

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

COMPANIES ACT 2006

EXPLANATORY NOTES

COMMENTARY

Part 21: Certification and Transfer of Securities

Chapter 1: Certification and Transfer of Securities: General

1091. Sections 768 to 770, 772 to 779 and 781 to 782 in this Chapter restate the provisions in Part 5 of the 1985 Act (sections 183 to 189) relating to the certification and transfer of shares and other securities.

Section 771: Procedure on transfer being lodged

1092. Under section 183(5) of the 1985 Act, if a company refuses to register a transfer of shares (or debentures), it must, within two months of receipt of the transfer, send to the transferee notice of its refusal to register the transfer of shares. Such a refusal will not affect the transferee's beneficial interest in a share, for example, he will still be entitled to any dividend declared on that share, and a return of capital on winding-up, but the transferee will not be able to exercise all of the rights of a member of the company, for example, he may not vote at meetings, until such time as the transfer is registered and his name is entered in the register of members.

1093. Section 771 is a new provision which amends the law on the registration of transfers. As recommended by the CLR, it requires the directors to either register a transfer of shares or debentures or provide the transferee with reasons for their refusal to register (see Final Report, paragraphs 7.44 and 7.45).

1094. In either case, this must be done as soon as practicable, but in any event within two months of the transfer being lodged with the company.

1095. Under *subsection (2)*, where the directors refuse to register the transfer of a share, the transferee is entitled to receive such information as he may reasonably require regarding the reasons for the directors' refusal to register the transfer. Such information does not extend to minutes of meetings of the directors.

1096. Where a company fails to comply with this section, the company and every officer of the company who is in default commits an offence (see *subsection (3)*).

1097. *Subsection (5)* makes it clear that this section does not apply to a transfer of shares if the company has issued a share warrant in respect of the shares under section 779 or in relation to a transmission of shares by operation of the law (for example, where a bankrupt member's trustee in bankruptcy or a deceased member's personal representative becomes entitled to shares).

Section 780: Duty of company as to issue of certificates on surrender of share warrant

1098. This provision is new and makes it clear that a company must issue a share certificate where a share warrant is subsequently surrendered for cancellation. It gives a company

two months from the date of surrender to complete and have ready for delivery a certificate of the shares specified in the warrant and failure to do so is a criminal offence (see *subsection (3)*). This requirement is subject to any contrary provisions in the company's articles, which may give the company more or less time to deliver such certificates to the transferee (see *subsection (2)*).

Chapter 2: Evidencing and Transfer of Title to Securities Without Written Instrument

1099. This Chapter replaces the existing power under section 207 of the 1989 Act relating to transfer of securities without a written instrument but goes beyond it in that it can be used to require, as well as to permit, the paper-free holding and transfer of shares or other securities. The provisions that make changes to the power are in sections 784, 786, 787 and 789.

Section 784: Power to make regulations

1100. This section provides for the power to make regulations about the transfer of title to securities without written instrument to be exercisable by the Secretary of State or the Treasury. Responsibility for section 207 of the 1989 Act and the regulations made under it passed from the Department of Trade and Industry to HM Treasury by virtue of article 2(1) of the [Transfer of Functions \(Financial Services\) Order 1992 \(S.I. 1992/1315\)](#) as part of a general transfer of responsibility for financial services matters. Dual responsibility is considered more appropriate for the making of regulations under the new power as the extension of paperless holding and transfer to new classes of shares or other securities involve matters which are part of company law. Exercise of the power will continue to be subject to the affirmative procedure.

Section 786: Provision enabling or requiring arrangements to be adopted

1101. This section provides that regulations under this Chapter may require, as well as permit, the paper-free holding and transfer of securities. The effect of *subsections (1) and (2)* is that regulations made under section 207 may:

- enable members of companies, or of designated classes of company, by ordinary resolution, to adopt a new form of paperless holding and transfer of shares and abandon paper-based forms of holding and transfer in relation to all existing and new securities of that company, or to specified types of securities; or
- make the adoption of a form of paperless transfer and the abandonment of paper-based forms of transfer mandatory for all securities, or specified types of securities, issued by companies generally or by designated classes of company.

1102. Regulations do not need to make it obligatory both to hold and to transfer securities in a paper-free way: the new arrangements could relate just to holding or just to transfer.

1103. *Subsection (3)* is designed to protect the right of individual investors to continue to hold shares in their own names rather than through nominees. It ensures that the new arrangements prescribed in the regulations will not mean that:

- people who would have been entitled to have their names entered in the company's register of members will lose that entitlement; or
- people who are entitled to exercise rights in respect of securities will lose that right.

1104. *Subsection (4)* provides that the regulations will be able to:

- prohibit the issue of share certificates or certificates for other types of security. Holders of securities to which any such prohibition applies will lose the option of continuing to hold certificates and transfer their shares by paper-based methods;
- ensure that such holders of securities are sent periodic statements of their holdings;

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- make provision about the evidential value of certificates or statements.

Section 787: Provision enabling or requiring arrangements to be adopted: order-making powers

1105. This section provides additional flexibility by enabling Ministers to designate, by order (subject to negative resolution procedure), companies or classes of company to which the regulations are to apply, or to modify the effect of the regulations (or disapply them) in relation to a designated class of companies or specified companies.

Section 789: Duty to consult

1106. Ministers will be obliged to consult such persons as they consider appropriate before making regulations or designating a class of companies by order under the new powers. This obligation reflects the breadth of the proposed new powers, as well as the technical nature of some of the regulations which could be made under it.