



# Companies Act 1985

## 1985 CHAPTER 6

### PART IV

#### ALLOTMENT OF SHARES AND DEBENTURES

##### *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,

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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.

## **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.  
  
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 address 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.

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- (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)

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relevant shares of a particular class; but such a reference does not include the allotment of any relevant shares pursuant to such a right.

- (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.
- (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.

## **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.
- (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.

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- (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.

## **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 <sup>M1</sup>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.

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