



# Companies Act 1985

## 1985 CHAPTER 6

### PART II

#### RE-REGISTRATION AS A MEANS OF ALTERING A COMPANY'S STATUS

##### *Private company becoming public*

#### **43 Re-registration of private company as public**

- (1) Subject to this and the following five sections, a private company (other than a company not having a share capital) may be re-registered as a public company if—
- (a) a special resolution that it should be so re-registered is passed; and
  - (b) an application for re-registration is delivered to the registrar of companies, together with the necessary documents.

A company cannot be re-registered under this section if it has previously been re-registered as unlimited.

- (2) The special resolution must—
- (a) alter the company's memorandum so that it states that the company is to be a public company; and
  - (b) make such other alterations in the memorandum as are necessary to bring it (in substance and in form) into conformity with the requirements of this Act with respect to the memorandum of a public company (the alterations to include compliance with section 25(1) as regards the company's name); and
  - (c) make such alterations in the company's articles as are requisite in the circumstances.
- (3) The application must be in the prescribed form and be signed by a director or secretary of the company; and the documents to be delivered with it are the following—
- (a) a printed copy of the memorandum and articles as altered in pursuance of the resolution ;

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- (b) a copy of a written statement by the company's auditors that in their opinion the relevant balance sheet shows that at the balance sheet date the amount of the company's net assets (within the meaning given to that expression by section 264(2)) was not less than the aggregate of its called-up share capital and undistributable reserves;
  - (c) a copy of the relevant balance sheet, together with a copy of an unqualified report (defined in section 46) by the company's auditors in relation to that balance sheet;
  - (d) if section 44 applies, a copy of the valuation report under subsection (2)(b) of that section ; and
  - (e) a statutory declaration in the prescribed form by a director or secretary of the company—
    - (i) that the special resolution required by this section has been passed and that the conditions of the following two sections (so far as applicable) have been satisfied, and
    - (ii) that, between the balance sheet date and the application for re-registration, there has been no change in the company's financial position that has resulted in the amount of its net assets becoming less than the aggregate of its called-up share capital and undistributable reserves.
- (4) "Relevant balance sheet" means a balance sheet prepared as at a date not more than 7 months before the company's application under this section.
- (5) A resolution that a company be re-registered as a public company may change the company name by deleting the word " company" or the words " and company", or its or their equivalent in Welsh (" cwmni", " a'r cwmni"), including any abbreviation of them.

#### **44 Consideration for shares recently allotted to be valued**

- (1) The following applies if shares have been allotted by the company between the date as at which the relevant balance sheet was prepared and the passing of the special resolution under section 43, and those shares were allotted as fully or partly paid up as to their nominal value or any premium on them otherwise than in cash.
- (2) Subject to the following provisions, the registrar of companies shall not entertain an application by the company under section 43 unless beforehand—
  - (a) the consideration for the allotment has been valued in accordance with section 108, and
  - (b) a report with respect to the value of the consideration has been made to the company (in accordance with that section) during the 6 months immediately preceding the allotment of the shares.
- (3) Where an amount standing to the credit of any of the company's reserve accounts, or of its profit and loss account, has been applied in paying up (to any extent) any of the shares allotted or any premium on those shares, the amount applied does not count as consideration for the allotment, and accordingly subsection (2) does not apply to it.
- (4) Subsection (2) does not apply if the allotment is in connection with an arrangement providing for it to be on terms that the whole or part of the consideration for the shares allotted is to be provided by the transfer to the company or the cancellation of all or some of the shares, or of all or some of the shares of a particular class, in

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another company (with or without the issue to the company applying under section 43 of shares, or of shares of any particular class, in that other company).

- (5) But subsection (4) does not exclude the application of subsection (2), unless under the arrangement it is open to all the holders of the shares of the other company in question (or, where the arrangement applies only to shares of a particular class, all the holders of the other company's shares of that class) to take part in the arrangement.

In determining whether that is the case, shares held by or by a nominee of the company allotting shares in connection with the arrangement, or by or by a nominee of a company which is that company's holding company or subsidiary or a company which is a subsidiary of its holding company, are to be disregarded.

- (6) Subsection (2) does not apply to preclude an application under section 43, if the allotment of the company's shares is in connection with its proposed merger with another company ; that is, where one of the companies concerned proposes to acquire all the assets and liabilities of the other in exchange for the issue of shares or other securities of that one to shareholders of the other, with or without any cash payment to shareholders.
- (7) In this section—
- (a) " arrangement" means any agreement, scheme or arrangement, including an arrangement sanctioned in accordance with section 425 (company compromise with creditors and members) or section 582 (liquidator in winding up accepting shares as consideration for sale of company's property), and
  - (b) "another company" includes any body corporate and any body to which letters patent have been issued under the Chartered Companies Act 1837.

#### **45 Additional requirements relating to share capital**

- (1) For a private company to be re-registered under section 43 as a public company, the following conditions with respect to its share capital must be satisfied at the time the special resolution under that section is passed.
- (2) Subject to subsections (5) to (7) below—
- (a) the nominal value of the company's allotted share capital must be not less than the authorised minimum, and
  - (b) each of the company's allotted shares must be paid up at least as to one-quarter of the nominal value of that share and the whole of any premium on it.
- (3) Subject to subsection (5), if any shares in the company or any premium on them have been fully or partly paid up by an undertaking given by any person that he or another should do work or perform services (whether for the company or any other person), the undertaking must have been performed or otherwise discharged.
- (4) Subject to subsection (5), if shares have been allotted as fully or partly paid up as to their nominal value or any premium on them otherwise than in cash, and the consideration for the allotment consists of or includes an undertaking to the company (other than one to which subsection (3) applies), then either—
- (a) the undertaking must have been performed or otherwise discharged, or
  - (b) there must be a contract between the company and some person pursuant to which the undertaking is to be performed within 5 years from the time the resolution under section 43 is passed.

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- (5) For the purpose of determining whether subsections (2)(b), (3) and (4) are complied with, certain shares in the company may be disregarded ; and these are—
- (a) subject to the next subsection, any share which was allotted before 22nd June 1982, and
  - (b) any share which was allotted in pursuance of an employees' share scheme and by reason of which the company would, but for this subsection, be precluded under subsection (2)(b) (but not otherwise) from being reregistered as a public company.
- (6) A share is not to be disregarded under subsection (5)(a) if the aggregate in nominal value of that share and other shares proposed to be so disregarded is more than one-tenth of the nominal value of the company's allotted share capital; but for this purpose the allotted share capital is treated as not including any shares disregarded under subsection (5)(b).
- (7) Any shares disregarded under subsection (5) are treated as not forming part of the allotted share capital for the purposes of subsection (2)(a).

#### **46 Meaning of " unqualified report " in s. 43(3)**

- (1) The following subsections explain the reference in section 43(3)(c) to an unqualified report of the company's auditors on the relevant balance sheet.
- (2) If the balance sheet was prepared in respect of an accounting reference period of the company, that reference is to a report made by the auditors and stating without material qualification, that in their opinion the balance sheet—
  - (a) has been properly prepared in accordance with this Act, and
  - (b) gives a true and fair view of the state of the company's affairs as at the balance sheet date.
- (3) In any other case the reference is to a report by the auditors stating without material qualification that in their opinion the balance sheet—
  - (a) complies with the applicable accounting provisions, and
  - (b) without prejudice to that (but subject to subsection (4) below), gives a true and fair view of the state of the company's affairs as at the balance sheet date; and the accounting provisions referred to in paragraph (a) are sections 228 and 238(1) in Chapter I of Part VII and (where applicable) section 258 in Chapter II of that Part.
- (4) Where the balance sheet is prepared under Chapter II of Part VII (special category companies), and the company is entitled to avail itself, and has availed itself, of any of the provisions of Part III of Schedule 9, the auditors' report is not required to state that the balance sheet gives a true and fair view of the company's state of affairs as at the balance sheet date.
- (5) For purposes of references in this section to the auditors' report, a qualification is not material if, but only if, the auditors in their report state that the thing giving rise to the qualification is not material for the purpose of determining (by reference to the balance sheet) whether at the balance sheet date the amount of the company's net assets was not less than the aggregate of its called up share capital and undistributable reserves.
- (6) For the purposes of a report of the auditors falling within subsection (3)—
  - (a) section 228 in Chapter I of Part VII, and Schedule 4 (form and content of company accounts), and

(b) (where applicable) section 258 in Chapter II of that Part, and Schedule 9 (the same, in relation to special category companies),  
are deemed to have effect in relation to the balance sheet with such modifications as are necessary by reason of the fact that the balance sheet is prepared otherwise than as at the end of an accounting reference period.

#### **47 Certificate of re-registration under s. 43**

- (1) If the registrar of companies is satisfied, on an application under section 43, that a company may be re-registered under that section as a public company, he shall—
  - (a) retain the application and other documents delivered to him under the section ; and
  - (b) issue the company with a certificate of incorporation stating that the company is a public company.
- (2) The registrar may accept a declaration under section 43 (3)(e) as sufficient evidence that the special resolution required by that section has been passed and the other conditions of re-registration satisfied.
- (3) The registrar shall not issue the certificate if it appears to him that the court has made an order confirming a reduction of the company's capital which has the effect of bringing the nominal value of the company's allotted share capital below the authorised minimum.
- (4) Upon the issue to a company of a certificate of incorporation under this section—
  - (a) the company by virtue of the issue of that certificate becomes a public company ; and
  - (b) any alterations in the memorandum and articles set out in the resolution take effect accordingly.
- (5) The certificate is conclusive evidence—
  - (a) that the requirements of this Act in respect of re-registration and of matters precedent and incidental thereto have been complied with ; and
  - (b) that the company is a public company.

#### **48 Modification for unlimited company re-registering**

- (1) In their application to unlimited companies, sections 43 to 47 are modified as follows.
- (2) The special resolution required by section 43(1) must, in addition to the matters mentioned in subsection (2) of that section—
  - (a) state that the liability of the members is to be limited by shares, and what the company's share capital is to be; and
  - (b) make such alterations in the company's memorandum as are necessary to bring it in substance and in form into conformity with the requirements of this Act with respect to the memorandum of a company limited by shares.
- (3) The certificate of incorporation issued under section 47(1) shall, in addition to containing the statement required by paragraph (b) of that subsection, state that the company has been incorporated as a company limited by shares; and—
  - (a) the company by virtue of the issue of the certificate becomes a public company so limited ; and

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- (b) the certificate is conclusive evidence of the fact that it is such a company.