

COMPANIES ACT 2006

EXPLANATORY NOTES

COMMENTARY

Part 17: a Company's Share Capital

Chapter 8: Alteration of Share Capital

Section 617: Alteration of share capital of limited company

886. This section prohibits a limited company from altering its share capital except in the ways permitted under the Act. It includes a signpost to a new provision which will enable companies limited by shares easily to convert (or “redenominate”) their share capital from one currency to another (see section 622).

Section 618: Sub-division or consolidation of shares

887. Consolidation of a company's share capital involves combining a number of shares into a new share of commensurate nominal value: for example, ten £1 shares may be combined to make one £10 share. Sub-division of a company's share capital involves dividing a share into a number of new shares with a smaller nominal value: for example, a £10 share may be sub-divided into ten £1 shares.

888. [Section 618](#) replaces section 121(2)(b) and (d) of the 1985 Act. It sets out the circumstances and manner in which a limited company may consolidate or sub-divide its share capital. Where shares in a company are sub-divided or consolidated, the proportion between the amount paid and the amount unpaid (if any) on the original share(s) must remain the same in relation to the share(s) resulting from the sub-division or consolidation. If, for example, £2 is unpaid on a £10 share that is subsequently sub-divided into ten £1 shares, there will now be 20p unpaid on each of those ten shares.

889. A company may exercise a power conferred on it under this section only if the members have passed a resolution authorising it to do so, which may be an ordinary resolution or a resolution requiring a higher majority (as the articles may require). Such a resolution may authorise a company to exercise more than one of the powers conferred on it under this section, for example, the resolution may authorise a sub-division of one class of the company's shares and a consolidation of another. It may also authorise the company to exercise a power conferred on it under this section on more than one occasion or at a specified time or in specified circumstances. This avoids the directors having to obtain authorisation from the company's members on each and every occasion that a company alters its share capital under this section (which may be inconvenient to the directors and members alike or impractical due to timing constraints).

890. The flexibility to pass a conditional resolution (that is, a resolution that will only take effect if certain conditions are met) given in [subsection \(4\)\(c\)](#) is necessary as a sub-division or consolidation of share capital (or any class of it) may form part of a wider re-organisation of a company's share capital, for example, a reduction of share capital following a redenomination of share capital. It may, therefore, not be appropriate, or

necessary, for a company's share capital to be altered in this way if the reorganisation of share capital that the sub-division or consolidation is linked to does not go ahead.

891. Under the 1985 Act a company may only sub-divide or consolidate its share capital if it is authorised to do so by the company's articles (see section 121 of that Act). This restriction has not been retained.

Section 619: Notice to registrar of sub-division or consolidation

892. The section replaces a similar requirement to notify the registrar contained in section 122(1)(a) and (d) of the 1985 Act. Where a company sub-divides or consolidates its share capital under section 618, it will continue to be required to give notice of this alteration to its share capital to the registrar within one month. However, there is a new requirement to file a statement of capital (see *subsections (2) and (3)*), which is in essence a "snap-shot" of the company's total share capital at a particular point in time: in this case following the consolidation/sub-division.

893. For public companies, the requirement for a statement of capital is linked to the abolition of authorised share capital: it implements Article 2 of the Second Company Law Directive (77/91/EEC) which states:

“the statutes or instruments of incorporation of the company shall always give at least the following information... (c) when the company has no authorized capital, the amount of the subscribed capital...”.

894. The statement of capital will require the following information to be provided:

- the total number of shares of the company,
- the aggregate nominal value of those shares,
- for each class of shares, prescribed particulars of the rights attached to the shares, the total number of shares of that class and the aggregate nominal value of shares of that class, and
- the amount paid up and the amount (if any) unpaid on each share (whether on account of the nominal value of the share or by way of premium).

895. Whilst this Directive applies only to public companies it is important that the information on the public register is up-to-date. A statement of capital will, therefore, be required where it is proposed that a company formed under the Act will have a share capital on formation and, with limited exceptions (in particular, where there has been a variation of class rights which does not affect the company's aggregate subscribed capital) whenever a limited company makes an alteration to its share capital. A statement of capital is also called for in certain circumstances where an unlimited company having a share capital makes a return to the registrar (see, section 856).

896. In making a statement of capital, a company is required to provide "prescribed particulars of the rights attached to the shares". Here, and elsewhere in the Act where a statement of capital is called for, "prescribed" means prescribed by the Secretary of State in regulations or by order made under the Act.

897. The power conferred on the Secretary of State under this section enables the Secretary of State to specify the particular detail of the information which he requires to be filed with the registrar by a company. A statutory instrument made pursuant to this power will not be subject to any form of Parliamentary scrutiny.

898. Criminal liability for any failure to comply with the procedural requirements as to notice is retained (see *subsection (4)*). The penalty for this offence is set out in *subsection (5)*.

Section 620: Re-conversion of stock into shares

899. Stock cannot be issued directly by a company but arises from a conversion of fully paid up shares into stock under section 121(2)(c) of the 1985 Act. This ability to convert shares into stock has not been retained. A company that currently has stock may, however, wish to re-convert this stock back into fully paid shares, and this is permitted by the following section.
900. **Section 620** replaces section 121(2)(c) of the 1985 Act. It retains the ability to re-convert stock back into fully paid shares but removes the requirement for prior authorisation in the articles (currently a company may only re-convert stock back into shares if provision for this is made in its articles).
901. A re-conversion of stock into shares will require an ordinary resolution of the company's members. Such a resolution may give the directors power to convert stock into fully paid shares on more than one occasion; at a specified time; or only if certain conditions are met (see *subsection (3)*). The flexibility to pass a conditional resolution (that is, a resolution that will only take effect if certain conditions are met) is necessary as a re-conversion of stock into shares may form part of a wider re-organisation of a company's share capital.

Section 621: Notice to registrar of reconversion of stock into shares

902. Where a company re-converts stock into shares it must give notice of the alteration to its share capital to the registrar under the provisions in section 621. This requirement replaces a similar provision in section 122(1)(c) of the 1985 Act.
903. A statement of capital is required (see note on section 619).
904. Criminal liability for any failure to comply with the procedural requirements as to notice is retained (see *subsection (4)*). The penalty for this offence is set out in *subsection (5)*.

Section 622: Redenomination of share capital

905. Where a public company applies for a trading certificate under section 117 of the 1985 Act it must satisfy a minimum share capital requirement (known as the "authorised minimum"). There is a similar requirement where a private company re-registers as a public company under section 43 of that Act. The authorised minimum is currently set at £50,000 and must be expressed in sterling. This implements Article 6 of the Second Company Law Directive (77/91/EEC) which requires that, in order that a company may be incorporated or obtain authorisation to commence business, a minimum capital shall be subscribed the amount of which shall be not less than 25000 ECU (expressed in the domestic currency of the Member State). Under section 763, in future the authorised minimum will be capable of being satisfied in sterling (£50,000) or the euro equivalent to the sterling amount. Subject to this change, the Act retains the effect of the 1985 Act provisions on the authorised minimum (see, for example, section 91, section 650 and section 761).
906. Subject to the above qualification (and any restriction in a company's articles) a company is free to allot shares in any currency that it wishes (see section 542(3)). It may also have its share capital made up of shares of a mixture of denominations, for example, one class of a company's shares may be denominated in sterling, whereas another class may be denominated in dollars, euros or some other currency of the company's choosing. What a company cannot currently do is easily redenominate its share capital (or any class of it) from one currency to another, for example, from dollars to sterling or vice versa. The current procedure involves cancelling existing shares under the court approved procedure for capital reductions set out in section 135 of the 1985 Act or, in the case of private companies only, buying back or redeeming shares out of capital under section 171 of that Act, and then issuing new shares in the desired currency.

907. **Section 622** introduces a new procedure that will allow a company limited by shares to redenominate its share capital easily. This requires a resolution of the company's members. (Unlimited companies having a share capital are already free to redenominate their share capital as they see fit and no change to the legislation is required in respect of such companies).
908. *Subsection (2)* of this section provides that the spot rate used when converting a company's share capital from one currency to another must be specified in the resolution to redenominate the company's share capital. There is a choice of spot rates and this is set out in *subsection (3)*.
909. A company is free to pass a conditional resolution under this section (see *subsection (4)*). A resolution will, however, lapse if the redenomination of share capital has not taken effect within 28 days of the date on which the resolution is passed (see *subsection (6)*). Where a resolution lapses, the company will not be able to redenominate its capital unless it passes a new resolution and the redenomination is effected in accordance with the new resolution.
910. *Subsection (7)* makes it clear that, if it wishes, a company may restrict or prohibit a redenomination of its share capital by incorporating a provision to this effect in the company's articles.
911. It should be noted that this section does not make provision for the authorised minimum to continue to be denominated in sterling (or the euro equivalent). This means that once a public company has obtained a trading certificate under section 761 (or previously under section 117 of the 1985 Act) or where a private company has re-registered as a public company, such a company is free, if it wishes, to redenominate all of its share capital, including the authorised minimum into any currency of its choosing.

Section 623: Calculation of new nominal values

912. This section explains how the new nominal value of a share which has been redenominated from one currency to another should be calculated.

Section 624: Effect of redenomination

913. This section makes it clear that a redenomination of a company's share capital (or any class of it) does not affect any rights or obligations that the members may have under the company's constitution or any restrictions affecting members under the company's constitution. In particular, it does not affect entitlement to dividends, voting rights or any liability in respect of amounts unpaid on shares. If, for example, a dividend of 20p was declared on a £1 share prior to a redenomination of that share, and that £1 share is subsequently converted into a \$1.5 share, the member who now owns a \$1.5 share in the company will still be entitled to a 20p dividend (albeit that the company and the member in question may agree that the 20p dividend can be paid in cents – or indeed in some other currency). Similarly, where a company has issued partly paid shares, the member's liability to the company will remain in the currency in which the share was originally denominated.

Section 625: Notice to registrar of redenomination

914. This section sets out the requirements as to notice where a company redenominates its share capital (or any class of it). Notice must be given to the registrar in accordance with *subsections (1) and (2)* of this section and there is a requirement for a statement of capital (see note on section 619).
915. A copy of the resolution to redenominate the company's share capital must be forwarded to the registrar within 15 days after it is passed notwithstanding that it may be an ordinary resolution (see section 622(8) which provides that Chapter 3 of Part 3 applies to the resolution and in particular section 30)

916. If a company fails to comply with the procedural requirements as to notice the company and every officer of the company commits an offence. The penalty for this offence is set out in *subsection (5)*.

Section 626: Reduction of capital in connection with redenomination

917. Following a redenomination of a company's share capital, it is likely that the company will be left with shares expressed in awkward fractions of the new currency, for example, 0.997 dollars or 1.01 euros. The company may therefore wish to renominalise the value of the shares affected (that is, alter the nominal value of these shares) to obtain share values in whole units of the new currency. It can do this in one of two ways: if the company has distributable reserves it may capitalise those reserves to increase the nominal value of the shares affected; alternatively, it may reduce its share capital using the procedure set out in section 626.
918. This section enables a company to renominalise the value of its shares by cancelling part of its share capital. A special resolution of the company's members is required but there is no need for the directors to make a solvency statement or for the company to go to court (as required where a company reduces its share capital under Chapter 10 of this Part).
919. Under *subsection (3)*, a resolution to reduce capital in connection with a redenomination must be passed within 3 months of the resolution to redenominate the company's share capital.
920. *Subsection (4)* provides that the amount by which a company can reduce its share capital using this new provision is capped at 10% of the nominal value of the company's share capital immediately after the reduction. This 10% cap is required by the Second Company Law Directive (77/91/EEC) and applies to any reduction of capital in a public company which is not approved by the court.
921. Where a company reduces its share capital under this section, the amount by which the company's share capital is reduced must be transferred to a new non-distributable reserve (see section 628).

Section 627: Notice to registrar of reduction of capital in connection with redenomination

922. This section sets out the requirements as to notice where a company reduces its share capital in connection with a redenomination of its share capital (that is, to renominalise the value of its shares). Notice must be given to the registrar in accordance with *subsection (1)* of this section. This notice must be accompanied by a statement of capital (see note on section 619).
923. The resolution to reduce the share capital must be filed with the registrar in accordance with section 30.
924. The reduction of capital will not take effect until the documents that are required to be delivered to the registrar under *subsections (1) and (2)* are registered by the registrar (see *subsection (5)*).
925. In addition to delivering the above documents to the registrar, within 15 days of the date that a resolution to reduce capital in connection with a redenomination is passed, under *subsection (6)* the company must also deliver to the registrar a statement made by the directors confirming that the reduction of share capital was made in accordance with *subsection (4)* of section 626.
926. If a company fails to comply with the procedural requirements as to notice the company and every officer of the company commits an offence. The penalty for this offence is set out in *subsection (8)*. In addition, where the statement made by the directors under

*These notes refer to the Companies Act 2006 (c.46)
which received Royal Assent on 8 November 2006*

subsection (6) is misleading, false or deceptive in a material particular, the directors are liable to an offence under section 1112.

Section 628: Redenomination reserve

927. Where a company reduces its share capital under section 626 it must transfer an amount equal to the value of the reduction to a non-distributable reserve known as the redenomination reserve.
928. This section provides that amounts transferred to the redenomination reserve may be used by the company in paying up shares to be allotted to existing members as fully paid bonus shares. Subject to this, the provisions of the Companies Acts relating to the reduction of a company's share capital, apply to the redenomination reserve as if it were paid-up share capital. These provisions mirror those contained in section 733 (which restates section 170 of the 1985 Act).