



# Companies Act 1985

## 1985 CHAPTER 6

### PART II

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

##### *Private company becoming public*

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

- (1) Subject to this and the following five sections, a private company (other than a company not having a share capital) may be re-registered as a public company if—
- a special resolution that it should be so re-registered is passed; and
  - an application for re-registration is delivered to the registrar of companies, together with the necessary documents.

A company cannot be re-registered under this section if it has previously been re-registered as unlimited.

- (2) The special resolution must—
- alter the company's memorandum so that it states that the company is to be a public company; and
  - make such other alterations in the memorandum as are necessary to bring it (in substance and in form) into conformity with the requirements of this Act with respect to the memorandum of a public company (the alterations to include compliance with section 25(1) as regards the company's name); and
  - make such alterations in the company's articles as are requisite in the circumstances.
- (3) The application must be in the prescribed form and be signed by a director or secretary of the company; and the documents to be delivered with it are the following—
- a printed copy of the memorandum and articles as altered in pursuance of the resolution ;

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- (b) a copy of a written statement by the company's auditors that in their opinion the relevant balance sheet shows that at the balance sheet date the amount of the company's net assets (within the meaning given to that expression by section 264(2)) was not less than the aggregate of its called-up share capital and undistributable reserves;
  - (c) a copy of the relevant balance sheet, together with a copy of an unqualified report (defined in section 46) by the company's auditors in relation to that balance sheet;
  - (d) if section 44 applies, a copy of the valuation report under subsection (2)(b) of that section ; and
  - (e) a statutory declaration in the prescribed form by a director or secretary of the company—
    - (i) that the special resolution required by this section has been passed and that the conditions of the following two sections (so far as applicable) have been satisfied, and
    - (ii) that, between the balance sheet date and the application for re-registration, there has been no change in the company's financial position that has resulted in the amount of its net assets becoming less than the aggregate of its called-up share capital and undistributable reserves.
- (4) "Relevant balance sheet" means a balance sheet prepared as at a date not more than 7 months before the company's application under this section.
- (5) A resolution that a company be re-registered as a public company may change the company name by deleting the word " company" or the words " and company", or its or their equivalent in Welsh (" cwmni", " a'r cwmni"), including any abbreviation of them.

#### **44 Consideration for shares recently allotted to be valued**

- (1) The following applies if shares have been allotted by the company between the date as at which the relevant balance sheet was prepared and the passing of the special resolution under section 43, and those shares were allotted as fully or partly paid up as to their nominal value or any premium on them otherwise than in cash.
- (2) Subject to the following provisions, the registrar of companies shall not entertain an application by the company under section 43 unless beforehand—
  - (a) the consideration for the allotment has been valued in accordance with section 108, and
  - (b) a report with respect to the value of the consideration has been made to the company (in accordance with that section) during the 6 months immediately preceding the allotment of the shares.
- (3) Where an amount standing to the credit of any of the company's reserve accounts, or of its profit and loss account, has been applied in paying up (to any extent) any of the shares allotted or any premium on those shares, the amount applied does not count as consideration for the allotment, and accordingly subsection (2) does not apply to it.
- (4) Subsection (2) does not apply if the allotment is in connection with an arrangement providing for it to be on terms that the whole or part of the consideration for the shares allotted is to be provided by the transfer to the company or the cancellation of all or some of the shares, or of all or some of the shares of a particular class, in

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another company (with or without the issue to the company applying under section 43 of shares, or of shares of any particular class, in that other company).

- (5) But subsection (4) does not exclude the application of subsection (2), unless under the arrangement it 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 class, all the holders of the other company's shares of that class) to take part in the arrangement.

In determining whether that is the case, shares held by or by a nominee of the company allotting shares in connection with the arrangement, or by or by a nominee of a company which is that company's holding company or subsidiary or a company which is a subsidiary of its holding company, are to be disregarded.

- (6) Subsection (2) does not apply to preclude an application under section 43, if the allotment of the company's shares is in connection with its proposed merger with another company ; that is, where one of the companies concerned proposes to acquire all the assets and liabilities of the other in exchange for the issue of shares or other securities of that one to shareholders of the other, with or without any cash payment to shareholders.
- (7) In this section—
- (a) " arrangement" means any agreement, scheme or arrangement, including an arrangement sanctioned in accordance with section 425 (company compromise with creditors and members) or section 582 (liquidator in winding up accepting shares as consideration for sale of company's property), and
  - (b) "another company" includes any body corporate and any body to which letters patent have been issued under the Chartered Companies Act 1837.

#### **45 Additional requirements relating to share capital**

- (1) For a private company to be re-registered under section 43 as a public company, the following conditions with respect to its share capital must be satisfied at the time the special resolution under that section is passed.
- (2) Subject to subsections (5) to (7) below—
- (a) the nominal value of the company's allotted share capital must be not less than the authorised minimum, and
  - (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.
- (3) Subject to subsection (5), 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.
- (4) Subject to subsection (5), 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 subsection (3) applies), then either—
- (a) the undertaking must have been performed or otherwise discharged, or
  - (b) there must be a contract between the company and some person pursuant to which the undertaking is to be performed within 5 years from the time the resolution under section 43 is passed.

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- (5) For the purpose of determining whether subsections (2)(b), (3) and (4) are complied with, certain shares in the company may be disregarded ; and these are—
- (a) subject to the next subsection, any share which was allotted before 22nd June 1982, and
  - (b) any share which was allotted in pursuance of an employees' share scheme and by reason of which the company would, but for this subsection, be precluded under subsection (2)(b) (but not otherwise) from being reregistered as a public company.
- (6) A share is not to be disregarded under subsection (5)(a) if the aggregate in nominal value of that share and other shares proposed to be so disregarded is more than one-tenth of the nominal value of the company's allotted share capital; but for this purpose the allotted share capital is treated as not including any shares disregarded under subsection (5)(b).
- (7) Any shares disregarded under subsection (5) are treated as not forming part of the allotted share capital for the purposes of subsection (2)(a).

#### **46 Meaning of " unqualified report " in s. 43(3)**

- (1) The following subsections explain the reference in section 43(3)(c) to an unqualified report of the company's auditors on the relevant balance sheet.
- (2) If the balance sheet was prepared in respect of an accounting reference period of the company, that reference is to a report made by the auditors and stating without material qualification, that in their opinion the balance sheet—
  - (a) has been properly prepared in accordance with this Act, and
  - (b) gives a true and fair view of the state of the company's affairs as at the balance sheet date.
- (3) In any other case the reference is to a report by the auditors stating without material qualification that in their opinion the balance sheet—
  - (a) complies with the applicable accounting provisions, and
  - (b) without prejudice to that (but subject to subsection (4) below), gives a true and fair view of the state of the company's affairs as at the balance sheet date; and the accounting provisions referred to in paragraph (a) are sections 228 and 238(1) in Chapter I of Part VII and (where applicable) section 258 in Chapter II of that Part.
- (4) Where the balance sheet is prepared under Chapter II of Part VII (special category companies), and the company is entitled to avail itself, and has availed itself, of any of the provisions of Part III of Schedule 9, the auditors' report is not required to state that the balance sheet gives a true and fair view of the company's state of affairs as at the balance sheet date.
- (5) For purposes of references in this section to the auditors' report, a qualification is not material if, but only if, the auditors in their report state that the thing giving rise to the qualification is not material for the purpose of determining (by reference to the 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) For the purposes of a report of the auditors falling within subsection (3)—
  - (a) section 228 in Chapter I of Part VII, and Schedule 4 (form and content of company accounts), and

(b) (where applicable) section 258 in Chapter II of that Part, and Schedule 9 (the same, in relation to special category companies),  
are deemed to have effect in relation to the balance sheet with such modifications as are necessary by reason of the fact that the balance sheet is prepared otherwise than as at the end of an accounting reference period.

#### **47 Certificate of re-registration under s. 43**

- (1) If the registrar of companies is satisfied, on an application under section 43, that a company may be re-registered under that section as a public company, he shall—
  - (a) retain the application and other documents delivered to him under the section ;  
and
  - (b) issue the company with a certificate of incorporation stating that the company is a public company.
- (2) The registrar may accept a declaration under section 43 (3)(e) as sufficient evidence that the special resolution required by that section has been passed and the other conditions of re-registration satisfied.
- (3) The registrar shall not issue the certificate if it appears to him that the court has made an order confirming a reduction of the company's capital which has the effect of bringing the nominal value of the company's allotted share capital below the authorised minimum.
- (4) Upon the issue to a company of a certificate of incorporation under this section—
  - (a) the company by virtue of the issue of that certificate becomes a public company ; and
  - (b) any alterations in the memorandum and articles set out in the resolution take effect accordingly.
- (5) The certificate is conclusive evidence—
  - (a) that the requirements of this Act in respect of re-registration and of matters precedent and incidental thereto have been complied with ; and
  - (b) that the company is a public company.

#### **48 Modification for unlimited company re-registering**

- (1) In their application to unlimited companies, sections 43 to 47 are modified as follows.
- (2) The special resolution required by section 43(1) must, in addition to the matters mentioned in subsection (2) of that section—
  - (a) state that the liability of the members is to be limited by shares, and what the company's share capital is to be; and
  - (b) make such alterations in the company's memorandum as are necessary to bring it in substance and in form into conformity with the requirements of this Act with respect to the memorandum of a company limited by shares.
- (3) The certificate of incorporation issued under section 47(1) shall, in addition to containing the statement required by paragraph (b) of that subsection, state that the company has been incorporated as a company limited by shares; and—
  - (a) the company by virtue of the issue of the certificate becomes a public company so limited ; and

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- (b) the certificate is conclusive evidence of the fact that it is such a company.

*Limited company becoming unlimited*

**49 Re-registration of limited company as unlimited**

- (1) Subject as follows, a company which is registered as limited may be re-registered as unlimited in pursuance of an application in that behalf complying with the requirements of this section.
- (2) A company is excluded from re-registering under this section if it is limited by virtue of re-registration under section 44 of the Companies Act 1967 or section 51 of this Act.
- (3) A public company cannot be re-registered under this section; nor can a company which has previously been reregistered as unlimited.
- (4) An application under this section must be in the prescribed form and be signed by a director or the secretary of the company, and be lodged with the registrar of companies, together with the documents specified in subsection (8) below.
- (5) The application must set out such alterations in the company's memorandum as—
  - (a) if it is to have a share capital, are requisite to bring it (in substance and in form) into conformity with the requirements of this Act with respect to the memorandum of a company to be formed as an unlimited company having a share capital; or
  - (b) if it is not to have a share capital, are requisite in the circumstances.
- (6) If articles have been registered, the application must set out such alterations in them as—
  - (a) if the company is to have a share capital, are requisite to bring the articles (in substance and in form) into conformity with the requirements of this Act with respect to the articles of a company to be formed as an unlimited company having a share capital; or
  - (b) if the company is not to have a share capital, are requisite in the circumstances.
- (7) If articles have not been registered, the application must have annexed to it, and request the registration of, printed articles; and these must, if the company is to have a share capital, comply with the requirements mentioned in subsection (6)(a) and, if not, be articles appropriate to the circumstances.
- (8) The documents to be lodged with the registrar are—
  - (a) the prescribed form of assent to the company's being registered as unlimited, subscribed by or on behalf of all the members of the company ;
  - (b) a statutory declaration made by the directors of the company—
    - (i) that the persons by whom or on whose behalf the form of assent is subscribed constitute the whole membership of the company, and
    - (ii) if any of the members have not subscribed that form themselves, that the directors have taken all reasonable steps to satisfy themselves that each person who subscribed it on behalf of a member was lawfully empowered to do so ;
  - (c) a printed copy of the memorandum incorporating the alterations in it set out in the application; and

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- (d) if articles have been registered, a printed copy of them incorporating the alterations set out in the application.
- (9) For purposes of this section—
- (a) subscription to a form of assent by the legal personal representative of a deceased member of a company is deemed subscription by him ; and
  - (b) a trustee in bankruptcy of a member of a company is, to the exclusion of the latter, deemed a member of the company.

## **50 Certificate of re-registration under s. 49**

- (1) The registrar of companies shall retain the application and other documents lodged with him under section 49 and shall—
- (a) if articles are annexed to the application, register them; and
  - (b) issue to the company a certificate of incorporation appropriate to the status to be assumed by it by virtue of that section.
- (2) On the issue of the certificate—
- (a) the status of the company, by virtue of the issue, is changed from limited to unlimited ; and
  - (b) the alterations in the memorandum set out in the application and (if articles have been previously registered) any alterations to the articles so set out take effect as if duly made by resolution of the company; and
  - (c) the provisions of this Act apply accordingly to the memorandum and articles as altered.
- (3) The certificate is conclusive evidence that the requirements of section 49 in respect of re-registration and of matters precedent and incidental to it have been complied with, and that the company was authorised to be re-registered under this Act in pursuance of that section and was duly so re-registered.

### *Unlimited company becoming limited*

## **51 Re-registration of unlimited company as limited**

- (1) Subject as follows, a company which is registered as unlimited may be re-registered as limited if a special resolution that it should be so re-registered is passed, and the requirements of this section are complied with in respect of the resolution and otherwise.
- (2) A company cannot under this section be re-registered as a public company; and a company is excluded from reregistering under it if it is unlimited by virtue of re-registration under section 43 of the Companies Act 1967 or section 49 of this Act.
- (3) The special resolution must state whether the company is to be limited by shares or by guarantee and—
- (a) if it is to be limited by shares, must state what the share capital is to be and provide for the making of such alterations in the memorandum as are necessary to bring it (in substance and in form) into conformity with the requirements of this Act with respect to the memorandum of a company so limited, and such alterations in the articles as are requisite in the circumstances;

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- (b) if it is to be limited by guarantee, must provide for the making of such alterations in its memorandum and articles as are necessary to bring them (in substance and in form) into conformity with the requirements of this Act with respect to the memorandum and articles of a company so limited.
- (4) The special resolution is subject to section 380 of this Act (copy to be forwarded to registrar within 15 days); and an application for the company to be re-registered as limited, framed in the prescribed form and signed by a director or by the secretary of the company, must be lodged with the registrar of companies, together with the necessary documents, not earlier than the day on which the copy of the resolution forwarded under section 380 is received by him.
- (5) The documents to be lodged with the registrar are—
  - (a) a printed copy of the memorandum as altered in pursuance of the resolution ; and
  - (b) a printed copy of the articles as so altered.
- (6) This section does not apply in relation to the re-registration of an unlimited company as a public company under section 43.

## **52 Certificate of re-registration under s. 51**

- (1) The registrar shall retain the application and other documents lodged with him under section 51. and shall issue to the company a certificate of incorporation appropriate to the status to be assumed by the company by virtue of that section.
- (2) On the issue of the certificate—
  - (a) the status of the company is, by virtue of the issue, changed from unlimited to limited ; and
  - (b) the alterations in the memorandum specified in the resolution and the alterations in, and additions to, the articles so specified take effect
- (3) The certificate is conclusive evidence that the requirements of section 51 in respect of re-registration and of matters precedent and incidental to it have been complied with, and that the company was authorised to be re-registered in pursuance of that section and was duly so re-registered.

*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.

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- (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.