

Companies Act, 1956

Section 76 - Power to pay certain commissions and prohibition of payment of all other commissioner discount, etc

1) A company may pay a commission to any person in consideration of- (a) his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any shares in, or debentures of, the company, or (b) his procuring or agreeing to procure subscriptions, whether absolute or conditional, for any shares in, or debentures of, the company, if the following conditions are fulfilled, namely - (i) the payment of the commission is authorised by the articles, (ii) the commission paid or agreed to be paid does not exceed in the case of shares, five per cent of the price at which the shares are issued or the amount or rate authorised by the articles, whichever is less, and in the case of debentures, two and a half per cent of the price at which the debentures are issued or the amount or rate authorised by the articles, whichever is less, (iii) the amount or rate per cent of the commission paid or agreed to be paid is- in the case of shares or debentures offered to the public for subscription, disclosed in the prospectus, and in the case of shares or debentures not offered to the public for subscription, disclosed in the statement in lieu of prospectus, or in a statement in the prescribed form signed in like manner as a statement in lieu of prospectus and filed before the payment of the commission with the Registrar and, where a circular or notice, not being a prospectus inviting subscription for the shares or debentures, is issued, also disclosed in that circular or notice, [***] (iv) the number of shares or debentures which persons have agreed for a commission to subscribe absolutely or conditionally is disclosed in the manner aforesaid, [and] [(v) a copy of the contract for the payment of the commission is delivered to the Registrar at the time of delivery of the prospectus or the statement in lieu of prospectus for registration] (2) Save as aforesaid and save as provided in (section 79), no company shall allot any of its shares or debentures or apply [any of its moneys], either directly or indirectly, in payment of any commission, discount or allowance, to any person in consideration of- (a) his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any shares in, or debentures of, the company, or (b) his procuring or agreeing to procure subscriptions, whether absolute or conditional, for any shares in, or debentures of, the company, whether the shares, debentures or money be so allotted or applied by being added to the purchase money of any property acquired by the company or to the contract price of any work to be executed for the company, or the money be paid out of the nominal purchase money or contract price, or otherwise (3) Nothing in this section shall affect the power of any company to pay such brokerage as it has heretofore been lawful for a company to pay (4) A vendor to promoter of, or other person who receives payment in shares, debentures or money from, a company shall have and shall be deemed always to have had power to apply any part of the shares, debentures or money so received in payment of any commission the payment of which, if made directly by the company, would have been legal under this section [(4A) For the removal of doubts it is hereby declared that no commission shall be paid under clause (a) of sub section (1) to any person on shares or debentures which are not offered to the public for subscription Provided that where a person has subscribed or agreed to subscribe under clause (a) of sub section (1) for any shares in, or debentures of, the company and before the issue of the prospectus or statement in lieu thereof any other person or persons has or have subscribed for any or all of those shares or debentures and that fact together with the aggregate amount of commission payable under this section in respect of such subscription is disclosed in such prospectus or statement, then, the company may pay commission to the first mentioned person in respect of such subscription] (5) If default is made in complying with the provisions of this section, the company, and every officer of the company who is in default, shall be punishable with fine which may extend to [five thousand] rupees