
STATUTORY INSTRUMENTS

1984 No. 2007

COMPANIES

The Companies (Share Premium Account) Regulations 1984

Laid before Parliament in draft

Made - - - 21st December 1984

Coming into operation in accordance with Regulation 1

Whereas a draft of these Regulations has been laid before Parliament and approved by resolution of each House of Parliament in pursuance of section 41(3) of the Companies Act 1981(a).

Now, therefore, the Secretary of State, in exercise of his powers under section 41 of the Companies Act 1981, hereby makes the following Regulations —

1. These Regulations may be cited as the Companies (Share Premium Account) Regulations 1984 and shall come into operation forthwith.
2. For the existing section 38 of the Companies Act 1981 there shall be substituted a new section 38 in the terms set out in the Schedule hereto.

Alexander Fletcher,
Parliamentary Under-Secretary of State,
Department of Trade and Industry.

21st December 1984.

SCHEDULE

RELIEF FROM SECTION 56 IN RESPECT OF GROUP RECONSTRUCTIONS

38.—(1) This section applies where the issuing company —

- (a) is a wholly-owned subsidiary of another company (“the holding company”); and
- (b) allots shares to the holding company or to another wholly-owned subsidiary of the holding company in consideration for the transfer to the issuing company of assets other than cash being assets of any company (“the transferor company”) which is a member of the group of companies which comprises the holding company and all its wholly-owned subsidiaries.

(2) Where the shares in the issuing company allotted in consideration for the transfer are issued at a premium, the issuing company shall not be required by section 56 of the 1948 Act to transfer any amount in excess of the minimum premium value to the share premium account.

(a) 1981 c.62.

(3) In subsection (2) above, "the minimum premium value" means the amount (if any) by which the base value of the consideration for the shares allotted exceeds the aggregate nominal value of those shares.

(4) For the purposes of subsection (3) above, the base value of the consideration for the shares allotted shall be the amount by which the base value of the assets transferred exceeds the base value of any liabilities of the transferor company assumed by the issuing company as part of the consideration for the assets transferred.

(5) For the purposes of subsection (4) above —

(a) the base value of the assets transferred shall be taken as —

(i) the cost of those assets to the transferor company, or

(ii) the amount at which those assets are stated in the transferor company's accounting records immediately before the transfer,

whichever is the less; and

(b) the base value of the liabilities assumed shall be taken as the amount at which they are stated in the transferor company's accounting records immediately before the transfer.

(6) Section 37 of this Act shall not apply in any case to which this section applies.

EXPLANATORY NOTE

(This Note is not part of the Regulations.)

1. These Regulations extend the relief afforded by section 38 of the Companies Act 1981 from the requirements of section 56 of the Companies Act 1948 (c.38). The extension is achieved by substituting a new section for the existing section 38.

2. The general requirement of section 56 of the Companies Act 1948 is that any premium received by a company on the issue of its shares be carried to a share premium account. The relief afforded by section 38 of the Companies Act 1981 is available only in the case of a group reconstruction involving the issue of shares by a wholly-owned subsidiary to another such subsidiary or to the holding company. The relief is that the premium to be carried to the share premium account is to be based on the cost or book value of the consideration for the shares issued and not on the fair value of that consideration.

3. The extension of the relief is that, under the new section 38, it will be available where the consideration for the issue of the shares consists of any non-cash assets of the company providing the consideration and not merely of shares in another subsidiary of the holding company.

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