



Companies Act 1985

1985 CHAPTER 6

PART V

SHARE CAPITAL, ITS INCREASE, MAINTENANCE AND REDUCTION

CHAPTER III

SHARE PREMIUMS

130 Application of share premiums

- (1) If a company issues shares at a premium, whether for cash or otherwise, a sum equal to the aggregate amount or value of the premiums on those shares shall be transferred to an account called " the share premium account".
- (2) The share premium account may be applied by the company in paying up unissued shares to be allotted to members as fully paid bonus shares, or in writing off—
 - (a) the company's preliminary expenses; or
 - (b) the expenses of, or the commission paid or discount allowed on, any issue of shares or debentures of the company,or in providing for the premium payable on redemption of debentures of the company.
- (3) Subject to this, the provisions of this Act relating to the reduction of a company's share capital apply as if the share premium account were part of its paid up share capital.
- (4) Sections 131 and 132 below give relief from the requirements of this section, and in those sections references to the issuing company are to the company issuing shares as above mentioned.

131 Merger relief

- (1) With the exception made by section 132(4) (group reconstruction) this section applies where the issuing company has secured at least a 90 per cent, equity holding in another

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company in pursuance of an arrangement providing for the allotment of equity shares in the issuing company on terms that the consideration for the shares allotted is to be provided—

- (a) by the issue or transfer to the issuing company of equity shares in the other company, or
 - (b) by the cancellation of any such shares not held by the issuing company.
- (2) If the equity shares in the issuing company allotted in pursuance of the arrangement in consideration for the acquisition or cancellation of equity shares in the other company are issued at a premium, section 130 does not apply to the premiums on those shares.
- (3) Where the arrangement also provides for the allotment of any shares in the issuing company on terms that the consideration for those shares is to be provided by the issue or transfer to the issuing company of non-equity shares in the other company or by the cancellation of any such shares in that company not held by the issuing company, relief under subsection (2) extends to any shares in the issuing company allotted on those terms in pursuance of the arrangement.
- (4) Subject to the next subsection, the issuing company is to be regarded for purposes of this section as having secured at least a 90 per cent, equity holding in another company in pursuance of such an arrangement as is mentioned in subsection (1) if in consequence of an acquisition or cancellation of equity shares in that company (in pursuance of that arrangement) it holds equity shares in that company (whether all or any of those shares were acquired in pursuance of that arrangement, or not) of an aggregate nominal value equal to 90 per cent, or more of the nominal value of that company's equity share capital.
- (5) Where the equity share capital of the other company is divided into different classes of shares, this section does not apply unless the requirements of subsection (1) are satisfied in relation to each of those classes of shares taken separately.
- (6) Shares held by a company which is the issuing company's holding company or subsidiary, or a subsidiary of the issuing company's holding company, or by its or their nominees, are to be regarded for purposes of this section as held by the issuing company.
- (7) In relation to a company and its shares and capital, the following definitions apply for purposes of this section—
- (a) "equity shares" means shares comprised in the company's equity share capital; and
 - (b) " non-equity shares " means shares (of any class) not so comprised;
- and " arrangement" means any agreement, scheme or arrangement (including an arrangement sanctioned under section 425 (company compromise with members and creditors) or section 582 (liquidator accepting shares etc. as consideration for sale of company property)).
- (8) The relief allowed by this section does not apply if the issue of shares took place before 4th February 1981.

132 Relief in respect of group reconstructions

- (1) This section applies where the issuing company—
- (a) is a wholly-owned subsidiary of another company (" the holding company "), and

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- (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 is not required by section 130 to transfer any amount in excess of the minimum premium value to the share premium account.
 - (3) In subsection (2), " 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), the base value of the consideration for the shares allotted is 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)—
 - (a) the base value of the assets transferred is to 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 is to be taken as the amount at which they are stated in the transferor company's accounting records immediately before the transfer.
 - (6) The relief allowed by this section does not apply (subject to the next subsection) if the issue of shares took place before the date of the coming into force of the Companies (Share Premium Account) Regulations 1984 (which were made on 21st December 1984).
 - (7) To the extent that the relief allowed by this section would have been allowed by section 38 of the Companies Act 1981 as originally enacted (the text of which section is set out in Schedule 25 to this Act), the relief applies where the issue of shares took place before the date of the coming into force of those Regulations, but not if the issue took place before 4th February 1981.
 - (8) Section 131 does not apply in a case falling within this section.

133 Provisions supplementing ss. 131, 132

- (1) An amount corresponding to one representing the premiums or part of the premiums on shares issued by a company which by virtue of sections 131 or 132 of this Act, or section 12 of the Consequential Provisions Act, is not included in the company's share premium account may also be disregarded in determining the amount at which any shares or other consideration provided for the shares issued is to be included in the company's balance sheet.
- (2) References in this Chapter (however expressed) to—
 - (a) the acquisition by a company of shares in another company ; and
 - (b) the issue or allotment of shares to, or the transfer of shares to or by, a company,

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include (respectively) the acquisition of any of those shares by, and the issue or allotment or (as the case may be) the transfer of any of those shares to or by, nominees of that company; and the reference in section 132 to the company transferring the shares is to be construed accordingly.

- (3) References in this Chapter to the transfer of shares in a company include the transfer of a right to be included in the company's register of members in respect of those shares.
- (4) In sections 131 to 133 "company", except in references to the issuing company, includes any body corporate.

134 Provision for extending or restricting relief from s. 130

- (1) The Secretary of State may by regulations in a statutory instrument make such provision as appears to him to be appropriate—
 - (a) for relieving companies from the requirements of section 130 in relation to premiums other than cash premiums, or
 - (b) for restricting or otherwise modifying any relief from those requirements provided by this Chapter.
- (2) Regulations under this section may make different provision for different cases or classes of case and may contain such incidental and supplementary provisions as the Secretary of State thinks fit.
- (3) No such regulations shall be made unless a draft of the instrument containing them has been laid before Parliament and approved by a resolution of each House.