



# Companies Act 1985

## 1985 CHAPTER 6

### PART II

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

##### *Public company becoming private*

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

- (1) A public company may be re-registered as a private company if—
  - (a) a special resolution complying with subsection (2) below that it should be so re-registered is passed and has not been cancelled by the court under the following section;
  - (b) an application for the purpose in the prescribed form and signed by a director or the secretary of the company is delivered to the registrar of companies, together with a printed copy of the memorandum and articles of the company as altered by the resolution; and
  - (c) the period during which an application for the cancellation of the resolution under the following section may be made has expired without any such application having been made ; or
  - (d) where such an application has been made, the application has been withdrawn or an order has been made under section 54(5) confirming the resolution and a copy of that order has been delivered to the registrar.
- (2) The special resolution must alter the company's memorandum so that it no longer states that the company is to be a public company and must make such other alterations in the company's memorandum and articles as are requisite in the circumstances.
- (3) A company cannot under this section be re-registered otherwise than as a company limited by shares or by guarantee.

## **54 Litigated objection to resolution under s. 53**

- (1) Where a special resolution by a public company to be re-registered under section 53 as a private company has been passed, an application may be made to the court for the cancellation of that resolution.
- (2) The application may be made—
  - (a) by the holders of not less in the aggregate than 5 per cent, in nominal value of the company's issued share capital or any class thereof;
  - (b) if the company is not limited by shares, by not less than 5 per cent, of its members; or
  - (c) by not less than 50 of the company's members ;but not by a person who has consented to or voted in favour of the resolution.
- (3) The application must be made within 28 days after the passing of the resolution and may be made on behalf of the persons entitled to make the application by such one or more of their number as they may appoint in writing for the purpose.
- (4) If such an application is made, the company shall forthwith give notice in the prescribed form of that fact to the registrar of companies.
- (5) On the hearing of the application, the court shall make an order either cancelling or confirming the resolution and—
  - (a) may make that order on such terms and conditions as it thinks fit, and may (if it thinks fit) adjourn the proceedings in order that an arrangement may be made to the satisfaction of the court for the purchase of the interests of dissentient members ; and
  - (b) may give such directions and make such orders as it thinks expedient for facilitating or carrying into effect any such arrangement.
- (6) The court's order may, if the court thinks fit, provide for the purchase by the company of the shares of any of its members and for the reduction accordingly of the company's capital, and may make such alterations in the company's memorandum and articles as may be required in consequence of that provision.
- (7) The company shall, within 15 days from the making of the court's order, or within such longer period as the court may at any time by order direct, deliver to the registrar of companies an office copy of the order.
- (8) If the court's order requires the company not to make any, or any specified, alteration in its memorandum or articles, the company has not then power without the leave of the court to make any such alteration in breach of the requirement.
- (9) An alteration in the memorandum or articles made by virtue of an order under this section, if not made by resolution of the company, is of the same effect as if duly made by resolution ; and this Act applies accordingly to the memorandum or articles as so altered.
- (10) A company which fails to comply with subsection (4) or subsection (7), and any officer of it who is in default, is liable to a fine and, for continued contravention, to a daily default fine.

## **55 Certificate of re-registration under s. 53**

- (1) If the registrar of companies is satisfied that a company may be re-registered under section 53, he shall—
  - (a) retain the application and other documents delivered to him under that section ; and
  - (b) issue the company with a certificate of incorporation appropriate to a private company.
- (2) On the issue of the certificate—
  - (a) the company by virtue of the issue becomes a private company; and
  - (b) the alterations in the memorandum and articles set out in the resolution under section 53 take effect accordingly.
- (3) The certificate is conclusive evidence—
  - (a) that the requirements of section 53 in respect of re-registration and of matters precedent and incidental to it have been complied with ; and
  - (b) that the company is a private company.