

*These notes refer to the Companies Act 2006 (c.46)
which received Royal Assent on 8 November 2006*

COMPANIES ACT 2006

EXPLANATORY NOTES

COMMENTARY

Part 17: a Company's Share Capital

Chapter 4: Public Companies: Allotment Where Issue Not Fully Subscribed

Section 578: Public companies: allotment where issue not fully subscribed

874. The provisions of this section restate section 84 of the 1985 Act and relate to the allotment of shares by public companies, and apply where not all the shares offered are taken up. A public company must not allot shares following an offer to subscribe for shares unless all the shares offered are taken up or the offer is made on the basis that it will go ahead even if all the shares offered are not taken up or if other conditions specified in the offer are met. It is not possible for the terms of the offer to override the requirements of this section (*subsection 6*).
875. The purpose of this rule is to protect persons who apply for shares, by ensuring that if the increase in capital is not fully subscribed, the capital will be increased by the amount of the subscriptions received only if the conditions of the issue so provide (Article 28 of the Second Company Law Directive (*77/91/EEC*)).
876. If 40 days after first making the offer, the offer is unsuccessful because not enough shares have been applied for under the offer, any money or other consideration received from those that did apply for shares under the offer must be repaid or returned (*subsection 2*). Interest becomes payable after the expiration of the 48th day after the offer was first made (*subsection 3*). The rate of interest will be as specified at the time under section 17 of the Judgments Act 1838 (currently 8%). This is a change from section 84(3) of the 1985 Act which sets the interest rate at 5% per annum.
877. The 40 day and 48 day time limits imposed by subsections (2) and (3) now run from the making of the offer rather than from the issue of any prospectus (as was the case under section 84 of the 1985 Act) given that the requirement or otherwise for a prospectus is a matter of securities law.
878. The regulation of public offers, especially requirements relating to prospectuses, is generally a matter of securities law. Sections 82 and 83 of the 1985 Act are, therefore, not restated in this Act.