



Companies Act 1985

1985 CHAPTER 6

PART V

SHARE CAPITAL, ITS INCREASE, MAINTENANCE AND REDUCTION

CHAPTER IV

REDUCTION OF SHARE CAPITAL

135 Special resolution for reduction of share capital

- (1) Subject to confirmation by the court, a company limited by shares or a company limited by guarantee and having a share capital may, if so authorised by its articles, by special resolution reduce its share capital in any way.
- (2) In particular, and without prejudice to subsection (1), the company may—
 - (a) extinguish or reduce the liability on any of its shares in respect of share capital not paid up; or
 - (b) either with or without extinguishing or reducing liability on any of its shares, cancel any paid-up share capital which is lost or unrepresented by available assets; or
 - (c) either with or without extinguishing or reducing liability on any of its shares, pay off any paid-up share capital which is in excess of the company's wants; and the company may, if and so far as is necessary, alter its memorandum by reducing the amount of its share capital and of its shares accordingly.
- (3) A special resolution under this section is in this Act referred to as " a resolution for reducing share capital".

136 Application to court for order of confirmation

- (1) Where a company has passed a resolution for reducing share capital, it may apply to the court for an order confirming the reduction.

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- (2) If the proposed reduction of share capital involves either—
 - (a) diminution of liability in respect of unpaid share capital; or
 - (b) the payment to a shareholder of any paid-up share capital,
 and in any other case if the court so directs, the next three subsections have effect, but subject throughout to subsection (6).
- (3) Every creditor of the company who at the date fixed by the court is entitled to any debt or claim which, if that date were the commencement of the winding up of the company, would be admissible in proof against the company is entitled to object to the reduction of capital.
- (4) The court shall settle a list of creditors entitled to object, and for that purpose—
 - (a) shall ascertain, as far as possible without requiring an application from any creditor, the names of those creditors and the nature and amount of their debts or claims; and
 - (b) may publish notices fixing a day or days within which creditors not entered on the list are to claim to be so entered or are to be excluded from the right of objecting to the reduction of capital.
- (5) If a creditor entered on the list whose debt or claim is not discharged or has not determined does not consent to the reduction, the court may, if it thinks fit, dispense with the consent of that creditor, on the company securing payment of his debt or claim by appropriating (as the court may direct) the following amount—
 - (a) if the company admits the full amount of the debt or claim or, though not admitting it, is willing to provide for it, then the full amount of the debt or claim;
 - (b) if the company does not admit, and is not willing to provide for, the full amount of the debt or claim, or if the amount is contingent or not ascertained, then an amount fixed by the court after the like enquiry and adjudication as if the company were being wound up by the court.
- (6) If a proposed reduction of share capital involves either the diminution of any liability in respect of unpaid share capital or the payment to any shareholder of any paid-up share capital, the court may, if having regard to any special circumstances of the case it thinks proper to do so, direct that subsections (3) to (5) of this section shall not apply as regards any class or any classes of creditors.

137 Court order confirming reduction

- (1) The court, if satisfied with respect to every creditor of the company who under section 136 is entitled to object to the reduction of capital that either—
 - (a) his consent to the reduction has been obtained; or
 - (b) his debt or claim has been discharged or has determined, or has been secured,
 may make an order confirming the reduction on such terms and conditions as it thinks fit.
- (2) Where the court so orders, it may also—
 - (a) if for any special reason it thinks proper to do so, make an order directing that the company shall, during such period (commencing on or at any time after the date of the order) as is specified in the order, add to its name as its last words the words " and reduced "; and

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- (b) make an order requiring the company to publish (as the court directs) the reasons for reduction of capital or such other information in regard to it as the court thinks expedient with a view to giving proper information to the public and (if the court thinks fit) the causes which led to the reduction.
- (3) Where a company is ordered to add to its name the words " and reduced ", those words are, until the expiration of the period specified in the order, deemed to be part of the company's name.

138 Registration of order and minute of reduction

- (1) The registrar of companies, on production to him of an order of the court confirming the reduction of a company's share capital, and the delivery to him of a copy of the order and of a minute (approved by the court) showing, with respect to the company's share capital as altered by the order—
- (a) the amount of the share capital;
 - (b) the number of shares into which it is to be divided, and the amount of each share; and
 - (c) the amount (if any) at the date of the registration deemed to be paid up on each share,
- shall register the order and minute (but subject to section 139).
- (2) On the registration of the order and minute, and not before, the resolution for reducing share capital as confirmed by the order so registered takes effect.
- (3) Notice of the registration shall be published in such manner as the court may direct.
- (4) The registrar shall certify the registration of the order and minute ; and the certificate—
- (a) may be either signed by the registrar, or authenticated by his official seal;
 - (b) is conclusive evidence that all the requirements of this Act with respect to the reduction of share capital have been complied with, and that the company's share capital is as stated in the minute.
- (5) The minute when registered is deemed to be substituted for the corresponding part of the company's memorandum, and is valid and alterable as if it had been originally contained therein.
- (6) The substitution of such a minute for part of the company's memorandum is deemed an alteration of the memorandum for purposes of section 20.

139 Public company reducing capital below authorised minimum

- (1) This section applies where the court makes an order confirming a reduction of a public company's capital which has the effect of bringing the nominal value of its allotted share capital below the authorised minimum.
- (2) The registrar of companies shall not register the order under section 138 unless the court otherwise directs, or the company is first re-registered as a private company.
- (3) The court may authorise the company to be so re-registered without its having passed the special resolution required by section 53 ; and where that authority is given, the court shall specify in the order the alterations in the company's memorandum and articles to be made in connection with that re-registration.

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- (4) The company may then be re-registered as a private company, if an application in the prescribed form and signed by a director or secretary of the company is delivered to the registrar, together with a printed copy of the memorandum and articles as altered by the court's order.
- (5) On receipt of such an application, the registrar shall retain it and the other documents delivered with it and issue the company with a certificate of incorporation appropriate to a company that is not a public company; and—
 - (a) the company by virtue of the issue of the certificate becomes a private company, and the alterations in the memorandum and articles set out in the court's order take effect; and
 - (b) the certificate is conclusive evidence that the requirements of this section in respect of re-registration and of matters precedent and incidental thereto have been complied with, and that the company is a private company.

140 Liability of members on reduced shares

- (1) Where a company's share capital is reduced, a member of the company (past or present) is not liable in respect of any share to any call or contribution exceeding in amount the difference (if any) between the amount of the share as fixed by the minute and the amount paid on the share or the reduced amount (if any), which is deemed to have been paid on it, as the case may be.
- (2) But the following two subsections apply if—
 - (a) a creditor, entitled in respect of a debt or claim to object to the reduction of share capital, by reason of his ignorance of the proceedings for reduction of share capital, or of their nature and effect with respect to his claim, is not entered on the list of creditors; and
 - (b) after the reduction of capital, the company is unable (within the meaning of section 518) to pay the amount of his debt or claim.
- (3) Every person who was a member of the company at the date of the registration of the order for reduction and minute is then liable to contribute for the payment of the debt or claim in question an amount not exceeding that which he would have been liable to contribute if the company had commenced to be wound up on the day before that date.
- (4) If the company is wound up, the court, on the application of the creditor in question and proof of ignorance referred to in subsection (2)(a), may (if it thinks fit) settle accordingly a list of persons so liable to contribute, and make and enforce calls and orders on the contributories settled on the list, as if they were ordinary contributories in a winding up.
- (5) Nothing in this section affects the rights of the contributories among themselves.

141 Penalty for concealing name of creditor, etc.

If an officer of the company—

- (a) wilfully conceals the name of a creditor entitled to object to the reduction of capital; or
- (b) wilfully misrepresents the nature or amount of the debt or claim of any creditor; or

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(c) aids, abets or is privy to any such concealment or misrepresentation as is mentioned above,
he is guilty of an offence and liable to a fine.