



# Companies Act 1985

## 1985 CHAPTER 6

### PART V

#### SHARE CAPITAL, ITS INCREASE, MAINTENANCE AND REDUCTION

### CHAPTER I

#### GENERAL PROVISIONS ABOUT SHARE CAPITAL

#### **117 Public company share capital requirements.**

- (1) A company registered as a public company on its original incorporation shall not do business or exercise any borrowing powers unless the registrar of companies has issued it with a certificate under this section or the company is re-registered as a private company.
- (2) The registrar shall issue a company with such a certificate if, on an application made to him by the company in the prescribed form, he is satisfied that the nominal value of the company's allotted share capital is not less than the authorised minimum, and there is delivered to him a statutory declaration complying with the following subsection. [F1This subsection is subject to subsection (3A).]
- (3) The statutory declaration must be in the prescribed form and be signed by a director or secretary of the company; and it must—
  - (a) state that the nominal value of the company's allotted share capital is not less than the authorised minimum;
  - (b) specify the amount paid up, at the time of the application, on the allotted share capital of the company;
  - (c) specify the amount, or estimated amount, of the company's preliminary expenses and the persons by whom any of those expenses have been paid or are payable; and

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- (d) specify any amount or benefit paid or given, or intended to be paid or given, to any promoter of the company, and the consideration for the payment or benefit.

[<sup>F2</sup>(3A) In place of the statutory declaration referred to in subsection (2), there may be delivered to the registrar of companies using electronic communications a statement made by a director or secretary of the company complying with the requirements of subsection (3)(a) to (d).]

- (4) For the purposes of subsection (2), a share allotted in pursuance of an employees' share scheme may not be taken into account in determining the nominal value of the company's allotted share capital unless it is paid up at least as to one-quarter of the nominal value of the share and the whole of any premium on the share.

- (5) The registrar may accept a statutory declaration [<sup>F3</sup>or statement] delivered to him under this section as sufficient evidence of the matters stated in it.

- (6) A certificate under this section in respect of a company is conclusive evidence that the company is entitled to do business and exercise any borrowing powers.

- (7) If a company does business or exercises borrowing powers in contravention of this section, the company and any officer of it who is in default is liable to a fine.

[<sup>F4</sup>(7A) Any person who makes a false statement under subsection (3A) which he knows to be false or does not believe to be true is liable to imprisonment or a fine, or both.]

- (8) Nothing in this section affects the validity of any transaction entered into by a company; but, if a company enters into a transaction in contravention of this section and fails to comply with its obligations in that connection within 21 days from being called upon to do so, the directors of the company are jointly and severally liable to indemnify the other party to the transaction in respect of any loss or damage suffered by him by reason of the company's failure to comply with those obligations.

#### Textual Amendments

**F1** Words in s. 117(2) inserted (22.12.2000) by S.I. 2000/3373, art. 9(1)(2)

**F2** S. 117(3A) inserted (22.12.2000) by S.I. 2000/3373, art. 9(1)(3)

**F3** Words in s. 117(5) inserted (22.12.2000) by S.I. 2000/3373, art. 9(1)(4)

**F4** S. 117(7A) inserted (22.12.2000) by S.I. 2000/3373, art. 9(1)(5)

#### Modifications etc. (not altering text)

**C1** S. 117 excluded (8.10.2004) by The European Public Limited-Liability Company Regulations 2004 (S.I. 2004/2326), regs. 85, 88, Sch. 4 para. 9(a) (with para. 11)

## 118 The authorised minimum.

- (1) In this Act, "the authorised minimum" means £50,000, or such other sum as the Secretary of State may by order made by statutory instrument specify instead.

- (2) An order under this section which increases the authorised minimum may—
- (a) require any public company having an allotted share capital of which the nominal value is less than the amount specified in the order as the authorised minimum to increase that value to not less than that amount or make application to be re-registered as a private company;

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- (b) make, in connection with any such requirement, provision for any of the matters for which provision is made by this Act relating to a company's registration, re-registration or change of name, to payment for any share comprised in a company's capital and to offers of shares in or debentures of a company to the public, including provision as to the consequences (whether in criminal law or otherwise) of a failure to comply with any requirement of the order; and
  - (c) contain such supplemental and transitional provisions as the Secretary of State thinks appropriate, make different provision for different cases and, in particular, provide for any provision of the order to come into operation on different days for different purposes.
- (3) An order shall not be made under this section unless a draft of it has been laid before Parliament and approved by resolution of each House.

#### **119 Provision for different amounts to be paid on shares.**

A company, if so authorised by its articles, may do any one or more of the following things—

- (a) make arrangements on the issue of shares for a difference between the shareholders in the amounts and times of payment of calls on their shares;
- (b) accept from any member the whole or a part of the amount remaining unpaid on any shares held by him, although no part of that amount has been called up;
- (c) pay dividend in proportion to the amount paid up on each share where a larger amount is paid up on some shares than on others.

#### **120 Reserve liability of limited company.**

A limited company may by special resolution determine that any portion of its share capital which has not been already called up shall not be capable of being called up except in the event and for the purposes of the company being wound up; and that portion of its share capital is then not capable of being called up except in that event and for those purposes.

#### **121 Alteration of share capital (limited companies).**

- (1) A company limited by shares or a company limited by guarantee and having a share capital, if so authorised by its articles, may alter the conditions of its memorandum in any of the following ways.
- (2) The company may—
  - (a) increase its share capital by new shares of such amount as it thinks expedient;
  - (b) consolidate and divide all or any of its share capital into shares of larger amount than its existing shares;
  - (c) convert all or any of its paid-up shares into stock, and re-convert that stock into paid-up shares of any denomination;
  - (d) sub-divide its shares, or any of them, into shares of smaller amount than is fixed by the memorandum (but subject to the following subsection);
  - (e) cancel shares which, at the date of the passing of the resolution to cancel them, have not been taken or agreed to be taken by any person, and diminish

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the amount of the company's share capital by the amount of the shares so cancelled.

- (3) In any sub-division under subsection (2)(d) the proportion between the amount paid and the amount, if any, unpaid on each reduced share must be the same as it was in the case of the share from which the reduced share is derived.
- (4) The powers conferred by this section must be exercised by the company in general meeting.
- (5) A cancellation of shares under this section does not for purposes of this Act constitute a reduction of share capital.

## **122 Notice to registrar of alteration.**

- (1) If a company having a share capital has—
  - (a) consolidated and divided its share capital into shares of larger amount than its existing shares; or
  - (b) converted any shares into stock; or
  - (c) re-converted stock into shares; or
  - (d) sub-divided its shares or any of them; or
  - (e) redeemed any redeemable shares; or
  - (f) cancelled any shares (otherwise than in connection with a reduction of share capital under section 135),

it shall within one month after so doing give notice in the prescribed form to the registrar of companies, specifying (as the case may be) the shares consolidated, divided, converted, subdivided, redeemed or cancelled, or the stock re-converted.

- (2) If default is made in complying with this section, the company and every officer of it who is in default is liable to a fine and, for continued contravention, to a daily default fine.

## **123 Notice to registrar of increased share capital.**

- (1) If a company having a share capital (whether or not its shares have been converted into stock) increases its share capital beyond the registered capital, it shall within 15 days after the passing of the resolution authorising the increase, give to the registrar of companies notice of the increase, and the registrar shall record the increase.
- (2) The notice must include such particulars as may be prescribed with respect to the classes of shares affected and the conditions subject to which the new shares have been or are to be issued.
- (3) There shall be forwarded to the registrar together with the notice a printed copy of the resolution authorising the increase, or a copy of the resolution in some other form approved by the registrar.
- (4) If default is made in complying with this section, the company and every officer of it who is in default is liable to a fine and, for continued contravention, to a daily default fine.

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## **124 Reserve capital of unlimited company.**

An unlimited company having a share capital may by its resolution for re-registration as a public company under section 43, or as a limited company under section 51—

- (a) increase the nominal amount of its share capital by increasing the nominal amount of each of its shares (but subject to the condition that no part of the increased capital is to be capable of being called up except in the event and for the purpose of the company being wound up), and
- (b) alternatively or in addition, provide that a specified portion of its uncalled share capital is not to be capable of being called up except in that event and for that purpose.

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**Changes to legislation:**

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