



Companies Act 1985

1985 CHAPTER 6

PART IV

ALLOTMENT OF SHARES AND DEBENTURES

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;

Status: This is the original version (as it was originally enacted).

- (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.

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.

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.