
STATUTORY INSTRUMENTS

1986 No. 1035

The Companies Consolidation (Consequential Provisions) (Northern Ireland) Order 1986 (repealed)

Old Public companies

Meaning of “old public company”

3.—(1) For the purposes of the principal Order and this Order, 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 1st July 1983 or was incorporated after that date pursuant to an application made before that date,
- (b) on that date or, if later, on the date of the company's incorporation the company was not or (as the case may be) would not have been a private company within the meaning of section 28 of the Act of 1960, and
- (c) the company has not since that date or the date 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 Order (other than so much of it as is derived from Part II of the Order of 1981, and other than Article 43 (prohibition on 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 Order to a private company are to be read accordingly.

Re-registration as public company

4.—(1) An old public company may be re-registered as a public company if—

- (a) the directors pass a resolution, complying with paragraph (2), 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 together with the documents mentioned in paragraph (4), and
- (c) at the time of the resolution, the conditions specified in Article 5 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 Order with respect to the memorandum of the public company.

(3) A resolution of the directors under this Article is subject to Article 388 of the principal Order (copy of resolution to be forwarded to registrar within 15 days).

(4) The documents referred to in paragraph (1)(b) are—

- (a) a printed copy of the memorandum as altered in pursuance of the resolution, and

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(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 Article 5 were satisfied at the time of the resolution.

(5) The registrar may accept a declaration under paragraph 4(b) as sufficient evidence that the resolution has been passed and the necessary conditions were satisfied.

(6) Article 57(1) and (3) to (5) of the principal Order applies on an application for re-registration under this Article as it applies on an application under Article 53 of that Order.

Conditions for re-registering under Article 4

5.—(1) The following are the conditions referred to in Article 4(1)(c) (being conditions also relevant under Article 6).

(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 Article 128 of the principal Order).

(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 paragraph (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 sub-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.

Old public company becoming private

6.—(1) An old public company may pass a special resolution not to be re-registered under Article 4 as a public company; and Article 64 of the principal Order (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 Article 64 of the principal Order (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 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 paragraph (2)(b), proceedings on the application are concluded—

- (a) except in a case within sub-paragraph (b), when the period mentioned in Article 64(7) of the principal Order (as applied) for delivering an office copy of the court's order under that Article to the registrar 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 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 Article 5 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 paragraph (2) or (4) is conclusive evidence that the requirements of that paragraph have been complied with and that the company is a private company.

Failure by old public company to obtain new classification

7.—(1) If at any time a company which is an old public company has not delivered to the registrar a declaration under Article 6(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 Article 4, and the application has not been refused or withdrawn, or
- (b) has passed a special resolution not to be re-registered under that Article, and the resolution has not been revoked, and has not been cancelled under Article 64 of the principal Order as applied by Article 6 of this Order.

(2) A person guilty of an offence under paragraph (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 that paragraph is contravened.

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

8.—(1) The following has effect notwithstanding Article 3(2).

(2) References to a public company in Articles 156 to 159 of the principal Order (treatment of a company's shares when acquired by itself) do not include an old public company; and references in those Articles to a private company are to be read accordingly.

(3) In the case of a company which after 30th September 1984 remained an old public company and did not on or before that date apply to be re-registered under Article 10 of the Order of 1981 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 VI of the principal Order and accordingly not void under Article 160 of that Order.

Offers of shares and debentures by old public company

9. Article 91 of the principal Order applies to an old public company as if it were a private company such as is mentioned in paragraph (1) of that Article.

Trading under misleading name

10.—(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 any contraction or imitation of those words.

(2) During the 3 years following the re-registration of an old public company under Article 10 of the Order of 1981, Article 356(1) of the principal Order and any other statutory provision requiring or authorising the name of the company to be shown on any document or other object, apply as if any reference in that provision to the name of the company were a reference to a name which either is its name or was its name before re-registration.

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(3) A company guilty of an offence under paragraph (1), and any officer of the company who is in default, is liable on summary conviction as for an offence under Article 43 of the principal Order.

Payment for share capital

11.—(1) Subject to paragraph (2), Articles 109, 111 to 113, 116, 118 and 120 to 125 of the principal Order apply to a company whose directors have passed and not revoked a resolution to be re-registered under Article 4 of this Order, as those Articles apply to a public company.

(2) Articles 109, 111 to 113, 118 and 122 of the principal Order 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 sub-paragraph (b), on or before 31st December 1984;
- (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 Article 53 of the principal Order,
 - (ii) a resolution to be re-registered under Article r of this Order, 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 31st December 1984, before the date on which the resolution was passed.

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