Dictionary of

COMPANY LAW

E.R. Hardy Ivamy

Butterworths Professional Dictionary Series

Butterworths Professional Dictionaries Series

DICTIONARY OF COMPANY LAW

by

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LONDON

BUTTERWORTHS

1983

England	Butterworth & Co (Publishers) Ltd, 88 Kingsway, LONDON WC2B 6AB
Australia	Butterworths Pty Ltd, SYDNEY, MELBOURNE, BRISBANE, ADELAIDE and PERTH
Canada	Butterworth & Co (Canada) Ltd, TORONTO Butterworth & Co (Western Canada) Ltd, VANCOUVER
New Zealand	Butterworths of New Zealand Ltd, WELLINGTON
Singapore	Butterworth & Co (Asia) Pte Ltd, SINGAPORE
South Africa	Butterworth Publishers (Pty) Ltd, DURBAN
U.S.A.	Mason Publishing Co, ST PAUL, Minnesota Butterworth Legal Publishers, SEATTLE, Washington; BOSTON, Massachusetts; and AUSTIN, Texas D & S Publishers, CLEARWATER, Florida

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Ivamy, E. R. Hardy
Dictionary of company law.
1. Corporation law—England—Dictionaries
I. Title
344.206'66'0321 KD2079

ISBN Hardcover 0 406 68161 9
Softcover 0 406 68162 7

Printed by Billings Bookplan, Worcester
Photoset by Cotswold Typesetting Ltd, Gloucester

Preface

This is another volume in the 'Butterworths Professional Dictionaries Series', and, in general, is written in the same style as my 'Dictionary of Insurance Law', which was published in 1981.

But there is one considerable difference. Whereas the definitions in the earlier work were founded on the reported cases, those in this book are largely based on statute law. It is notoriously difficult to summarise in a reasonable form the provisions of Acts of Parliament, but it is hoped that the definitions and descriptions of the various terms used in the Companies Acts have been given precise and proper treatment.

Since Company Law is related in some respects to the Law of Partnership, I have included a few definitions from that branch of the law. I have, however, generally made no attempt to cover the statutory provisions of the Companies Acts in so far as they concern Accounts for this subject is one of accountancy and not one of law, and is therefore outside the scope of this dictionary.

I should like to thank the staff of Butterworths for seeing the book through the press.

University College London
July 1983

E. R. HARDY IVAMY

A

'A' list. A list of the present members of the company made out by the liquidator in the course of winding up. (*See* CONTRIBUTORY; LIQUIDATOR).

Allotment of shares. The appropriation to a person of a certain number of shares. There is no binding contract until the allotment has been made by a resolution of the board of directors and notice of allotment has been posted or reached the allottee in some other way: *Dunlop v Higgins* (1849) 1 HL Cas 381; *Household Fire Insurance Co v Grant* (1879) 4 Ex D 216. Allotment remains merely a contract until the allottee's name is registered in the register of members, and he thus becomes a member of the company: *Re Florence Land and Public Works Co, Nicol's Case, Tufnell and Ponsonby's Case* (1885) 29 ChD 421.

Allotment before 'minimum subscription' reached

No allotment must be made of any share capital of a company offered to the public for subscription unless the amount stated in the prospectus as the 'minimum subscription' has been subscribed: Companies Act 1948, s. 47 (1). (*See* PROSPECTUS: MINIMUM SUBSCRIPTION). This provision, however, does not apply to any allotment of shares subsequent to the first allotment of shares offered to the public for subscription: Companies Act 1948, s. 47 (6).

If the minimum subscription has not been subscribed on the expiration of 40 days after the issue of the prospectus, all money received from applicants for shares must be forthwith repaid to them without interest: ibid., s. 47 (4). If any such money is not repaid within 48 days after the issue of the prospectus, the directors are jointly and severally liable to repay the money with interest at the rate of 5 per cent per annum from the expiration of the 48th day: ibid., s. 47 (4). But a director is not liable if he proves that the default in the repayment of the money was not due to any misconduct or negligence on his part: ibid., s. 47 (4).

Any condition requiring or binding any applicant for shares to waive compliance with any of the above provisions is void: ibid., s. 47 (5).

An allotment made by a company to an applicant in contravention of the above provisions is voidable at his instance within 1 month after the date of the allotment and not later, notwithstanding that the company is in the course of being wound up: ibid., s. 49 (1).

Allotment of shares

If any director of a company knowingly contravenes or permits or authorises the contravention of any of the above provisions with respect to allotment, he is liable to compensate the company and the allottee respectively for any loss, damages or costs which the company or the allottee may have sustained or incurred: ibid., s. 49 (2). But proceedings to recover any such loss, damages or costs must not be commenced after the expiration of 2 years from the date of the allotment: ibid. s. 49 (2).

Allotment before third day after issue of prospectus

No allotment must be made of any shares of a company in pursuance of a prospectus issued generally until the beginning of the 3rd day after that on which the prospectus is first so issued or such later time (if any) as may be specified in the prospectus: ibid., s. 50 (1). The beginning of the 3rd day or such later time is referred to as 'the time of the opening of the subscription lists': ibid., s. 50 (1).

The validity of an allotment is not affected by any contravention of the above provision: ibid., s. 50 (3). But the company and every officer of the company who is in default is liable on conviction on indictment to a fine, and on summary conviction to a fine not exceeding the statutory maximum: ibid., s. 50 (3).

Allotment of shares to be dealt in on stock exchange

Where a prospectus whether issued generally or not states that application has been or will be made for permission for the shares offered by it to be listed on any stock exchange, any allotment made on an application in pursuance of the prospectus is void if

(a) the permission has not been applied for before the 3rd day after the first issue of the prospectus; or

(b) if the permission has been refused before the expiration of 3 weeks from the date of the closing of the subscription lists or such longer period not exceeding 6 weeks as may, within the 3 weeks, be notified to the applicant for permission by or on behalf of the stock exchange: ibid., s. 51 (1).

Where the permission has not been applied for or has been refused, the company must forthwith repay without interest all money received from applicants in pursuance of the prospectus: ibid., s. 51 (2). If any money is not repaid within 8 days after the company becomes liable to repay it, the directors of the company are jointly and severally liable to repay the money with interest at the rate of 5 per cent per annum from the expiration of the 8th day: ibid., s. 51 (2). But a director is not liable if he proves that the default in the repayment of the money was not due to any misconduct or negligence on his part: ibid., s. 51 (2).

All money received must be kept in a separate bank account so long as the company may become liable to repay it: ibid., s.51 (3). If default

is made in complying with this provision, the company and every officer in default is liable on conviction on indictment to a fine, and on summary conviction to a fine not exceeding the statutory maximum: ibid., s. 51 (3).

Any condition requiring or binding any applicant for shares to waive compliance with any of the above requirements is void: ibid., s. 51 (4).

Permission is not deemed to be refused if it is intimated that the application for it, though not at present granted, will be given further consideration: ibid., s. 51 (5).

Allotment where issue not fully subscribed

No allotment must be made of any share capital or a public company offered for subscription unless

(a) that capital is subscribed for in full; or

(b) the offer states that, even if the capital is not subscribed for in full, the amount of that capital subscribed for may be allotted in any event or in the event of the conditions specified in the offer being satisfied: Companies Act 1980, s. 16 (1).

Where conditions are specified, no allotment of the capital must be made unless those conditions are satisfied: ibid., s. 16 (1).

Allotment by private limited company

A private limited company (other than a company limited by guarantee and not having a share capital) is guilty of an offence if it allots or agrees to allot (whether for cash or otherwise) any shares in the company with a view to all or any of those shares being offered for sale to the public: Companies Act 1980, s. 15 (1). A company guilty of an offence under this provision and any officer who is in default are liable on conviction on indictment to a fine, and on summary conviction to a fine not exceeding the statutory maximum: ibid., s. 15 (3).

Nothing in the above provisions affects the validity of any allotment or of any agreement to allot shares: ibid., s. 15 (4).

Authority of company required for allotment of certain securities

The directors of a company must not exercise any power of the company to allot certain securities unless they are authorised to do so by

(a) the company in general meeting; or

(b) the articles of the company: Companies Act 1980, s. 14 (1).

Authority may be given for a particular exercise of that power or for the exercise of that power generally and may be unconditional or subject to conditions: ibid., s. 14 (2).

Any such authority must state the maximum amount of the securities which may be allotted and the date on which the authority will expire: ibid., s. 14 (3). This date must not be more than 5 years from whichever is relevant of the following dates:

(a) in the case of an authority contained at the time of the original incorporation of the company in the articles of the company, the date of that incorporation; and
(b) in any other case, the date on which the resolution is passed by virtue of which that authority is given: ibid., s. 14 (3).

Any such authority may be previously revoked or varied by the company in general meeting: ibid., s. 14 (3). The authority may be renewed by the company in general meeting for a further period not exceeding 5 years: ibid., s. 14 (4). A resolution of a company to give, vary, revoke or renew such authority may, notwithstanding that it alters the articles of the company, be an ordinary resolution: ibid., s. 14 (6). (*See* ORDINARY RESOLUTION).

Any director who knowingly and wilfully contravenes or permits or authorises a contravention of the above provisions is liable on conviction on indictment to a fine and on summary conviction to a fine not exceeding the statutory maximum: Companies Act 1948, s. 14 (7).

Nothing in the above provisions affects the validity of the allotment of the securities concerned: ibid., s. 14 (8).

The securities concerned are:

(a) shares in the company other than shares shown in the memorandum to have been taken by the subscribers to it or shares allotted in pursuance of an employees' share scheme; and
(b) any right to subscribe for, or to convert any security into, shares in the company other than shares so allotted: ibid., s. 14 (10).

Pre-emption rights

Certain restrictions are imposed on the allotment of shares with regard to pre-emption rights: Companies Act 1980, s. 17.

Subscription of share capital

Shares allotted by any company and any premium payable on them may be paid up in money or money's worth (including goodwill and know-how): ibid., s. 20 (1). A public company must not accept at any time in payment up of its shares or any premium payable on them an undertaking given by any person that he or another should do work or perform services for the company or any other person: ibid., s. 20 (2).

Prohibition of allotment of shares at a discount

The shares of a company must not be allotted at a discount: ibid., s. 21 (1).

Payment for allotted shares

A public company must not allot a share except as paid up at least to one-quarter of the nominal value of the share and the whole of any premium on it: ibid., s. 22 (1). But this provision does not apply to shares allotted in pursuance of an employees' share scheme: ibid., s. 22 (4). (*See* EMPLOYEES' SHARE SCHEME).

Payment for non-cash consideration

A public company must not allot shares as fully or partly paid otherwise than in cash if the consideration for the allotment is or includes an undertaking which is to be or may be performed more than 5 years after the date of the allotment: Companies Act 1980, s. 23 (1).

Experts' reports on non-cash consideration

A public company must not allot shares as fully or partly paid otherwise than in cash unless

(a) the consideration for the allotment has been valued;
(b) a report with respect to its value has been made to the company by an independent expert appointed by the company during the 6 months immediately preceding the allotment of the shares; and
(c) a copy of the report has been sent to the proposed allottee of the shares: ibid., s. 24 (1).

Any person carrying out a valuation or making a report with respect to any consideration proposed to be accepted or given by a company is entitled to require from its officers such information and explanation as he thinks necessary to carry out the valuation or to make the report: ibid., s. 25 (1).

Experts' reports on non-cash assets acquired from subscribers

In the case of a public company experts' reports are required where the company enters into an agreement with a subscriber to the memorandum of association for the transfer by him to it, during the period of 2 years from the date on which the company is issued with a certificate, of one or more non-cash assets: ibid., s. 26 (1)

Allotments, return as to. *See* RETURN AS TO ALLOTMENTS.

Allottee. A person to whom shares or debentures are allotted. (*See* ALLOTMENT).

'All round reduction'. *See* REDUCTION OF CAPITAL.

Annual general meeting. A meeting of the members of the company held once a year. Every company must in each year hold a general meeting as its annual general meeting in addition to any other meetings in that year and must specify the meeting as such in the notices calling it: Companies Act 1948, s. 131 (1). Not more than 15 months must elapse between the date of one annual general meeting of a company and that of the next: ibid., s. 131 (1). But so long as a company holds its first annual general meeting within 18 months of its incorporation, it need not hold it in the year of its incorporation or in the following year: ibid., s. 131 (1).

The annual general meeting must be held at such time and place as the directors appoint: ibid., Sch. 1, Table A, art. 47.

If default is made in holding an annual general meeting, the Department of Trade may, on the application of any member of the

company, call, or direct the calling of, a general meeting of the company and give such ancillary or consequential directions as the Department think expedient including directions modifying or supplementing, in relation to the calling, holding and conducting of the meeting, the operation of the company's articles: ibid., s. 131 (2). The directions that may be given include a direction that 1 member of the company present in person or by proxy shall be deemed to constitute a meeting: ibid., s. 131 (2). A general meeting so held, subject to any directions of the Department, is deemed to be an annual general meeting of the company: ibid., s. 131 (3). But, where a meeting so held is not held in the year in which the default in holding the company's annual general meeting occurred, the meeting so held must not be treated as the annual general meeting for the year in which it is held unless at that meeting the company resolves that it is to be so treated: ibid., s. 131 (3). Where a company resolves that a meeting is to be so treated, a copy of the resolution must, within 15 days of its passing, be forwarded to the Registrar of Companies and recorded by him: ibid., s. 131 (4). (*See* LENGTH OF NOTICE FOR CALLING MEETING; MINUTES).

Application for shares. A request by a person to a company that shares be allotted to him. (*See* ALLOTMENT OF SHARES).

In general, an application for shares may be revoked at any time.

But an application for shares in a company which is made in pursuance of a prospectus issued generally is not revocable until after the third day after the time of the opening of the subscription lists, or the giving before the expiration of the third day, by some person responsible under the Companies Act 1948, s. 43 for the prospectus, of a public notice having effect under that section of excluding or limiting the responsibility of the person giving it: Companies Act 1948, s. 50 (5). (*See* PROSPECTUS; TIME OF OPENING OF THE SUBSCRIPTION LISTS).

A conditional application for shares may be made: *Re Universal Banking Co, Rogers' Case, Harrison's Case* (1868) 3 Ch App 633.

If there is undue delay in allotment, the application will lapse: *Ramsgate Victoria Hotel Co v Montefiore* (1866) LR 1 Exch 109.

Application of partnership property. The rights of partners and creditors concerning the partnership property in the event of a dissolution of the partnership. (*See* DISSOLUTION OF PARTNERSHIP; PARTNERSHIP PROPERTY).

On the dissolution of a partnership every partner is entitled, as against the other partners in the firm, and all persons claiming through them in respect of their interests as partners, to have the property of the partnership applied in payment of the debts and liabilities of the

firm, and to have the surplus assets after such payment applied in payment of what may be due to the partners respectively after deducting what may be due from them as partners to the firm: Partnership Act 1890, s. 39. For that purpose any partner or his representatives may on the termination of the partnership apply to the court to wind up the business and affairs of the firm: ibid., s. 39.

In settling accounts between the partners after a dissolution of partnership, the following rules must, subject to any agreement, be observed:

(a) losses, including losses and deficiencies of capital, must be paid first out of profits, next out of capital, and lastly, if necessary, by the partners individually in the proportion in which they were entitled to share profits;

(b) the assets of the firm, including the sums, if any, contributed by the partners to make up losses or deficiencies of capital, must be applied in the following manner and order:

(1) in paying the debts and liabilities of the firm to persons who are not partners in it:

(2) in paying to each partner rateably what is due from the firm to him for advances as distinguished from capital:

(3) in paying to each partner rateably what is due from the firm to him in respect of capital:

(4) the ultimate residue, if any, must be divided among the partners in the proportions in which profits are divisible: ibid., s. 44.

Appropriate rate, in relation to interest, means 5 per cent per annum or such other rate as may be specified by order made by the Secretary of State by statutory instrument: Companies Act 1980, s. 87 (1).

Articles. *See* ARTICLES OF ASSOCIATION.

Articles of association. The internal regulations of the company.

(*a*) *Form and contents*

A company limited by shares may register, with the memorandum, articles of association signed by the subscribers to the memorandum and prescribing regulations for the company: Companies Act 1948, s. 6. Articles of association may adopt all or any of the regulations contained in Table A of Sch. 1 to the Act: ibid. s. 8 (1). If articles are not registered, or, if articles are registered, in so far as they do not exclude or modify the regulations contained in Table A, those regulations, so far as applicable, are the regulations of the company in the same manner and to the same extent as if they were contained in duly registered articles: ibid., s. 8 (2).

A company limited by guarantee and an unlimited company must register articles: ibid., s. 6.

A company limited by guarantee and not having a share capital must have articles in the form of Table C contained in Sch. 1 to the Act or as near to it as circumstances admit: ibid., s. 11 (b).

A company limited by guarantee and having a share capital must have articles in the form of Table D contained in Sch. 1 to the Act or as near to it as circumstances admit: ibid., s. 11 (c).

An unlimited company having a share capital must have articles in the form of Table E contained in Sch. 1 to the Act or as near to it as circumstances admit: ibid., s. 11 (d).

In the case of an unlimited company the articles must state the number of members with which the company proposes to be registered, and, if the company has a share capital, the amount of share capital with which the company proposes to be registered: ibid., s. 7 (1). In the case of a company limited by guarantee, the articles must state the number of members with which the company proposes to be registered: ibid., s. 7 (2).

Articles must be printed, divided into paragraphs numbered consecutively, and signed by each subscriber of the memorandum in the presence of at least one witness who must attest the signature: ibid., s. 9.

Where an unlimited company or a company limited by guarantee has increased the number of its members beyond the registered number, it must within 15 days after the increase was resolved on or took place, give to the Registrar of Companies notice of the increase in the prescribed form, and the Registrar must record the increase: ibid., s. 7 (3). If default is made in complying with this provision, the company and every officer of the company who is in default is liable on summary conviction to a fine not exceeding one-fifth of the statutory maximum: ibid., s. 7 (3).

Any article, which is the same in substance as any article in Table A, cannot be void on the ground of illegality: *Lock v Queensland Investment & Land Mortgage Co* [1896] AC 461.

In the case of a company limited by guarantee and not having a share capital every provision in the articles purporting to give any person a right to participate in the divisible profits of the company otherwise than as a member is void: Companies Act 1948, s. 21 (1).

(*b*) *Inspection and copies*

Any person may inspect a copy of the articles kept by the Registrar of Companies on payment of the prescribed fee: Companies Act 1948, s. 426 (1) (a).

A company must, on being so required by any member, send him a copy of the articles subject to the payment of 5p or such less sum as the company may prescribe: ibid., s. 24 (1). If a company makes default in complying with this provision, the company and every officer of the

company who is in default is liable for each offence, on summary conviction, to a fine not exceeding one-fifth of the statutory maximum: ibid., s. 24 (2).

(*c*) *Construction of the articles*

The articles are subject to the memorandum, and cannot give powers which are not given by the memorandum. But for the purposes of construction, on matters which need not necessarily be put in the memorandum, the memorandum and the articles are to be read together, and the articles may then explain or amplify the memorandum: *Re Wedgwood Coal & Iron Co, Anderson's Case* (1877) 7 Ch D 75; *Guinness v Land Corporation of Ireland* (1882) 22 Ch D 349. The articles should be regarded as a business document and should be so construed as to give them reasonable business efficacy, where a construction tending to that result is admissible on the language of the article, in preference to a result which would or might prove unworkable: *Holmes v Lord Keyes* [1958] 2 All ER 129 at 138, CA (per Jenkins LJ).

But the articles form a contract between the company and the members only in respect of their ordinary rights as members and not in that of any other capacity, e.g. that of a director (who happens also to be a shareholder): *Beattie v E. & F. Beattie Ltd* [1938] 3 All ER 214, CA.

(*d*) *Effect of the articles*

(i) THE COMPANY AND THE MEMBERS: When registered, the articles bind the company and the members to the same extent as if they respectively had been signed and sealed by each member, and contained covenants on the part of each member to observe all the provisions of the articles: Companies Act 1948, s. 20 (1). All money payable to the company under the articles is a debt due from him to the company, and is of the nature of a specialty debt: ibid., s. 20 (2).

(ii) THE MEMBERS INTER SE: Each member is bound to the other members: *Borland's Trustee v Steel Brothers & Co Ltd* [1901] 1 Ch 279; *Rayfield v Hands* [1958] 2 All ER 194.

(iii) THE COMPANY AND THIRD PARTIES: Generally the articles do not bind the company to a third party: *Eley v Positive Government Security Life Assurance Co* (1876) 1 Ex D 88. But the company may be liable to the third party on an implied contract in the terms of the articles: *Re New British Iron Co, ex parte Beckwith* [1898] 1 Ch 324 at 326 (per Wright J).

(*e*) *Alteration of the articles*

Subject to the Companies Acts 1948 to 1981 and to the conditions contained in its memorandum, a company may by special resolution alter its articles: Companies Act 1948, s. 10 (1). (*See* SPECIAL

RESOLUTION). Any alteration so made in the articles is as valid as if originally contained in them and is subject in like manner to alteration by special resolution: ibid., s. 10 (2).

A company cannot deprive itself of its powers to alter its articles: *Andrews v Gas Meter Co* [1897] 1 Ch 361. But a provision in an article relating to voting rights which has the effect of making a special resolution incapable of being passed if a particular shareholder or group of shareholders exercises their voting rights against a proposed alteration is valid: *Bushell v Faith* [1969] 1 All ER 1002 at 1006, CA (per Russell LJ). An article providing that no alteration shall be made without the consent of a specified person is contrary to the Companies Act 1948, s. 10 (supra) and is ineffective, but a provision as to voting rights is wholly different, and it is immaterial that it can have the same result: ibid., at 1006 (per Russell LJ). An article providing that on a proposed alteration of the articles only the shares of those opposed to the alteration should have a vote would breach s. 10 because it would mean that the articles could never be altered: ibid., at 1006 (per Russell LJ).

The company cannot by altering its articles justify a breach of contract with third parties: *British Equitable Assurance Co Ltd v Baily* [1906] AC 35, HL. In such a case the company cannot be prevented from altering its articles, although this may give rise to a claim by the other party to damages for breach of contract: *Punt v Symons & Co Ltd* [1903] 2 Ch 506; *Southern Foundries (1926) Ltd v Shirlaw* [1940] 2 All ER 445, HL.

A resolution passed by the requisite majority of shareholders will bind the minority provided that it is passed *bona fide* for the benefit of the company as a whole: *Brown v British Abrasive Wheel Co* [1919] 1 Ch 290; *Rights and Issues Investment Trust Ltd v Stylo Shoes Ltd* [1964] 3 All ER 628. The expression '*bona fide* for the benefit of the company as a whole' means that 'the shareholder must proceed on what, in his honest opinion, is for the benefit of the company as a whole': *Greenhalgh v Arderne Cinemas Ltd* [1950] 2 All ER 1120 at 1126 (per Evershed MR). The term 'as a whole' means the corporators as a general body; they are entitled to consider their personal financial interests: ibid., at 1126 (per Evershed MR). An alteration which benefits the company is valid even though it seriously affects the position of an individual shareholder: *Allen v Gold Reefs of West Africa Ltd* [1900] 1 Ch 656 (company's lien on all share 'not fully paid up' extended by alteration of article to cover all shares whether fully paid up or not). An alteration giving a majority power to exclude the minority where it is done for the benefit of the company is valid: *Sidebottom v Kershaw, Leese & Co* [1920] 1 Ch 154. An alteration may be valid even though it alters the whole structure of the company: *Andrews v Gas Motor Co* (supra).

(*f*) *Notification of alteration*

Where any alteration is made in a company's articles by any statutory provision, whether contained in an Act of Parliament or in an instrument made under an Act, a printed copy of the Act or instrument must, not later than 15 days after that provision comes into force, be forwarded to the Registrar of Companies and recorded by him: European Communities Act 1972, s. 9 (5). Where a company is required by s. 9 of that Act or otherwise to send to the Registrar any document making or evidencing an alteration in the company's articles, the company must send with it a printed copy of the articles as altered: ibid., s. 9 (5). If a company fails to comply with the above requirements, the company and any officer of the company who is in default is liable, on summary conviction, to a fine not exceeding one-fifth of the statutory maximum, or, on conviction after continued contravention, to a default fine not exceeding one-fiftieth of the statutory maximum: ibid., s. 9 (5).

The Registrar must cause to be published in the *Gazette* notice of the receipt by him of any document making or evidencing an alteration in the articles of a company: ibid., s. 9 (3) (b).

A company is not entitled to rely against other persons on any alteration of the articles if

(i) the alteration had not been officially notified at the material time and is not shown by the company to have been known at that time to the person concerned; or

(ii) if the material time fell on or before the 15th day after the date of official notification (or, where the 15th day was a non-business day, on or before the next day that was not) and it is shown that the person concerned was unavoidably prevented from knowing of the event at that time: ibid., s. 9 (4). (*See* NON-BUSINESS DAY; OFFICIAL NOTIFICATION).

Asset, non-cash. *See* NON-CASH ASSET.

Assignee of partner's share in partnership. A person to whom a partner has transferred his share in a partnership.

An assignment by any partner of his share in the partnership, either absolute or by way of mortgage, does not, as against the other partners, entitle the assignee, during the continuance of the partnership, to interfere in the management or administration of the partnership business of affairs, or to require any accounts of the partnership transactions, or to inspect the partnership books, but entitles the assignee only to receive the share of profits to which the assigning partner would otherwise be entitled, and the assignee must accept the account of profits agreed to by the partners: Partnership Act 1890, s. 31 (1).

Accordingly, the assignee cannot object to salaries paid in good faith

by the firm to individual partners for managing departments of the business although his share of the profits may be considerably reduced in consequence: *Re Garwood's Trusts: Paynter v Paynter* [1903] 1 Ch 236.

In case of a dissolution of the partnership, whether as respects all the partners or as respects the assigning partner, the assignee is entitled to receive the share of the partnership assets to which the assigning partner is entitled as between himself and the other partners, and, for the purpose of ascertaining that share, to an account as from the date of the dissolution: ibid., s. 31 (2). (*See* DISSOLUTION OF PARTNERSHIP).

Where a partnership deed contains an arbitration clause and a partner has mortgaged his share in the partnership, the mortgagee is entitled to an account if the partnership is dissolved, and cannot be compelled to submit to arbitration any dispute which arises: *Bonnin v Neame* [1910] 1 Ch 732.

In the case of a limited partnership a limited partner may, with the consent of the general partners, assign his share in the partnership, and on such an assignment the assignee becomes a limited partner with all the rights of the assignor: Limited Partnerships Act 1907, s. 6 (5) (b). (*See* GENERAL PARTNER: LIMITED PARTNER; LIMITED PARTNERSHIP).

Assignment of partner's share in partnership. The transfer by a partner of his share in the partnership to another person. (*See* ASSIGNEE OF PARTNER'S SHARE IN PARTNERSHIP).

A partnership may, at the option of the other partners, be dissolved if any partner suffers his share of the partnership property to be charged for his separate debt: Partnership Act 1890, s. 33 (2). (*See* DISSOLUTION OF PARTNERSHIP: PARTNERSHIP PROPERTY).

But in the case of a limited partnership the other partners are not entitled to dissolve the partnership by reason of any limited partner suffering his share to be charged for his separate debt: Limited Partnerships Act 1907, s. 6 (5) (c). (*See* LIMITED PARTNER: LIMITED PARTNERSHIP).

Association clause. A clause in the memorandum of association stating:— 'We, the several persons whose names and addresses are subscribed, are desirous of being formed into a company, in pursuance of the memorandum of association, and we respectively agree to take the number of shares in the capital of the company set opposite our respective names.' See e.g. Companies Act 1948, Tables B, C, D and E. (*See* MEMORANDUM OF ASSOCIATION; SUBSCRIBER).

Auditor. A person who audits the books of a company.

Qualification

A person is not qualified for appointment as auditor of a company unless

(a) he is a member of a body of accountants established in the United

Kingdom and for the time being recognised for this purpose by the Department of Trade; or

(b) he is for the time being authorised by the Department of Trade to be so appointed, either as having similar qualifications obtained outside the United Kingdom or as having before 6 August 1947, practised in Great Britain as an accountant: Companies Act 1948, s. 161 (1).

The bodies of accountants which are recognised by the Department of Trade are

(i) the Institute of Chartered Accountants in England and Wales;
(ii) the Institute of Chartered Accountants of Scotland;
(iii) the Association of Certified Accountants;
(iv) the Institute of Chartered Accountants in Ireland: Companies Act 1976, s. 13 (1).

The Secretary of State may by regulations made by statutory instrument amend the above list by adding or deleting any body: ibid., s. 13 (2). But he must not make any regulations

(a) adding any body; or
(b) deleting any body which has not consented in writing to its deletion;

unless he has published notice of his intention to do so in the *London* and *Edinburgh Gazettes* at least 4 months before making the regulations: ibid., s. 13 (2).

The Secretary of State may refuse an authorisation to a person as having qualifications obtained outside the United Kingdom if it appears to him that the country in which the qualifications were obtained does not confer on persons qualified in the United Kingdom corresponding privileges: ibid., s. 13 (3).

None of the following persons is qualified for appointment as an auditor

(a) an officer or servant of the company;
(b) a person who is a partner of or in the employment of an officer or servant of the company;
(c) a body corporate: Companies Act 1948, s. 161 (2).

No person must act as auditor at a time when he knows that he is disqualified for appointment to that office: Companies Act 1976, s. 13 (5). If an auditor to his knowledge becomes so disqualified during his term of office, he must thereupon vacate his office and give notice in writing to the company that he has vacated it by reason of such disqualification: ibid., s. 13 (5).

Any person who acts as auditor in contravention of the above provision or fails without reasonable excuse to give notice of vacating his office is guilty of an offence, and is liable on conviction on indictment to a fine, and on summary conviction to a fine not