

CHAPTER 3 Allotment of shares

Allotment of shares

69. (1) No shares may be allotted by a company unless the allotment is authorised, either specifically or pursuant to a general authority, by ordinary resolution or by the constitution of the company.

(2) Without prejudice to subsection (1), in the case of a company whose constitution states an authorised share capital, no shares may be allotted by the company unless those shares are comprised in the authorised but unissued share capital of the company.

(3) An authorisation for the purposes of subsection (1) (whether conferred by an ordinary resolution or the constitution) may stipulate a period during which the allotment may occur; if it so stipulates, then allotments occurring outside that period are not authorised by it.

(4) Save to the extent that the constitution of the company provides otherwise—

(a) shares of a company may only be allotted by the directors of the company;

(b) the directors of a company may allot, grant options over or otherwise dispose of shares to such persons, on such terms and conditions and at such times as they may consider to be in the best interests of the company and its shareholders.

(5) Any director of a company who knowingly contravenes, or knowingly permits or authorises a contravention of, a preceding provision of this section shall be guilty of a category 3 offence.

(6) Subject to subsections (8) and (12) and section 70, a company proposing to allot any shares—

(a) shall not allot any of those shares, on any terms—

(i) to any non-member, unless it has made an offer to each person who holds relevant shares, of the class concerned, in the company to allot to him or her, on the same or more favourable terms, a proportion of those relevant shares which is, as nearly as practicable, equal to the proportion in nominal value held by him or her of the aggregate of the shares of that class; or

(ii) to any person who holds shares in the company, unless it has made an offer to each person who holds relevant shares, of the class concerned, in the company to allot to him or her, on the same terms, a proportion of those shares which is, as nearly as practicable, equal to the proportion in nominal value held by him or her of the aggregate of the relevant shares of that class;

and

(b) shall not allot any of those shares to any person unless the period during which any such offer may

be accepted (not being less than 14 days) has expired or the company has received notice of the acceptance or refusal of every offer so made.

(7) In—

(a) subsection (6) “relevant shares”, in relation to a company, means shares in the company other than shares which as respects dividends and capital carry a right to participate only to a specified amount in a distribution;

(b) subsection (6)(a)(ii) “non-member” means a person who is not a holder of shares (4)) in the company.

(8) Where a company's constitution contains provisions which—

(a) require that the company, when proposing to allot shares of a particular class, shall not allot those shares unless it makes an offer of those shares to existing holders of shares of that class; and

(b) specify that the minimum period during which that offer may be accepted is not less than 14 days,

then subsection (6) shall not apply to any allotments made in compliance with such provisions.

(9) An offer which is required by—

(a) subsection (6); or

(b) the provisions of the company's constitution referred to in subsection (8),

to be made to any person shall be made by serving it on him or her in the same manner in which notices are authorised to be given by sections 180, 181 and 218.

(10) Any such offer as is mentioned in subsection (6) or (8) shall not be withdrawn before the end of the period that the offer referred to in subsection (6) or, as the case may be, the provisions of the company's constitution referred to in subsection (8) specify as the period within which it may be accepted.

(11) Nothing in subsection (6)(b), (9) or (10) shall invalidate provisions of the company's constitution referred to in subsection (8) by reason that those provisions require or authorise an offer thereunder to be made in contravention of one or more of those subsections, but, to the extent that those provisions require or authorise such an offer to be so made, they shall be of no effect.

(12) Subsection (6) shall not apply—

(a) to the extent that—

(i) the constitution of the company,

(ii) a special resolution, or

(iii) the terms of issue of already allotted shares,

provides or provide (either generally or in respect of a particular allotment or class of allotments),
to the extent so provided;

(b) to allotments of shares for a consideration wholly or partly paid for, otherwise than in cash;

(c) to allotments of shares to the subscriber or subscribers to the company's constitution upon the
company's incorporation, being the shares taken by that subscriber or those subscribers before such
incorporation;

(d) to allotments of shares to persons in pursuance of the terms of an employees' share scheme
established by the company;

(e) to allotments of bonus shares.