

COMPANIES ACT 2006

EXPLANATORY NOTES

COMMENTARY

Part 17: a Company's Share Capital

Chapter 1: Shares and Share Capital of a Company

Section 540: Shares

832. As now, generally speaking, references to a “share” in the Companies Acts (defined in section 2) includes stock. However, as recommended by the CLR, in future it will no longer be possible for a company to convert its shares into stock (see *subsection (2)*) but a company that has stock at the date that this provision comes into force will be able to reconvert its stock back into shares (see note on section 620).

Section 542: Nominal value of shares

833. This is a new provision, which is required as a result of the changes to the requirements with respect to the memorandum (see note on section 8).
834. Currently, section 2(5)(a) of the 1985 Act (requirements with respect to memorandum) requires that, in the case of a company having a share capital, the memorandum of a limited company must state the amount of the share capital with which the company proposes to be registered and the division of that share capital into shares of a fixed amount. This capital figure as stated in the memorandum (known as the “authorised share capital”) acts as a ceiling on the amount of shares that a company may issue. Such authorised share capital may, however, be increased by ordinary resolution under section 121 of that Act. The CLR recommended that the requirement for a company to have an authorised share capital should be abolished (Final Report, paragraph 10.6), and so the Act does not require a company to state in its memorandum the amount of its authorised share capital.
835. This section is required as a consequence of the repeal of this requirement. It does two key things:
- it makes it clear that the shares in a limited company having a share capital must have a fixed nominal value, e.g. 1p, £1, \$1 or 1 euro and therefore prevents a company from issuing shares of no par value (thereby implementing for public companies, Article 8 of the Second Company Law Directive (77/91/EEC)); and
 - it places in statute the common law rule that shares may be denominated in any currency and that different classes of shares may be denominated in different currencies. However, this is subject to the requirement in section 765 that a public company may only satisfy its initial authorised minimum share capital requirement if its shares are denominated in either sterling or euros.

836. Where a company purports to allot shares without a fixed nominal value, every officer of the company who is in default commits an offence and is liable to a fine (see *subsections (4) and (5)*). Moreover, such a purported allotment is void (see *subsection (2)*).
837. This section needs to be read alongside section 9, which requires the application for registration of a company that is to be formed with a share capital to include a “statement of capital and initial shareholdings”. The contents of this statement are prescribed in section 10 and this includes a requirement to set out the total number of shares and the aggregate nominal value of the shares which are to be taken by the subscribers to the memorandum on formation.

Section 545: Companies having a share capital

838. **Section 545** is a new provision which makes it clear that references in the Companies Acts (defined in section 2) to a company having a share capital are to company that has power under its constitution to issue shares.

Section 546: Issued and allotted share capital

839. **Section 546** is a new provision which makes it clear that references in the Companies Acts (defined in section 2) to issued or allotted shares include the shares taken by the subscribers to the memorandum on the formation of a company.