemed always to have had, power to apply any part of the money or shares so received in payment of any commission, the payment of which, if made directly by the company, would have been lawful under section 97 and this section.

*Amount to be paid for shares; the means of payment*

**99 General rules as to payment for shares on allotment.**

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

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

(3) If a public company accepts such an undertaking in payment up of its shares or any premium on them, the holder of the shares when they or the premium are treated as paid up (in whole or in part) by the undertaking is liable—
   (a) to pay the company in respect of those shares an amount equal to their nominal value, together with the whole of any premium or, if the case so requires, such proportion of that amount as is treated as paid up by the undertaking; and
   (b) to pay interest at the appropriate rate on the amount payable under paragraph (a) above.

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

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

**Modifications etc. (not altering text)**

**C7** Ss. 99, 101–103 extended by Companies Consolidation (Consequential Provisions) Act 1985 (c. 9, SIF 27), **s. 9(1)**

**C8** Ss. 99, 101–103 restricted by Companies Consolidation (Consequential Provisions) Act 1985 (c. 9, SIF 27), **s. 9(2)**

## 100 Prohibition on allotment of shares at a discount.

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

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

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

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

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

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

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

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

**Modifications etc. (not altering text)**

**C9** Ss. 99, 101–103 extended by Companies Consolidation (Consequential Provisions) Act 1985 (c. 9, SIF 27), **s. 9(1)**

**C10** Ss. 99, 101–103 restricted by Companies Consolidation (Consequential Provisions) Act 1985 (c. 9, SIF 27), **s. 9(2)**

## 102 Restriction on payment by long-term undertaking.

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

(2) If a company allots shares in contravention of subsection (1), the allottee is liable to pay the company an amount equal to the aggregate of their nominal value and the

whole of any premium (or, if the case so requires, so much of that aggregate as is treated as paid up by the undertaking), with interest at the appropriate rate.

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

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

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

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

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

**Modifications etc. (not altering text)**

**C11** Ss. 99, 101–103 extended by Companies Consolidation (Consequential Provisions) Act 1985 (c. 9, SIF 27), **s. 9(1)**

**C12** Ss. 99, 101–103 restricted by Companies Consolidation (Consequential Provisions) Act 1985 (c. 9, SIF 27), **s. 9(2)**

### 103 Non-cash consideration to be valued before allotment.

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

(a) the consideration for the allotment has been independently valued under section 108; and

(b) a report with respect to its value has been made to the company by a person appointed by the company (in accordance with that section) during the 6 months immediately preceding the allotment of the shares; and

(c) a copy of the report has been sent to the proposed allottee.

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

(3) Subsection (1) does not apply to the allotment of shares by a company in connection with an arrangement providing for the allotment of shares in that company on terms that the whole or part of the consideration for the shares allotted is to be provided by the transfer to that company (or the cancellation) of all or some of the shares, or of all or some of the shares of a particular class, in another company (with or without

the issue to that company of shares, or of shares of any particular class, in that other company).

(4) But subsection (3) does not exclude the application of subsection (1) unless under the arrangement it is open to all the holders of the shares in the other company in question **[**[F19] ("the relevant company")**]** (or, where the arrangement applies only to shares of a particular class, to all the holders of shares in **[**[F20]the relevant company**]**, being holders of shares of that class) to take part in the arrangement.**[**[F21] In determining whether that is the case, the following shall be disregarded—

(a) shares held by or by a nominee of the company proposing to allot the shares in connection with the arrangement ("the allotting company");

(b) shares held by or by a nominee of a company which is—

(i) the holding company, or a subsidiary, of the allotting company, or

(ii) a subsidiary of that holding company; and

(c) shares held as treasury shares by the relevant company.**]**

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

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

(a) the allottee has not received the valuer's report required by that subsection to be sent to him; or

(b) there has been some other contravention of this section or section 108 which the allottee knew or ought to have known amounted to a contravention,

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

(7) In this section—

(a) "arrangement" means any agreement, scheme or arrangement (including an arrangement sanctioned in accordance with section 425 (company compromise with creditors and members) or **[**[F22]section 110 of the Insolvency Act**]** (liquidator in winding up accepting shares as consideration for sale of company property)), and

(b) any reference to a company, except where it is or is to be construed as a reference to a public company, includes any body corporate [F23]. . .

**Textual Amendments**

**F19** Words in s. 103(4) inserted (1.12.2003) by The Companies (Acquisition of Own Shares)(Treasury Shares) Regulations 2003 (S.I. 2003/1116), reg. 4, {Sch. para. 7(a)(i)}

**F20** Words in s. 103(4) substituted (1.12.2003) by The Companies (Acquisition of Own Shares)(Treasury Shares) Regulations 2003 (S.I. 2003/1116), reg. 4, {Sch. para.7(a)(ii)}

**F21** Words in s. 103(4) substituted (1.12.2003) by The Companies (Acquisition of Own Shares)(Treasury Shares) Regulations 2003 (S.I. 2003/1116), reg. 4, {Sch. para. 7(b)}

**F22** Words substituted (E.W.S.) by Insolvency Act 1986 (c. 45, SIF 66), s. 439(1), **Sch. 13 Pt. I**

**F23** Words in s. 103(7)(b) repealed (22.7.2004) by Statute Law (Repeals) Act 2004 (c. 14), **s. 1(1)**, {Sch. 1 Pt. 17 Group 5}

**Modifications etc. (not altering text)**

**C13** Ss. 99, 101–103 extended by Companies Consolidation (Consequential Provisions) Act 1985 (c. 9, SIF 27), **s. 9(1)**

**C14** Ss. 99, 101–103 restricted by Companies Consolidation (Consequential Provisions) Act 1985 (c. 9, SIF 27), **s. 9(2)**

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

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

(a) that person is a subscriber to the company's memorandum, and

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

(2) The "initial period" for this purpose is 2 years beginning with the date of the company being issued with a certificate under section 117 (or the previous corresponding provision) that it was entitled to do business.

(3) This section applies also to a company re-registered as a public company (except one re-registered under section 8 of the [M3]Companies Act 1980 or section 2 of the Consequential Provisions Act), or registered under section 685 (joint stock company) or the previous corresponding provision; but in that case—

(a) there is substituted a reference in subsection (1)(a) to a person who is a member of the company on the date of registration or re-registration, and

(b) the initial period is then 2 years beginning with that date.

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

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

(a) the consideration to be received by the company, and any consideration other than cash to be given by the company, must have been independently valued under section 109;

(b) a report with respect to the consideration to be so received and given must have been made to the company in accordance with that section during the 6 months immediately preceding the date of the agreement;

(c) the terms of the agreement must have been approved by an ordinary resolution of the company; and

(d) not later than the giving of the notice of the meeting at which the resolution is proposed, copies of the resolution and report must have been circulated to the members of the company entitled to receive the notice and, if the person with whom the agreement in question is proposed to be made is not then a member of the company so entitled, to that person.

(5) In subsection (4)(a)—

(a) the reference to the consideration to be received by the company is to the asset to be transferred to it or the advantage to the company of the asset's transfer to another person; and

(b) the specified condition is without prejudice to any requirement to value any consideration for purposes of section 103.

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

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

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

**Marginal Citations**

**M3** 1980 c. 22.

## 105 Agreements contravening s. 104.

(1) The following subsection applies if a public company enters into an agreement contravening section 104, the agreement being made with the person referred to in subsection (1)(a) or (as the case may be) subsection (3) of that section, and either—

(a) that person has not received the valuer's report required for compliance with the conditions of the section, or

(b) there has been some other contravention of the section or of section 108(1), (2) or (5) or section 109, which he knew or ought to have known amounted to a contravention.

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

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

(a) whether or not the agreement also contravenes section 103, subsection (2) above does not apply to it in so far as it is for the allotment of shares; and

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

## 106 Shares issued to subscribers of memorandum.

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

**Modifications etc. (not altering text)**

**C15** S. 106 extended by Companies Consolidation (Consequential Provisions) Act 1985 (c. 9, SIF 27), **s. 9(1)**

### 107 Meaning of "the appropriate rate".

In sections 99 to 105 "the appropriate rate", in relation to interest, means 5 per cent. per annum or such other rate as may be specified by order made by the Secretary of State by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

*Valuation provisions*

### 108 Valuation and report (s. 103).

(1) The valuation and report required by section 103 (or, where applicable, section 44) shall be made by an independent person, that is to say a person qualified at the time of the report to be appointed, or continue to be, an auditor of the company.

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

(a) appears to him to have the requisite knowledge and experience to value the consideration or that part of it; and

(b) is not an officer or servant of the company or any other body corporate which is that company's subsidiary or holding company or a subsidiary of that company's holding company or a partner or employee of such an officer or servant,

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

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

(4) The valuer's report shall state—

(a) the nominal value of the shares to be wholly or partly paid for by the consideration in question;

(b) the amount of any premium payable on the shares;

(c) the description of the consideration and, as respects so much of the consideration as he himself has valued, a description of that part of the consideration, the method used to value it and the date of the valuation;

(d) the extent to which the nominal value of the shares and any premium are to be treated as paid up—

(i) by the consideration;

(ii) in cash.

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

(a) state the former's name and what knowledge and experience he has to carry out the valuation, and

(b) describe so much of the consideration as was valued by the other person, and the method used to value it, and specify the date of the valuation.

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

(a) in the case of a valuation made by a person other than himself, that it appeared to himself reasonable to arrange for it to be so made or to accept a valuation so made;

(b) whoever made the valuation, that the method of valuation was reasonable in all the circumstances;

(c) that it appears to the valuer that there has been no material change in the value of the consideration in question since the valuation; and

(d) that on the basis of the valuation the value of the consideration, together with any cash by which the nominal value of the shares or any premium payable on them is to be paid up, is not less than so much of the aggregate of the nominal value and the whole of any such premium as is treated as paid up by the consideration and any such cash.

(7) Where the consideration to be valued is accepted partly in payment up of the nominal value of the shares and any premium and partly for some other consideration given by the company, section 103 (and, where applicable, section 44) and the foregoing provisions of this section apply as if references to the consideration accepted by the company included the proportion of that consideration which is properly attributable to the payment up of that value and any premium; and—

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

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

**Modifications etc. (not altering text)**

**C16** S. 108 extended by Companies Consolidation (Consequential Provisions) Act 1985 (c. 9, SIF 27), **s. 9(1)**

**C17** S. 108 restricted by Companies Consolidation (Consequential Provisions) Act 1985 (c. 9, SIF 27), **s. 9(2)**

## 109 Valuation and report (s. 104).

(1) Subsections (1) to (3) and (5) of section 108 apply also as respects the valuation and report for the purposes of section 104.

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

(a) state the consideration to be received by the company, describing the asset in question (specifying the amount to be received in cash) and the consideration to be given by the company (specifying the amount to be given in cash);

(b) state the method and date of valuation;

(c) contain or be accompanied by a note as to the matters mentioned in section 108(6)(a) to (c); and

(d) contain or be accompanied by a note that on the basis of the valuation the value of the consideration to be received by the company is not less than the value of the consideration to be given by it.

(3) A reference in section 104 or this section to consideration given for the transfer of an asset includes consideration given partly for its transfer; but—

(a) the value of any consideration partly so given is to be taken as the proportion of the consideration properly attributable to its transfer;

(b) the valuer shall carry out or arrange for such valuations of anything else as will enable him to determine that proportion; and

(c) his report for purposes of section 104 shall state what valuation has been made under this subsection and also the reason for and method and date of any such valuation and any other matters which may be relevant to that determination.

## 110 Entitlement of valuer to full disclosure.

(1) A person carrying out a valuation or making a report under section 103 or 104, with respect to any consideration proposed to be accepted or given by a company, is entitled to require from the officers of the company such information and explanation as he thinks necessary to enable him to carry out the valuation or make the report and provide a note under section 108(6) or (as the case may be) section 109(2)(c).

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

(a) is misleading, false or deceptive in a material particular, and

(b) is a statement to which this subsection applies,

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

(3) Subsection (2) applies to any statement made (whether orally or in writing) to a person carrying out a valuation or making a report under section 108 or 109, being a statement which conveys or purports to convey any information or explanation which that person requires, or is entitled to require, under subsection (1) of this section.

**Modifications etc. (not altering text)**

**C18** Ss. 110, 111 extended by Companies Consolidation (Consequential Provisions) Act 1985 (c. 9, SIF 27), **s. 9(1)**

## 111 Matters to be communicated to registrar.

(1) A company to which a report is made under section 108 as to the value of any consideration for which, or partly for which, it proposes to allot shares shall deliver a copy of the report to the registrar of companies for registration at the same time that it files the return of the allotments of those shares under section 88.

(2) A company which has passed a resolution under section 104 with respect to the transfer of an asset shall, within 15 days of so doing, deliver to the registrar of companies a copy of the resolution together with the valuer's report required by that section.

(3) If default is made in complying with subsection (1), every officer of the company who is in default is liable to a fine and, for continued contravention, to a daily default fine; but this is subject to the same exception as is made by section 88(6) (relief on application to the court) in the case of default in complying with that section.

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

**Modifications etc. (not altering text)**

**C19** Ss. 110, 111 extended by Companies Consolidation (Consequential Provisions) Act 1985 (c. 9, SIF 27), **s. 9(1)**

*Other matters arising out of allotment &c.*

### [F24 111A Right to damages, &c. not affected.

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

**Textual Amendments**

**F24** S. 111A inserted by Companies Act 1989 (c. 40, SIF 27), **s. 131(1)** (with s. 213(2) and with savings in S.I. 1990/355, **art. 11**)

### 112 Liability of subsequent holders of shares allotted.

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

(a) there has been a contravention of section 99, 100, 101 or 103; and

(b) by virtue of that contravention, another is liable to pay any amount under the section contravened,

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

(2) If a company enters into an agreement in contravention of section 104 and—

(a) the agreement is or includes an agreement for the allotment of shares in the company; and

(b) a person becomes a holder of shares allotted under the agreement; and

(c) by virtue of the agreement and allotment under it, another person is liable to pay any amount under section 105,

the person who becomes the holder of the shares is also liable to pay that amount (jointly and severally with any other person so liable), unless he is exempted from liability by the following subsection; and this applies whether or not the agreement also contravenes section 103.

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

(a) he is a purchaser for value and, at the time of the purchase, he did not have actual notice of the contravention concerned; or

(b) he derived title to the shares (directly or indirectly) from a person who became a holder of them after the contravention and was not liable under subsection (1) or (as the case may be) subsection (2).

(4) References in this section to a holder, in relation to shares in a company, include any person who has an unconditional right to be included in the company's register of

members in respect of those shares or to have an instrument of transfer of the shares executed in his favour.

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

(a) to a contravention of section 102; and

(b) to a failure to carry out a term of a contract as mentioned in subsections (5) and (6) of that section.

**Modifications etc. (not altering text)**

**C20** S. 112 extended by Companies Consolidation (Consequential Provisions) Act 1985 (c.9, SIF 27), **s. 9(1)**, restricted by Companies Consolidation (Consequential Provisions) Act 1985 (c. 9, SIF 27), **s. 9(2)**

## 113 Relief in respect of certain liabilities under ss. 99 ff.

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

(a) section 99, 102, 103 or 105;

(b) section 112(1) by reference to a contravention of section 99 or 103; or

(c) section 112(2) or (5),

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

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

(a) if and to the extent that it appears to the court just and equitable to do so having regard to the matters mentioned in the following subsection,

(b) if and to the extent that it appears to the court just and equitable to do so in respect of any interest which he is liable to pay the company under any of the relevant sections.

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

(a) whether the applicant has paid, or is liable to pay, any amount in respect of any other liability arising in relation to those shares under any of the relevant sections, or of any liability arising by virtue of any undertaking given in or in connection with payment for those shares;

(b) whether any person other than the applicant has paid or is likely to pay (whether in pursuance of an order of the court or otherwise) any such amount; and

(c) whether the applicant or any other person has performed in whole or in part, or is likely so to perform, any such undertaking, or has done or is likely to do any other thing in payment or part payment for the shares.

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

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

(b) whether any person other than the applicant has paid or is likely to pay (whether in pursuance of an order of the court or otherwise) any such amount.

(5) In determining whether it should exempt the applicant in whole or in part from any liability, the court shall have regard to the following overriding principles, namely—

(a) that a company which has allotted shares should receive money or money's worth at least equal in value to the aggregate of the nominal value of those shares and the whole of any premium or, if the case so requires, so much of that aggregate as is treated as paid up; and

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

(6) If a person brings proceedings against another ("the contributor") for a contribution in respect of liability to a company arising under any of sections 99 to 105 or 112, and it appears to the court that the contributor is liable to make such a contribution, the court may exercise the powers of the following subsection.

(7) The court may, if and to the extent that it appears to it, having regard to the respective culpability (in respect of the liability to the company) of the contributor and the person bringing the proceedings, that it is just and equitable to do so—

(a) exempt the contributor in whole or in part from his liability to make such a contribution; or

(b) order the contributor to make a larger contribution than, but for this subsection, he would be liable to make.

(8) Where a person is liable to a company under section 105(2), the court may, on application, exempt him in whole or in part from that liability if and to the extent that it appears to the court just and equitable to do so having regard to any benefit accruing to the company by virtue of anything done by him towards the carrying out of the agreement mentioned in that subsection.

**Modifications etc. (not altering text)**

**C21** Ss. 113, 114, 115 extended by Companies Consolidation (Consequential Provisions) Act 1985 (c. 9, SIF 27), **s. 9(1)**

## 114 Penalty for contravention.

If a company contravenes any of the provisions of sections 99 to 104 and 106 the company and any officer of it who is in default is liable to a fine.

**Modifications etc. (not altering text)**

**C22** Ss. 113, 114, 115 extended by Companies Consolidation (Consequential Provisions) Act 1985 (c. 9, SIF 27), **s. 9(1)**

## 115 Undertakings to do work, etc.

(1) Subject to section 113, an undertaking given by any person, in or in connection with payment for shares in a company, to do work or perform services or to do any other thing, if it is enforceable by the company apart from this Act, is so enforceable notwithstanding that there has been a contravention in relation to it of section 99, 102 or 103.

(2) Where such an undertaking is given in contravention of section 104 in respect of the allotment of shares, it is so enforceable notwithstanding the contravention.

**Modifications etc. (not altering text)**

**C23** Ss. 113, 114, 115 extended by Companies Consolidation (Consequential Provisions) Act 1985 (c. 9, SIF 27), **s. 9(1)**

## 116 Application of ss. 99 ff to special cases.

Except as provided by section 9 of the Consequential Provisions Act (transitional cases dealt with by section 31 of the [M4]Companies Act 1980), sections 99, 101 to 103, 106, 108 **[**[F25], 110, 111 and 112 to 115**]** apply—

(a) to a company which has passed and not revoked a resolution to be re-registered under section 43 as a public company, and

(b) to a joint stock company which has passed, and not revoked, a resolution that the company be a public company,

as those sections apply to a public company.

**Textual Amendments**

**F25** Words substituted by Companies Act 1989 (c. 40, SIF 27), **ss. 131(2)**, 213(2)

**Marginal Citations**

**M4** 1980 c. 22.

**Status:**
Point in time view as at 01/10/2007.

**Changes to legislation:**
There are currently no known outstanding effects for the Companies Act 1985, Part IV.