



Companies Act 1985

1985 CHAPTER 6

PART IV

ALLOTMENT OF SHARES AND DEBENTURES

Other matters arising out of allotment &c

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, an
- other 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

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- (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.

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—

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- (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.

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.

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.

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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 Companies Act 1980), sections 99, 101 to 103, 106, 108 and 110 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.