

## NOTES FOR GUIDANCE - 14 ISSUE & ALLOTMENT OF SHARES

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### AUTHORITY TO ALLOT SHARES

Directors of a public or private company are not permitted to allot any shares (including any right to subscribe for or convert any security into shares) unless:

- (i) specific or general authority is given to them by ordinary resolution of the company in general meeting or by the Articles of Association;
- (ii) such authority is limited to a period not exceeding five years from the date of the resolution (or from the date of incorporation, if the authority is contained in the original Articles) (see below);
- (iii) such authority also limits the number of shares which may be allotted by the directors.

This does not apply to:

- (i) shares shown in the Memorandum to have been taken by the original subscribers on the formation of the company;
- (ii) the allotment of shares in an employees' share scheme including the grant of any option to subscribe for, or convert any security into, such shares.

In order to give, vary, revoke or renew any authority of the directors to allot shares, an ordinary resolution of the company in general meeting must be passed. A copy of any such resolution must be lodged with the Registrar of Companies within 15 days of its being passed.

s89 CA 85 (as introduced by CA 89) permits private companies by elective resolution to extend the duration of such authority for an indefinite period, or for a fixed period in excess of five years. This may be revoked at any time by ordinary resolution. A copy of any such elective resolution or a resolution revoking such a resolution must be lodged with the Registrar of Companies within 15 days of the passing of the resolution.

Within one month of an allotment of shares Form 88(2) must be completed and filed with the Registrar of Companies.

### STATUTORY PRE-EMPTION RIGHTS

If a company proposes to allot any relevant shares or relevant employee shares or grant any rights over them, those shares or rights must first be offered (for a period of at least 21 days) to the existing members in proportion to their existing holdings on terms no less favourable than are being offered to any third party. Where there are differing classes of shares, the relevant shares may first be offered to members of the relevant class if the Memorandum or Articles so require. Any shares not taken up must then be offered to the members of the company as a whole.

This does not apply to:

- (i) any allotment of shares which are wholly or partly paid up otherwise than in cash;
- (ii) the allotment of shares in an employees' share scheme;
- (iii) the allotment of bonus shares or of shares carrying a right only to a specified amount on a distribution of dividend and capital (e.g. non-participating preference shares);

- (iv) any allotment of shares to renounces pursuant to renounceable letters of allotment given to existing members where the offer has not contravened s89(1) CA 85;
- (v) any allotment of securities other than equity shares (e.g. debentures or other stock, except stock or debentures convertible into shares).

These provisions may be excluded in the following cases:

- (i) A private company can exclude them by a provision contained in its Memorandum or Articles either by a specific clause excluding the statutory rights or by alternative provisions which are inconsistent with the statutory provisions.
- (ii) If the directors have authority to allot shares under s80 CA 85 - see above - the statutory provisions can be avoided by any company (public or private) in one of two ways:
  - (a) if the directors have a general authority to allot shares pursuant to s80 CA 85 then the directors may be given authority to allot shares as if s89(1) did not apply either via the Articles or by a special resolution; or
  - (b) by a special resolution of the company determining that, on a particular allotment of shares, the statutory provisions shall not apply to that allotment. Such a resolution must, however, be recommended by the directors and a circular sent to shareholders setting out the reasons for this recommendation. The inclusion in the circular of any matter which is misleading, false or deceptive is a criminal offence.

The statutory pre-emption provisions only apply to the allotment of shares. The subsequent transfer of shares will only be subject to pre-emption rights, if any, contained in the Articles or any other contract.

A private company will frequently incorporate a provision in its Articles excluding the operation of the statutory pre-emption rights.

<p>These notes are based on our understanding of the law at this date and are general rather than specific. We cannot accept any responsibility for errors or omissions, and we must emphasise that the final responsibility for compliance with the requirements of the Companies Act rests with the Directors and Secretary who should seek appropriate legal advice if in doubt about over any particular aspect of company administration.</p>
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