



Companies Act 2006

2006 CHAPTER 46

PART 7

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

Private company becoming public

90 Re-registration of private company as public

- (1) A private company (whether limited or unlimited) may be re-registered as a public company limited by shares if—
 - (a) a special resolution that it should be so re-registered is passed,
 - (b) the conditions specified below are met, and
 - (c) an application for re-registration is delivered to the registrar in accordance with section 94, together with—
 - (i) the other documents required by that section, and
 - (ii) a statement of compliance.
- (2) The conditions are—
 - (a) that the company has a share capital;
 - (b) that the requirements of section 91 are met as regards its share capital;
 - (c) that the requirements of section 92 are met as regards its net assets;
 - (d) if section 93 applies (recent allotment of shares for non-cash consideration), that the requirements of that section are met; and
 - (e) that the company has not previously been re-registered as unlimited.
- (3) The company must make such changes—
 - (a) in its name, and
 - (b) in its articles,as are necessary in connection with its becoming a public company.

Status: Point in time view as at 01/10/2009.

Changes to legislation: Companies Act 2006, Cross Heading: Private company becoming public is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (4) If the company is unlimited it must also make such changes in its articles as are necessary in connection with its becoming a company limited by shares.

Modifications etc. (not altering text)

- C1** Ss. 90-96 applied (1.10.2009) by [The Companies Act 2006 \(Consequential Amendments, Transitional Provisions and Savings\) Order 2009 \(S.I. 2009/1941\)](#), art. 12(1), **Sch. 3 para. 3** (with art. 10)
- C2** Ss. 90-96 applied (12.5.2011) by [The Companies Act 2006 \(Consequential Amendments and Transitional Provisions\) Order 2011 \(S.I. 2011/1265\)](#), art. 5(1), **Sch. 1 para. 3**

91 Requirements as to share capital

- (1) The following requirements must be met at the time the special resolution is passed that the company should be re-registered as a public company—
- (a) the nominal value of the company's allotted share capital must be not less than the authorised minimum;
 - (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;
 - (c) 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;
 - (d) 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 paragraph (c) applies), then either—
 - (i) the undertaking must have been performed or otherwise discharged, or
 - (ii) there must be a contract between the company and some person pursuant to which the undertaking is to be performed within five years from the time the special resolution is passed.
- (2) For the purpose of determining whether the requirements in subsection (1)(b), (c) and (d) are met, the following may be disregarded—
- (a) shares allotted—
 - (i) before 22nd June 1982 in the case of a company then registered in Great Britain, or
 - (ii) before 31st December 1984 in the case of a company then registered in Northern Ireland;
 - (b) shares allotted in pursuance of an employees' share scheme by reason of which the company would, but for this subsection, be precluded under subsection (1)(b) (but not otherwise) from being re-registered as a public company.
- (3) No more than one-tenth of the nominal value of the company's allotted share capital is to be disregarded under subsection (2)(a).
- For this purpose the allotted share capital is treated as not including shares disregarded under subsection (2)(b).
- (4) Shares disregarded under subsection (2) are treated as not forming part of the allotted share capital for the purposes of subsection (1)(a).

Status: Point in time view as at 01/10/2009.

Changes to legislation: Companies Act 2006, Cross Heading: Private company becoming public is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (5) A company must not be re-registered as a public company if it appears to the registrar that—
- (a) the company has resolved to reduce its share capital,
 - (b) the reduction—
 - (i) is made under section 626 (reduction in connection with redenomination of share capital),
 - (ii) is supported by a solvency statement in accordance with section 643, or
 - (iii) has been confirmed by an order of the court under section 648, and
 - (c) the effect of the reduction is, or will be, that the nominal value of the company's allotted share capital is below the authorised minimum.

Modifications etc. (not altering text)

- C3** Ss. 90-96 applied (1.10.2009) by [The Companies Act 2006 \(Consequential Amendments, Transitional Provisions and Savings\) Order 2009 \(S.I. 2009/1941\)](#), art. 12(1), **Sch. 3 para. 3** (with art. 10)
- C4** Ss. 91-93 applied (with modifications) (1.10.2009) by [The Companies \(Companies Authorised to Register\) Regulations 2009 \(S.I. 2009/2437\)](#), **reg. 9(3)** (with transitional provisions and savings in **reg. 24**)
- C5** Ss. 90-96 applied (12.5.2011) by [The Companies Act 2006 \(Consequential Amendments and Transitional Provisions\) Order 2011 \(S.I. 2011/1265\)](#), art. 5(1), **Sch. 1 para. 3**

92 Requirements as to net assets

- (1) A company applying to re-register as a public company must obtain—
- (a) a balance sheet prepared as at a date not more than seven months before the date on which the application is delivered to the registrar,
 - (b) an unqualified report by the company's auditor on that balance sheet, and
 - (c) a written statement by the company's auditor that in his opinion 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.
- (2) Between the balance sheet date and the date on which the application for re-registration is delivered to the registrar, there must be no change in the company's financial position that results in the amount of its net assets becoming less than the aggregate of its called-up share capital and undistributable reserves.
- (3) In subsection (1)(b) an “unqualified report” means—
- (a) if the balance sheet was prepared for a financial year of the company, a report stating without material qualification the auditor's opinion that the balance sheet has been properly prepared in accordance with the requirements of this Act;
 - (b) if the balance sheet was not prepared for a financial year of the company, a report stating without material qualification the auditor's opinion that the balance sheet has been properly prepared in accordance with the provisions of this Act which would have applied if it had been prepared for a financial year of the company.

Status: Point in time view as at 01/10/2009.

Changes to legislation: Companies Act 2006, Cross Heading: Private company becoming public is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (4) For the purposes of an auditor's report on a balance sheet that was not prepared for a financial year of the company, the provisions of this Act apply with such modifications as are necessary by reason of that fact.
- (5) For the purposes of subsection (3) a qualification is material unless the auditor states in his report that the matter giving rise to the qualification is not material for the purpose of determining (by reference to the company's 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) In this Part “net assets” and “undistributable reserves” have the same meaning as in section 831 (net asset restriction on distributions by public companies).

Modifications etc. (not altering text)

- C6** Ss. 90-96 applied (1.10.2009) by [The Companies Act 2006 \(Consequential Amendments, Transitional Provisions and Savings\) Order 2009 \(S.I. 2009/1941\)](#), art. 12(1), **Sch. 3 para. 3** (with art. 10)
- C7** Ss. 91-93 applied (with modifications) (1.10.2009) by [The Companies \(Companies Authorised to Register\) Regulations 2009 \(S.I. 2009/2437\)](#), **reg. 9(3)** (with transitional provisions and savings in [reg. 24](#))
- C8** Ss. 90-96 applied (12.5.2011) by [The Companies Act 2006 \(Consequential Amendments and Transitional Provisions\) Order 2011 \(S.I. 2011/1265\)](#), art. 5(1), **Sch. 1 para. 3**

93 Recent allotment of shares for non-cash consideration

- (1) This section applies where—
 - (a) shares are allotted by the company in the period between the date as at which the balance sheet required by section 92 is prepared and the passing of the resolution that the company should re-register as a public company, and
 - (b) the shares are allotted as fully or partly paid up as to their nominal value or any premium on them otherwise than in cash.
- (2) The registrar shall not entertain an application by the company for re-registration as a public company unless—
 - (a) the requirements of section 593(1)(a) and (b) have been complied with (independent valuation of non-cash consideration; valuer's report to company not more than six months before allotment), or
 - (b) the allotment is in connection with—
 - (i) a share exchange (see subsections (3) to (5) below), or
 - (ii) a proposed merger with another company (see subsection (6) below).
- (3) An allotment is in connection with a share exchange if—
 - (a) the shares are allotted in connection with an arrangement under which the whole or part of the consideration for the shares allotted is provided by—
 - (i) the transfer to the company allotting the shares of shares (or shares of a particular class) in another company, or
 - (ii) the cancellation of shares (or shares of a particular class) in another company; and
 - (b) the allotment 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

Status: Point in time view as at 01/10/2009.

Changes to legislation: Companies Act 2006, Cross Heading: Private company becoming public is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

class, to all the holders of the company's shares of that class) to take part in the arrangement in connection with which the shares are allotted.

- (4) In determining whether a person is a holder of shares for the purposes of subsection (3), there shall be disregarded—
- (a) shares held by, or by a nominee of, the company allotting the shares;
 - (b) shares held by, or by a nominee of—
 - (i) the holding company of the company allotting the shares,
 - (ii) a subsidiary of the company allotting the shares, or
 - (iii) a subsidiary of the holding company of the company allotting the shares.
- (5) It is immaterial, for the purposes of deciding whether an allotment is in connection with a share exchange, whether or not the arrangement in connection with which the shares are allotted involves the issue to the company allotting the shares of shares (or shares of a particular class) in the other company.
- (6) There is a proposed merger with another company if one of the companies concerned proposes to acquire all the assets and liabilities of the other in exchange for the issue of its shares or other securities to shareholders of the other (whether or not accompanied by a cash payment).
- “Another company” includes any body corporate.
- (7) For the purposes of this section—
- (a) the consideration for an allotment does not include any amount standing to the credit of any of the company's reserve accounts, or of its profit and loss account, that has been applied in paying up (to any extent) any of the shares allotted or any premium on those shares; and
 - (b) “arrangement” means any agreement, scheme or arrangement, (including an arrangement sanctioned in accordance with—
 - (i) Part 26 of this Act (arrangements and reconstructions), or
 - (ii) section 110 of the Insolvency Act 1986 (c. 45) or Article 96 of the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)) (liquidator in winding up accepting shares as consideration for sale of company's property)).

Modifications etc. (not altering text)

- C9** Ss. 90-96 applied (1.10.2009) by [The Companies Act 2006 \(Consequential Amendments, Transitional Provisions and Savings\) Order 2009 \(S.I. 2009/1941\)](#), art. 12(1), **Sch. 3 para. 3** (with art. 10)
- C10** Ss. 91-93 applied (with modifications) (1.10.2009) by [The Companies \(Companies Authorised to Register\) Regulations 2009 \(S.I. 2009/2437\)](#), **reg. 9(3)** (with transitional provisions and savings in [reg. 24](#))
- C11** Ss. 90-96 applied (12.5.2011) by [The Companies Act 2006 \(Consequential Amendments and Transitional Provisions\) Order 2011 \(S.I. 2011/1265\)](#), art. 5(1), **Sch. 1 para. 3**

94 Application and accompanying documents

- (1) An application for re-registration as a public company must contain—
- (a) a statement of the company's proposed name on re-registration; and

Status: Point in time view as at 01/10/2009.

Changes to legislation: Companies Act 2006, Cross Heading: Private company becoming public is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (b) in the case of a company without a secretary, a statement of the company's proposed secretary (see section 95).
- (2) The application must be accompanied by—
- (a) a copy of the special resolution that the company should re-register as a public company (unless a copy has already been forwarded to the registrar under Chapter 3 of Part 3);
 - (b) a copy of the company's articles as proposed to be amended;
 - (c) a copy of the balance sheet and other documents referred to in section 92(1); and
 - (d) if section 93 applies (recent allotment of shares for non-cash consideration), a copy of the valuation report (if any) under subsection (2)(a) of that section.
- (3) The statement of compliance required to be delivered together with the application is a statement that the requirements of this Part as to re-registration as a public company have been complied with.
- (4) The registrar may accept the statement of compliance as sufficient evidence that the company is entitled to be re-registered as a public company.

Modifications etc. (not altering text)

- C12** Ss. 90-96 applied (1.10.2009) by The Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009 (S.I. 2009/1941), art. 12(1), **Sch. 3 para. 3** (with art. 10)
- C13** Ss. 90-96 applied (12.5.2011) by The Companies Act 2006 (Consequential Amendments and Transitional Provisions) Order 2011 (S.I. 2011/1265), art. 5(1), **Sch. 1 para. 3**

95 Statement of proposed secretary

- (1) The statement of the company's proposed secretary must contain the required particulars of the person who is or the persons who are to be the secretary or joint secretaries of the company.
- (2) The required particulars are the particulars that will be required to be stated in the company's register of secretaries (see sections 277 to 279).
- (3) The statement must also contain a consent by the person named as secretary, or each of the persons named as joint secretaries, to act in the relevant capacity.

If all the partners in a firm are to be joint secretaries, consent may be given by one partner on behalf of all of them.

Modifications etc. (not altering text)

- C14** Ss. 90-96 applied (1.10.2009) by The Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009 (S.I. 2009/1941), art. 12(1), **Sch. 3 para. 3** (with art. 10)
- C15** Ss. 90-96 applied (12.5.2011) by The Companies Act 2006 (Consequential Amendments and Transitional Provisions) Order 2011 (S.I. 2011/1265), art. 5(1), **Sch. 1 para. 3**

Status: Point in time view as at 01/10/2009.

Changes to legislation: Companies Act 2006, Cross Heading: Private company becoming public is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

96 Issue of certificate of incorporation on re-registration

- (1) If on an application for re-registration as a public company the registrar is satisfied that the company is entitled to be so re-registered, the company shall be re-registered accordingly.
- (2) The registrar must issue a certificate of incorporation altered to meet the circumstances of the case.
- (3) The certificate must state that it is issued on re-registration and the date on which it is issued.
- (4) On the issue of the certificate—
 - (a) the company by virtue of the issue of the certificate becomes a public company,
 - (b) the changes in the company's name and articles take effect, and
 - (c) where the application contained a statement under section 95 (statement of proposed secretary), the person or persons named in the statement as secretary or joint secretary of the company are deemed to have been appointed to that office.
- (5) The certificate is conclusive evidence that the requirements of this Act as to re-registration have been complied with.

Modifications etc. (not altering text)

- C16** Ss. 90-96 applied (1.10.2009) by The Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009 (S.I. 2009/1941), art. 12(1), **Sch. 3 para. 3** (with art. 10)
- C17** Ss. 90-96 applied (12.5.2011) by The Companies Act 2006 (Consequential Amendments and Transitional Provisions) Order 2011 (S.I. 2011/1265), art. 5(1), **Sch. 1 para. 3**

Status:

Point in time view as at 01/10/2009.

Changes to legislation:

Companies Act 2006, Cross Heading: Private company becoming public is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.