

Pre-emption rights

1022. (1) Subject to the provisions of this section and section 1023, a PLC proposing to allot any equity securities—

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

(i) to any non-member, unless it has made an offer to each person who holds relevant shares or relevant employee shares in the PLC to allot to him or her, 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 or her of the aggregate of the relevant shares and relevant employee shares, or

(ii) to any person who holds relevant shares or relevant employee shares in the PLC, unless it has made an offer to each person who holds relevant shares or relevant employee shares in the PLC to allot to him or her, 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 or her of the aggregate of the relevant shares and relevant employee shares,

and

(b) shall not allot any of those securities to any person unless the period during which any such offer may be accepted has expired or the PLC has received notice of the acceptance or refusal of every offer so made.

(2) In subsection (1)(a)(i) “non-member” means a person who is not a holder of shares (as that expression is to be read by virtue of subsection (11)) in the PLC.

(3) Subsection (4) applies to any provision of the memorandum or articles of a PLC which requires the PLC, 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.

(4) If, in accordance with a provision to which this subsection applies—

(a) a PLC makes an offer to allot any securities to such a holder, and

(b) that holder or anyone in whose favour that holder has renounced his or her right to their allotment accepts the offer,

subsection (1) shall not apply to the allotment of those securities and the PLC may allot them accordingly; but this subsection is without prejudice to the application of subsection (1) in any other case.

(5) Subsection (1) shall not apply in relation to a particular allotment of equity securities if the securities are, or are to be, wholly or partly paid up otherwise than in cash.

(6) Securities which a PLC has offered to allot to a holder of relevant shares or relevant employee shares may be allotted to that holder or anyone in whose favour that holder has renounced his or her right to their allotment without contravening subsection (1) (b).

(7) Subsection (1) shall not apply in relation to the allotment of any securities which would, apart from a renunciation or assignment of the right to their allotment, be held under an employees' share scheme.

(8) An offer which is required by subsection (1) or by any provision to which subsection (4) applies 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.

(9) Any such offer as is mentioned in subsection (8) shall state a period of not less than 14 days during which the offer may be accepted; and the offer shall not be withdrawn before the end of that period.

(10) Subsections (8) and (9) shall not invalidate a provision to which subsection (4) applies by reason that that provision requires or authorises an offer thereunder to be made in contravention of one or both of those subsections, but, to the extent that the provision requires or authorises such an offer to be so made, it shall be of no effect.

(11) In relation to any offer to allot any securities required by subsection (1) or by any provision to which subsection (4) applies, references in this section (however expressed) to the holder of shares of any description shall be read as including references to any person who held shares of that description on any day within the period of 28 days ending with the day immediately preceding the date of the offer which is specified by the directors of the PLC concerned as being the record date for the purposes of the offer.

(12) Where there is a contravention of subsection (1), (8) or (9) or a provision to which subsection (4) applies, the PLC and every officer of the PLC who knowingly authorised or permitted the contravention, shall be 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 that person has sustained or incurred by reason of the contravention.

(13) No proceedings to recover any such loss, damage, costs or expenses shall be commenced after the expiration of 2 years after the date of the delivery to the Registrar of the return of allotments in question or, where equity securities other than shares are granted, after the date of the grant.