



# Companies Consolidation (Consequential Provisions) Act 1985

## 1985 CHAPTER 9

### *Old public companies*

#### **1 Meaning of " old public company "**

- (1) For the purposes of the Companies Act 1985 ("the principal Act") and this Act, an " old public company " is a company limited by shares or by guarantee and having a share capital in respect of which the following conditions are satisfied—
  - (a) the company either existed on 22nd December 1980 or was incorporated after that date pursuant to an application made before that date,
  - (b) on that date or, if later, on the day of the company's incorporation the company was not or (as the case may be) would not have been a private company within section 28 of the Companies Act 1948, and
  - (c) the company has not since that date or the day of the company's incorporation (as the case may be) either been re-registered as a public company or become a private company.
- (2) References in the principal Act (other than so much of it as is derived from Part I of the Companies Act 1980, and other than section 33 (penalty for trading under misleading name)) to a public company or a company other than a private company are to be read as including (unless the context otherwise requires) references to an old public company, and references in that Act to a private company are to be read accordingly.

#### **2 Re-registration as public company**

- (1) An old public company may be re-registered as a public company if—
  - (a) the directors pass a resolution, complying with the following subsection, that it should be so re-registered, and
  - (b) an application for the purpose in the prescribed form and signed by a director or secretary of the company is delivered to the registrar of companies together with the documents mentioned in subsection (4) below, and

- (c) at the time of the resolution, the conditions specified in section 3 below are satisfied.
- (2) The 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 it as are necessary to bring it in substance and in form into conformity with the requirements of the principal Act with respect to the memorandum of a public company.
- (3) A resolution of the directors under this section is subject to section 380 of the principal Act (copy of resolution to be forwarded to registrar of companies within 15 days).
- (4) The documents referred to in subsection (1)(b) are—
  - (a) a printed copy of the memorandum as altered in pursuance of the resolution, and
  - (b) a statutory declaration in the prescribed form by a director or secretary of the company that the resolution has been passed and that the conditions specified in section 3 of this Act were satisfied at the time of the resolution.
- (5) The registrar may accept a declaration under subsection (4)(b) as sufficient evidence that the resolution has been passed and the necessary conditions were satisfied.
- (6) Section 47(1) and (3) to (5) of the principal Act apply on an application for re-registration under this section as they apply on an application under section 43 of that Act.

### **3 Conditions for re-registering under s. 2**

- (1) The following are the conditions referred to in section 2(1)(c) (being conditions also relevant under section 4).
- (2) At the time concerned, the nominal value of the company's allotted share capital must not be less than the authorised minimum (defined in section 118 of the principal Act).
- (3) In the case of all the shares of the company, or of all those of its shares which are comprised in a portion of the share capital which satisfies the condition in subsection (2)—
  - (a) each share 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;
  - (b) where any of the shares in question or any premium payable on them has been fully or partly paid up by an undertaking given by any person that he or another should do work or perform services for the company or another, the undertaking must have been performed or otherwise discharged ; and
  - (c) where any of the shares in question has been allotted as fully or partly paid up as to its nominal value or any premium payable on it otherwise than in cash, and the consideration for the allotment consists of or includes an undertaking (other than one to which paragraph (b) applies) to the company, then either—
    - (i) that undertaking must have been either performed or otherwise discharged, or
    - (ii) 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 of the resolution.

#### **4 Old public company becoming private**

- (1) An old public company may pass a special resolution not to be re-registered under section 2 as a public company; and section 54 of the principal Act (litigated objection by shareholders) applies to the resolution as it would apply to a special resolution by a public company to be re-registered as private.
- (2) If either—
  - (a) 28 days from the passing of the resolution elapse without an application being made under section 54 of the principal Act (as applied), or
  - (b) such an application is made and proceedings are concluded on the application without the court making an order for the cancellation of the resolution,the registrar of companies shall issue the company with a certificate stating that it is a private company; and the company then becomes a private company by virtue of the issue of the certificate.
- (3) For the purposes of subsection (2)(b), proceedings on the application are concluded—
  - (a) except in a case within the following paragraph, when the period mentioned in section 54(7) of the principal Act (as applied) for delivering an office copy of the court's order under that section to the registrar of companies has expired, or
  - (b) when the company has been notified that the application has been withdrawn.
- (4) If an old public company delivers to the registrar of companies a statutory declaration in the prescribed form by a director or secretary of the company that the company does not at the time of the declaration satisfy the conditions specified in section 3 for the company to be re-registered as public, the registrar shall issue the company with a certificate stating that it is a private company; and the company then becomes a private company by virtue of the issue of the certificate.
- (5) A certificate issued to a company under subsection (2) or (4) is conclusive evidence that the requirements of that subsection have been complied with and that the company is a private company.

#### **5 Failure by old public company to obtain new classification**

- (1) If at any time a company which is an old public company has not delivered to the registrar of companies a declaration under section 4(4), the company and any officer of it who is in default is guilty of an offence unless at that time the company—
  - (a) has applied to be re-registered under section 2, and the application has not been refused or withdrawn, or
  - (b) has passed a special resolution not to be re-registered under that section, and the resolution has not been revoked, and has not been cancelled under section 54 of the principal Act as applied by section 4 above.
- (2) A person guilty of an offence under subsection (1) is liable on summary conviction to a fine not exceeding one-fifth of the statutory maximum or, on conviction after continued contravention, to a daily default fine not exceeding one-fiftieth of the statutory maximum for every day on which the subsection is contravened.

#### **6 Shares of old public company held by itself; charges on own shares**

- (1) The following has effect notwithstanding section 1(2).

- (2) References to a public company in sections 146 to 149 of the principal Act (treatment of a company's shares when acquired by itself) do not include an old public company; and references in those sections to a private company are to be read accordingly.
- (3) In the case of a company which after 22nd March 1982 remained an old public company and did not before that date apply to be re-registered under section 8 of the Act of 1980 as a public company, any charge on its own shares which was in existence on or immediately before that date is a permitted charge for the purposes of Chapter V of Part V of the principal Act and accordingly not void under section 150 of that Act.

## **7 Offers of shares and debentures by old public company**

Section 81 of the principal Act applies to an old public company as if it were a private company such as is mentioned in subsection (1) of that section.

## **8 Trading under misleading name**

- (1) An old public company is guilty of an offence if it carries on any trade, profession or business under a name which includes, as its last part, the words " public limited company " or " cwmni cyfyngedig cyhoeddus ".
- (2) A company guilty of an offence under this section, and any officer of the company who is in default, is liable on summary conviction as for an offence under section 33 of the principal Act.

## **9 Payment for share capital**

- (1) Subject as follows, sections 99, 101 to 103, 106, 108 and 110 to 115 in Part IV of the principal Act apply to a company whose directors have passed and not revoked a resolution to be re-registered under section 2 of this Act, as those sections apply to a public company.
- (2) Sections 99, 101 to 103, 108 and 112 of the principal Act do not apply to the allotment of shares by a company, other than a public company registered as such on its original incorporation, where the contract for the allotment was entered into—
  - (a) except in a case falling within the following paragraph, on or before 22nd June 1982 ;
  - (b) in the case of a company re-registered or registered as a public company in pursuance of—
    - (i) a resolution to be re-registered under section 43 of the principal Act,
    - (ii) a resolution to be re-registered under section 2 of this Act, or
    - (iii) a resolution by a joint stock company that the company be a public company,being a resolution that was passed on or before 22nd June 1982, before the date on which the resolution was passed.