Companies Act 1985

1985 CHAPTER 6

PART IV

ALLOTMENT OF SHARES AND DEBENTURES

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)

C1 Ss. 99, 101–103 extended by Companies Consolidation (Consequential Provisions) Act 1985 (c. 9, SIF 27), **s. 9(1)**

C2 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)

C3 Ss. 99, 101–103 extended by Companies Consolidation (Consequential Provisions) Act 1985 (c. 9, SIF 27), **s. 9(1)**

C4 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)

C5 Ss. 99, 101–103 extended by Companies Consolidation (Consequential Provisions) Act 1985 (c. 9, SIF 27), **s. 9(1)**

C6 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 **[**F1 ("the relevant company")**]** (or, where the arrangement applies only to shares of a particular class, to all the holders of shares in **[**F2the relevant company**]**, being holders of shares of that class) to take part in the arrangement.**[**F3 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 **[**F4section 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 F5. . .

Textual Amendments

F1 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)}

F2 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)}

F3 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)}

F4 Words substituted (E.W.S.) by Insolvency Act 1986 (c. 45, SIF 66), s. 439(1), **Sch. 13 Pt. I**

F5 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)

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)**

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 [M1]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

M1 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)

C9 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.

Status:
Point in time view as at 08/11/2006.

Changes to legislation:
There are currently no known outstanding effects for the Companies Act 1985, Cross Heading: Amount to be paid for shares; the means of payment.