Plc's and Limited Companies

S 1 of the 1985 Companies Act defines a plc as one

(a) limited by shares or limited by guarantee and having a share capital,

(b) whose memorandum states that the company is to be a plc, and

(c) which was registered or re-registered as a plc under the provisions of the 1985 Companies Act (CA) or the former Companies Acts.

This definition gives little indication of how a plc differs from a private company. The main differences of *form* between the two arise from the requirements with which a plc must comply in order to register under the 1985 Companies Act. There are three main differences:

1. The company's name must end with the words 'public limited company' or 'plc'.

2. The company's Memorandum of Association must be in a form specified for such a company by the Companies (Tables A to F) Regulations 1985 or as near to it as circumstances permit (CA 1985, s 3(1)). The form for a company limited by shares is contained in Table F. The main difference between the form of Memorandum specified by these Tables for plcs and the forms specified for private companies, is that the former require an additional clause to be included, stating that the company is to be a plc.

3. The nominal value of the company's allotted share capital must be not less than the authorised minimum (CA 1985, s 11). This is at present fixed at £50,000. Further, a share may not be allotted except as paid up at least as to 25 per cent of its nominal value (CA 1985, s 101). So 50,000 £1 shares could be issued at a total of £12,500 subscribed, i.e. 25 per cent of nominal value paid up, with 75 per cent to follow in the future.

Subject to section 3(1) of the 1985 Companies Act (form of Memorandum), the documents that must be lodged with the Registrar of Companies in order to incorporate a plc are the same as for a private company. Provided they are in order, and the Registrar is satisfied that all the requirements of the 1985 Companies Act relating to incorporation and registration have been met, he will issue a certificate of incorporation. This is conclusive evidence that all the requirements have been complied with. However, in contrast to a private company, a newly incorporated plc requires from the Registrar a further certificate before it is able to do business or exercise borrowing powers (CA 1985, s 117). To obtain this certificate it must satisfy the Registrar that its share capital is adequate. This may be done by filing with the Registrar a statutory declaration made by a director or the secretary of the plc, stating that

the nominal value of the plc's allotted share capital is not less than the authorised minimum. The plc must also give the following details:

(a) the amount paid up, at the time of application, on the allotted share capital (shares allotted must be paid up at least as to 25 per cent of the nominal value);
(b) the amount, or estimated amount, of the preliminary expenses and the person by whom these expenses have been paid or are payable; and
(c) any amount or benefit paid or given, or intended to be paid or given, to the promoters of the plc and the consideration for the payment or benefit.

Failure to obtain the certificate before a plc commences business renders both the company and its officers in default liable to a fine. The validity of any transaction that has been entered into is not affected although the directors will be jointly and severally liable to indemnify the other parties to the transaction if the plc fails to comply with its obligations in connection with that transaction within 21 days of its being called upon to do so. If the certificate has not been issued within one year of the plc's registration, the plc may be wound up by a court order section 122 of the Insolvency Act 1986.

Why be a plc?

The only advantage (other than perceived status) of a plc over a private company is that the former has the right subject to certain regulations (i) to offer shares or debentures to the public (for cash or otherwise) and (ii) to allot such securities with a view to their being offered for sale to the public. A private company which engages in either of these activities commits an offence (CA 1985, s 81).

In return for this benefit, plc's are subjected to far more stringent controls than private companies. These include, in addition to the restriction on minimum share capital, the following:-

Pre-emption rights on allotment of shares. The statutory pre-emption provisions which apply on the allotment of shares (contained in Ss 89-96 of the 1985 Companies Act) may, in the case of a private company, be excluded by a provision contained in its Memorandum or Articles (S 91(1)). Both public and private companies can, however, avoid the statutory pre-emption provisions by giving the directors authority to allot shares in accordance with S 80 of the 1985 Act and including in that authority (or adding to it) a power to allot in disregard of the statutory provisions (S 95(1)(2). However, the power will cease to have effect when the authority to which it relates is revoked or would, if not renewed, expire (S 95(3)).

Payment for share capital. Ss 99-116 of the 1985 Companies Act contain a number of detailed rules concerning the payment for shares allotted by companies, most of which relate only to plcs. In outline the position is as follows.

(1) A plc may not allot shares unless at least 25 per cent of the nominal value has been paid up (S 101(1)).

(2) A plc is prohibited from accepting an undertaking to *do work* or *perform services* as consideration for the allotment of shares (S 99(2)).

(3) Where a plc allots shares as fully or partly paid in exchange for a non-cash consideration, any undertaking which forms part of that consideration (e.g. to transfer assets to the company) must be performed within five years of the allotment (S 102(1)). Further a prior expert's valuation and report on the consideration given will usually be required (S 103).

(4) The original subscribers to the Memorandum of a plc must pay for their shares in cash (S 106).

(5) S 104 contains special provisions dealing with the acquisition of non-cash assets from the original subscribers to the Memorandum of a public company (or from members at the time of registration or re-registration as a plc under the Act).

Maintenance of capital. If at any time the net assets of a plc are reduced to 50 per cent or less of its called up share capital, the directors must convene an Extraordinary General Meeting within 28 days of the date on which any one of them becomes aware of the fact (CA 1985, s 142). The meeting is to be held within 56 days. The purpose of the meeting is to consider what measures, if any, should be taken to deal with the situation -- there is no obligation to undertake specific measures.

Distribution of profits. A plc is subject to restrictions on the distribution of profits additional to those applicable to *all* companies set out in S 263 of the 1985 Companies Act. A distribution can only be made by a plc if its net assets do not fall below the aggregate of its called up share capital and its 'undistributable reserves' (CA 1985, s 264).

Loans to directors. Where a group of companies includes a plc, the rules concerning loans to directors are extended (in relation to each company in the group). Broadly, the effect of

these provisions is to prohibit or restrict transactions in the nature of or in substitution for loans (CA 1985, s 330).

Purchase of own shares. Both plc's and private companies may issue redeemable shares. They may also purchase their own shares (CA 1985, ss 159 and 162). However, only a private company can apply capital in the purchase or redemption of its shares where it has insufficient profits available (CA 1985, s 171). Note that Ss 219-229 of the Taxes Act 1988, which remove some of the tax disadvantages where a company purchases its own shares, apply only to *unquoted* companies, as defined in the 1988 Act.

Financial assistance for acquisition of shares. The prohibition against companies providing financial assistance for the purchase of their own shares contained in S 151 of the 1985 Act is relaxed in the case of private companies. Ss 155-158 contain a procedure whereby, in certain cases, private companies may provide financial assistance, subject to various safeguards for creditors and shareholders being complied with.

Accounting requirements. Plc's cannot take advantage of the provisions contained in Ss 246-249 of the 1985 Companies Act (as replaced by the Companies Act 1989) permitting 'small' and 'medium sized' companies to file with the Registrar (or, in the case of 'small' companies, to prepare) less detailed accounts, nor can they qualify as 'dormant' companies so as to dispense with auditors.

Other items.

Other differences between a plc and a private company include rules governing the number of members (a plc must still have at least two), the age and number of directors, the qualifications of the company secretary, voting on directors' appointments, and the ability of proxies to speak at general meetings. In addition, S 281A of the Companies Act 1985 permits private companies to agree to written resolutions of members instead of resolutions at daily convened general meetings, but not plcs.