



# Companies Act 2006

## 2006 CHAPTER 46

### PART 17

#### A COMPANY'S SHARE CAPITAL

##### **Modifications etc. (not altering text)**

- C1** Pts. 1-39 (except for Pt. 7 and ss. 662-669), 45-47 extended (12.5.2011) by [The Companies Act 2006 \(Consequential Amendments and Transitional Provisions\) Order 2011 \(S.I. 2011/1265\)](#), art. 5(1), [Sch. 1 para. 2](#)

### CHAPTER 1

#### SHARES AND SHARE CAPITAL OF A COMPANY

##### *Shares*

#### **540 Shares**

- (1) In the Companies Acts “share”, in relation to a company, means share in the company's share capital.
- (2) A company's shares may no longer be converted into stock.
- (3) Stock created before the commencement of this Part may be reconverted into shares in accordance with section 620.
- (4) In the Companies Acts—
  - (a) references to shares include stock except where a distinction between share and stock is express or implied, and
  - (b) references to a number of shares include an amount of stock where the context admits of the reference to shares being read as including stock.

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### Commencement Information

- II** S. 540 wholly in force at 1.10.2009; s. 540 not in force at Royal Assent see s. 1300; s. 540(1)(4) in force for certain purposes at 1.10.2007 by S.I. 2007/2194, **art. 2(3)(c)** (with saving in art. 12); s. 540(1)(4) in force for certain further purposes at 6.4.2008 by S.I. 2007/3495, **art. 3(3)(b)** (with savings in arts. 7, 12); s. 540 otherwise in force at 1.10.2009 by S.I. 2008/2860, **art. 3(k)** (with arts. 5, 7, 8, Sch. 2) (as amended by S.I. 2009/1802, art. 18)

### 541 Nature of shares

The shares or other interest of a member in a company are personal property (or, in Scotland, moveable property) and are not in the nature of real estate (or heritage).

### 542 Nominal value of shares

- (1) Shares in a limited company having a share capital must each have a fixed nominal value.
- (2) An allotment of a share that does not have a fixed nominal value is void.
- (3) Shares in a limited company having a share capital may be denominated in any currency, and different classes of shares may be denominated in different currencies.  
  
But see section 765 (initial authorised minimum share capital requirement for public company to be met by reference to share capital denominated in sterling or euros).
- (4) If a company purports to allot shares in contravention of this section, an offence is committed by every officer of the company who is in default.
- (5) A person guilty of an offence under this section is liable—
  - (a) on conviction on indictment, to a fine;
  - (b) on summary conviction, to a fine not exceeding the statutory maximum.

### 543 Numbering of shares

- (1) Each share in a company having a share capital must be distinguished by its appropriate number, except in the following circumstances.
- (2) If at any time—
  - (a) all the issued shares in a company are fully paid up and rank *pari passu* for all purposes, or
  - (b) all the issued shares of a particular class in a company are fully paid up and rank *pari passu* for all purposes,
 none of those shares need thereafter have a distinguishing number so long as it remains fully paid up and ranks *pari passu* for all purposes with all shares of the same class for the time being issued and fully paid up.

### 544 Transferability of shares

- (1) The shares or other interest of any member in a company are transferable in accordance with the company's articles.

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- (2) This is subject to—
- (a) the Stock Transfer Act 1963 (c. 18) or the Stock Transfer Act (Northern Ireland) 1963 (c. 24 (N.I.)) (which enables securities of certain descriptions to be transferred by a simplified process), and
  - (b) regulations under Chapter 2 of Part 21 of this Act (which enable title to securities to be evidenced and transferred without a written instrument).
- (3) See Part 21 of this Act generally as regards share transfers.

## 545 Companies having a share capital

References in the Companies Acts to a company having a share capital are to a company that has power under its constitution to issue shares.

### Commencement Information

- I2** [S. 545](#) wholly in force at 1.10.2009; [s. 545](#) not in force at Royal Assent see [s. 1300](#); [s. 545](#) in force at 1.10.2007 for certain purposes by [S.I. 2007/2194](#), [art. 2\(3\)\(d\)](#) (with savings in [art. 12](#)); [s. 545](#) in force at 6.4.2008 for certain further purposes by [S.I. 2007/3495](#), [art. 3\(3\)\(c\)](#) (with savings in [arts. 7, 12](#)); [s. 545](#) otherwise in force at 1.10.2009 by [S.I. 2008/2860](#), [art. 3\(k\)](#) (with [arts. 5, 7, 8, Sch. 2](#)) (as amended by [S.I. 2009/1802](#), [art. 18](#))

## 546 Issued and allotted share capital

- (1) References in the Companies Acts—
- (a) to “issued share capital” are to shares of a company that have been issued;
  - (b) to “allotted share capital” are to shares of a company that have been allotted.
- (2) References in the Companies Acts to issued or allotted shares, or to issued or allotted share capital, include shares taken on the formation of the company by the subscribers to the company's memorandum.

### Modifications etc. (not altering text)

- C2** [S. 546](#) applied (6.4.2007) by [The Companies Acts \(Unregistered Companies\) Regulations 2007 \(S.I. 2007/318\)](#), [reg. 3](#), [Sch.](#) (with [reg. 6](#))

### Commencement Information

- I3** [S. 546](#) wholly in force at 1.10.2009; [s. 546](#) not in force at Royal Assent see [s. 1300](#); [s. 546](#) in force for certain purposes at 6.4.2007 by [S.I. 2007/1093](#), [art. 2\(2\)\(a\)](#) (with [art. 11\(1\)](#)); [s. 546](#) in force for certain further purposes at 1.10.2007 and 1.11.2007 by [S.I. 2007/2194](#), [arts. 2\(3\)\(e\), 3\(2\)\(a\)](#) (with saving in [art. 12](#)); [s. 546](#) in force for certain further purposes at 6.4.2008 by [S.I. 2007/3495](#), [art. 3\(3\)\(d\)](#) (with savings in [arts. 7, 12](#)); [s. 546](#) in force otherwise at 1.10.2009 by [S.I. 2008/2860](#), [art. 3\(k\)](#) (with [arts. 5, 7, 8, Sch. 2](#)) (as amended by [S.I. 2009/1802](#), [art. 18](#))

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## *Share capital*

### **547 Called-up share capital**

In the Companies Acts—

“called-up share capital”, in relation to a company, means so much of its share capital as equals the aggregate amount of the calls made on its shares (whether or not those calls have been paid), together with—

- (a) any share capital paid up without being called, and
- (b) any share capital to be paid on a specified future date under the articles, the terms of allotment of the relevant shares or any other arrangements for payment of those shares; and

“uncalled share capital” is to be construed accordingly.

### **548 Equity share capital**

In the Companies Acts “equity share capital”, in relation to a company, means its issued share capital excluding any part of that capital that, neither as respects dividends nor as respects capital, carries any right to participate beyond a specified amount in a distribution.

#### **Commencement Information**

- I4** [S. 548](#) wholly in force at 1.10.2009; [s. 548](#) not in force at Royal Assent see [s. 1300](#); [s. 548](#) in force for certain purposes at 1.10.2007 by [S.I. 2007/2194](#), [art. 2\(3\)\(f\)](#) (with saving in [art. 12](#)); [s. 548](#) in force for certain purposes at 6.4.2008 by [S.I. 2007/3495](#), [art. 3\(3\)\(e\)](#) (with savings in [arts. 7, 12](#)); [s. 548](#) otherwise in force at 1.10.2009 by [S.I. 2008/2860](#), [art. 3\(k\)](#) (with [arts. 5, 7, 8, Sch. 2](#)) (as amended by [S.I. 2009/1802](#), [art. 18](#))

## **CHAPTER 2**

### ALLOTMENT OF SHARES: GENERAL PROVISIONS

#### *Power of directors to allot shares*

### **549 Exercise by directors of power to allot shares etc**

- (1) The directors of a company must not exercise any power of the company—
- (a) to allot shares in the company, or
  - (b) to grant rights to subscribe for, or to convert any security into, shares in the company,
- except in accordance with section 550 (private company with single class of shares) or section 551 (authorisation by company).
- (2) Subsection (1) does not apply—
- (a) to the allotment of shares in pursuance of an employees' share scheme, or
  - (b) to the grant of a right to subscribe for, or to convert any security into, shares so allotted.

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[<sup>F1</sup>(3) Subsection (1) does not apply to the allotment of shares pursuant to a right to subscribe for, or to convert any security into, shares in the company.]

(4) A director who knowingly contravenes, or permits or authorises a contravention of, this section commits an offence.

(5) A person guilty of an offence under this section is liable—

(a) on conviction on indictment, to a fine;

(b) on summary conviction, to a fine not exceeding the statutory maximum.

(6) Nothing in this section affects the validity of an allotment or other transaction.

#### Textual Amendments

**F1** S. 549(3) substituted (1.10.2009) by [The Companies Act 2006 \(Allotment of Shares and Right of Pre-emption\) \(Amendment\) Regulations 2009 \(S.I. 2009/2561\)](#), [reg. 2\(1\)](#)

### **550 Power of directors to allot shares etc: private company with only one class of shares**

Where a private company has only one class of shares, the directors may exercise any power of the company—

(a) to allot shares of that class, or

(b) to grant rights to subscribe for or to convert any security into such shares, except to the extent that they are prohibited from doing so by the company's articles.

### **551 Power of directors to allot shares etc: authorisation by company**

(1) The directors of a company may exercise a power of the company—

(a) to allot shares in the company, or

(b) to grant rights to subscribe for or to convert any security into shares in the company,

if they are authorised to do so by the company's articles or by resolution of the company.

(2) Authorisation may be given for a particular exercise of the power or for its exercise generally, and may be unconditional or subject to conditions.

(3) Authorisation must—

(a) state the maximum amount of shares that may be allotted under it, and

(b) specify the date on which it will expire, which must be not more than five years from—

(i) in the case of authorisation contained in the company's articles at the time of its original incorporation, the date of that incorporation;

(ii) in any other case, the date on which the resolution is passed by virtue of which the authorisation is given.

(4) Authorisation may—

(a) be renewed or further renewed by resolution of the company for a further period not exceeding five years, and

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- (b) be revoked or varied at any time by resolution of the company.
- (5) A resolution renewing authorisation must—
  - (a) state (or restate) the maximum amount of shares that may be allotted under the authorisation or, as the case may be, the amount remaining to be allotted under it, and
  - (b) specify the date on which the renewed authorisation will expire.
- (6) In relation to rights to subscribe for or to convert any security into shares in the company, references in this section to the maximum amount of shares that may be allotted under the authorisation are to the maximum amount of shares that may be allotted pursuant to the rights.
- (7) The directors may allot shares, or grant rights to subscribe for or to convert any security into shares, after authorisation has expired if—
  - (a) the shares are allotted, or the rights are granted, in pursuance of an offer or agreement made by the company before the authorisation expired, and
  - (b) the authorisation allowed the company to make an offer or agreement which would or might require shares to be allotted, or rights to be granted, after the authorisation had expired.
- (8) A resolution of a company to give, vary, revoke or renew authorisation under this section may be an ordinary resolution, even though it amends the company's articles.
- (9) Chapter 3 of Part 3 (resolutions affecting a company's constitution) applies to a resolution under this section.

*Prohibition of commissions, discounts and allowances*

**552 General prohibition of commissions, discounts and allowances**

- (1) Except as permitted by section 553 (permitted commission), a company must not apply any of its shares or capital money, either directly or indirectly, in payment of any commission, discount or allowance to any person in consideration of his—
  - (a) subscribing or agreeing to subscribe (whether absolutely or conditionally) for shares in the company, or
  - (b) procuring or agreeing to procure subscriptions (whether absolute or conditional) for shares in the company.
- (2) It is immaterial how the shares or money are so applied, whether by being added to the purchase money of property acquired by the company or to the contract price of work to be executed for the company, or being paid out of the nominal purchase money or contract price, or otherwise.
- (3) Nothing in this section affects the payment of such brokerage as has previously been lawful.

**553 Permitted commission**

- (1) A company may, if the following conditions are satisfied, pay a commission to a person in consideration of his subscribing or agreeing to subscribe (whether absolutely or conditionally) for shares in the company, or procuring or agreeing to procure subscriptions (whether absolute or conditional) for shares in the company.

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- (2) The conditions are that—
  - (a) the payment of the commission is authorised by the company's articles; and
  - (b) the commission paid or agreed to be paid does not exceed—
    - (i) 10% of the price at which the shares are issued, or
    - (ii) the amount or rate authorised by the articles,whichever is the less.
- (3) A vendor to, or promoter of, or other person who receives payment in money or shares from, a company may apply any part of the money or shares so received in payment of any commission the payment of which directly by the company would be permitted by this section.

#### *Registration of allotment*

### **554 Registration of allotment**

- (1) A company must register an allotment of shares as soon as practicable and in any event within two months after the date of the allotment.
- (2) This does not apply if the company has issued a share warrant in respect of the shares (see section 779).
- (3) If a company fails to comply with this section, an offence is committed by—
  - (a) the company, and
  - (b) every officer of the company who is in default.
- (4) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.
- (5) For the company's duties as to the issue of share certificates etc, see Part 21 (certification and transfer of securities).

#### *Return of allotment*

### **555 Return of allotment by limited company**

- (1) This section applies to a company limited by shares and to a company limited by guarantee and having a share capital.
- (2) The company must, within one month of making an allotment of shares, deliver to the registrar for registration a return of the allotment.
- (3) The return must—
  - (a) contain the prescribed information, and
  - (b) be accompanied by a statement of capital.
- (4) The statement of capital must state with respect to the company's share capital at the date to which the return is made up—
  - (a) the total number of shares of the company,
  - (b) the aggregate nominal value of those shares,

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- (c) for each class of shares—
  - (i) prescribed particulars of the rights attached to the shares,
  - (ii) the total number of shares of that class, and
  - (iii) the aggregate nominal value of shares of that class, and
- (d) 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).

#### Commencement Information

- I5** S. 555 wholly in force at 1.10.2009; s. 555 not in force at Royal Assent, see s. 1300; s. 555 in force for specified purposes at 20.1.2007 by S.I. 2006/3428, art. 3(3) (subject to art. 5, Sch. 1 and with arts. 6, 8, Sch. 5); s. 555 otherwise in force at 1.10.2009 by S.I. 2008/2860, art. 3(k) (with arts. 5, 7, 8, Sch. 2) (as amended by S.I. 2009/1802, art. 18)

### 556 Return of allotment by unlimited company allotting new class of shares

- (1) This section applies to an unlimited company that allots shares of a class with rights that are not in all respects uniform with shares previously allotted.
- (2) The company must, within one month of making such an allotment, deliver to the registrar for registration a return of the allotment.
- (3) The return must contain the prescribed particulars of the rights attached to the shares.
- (4) For the purposes of this section shares are not to be treated as different from shares previously allotted by reason only that the former do not carry the same rights to dividends as the latter during the twelve months immediately following the former's allotment.

#### Commencement Information

- I6** S. 556 wholly in force at 1.10.2009; s. 556 not in force at Royal Assent, see s. 1300; s. 556 in force for specified purposes at 20.1.2007 by S.I. 2006/3428, art. 3(3) (subject to art. 5, Sch. 1 and with arts. 6, 8, Sch. 5); s. 556 otherwise in force at 1.10.2009 by S.I. 2008/2860, art. 3(k) (with arts. 5, 7, 8, Sch. 2) (as amended by S.I. 2009/1802, art. 18)

### 557 Offence of failure to make return

- (1) If a company makes default in complying with—
  - section 555 (return of allotment of shares by limited company), or
  - section 556 (return of allotment of new class of shares by unlimited company),
 an offence is committed by every officer of the company who is in default.
- (2) A person guilty of an offence under this section is liable—
  - (a) on conviction on indictment, to a fine;
  - (b) on summary conviction, to a fine not exceeding the statutory maximum and, for continued contravention, a daily default fine not exceeding one-tenth of the statutory maximum.
- (3) In the case of default in delivering to the registrar within one month after the allotment the return required by section 555 or 556—



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- (a) any person liable for the default may apply to the court for relief, and
- (b) the court, if satisfied—
  - (i) that the omission to deliver the document was accidental or due to inadvertence, or
  - (ii) that it is just and equitable to grant relief,
 may make an order extending the time for delivery of the document for such period as the court thinks proper.

### *Supplementary provisions*

#### **558 When shares are allotted**

For the purposes of the Companies Acts shares in a company are taken to be allotted when a person acquires the unconditional right to be included in the company's register of members in respect of the shares.

#### **Modifications etc. (not altering text)**

- C3** [S. 558](#) applied (6.4.2007) by [The Companies Acts \(Unregistered Companies\) Regulations 2007 \(S.I. 2007/318\)](#), [reg. 3](#), [Sch.](#) (with [reg. 6](#))

#### **Commencement Information**

- I7** [S. 558](#) wholly in force at 1.10.2009; [s. 558](#) not in force at Royal Assent see [s. 1300](#); [s. 558](#) in force for specified purposes at 6.4.2007 by [S.I. 2007/1093](#), [art. 2\(2\)\(b\)](#) (with [art. 11\(1\)](#)); [s. 558](#) in force otherwise at 1.10.2009 by [S.I. 2008/2860](#), [art. 3\(k\)](#) (with [arts. 5, 7, 8, Sch. 2](#)) (as amended by [S.I. 2009/1802](#), [art. 18](#))

#### **559 Provisions about allotment not applicable to shares taken on formation**

The provisions of this Chapter have no application in relation to the taking of shares by the subscribers to the memorandum on the formation of the company.

## **CHAPTER 3**

### ALLOTMENT OF EQUITY SECURITIES: EXISTING SHAREHOLDERS' RIGHT OF PRE-EMPTION

#### *Introductory*

#### **560 Meaning of “equity securities” and related expressions**

- (1) In this Chapter—
- “equity securities” means—
    - (a) ordinary shares in the company, or
    - (b) rights to subscribe for, or to convert securities into, ordinary shares in the company;
 “ordinary shares” means shares other than shares that as respects dividends and capital carry a right to participate only up to a specified amount in a distribution.

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- [<sup>F2</sup>(2) References in this Chapter to the allotment of equity securities—
- (a) include the grant of a right to subscribe for, or to convert any securities into, ordinary shares in the company, and
  - (b) do not include the allotment of shares pursuant to such a right.
- (3) References in this Chapter to the allotment of equity securities include the sale of ordinary shares in the company that immediately before the sale were held by the company as treasury shares.]

#### Textual Amendments

- F2** S. 560(2)(3) substituted for s. 560(2) (1.10.2009) by [The Companies Act 2006 \(Allotment of Shares and Right of Pre-emption\) \(Amendment\) Regulations 2009 \(S.I. 2009/2561\)](#), **reg. 2(2)**

### *Existing shareholders' right of pre-emption*

#### **561 Existing shareholders' right of pre-emption**

- (1) A company must not allot equity securities to a person on any terms unless—
- (a) it has made an offer to each person who holds ordinary shares in the company to allot to him on the same or more favourable terms a proportion of those securities that is as nearly as practicable equal to the proportion in nominal value held by him of the ordinary share capital of the company, and
  - (b) the period during which any such offer may be accepted has expired or the company has received notice of the acceptance or refusal of every offer so made.
- (2) Securities that a company has offered to allot to a holder of ordinary shares may be allotted to him, or anyone in whose favour he has renounced his right to their allotment, without contravening subsection (1)(b).
- (3) <sup>F3</sup> .....
- (4) Shares held by the company as treasury shares are disregarded for the purposes of this section, so that—
- (a) the company is not treated as a person who holds ordinary shares, and
  - (b) the shares are not treated as forming part of the ordinary share capital of the company.
- (5) This section is subject to—
- (a) sections 564 to 566 (exceptions to pre-emption right),
  - (b) sections 567 and 568 (exclusion of rights of pre-emption),
  - (c) sections 569 to 573 (disapplication of pre-emption rights), and
  - (d) section 576 (saving for certain older pre-emption procedures).

#### Textual Amendments

- F3** S. 561(3) omitted (1.10.2009) by virtue of [The Companies Act 2006 \(Allotment of Shares and Right of Pre-emption\) \(Amendment\) Regulations 2009 \(S.I. 2009/2561\)](#), **reg. 2(3)**

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## 562 Communication of pre-emption offers to shareholders

- (1) This section has effect as to the manner in which offers required by section 561 are to be made to holders of a company's shares.
- (2) The offer may be made in hard copy or electronic form.
- (3) If the holder—
  - (a) has no registered address in an EEA State and has not given to the company an address in an EEA State for the service of notices on him, or
  - (b) is the holder of a share warrant,
 the offer may be made by causing it, or a notice specifying where a copy of it can be obtained or inspected, to be published in the Gazette.
- (4) The offer must state a period during which it may be accepted and the offer shall not be withdrawn before the end of that period.
- (5) The period must be a period of at least [<sup>F4</sup>14 days] beginning—
  - (a) in the case of an offer made in hard copy form, with the date on which the offer is sent or supplied;
  - (b) in the case of an offer made in electronic form, with the date on which the offer is sent;
  - (c) in the case of an offer made by publication in the Gazette, with the date of publication.
- (6) The Secretary of State may by regulations made by statutory instrument—
  - (a) reduce the period specified in subsection (5) (but not to less than 14 days), or
  - (b) increase that period.
- (7) A statutory instrument containing regulations made under subsection (6) is subject to affirmative resolution procedure.

### Textual Amendments

- F4** Words in s. 562(5) substituted (1.10.2009) by [The Companies \(Share Capital and Acquisition by Company of its Own Shares\) Regulations 2009 \(S.I. 2009/2022\)](#), **reg. 2**

### Commencement Information

- I8** [S. 562](#) wholly in force at 1.10.2009; [s. 562](#) not in force at Royal Assent, see [s. 1300](#); [s. 562](#) in force for specified purposes at 20.1.2007 by [S.I. 2006/3428](#), **art. 3(3)** (subject to [art. 5](#), [Sch. 1](#) and with [arts. 6, 8](#), [Sch. 5](#)); [s. 562](#) otherwise in force at 1.10.2009 by [S.I. 2008/2860](#), **art. 3(k)** (with [arts. 5, 7, 8](#), [Sch. 2](#)) (as amended by [S.I. 2009/1802](#), [art. 18](#))

## 563 Liability of company and officers in case of contravention

- (1) This section applies where there is a contravention of—
  - section 561 (existing shareholders' right of pre-emption), or
  - section 562 (communication of pre-emption offers to shareholders).
- (2) The company and every officer of it who knowingly authorised or permitted the contravention are jointly and severally liable to compensate any person to whom an offer should have been made in accordance with those provisions for any loss,

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damage, costs or expenses which the person has sustained or incurred by reason of the contravention.

- (3) No proceedings to recover any such loss, damage, costs or expenses shall be commenced after the expiration of two years—
- (a) from the delivery to the registrar of companies of the return of allotment, or
  - (b) where equity securities other than shares are granted, from the date of the grant.

#### *Exceptions to right of pre-emption*

#### **564 Exception to pre-emption right: bonus shares**

Section 561(1) (existing shareholders' right of pre-emption) does not apply in relation to the allotment of bonus shares.

#### **565 Exception to pre-emption right: issue for non-cash consideration**

Section 561(1) (existing shareholders' right of pre-emption) does not apply to a particular allotment of equity securities if these are, or are to be, wholly or partly paid up otherwise than in cash.

#### **[<sup>F5</sup>566 Exceptions to pre-emption right: employees' share schemes**

Section 561 (existing shareholders' right of pre-emption) does not apply to the allotment of equity securities that would, apart from any renunciation or assignment of the right to their allotment, be held under or allotted or transferred pursuant to an employees' share scheme.]

#### **Textual Amendments**

- F5** S. 566 substituted (1.10.2009) by [The Companies Act 2006 \(Allotment of Shares and Right of Pre-emption\) \(Amendment\) Regulations 2009 \(S.I. 2009/2561\)](#), **reg. 2(4)**

#### *Exclusion of right of pre-emption*

#### **567 Exclusion of requirements by private companies**

- (1) All or any of the requirements of—
- (a) section 561 (existing shareholders' right of pre-emption), or
  - (b) section 562 (communication of pre-emption offers to shareholders)
- may be excluded by provision contained in the articles of a private company.
- (2) They may be excluded—
- (a) generally in relation to the allotment by the company of equity securities, or
  - (b) in relation to allotments of a particular description.
- (3) Any requirement or authorisation contained in the articles of a private company that is inconsistent with either of those sections is treated for the purposes of this section as a provision excluding that section.

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- (4) A provision to which section 568 applies (exclusion of pre-emption right: corresponding right conferred by articles) is not to be treated as inconsistent with section 561.

### **568 Exclusion of pre-emption right: articles conferring corresponding right**

- (1) The provisions of this section apply where, in a case in which section 561 (existing shareholders' right of pre-emption) would otherwise apply—
- (a) a company's articles contain provision (“pre-emption provision”) prohibiting the company from allotting ordinary shares of a particular class unless it has complied with the condition that it makes such an offer as is described in section 561(1) to each person who holds ordinary shares of that class, and
  - (b) in accordance with that provision—
    - (i) the company makes an offer to allot shares to such a holder, and
    - (ii) he or anyone in whose favour he has renounced his right to their allotment accepts the offer.
- (2) In that case, section 561 does not apply to the allotment of those shares and the company may allot them accordingly.
- (3) The provisions of section 562 (communication of pre-emption offers to shareholders) apply in relation to offers made in pursuance of the pre-emption provision of the company's articles.

This is subject to section 567 (exclusion of requirements by private companies).

- (4) If there is a contravention of the pre-emption provision of the company's articles, the company, and every officer of it who knowingly authorised or permitted the contravention, are jointly and severally liable to compensate any person to whom an offer should have been made under the provision for any loss, damage, costs or expenses which the person has sustained or incurred by reason of the contravention.
- (5) No proceedings to recover any such loss, damage, costs or expenses may be commenced after the expiration of two years—
- (a) from the delivery to the registrar of companies of the return of allotment, or
  - (b) where equity securities other than shares are granted, from the date of the grant.

### *Disapplication of pre-emption rights*

### **569 Disapplication of pre-emption rights: private company with only one class of shares**

- (1) The directors of a private company that has only one class of shares may be given power by the articles, or by a special resolution of the company, to allot equity securities of that class as if section 561 (existing shareholders' right of pre-emption)—
- (a) did not apply to the allotment, or
  - (b) applied to the allotment with such modifications as the directors may determine.
- (2) Where the directors make an allotment under this section, the provisions of this Chapter have effect accordingly.

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## **570 Disapplication of pre-emption rights: directors acting under general authorisation**

- (1) Where the directors of a company are generally authorised for the purposes of section 551 (power of directors to allot shares etc: authorisation by company), they may be given power by the articles, or by a special resolution of the company, to allot equity securities pursuant to that authorisation as if section 561 (existing shareholders' right of pre-emption)—
  - (a) did not apply to the allotment, or
  - (b) applied to the allotment with such modifications as the directors may determine.
- (2) Where the directors make an allotment under this section, the provisions of this Chapter have effect accordingly.
- (3) The power conferred by this section ceases to have effect when the authorisation to which it relates—
  - (a) is revoked, or
  - (b) would (if not renewed) expire.

But if the authorisation is renewed the power may also be renewed, for a period not longer than that for which the authorisation is renewed, by a special resolution of the company.

- (4) Notwithstanding that the power conferred by this section has expired, the directors may allot equity securities in pursuance of an offer or agreement previously made by the company if the power enabled the company to make an offer or agreement that would or might require equity securities to be allotted after it expired.

## **571 Disapplication of pre-emption rights by special resolution**

- (1) Where the directors of a company are authorised for the purposes of section 551 (power of directors to allot shares etc: authorisation by company), whether generally or otherwise, the company may by special resolution resolve that section 561 (existing shareholders' right of pre-emption)—
  - (a) does not apply to a specified allotment of equity securities to be made pursuant to that authorisation, or
  - (b) applies to such an allotment with such modifications as may be specified in the resolution.
- (2) Where such a resolution is passed the provisions of this Chapter have effect accordingly.
- (3) A special resolution under this section ceases to have effect when the authorisation to which it relates—
  - (a) is revoked, or
  - (b) would (if not renewed) expire.

But if the authorisation is renewed the resolution may also be renewed, for a period not longer than that for which the authorisation is renewed, by a special resolution of the company.

- (4) Notwithstanding that any such resolution has expired, the directors may allot equity securities in pursuance of an offer or agreement previously made by the company if

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the resolution enabled the company to make an offer or agreement that would or might require equity securities to be allotted after it expired.

- (5) A special resolution under this section, or a special resolution to renew such a resolution, must not be proposed unless—
  - (a) it is recommended by the directors, and
  - (b) the directors have complied with the following provisions.
- (6) Before such a resolution is proposed, the directors must make a written statement setting out—
  - (a) their reasons for making the recommendation,
  - (b) the amount to be paid to the company in respect of the equity securities to be allotted, and
  - (c) the directors' justification of that amount.
- (7) The directors' statement must—
  - (a) if the resolution is proposed as a written resolution, be sent or submitted to every eligible member at or before the time at which the proposed resolution is sent or submitted to him;
  - (b) if the resolution is proposed at a general meeting, be circulated to the members entitled to notice of the meeting with that notice.

## **572 Liability for false statement in directors' statement**

- (1) This section applies in relation to a directors' statement under section 571 (special resolution disapplying pre-emption rights) that is sent, submitted or circulated under subsection (7) of that section.
- (2) A person who knowingly or recklessly authorises or permits the inclusion of any matter that is misleading, false or deceptive in a material particular in such a statement commits an offence.
- (3) A person guilty of an offence under this section is liable—
  - (a) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine (or both);
  - (b) on summary conviction—
    - (i) in England and Wales, to imprisonment for a term not exceeding twelve months or to a fine not exceeding the statutory maximum (or both);
    - (ii) in Scotland or Northern Ireland, to imprisonment for a term not exceeding six months, or to a fine not exceeding the statutory maximum (or both).

## **573 Disapplication of pre-emption rights: sale of treasury shares**

- (1) This section applies in relation to a sale of shares that is an allotment of equity securities by virtue of [F6section 560(3)](sale of shares held by company as treasury shares).
- (2) The directors of a company may be given power by the articles, or by a special resolution of the company, to allot equity securities as if section 561 (existing shareholders' right of pre-emption)—

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- (a) did not apply to the allotment, or
  - (b) applied to the allotment with such modifications as the directors may determine.
- (3) The provisions of section 570(2) and (4) apply in that case as they apply to a case within subsection (1) of that section.
- (4) The company may by special resolution resolve that section 561—
- (a) shall not apply to a specified allotment of securities, or
  - (b) shall apply to the allotment with such modifications as may be specified in the resolution.
- (5) The provisions of section 571(2) and (4) to (7) apply in that case as they apply to a case within subsection (1) of that section.

#### **Textual Amendments**

- F6** Words in s. 573(1) substituted (1.10.2009) by [The Companies Act 2006 \(Allotment of Shares and Right of Pre-emption\) \(Amendment\) Regulations 2009 \(S.I. 2009/2561\)](#), **reg. 2(5)**

### *Supplementary*

#### **574 References to holder of shares in relation to offer**

- (1) In this Chapter, in relation to an offer to allot securities required by—
- (a) section 561 (existing shareholders' right of pre-emption), or
  - (b) any provision to which section 568 applies (articles conferring corresponding right),
- a reference (however expressed) to the holder of shares of any description is to whoever was the holder of shares of that description at the close of business on a date to be specified in the offer.
- (2) The specified date must fall within the period of 28 days immediately before the date of the offer.

#### **575 Saving for other restrictions on offer or allotment**

- (1) The provisions of this Chapter are without prejudice to any other enactment by virtue of which a company is prohibited (whether generally or in specified circumstances) from offering or allotting equity securities to any person.
- (2) Where a company cannot by virtue of such an enactment offer or allot equity securities to a holder of ordinary shares of the company, those shares are disregarded for the purposes of section 561 (existing shareholders' right of pre-emption), so that—
- (a) the person is not treated as a person who holds ordinary shares, and
  - (b) the shares are not treated as forming part of the ordinary share capital of the company.



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## **576 Saving for certain older pre-emption requirements**

- (1) In the case of a public company the provisions of this Chapter do not apply to an allotment of equity securities that are subject to a pre-emption requirement in relation to which section 96(1) of the Companies Act 1985 (c. 6) or Article 106(1) of the Companies (Northern Ireland) Order 1986 (S.I. 1986/1032 (N.I. 6)) applied immediately before the commencement of this Chapter.
- (2) In the case of a private company a pre-emption requirement to which section 96(3) of the Companies Act 1985 or Article 106(3) of the Companies (Northern Ireland) Order 1986 applied immediately before the commencement of this Chapter shall have effect, so long as the company remains a private company, as if it were contained in the company's articles.
- (3) A pre-emption requirement to which section 96(4) of the Companies Act 1985 or Article 106(4) of the Companies (Northern Ireland) Order 1986 applied immediately before the commencement of this section shall be treated for the purposes of this Chapter as if it were contained in the company's articles.

## **577 Provisions about pre-emption not applicable to shares taken on formation**

The provisions of this Chapter have no application in relation to the taking of shares by the subscribers to the memorandum on the formation of the company.

## **CHAPTER 4**

### PUBLIC COMPANIES: ALLOTMENT WHERE ISSUE NOT FULLY SUBSCRIBED

## **578 Public companies: allotment where issue not fully subscribed**

- (1) No allotment shall be made of shares of a public company offered for subscription unless—
  - (a) the issue is subscribed for in full, or
  - (b) the offer is made on terms that the shares subscribed for may be allotted—
    - (i) in any event, or
    - (ii) if specified conditions are met (and those conditions are met).
- (2) If shares are prohibited from being allotted by subsection (1) and 40 days have elapsed after the first making of the offer, all money received from applicants for shares must be repaid to them forthwith, without interest.
- (3) If any of the money is not repaid within 48 days after the first making of the offer, the directors of the company are jointly and severally liable to repay it, with interest at the rate for the time being specified under section 17 of the Judgments Act 1838 (c. 110) from the expiration of the 48th day.

A director is not so liable if he proves that the default in the repayment of the money was not due to any misconduct or negligence on his part.
- (4) This section applies in the case of shares offered as wholly or partly payable otherwise than in cash as it applies in the case of shares offered for subscription.
- (5) In that case—

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- (a) the references in subsection (1) to subscription shall be construed accordingly;
  - (b) references in subsections (2) and (3) to the repayment of money received from applicants for shares include—
    - (i) the return of any other consideration so received (including, if the case so requires, the release of the applicant from any undertaking), or
    - (ii) if it is not reasonably practicable to return the consideration, the payment of money equal to its value at the time it was so received;
  - (c) references to interest apply accordingly.
- (6) Any condition requiring or binding an applicant for shares to waive compliance with any requirement of this section is void.

### **579 Public companies: effect of irregular allotment where issue not fully subscribed**

- (1) An allotment made by a public company to an applicant in contravention of section 578 (public companies: allotment where issue not fully subscribed) is voidable at the instance of the applicant within one month after the date of the allotment, and not later.
- (2) It is so voidable even if the company is in the course of being wound up.
- (3) A director of a public company who knowingly contravenes, or permits or authorises the contravention of, any provision of section 578 with respect to allotment is liable to compensate the company and the allottee respectively for any loss, damages, costs or expenses that the company or allottee may have sustained or incurred by the contravention.
- (4) Proceedings to recover any such loss, damages, costs or expenses may not be brought more than two years after the date of the allotment.

## **CHAPTER 5**

### PAYMENT FOR SHARES

#### *General rules*

### **580 Shares not to be allotted at a discount**

- (1) A company's shares must not be allotted at a discount.
- (2) If shares are allotted in contravention of this section, the allottee is liable to pay the company an amount equal to the amount of the discount, with interest at the appropriate rate.

### **581 Provision for different amounts to be paid on shares**

A company, if so authorised by its articles, may—

- (a) make arrangements on the issue of shares for a difference between the shareholders in the amounts and times of payment of calls on their shares;
- (b) accept from any member the whole or part of the amount remaining unpaid on any shares held by him, although no part of that amount has been called up;

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- (c) pay a dividend in proportion to the amount paid up on each share where a larger amount is paid up on some shares than on others.

## **582 General rule as to means of payment**

- (1) Shares allotted by a company, and any premium on them, may be paid up in money or money's worth (including goodwill and know-how).
- (2) This section does not prevent a company—
  - (a) from allotting bonus shares to its members, or
  - (b) from paying up, with sums available for the purpose, any amounts for the time being unpaid on any of its shares (whether on account of the nominal value of the shares or by way of premium).
- (3) This section has effect subject to the following provisions of this Chapter (additional rules for public companies).

## **583 Meaning of payment in cash**

- (1) The following provisions have effect for the purposes of the Companies Acts.
- (2) A share in a company is deemed paid up (as to its nominal value or any premium on it) in cash, or allotted for cash, if the consideration received for the allotment or payment up is a cash consideration.
- (3) A “cash consideration” means—
  - (a) cash received by the company,
  - (b) a cheque received by the company in good faith that the directors have no reason for suspecting will not be paid,
  - (c) a release of a liability of the company for a liquidated sum,
  - (d) an undertaking to pay cash to the company at a future date, or
  - (e) payment by any other means giving rise to a present or future entitlement (of the company or a person acting on the company's behalf) to a payment, or credit equivalent to payment, in cash.
- (4) The Secretary of State may by order provide that particular means of payment specified in the order are to be regarded as falling within subsection (3)(e).
- (5) In relation to the allotment or payment up of shares in a company—
  - (a) the payment of cash to a person other than the company, or
  - (b) an undertaking to pay cash to a person other than the company,counts as consideration other than cash.

This does not apply for the purposes of Chapter 3 (allotment of equity securities: existing shareholders' right of pre-emption).

- (6) For the purpose of determining whether a share is or is to be allotted for cash, or paid up in cash, “cash” includes foreign currency.
- (7) An order under this section is subject to negative resolution procedure.

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### Commencement Information

- I9** S. 583 wholly in force at 1.10.2009; s. 583 not in force at Royal Assent, see s. 1300; s. 583 in force for specified purposes at 20.1.2007 by S.I. 2006/3428, **art. 3(3)** (subject to **art. 5, Sch. 1** and with **arts. 6, 8, Sch. 5**); s. 583 otherwise in force at 1.10.2009 by S.I. 2008/2860, **art. 3(k)** (with **arts. 5, 7, 8, Sch. 2**) (as amended by S.I. 2009/1802, **art. 18**)

### *Additional rules for public companies*

#### **584 Public companies: shares taken by subscribers of memorandum**

Shares taken by a subscriber to the memorandum of a public company in pursuance of an undertaking of his in the memorandum, and any premium on the shares, must be paid up in cash.

### Modifications etc. (not altering text)

- C4** Ss. 584-587 applied (1.10.2009) by The Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009 (S.I. 2009/1941), **art. 12(1), Sch. 3 para. 9** (with **art. 10**)
- C5** Ss. 584-587 applied (12.5.2011) by The Companies Act 2006 (Consequential Amendments and Transitional Provisions) Order 2011 (S.I. 2011/1265), **art. 5(1), Sch. 1 para. 9**

#### **585 Public companies: must not accept undertaking to do work or perform services**

- (1) A public company must not accept at any time, in payment up of its shares or any premium on them, an undertaking given by any person that he or another should do work or perform services for the company or any other person.
- (2) If a public company accepts such an undertaking in payment up of its shares or any premium on them, the holder of the shares when they or the premium are treated as paid up (in whole or in part) by the undertaking is liable—
  - (a) to pay the company in respect of those shares an amount equal to their nominal value, together with the whole of any premium or, if the case so requires, such proportion of that amount as is treated as paid up by the undertaking; and
  - (b) to pay interest at the appropriate rate on the amount payable under paragraph (a).
- (3) The reference in subsection (2) to the holder of shares includes a person who has an unconditional right—
  - (a) to be included in the company's register of members in respect of those shares, or
  - (b) to have an instrument of transfer of them executed in his favour.

### Modifications etc. (not altering text)

- C6** Ss. 584-587 applied (1.10.2009) by The Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009 (S.I. 2009/1941), **art. 12(1), Sch. 3 para. 9** (with **art. 10**)

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**C7** Ss. 584-587 applied (12.5.2011) by [The Companies Act 2006 \(Consequential Amendments and Transitional Provisions\) Order 2011 \(S.I. 2011/1265\)](#), art. 5(1), **Sch. 1 para. 9**

### **586 Public companies: shares must be at least one-quarter paid up**

- (1) A public company must not allot a share except as paid up at least as to one-quarter of its nominal value and the whole of any premium on it.
- (2) This does not apply to shares allotted in pursuance of an employees' share scheme.
- (3) If a company allots a share in contravention of this section—
  - (a) the share is to be treated as if one-quarter of its nominal value, together with the whole of any premium on it, had been received, and
  - (b) the allottee is liable to pay the company the minimum amount which should have been received in respect of the share under subsection (1) (less the value of any consideration actually applied in payment up, to any extent, of the share and any premium on it), with interest at the appropriate rate.
- (4) Subsection (3) does not apply to the allotment of bonus shares, unless the allottee knew or ought to have known the shares were allotted in contravention of this section.

#### **Modifications etc. (not altering text)**

- C8** Ss. 584-587 applied (1.10.2009) by [The Companies Act 2006 \(Consequential Amendments, Transitional Provisions and Savings\) Order 2009 \(S.I. 2009/1941\)](#), art. 12(1), **Sch. 3 para. 9** (with art. 10)
- C9** Ss. 584-587 applied (12.5.2011) by [The Companies Act 2006 \(Consequential Amendments and Transitional Provisions\) Order 2011 \(S.I. 2011/1265\)](#), art. 5(1), **Sch. 1 para. 9**

### **587 Public companies: payment by long-term undertaking**

- (1) A public company must not allot shares as fully or partly paid up (as to their nominal value or any premium on them) otherwise than in cash if the consideration for the allotment is or includes an undertaking which is to be, or may be, performed more than five years after the date of the allotment.
- (2) If a company allots shares in contravention of subsection (1), the allottee is liable to pay the company an amount equal to the aggregate of their nominal value and the whole of any premium (or, if the case so requires, so much of that aggregate as is treated as paid up by the undertaking), with interest at the appropriate rate.
- (3) Where a contract for the allotment of shares does not contravene subsection (1), any variation of the contract that has the effect that the contract would have contravened the subsection, if the terms of the contract as varied had been its original terms, is void.

This applies also to the variation by a public company of the terms of a contract entered into before the company was re-registered as a public company.

- (4) Where—
  - (a) a public company allots shares for a consideration which consists of or includes (in accordance with subsection (1)) an undertaking that is to be performed within five years of the allotment, and

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- (b) the undertaking is not performed within the period allowed by the contract for the allotment of the shares,  
 the allottee is liable to pay the company, at the end of the period so allowed, an amount equal to the aggregate of the nominal value of the shares and the whole of any premium (or, if the case so requires, so much of that aggregate as is treated as paid up by the undertaking), with interest at the appropriate rate.
- (5) References in this section to a contract for the allotment of shares include an ancillary contract relating to payment in respect of them.

**Modifications etc. (not altering text)**

- C10** Ss. 584-587 applied (1.10.2009) by [The Companies Act 2006 \(Consequential Amendments, Transitional Provisions and Savings\) Order 2009 \(S.I. 2009/1941\)](#), art. 12(1), **Sch. 3 para. 9** (with art. 10)
- C11** Ss. 584-587 applied (12.5.2011) by [The Companies Act 2006 \(Consequential Amendments and Transitional Provisions\) Order 2011 \(S.I. 2011/1265\)](#), art. 5(1), **Sch. 1 para. 9**

*Supplementary provisions*

**588 Liability of subsequent holders of shares**

- (1) If a person becomes a holder of shares in respect of which—
- (a) there has been a contravention of any provision of this Chapter, and
  - (b) by virtue of that contravention another is liable to pay any amount under the provision contravened,
- that person is also liable to pay that amount (jointly and severally with any other person so liable), subject as follows.
- (2) A person otherwise liable under subsection (1) is exempted from that liability if either—
- (a) he is a purchaser for value and, at the time of the purchase, he did not have actual notice of the contravention concerned, or
  - (b) he derived title to the shares (directly or indirectly) from a person who became a holder of them after the contravention and was not liable under subsection (1).
- (3) References in this section to a holder, in relation to shares in a company, include any person who has an unconditional right—
- (a) to be included in the company's register of members in respect of those shares, or
  - (b) to have an instrument of transfer of the shares executed in his favour.
- (4) This section applies in relation to a failure to carry out a term of a contract as mentioned in section 587(4) (public companies: payment by long-term undertaking) as it applies in relation to a contravention of a provision of this Chapter.

**589 Power of court to grant relief**

- (1) This section applies in relation to liability under—

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section 585(2) (liability of allottee in case of breach by public company of prohibition on accepting undertaking to do work or perform services),  
section 587(2) or (4) (liability of allottee in case of breach by public company of prohibition on payment by long-term undertaking), or  
section 588 (liability of subsequent holders of shares),  
as it applies in relation to a contravention of those sections.

- (2) A person who—
- (a) is subject to any such liability to a company in relation to payment in respect of shares in the company, or
  - (b) is subject to any such liability to a company by virtue of an undertaking given to it in, or in connection with, payment for shares in the company,
- may apply to the court to be exempted in whole or in part from the liability.
- (3) In the case of a liability within subsection (2)(a), the court may exempt the applicant from the liability only if and to the extent that it appears to the court just and equitable to do so having regard to—
- (a) whether the applicant has paid, or is liable to pay, any amount in respect of—
    - (i) any other liability arising in relation to those shares under any provision of this Chapter or Chapter 6, or
    - (ii) any liability arising by virtue of any undertaking given in or in connection with payment for those shares;
  - (b) whether any person other than the applicant has paid or is likely to pay, whether in pursuance of any order of the court or otherwise, any such amount;
  - (c) whether the applicant or any other person—
    - (i) has performed in whole or in part, or is likely so to perform any such undertaking, or
    - (ii) has done or is likely to do any other thing in payment or part payment for the shares.
- (4) In the case of a liability within subsection (2)(b), the court may exempt the applicant from the liability only if and to the extent that it appears to the court just and equitable to do so having regard to—
- (a) whether the applicant has paid or is liable to pay any amount in respect of liability arising in relation to the shares under any provision of this Chapter or Chapter 6;
  - (b) whether any person other than the applicant has paid or is likely to pay, whether in pursuance of any order of the court or otherwise, any such amount.
- (5) In determining whether it should exempt the applicant in whole or in part from any liability, the court must have regard to the following overriding principles—
- (a) a company that has allotted shares should receive money or money's worth at least equal in value to the aggregate of the nominal value of those shares and the whole of any premium or, if the case so requires, so much of that aggregate as is treated as paid up;
  - (b) subject to that, where a company would, if the court did not grant the exemption, have more than one remedy against a particular person, it should be for the company to decide which remedy it should remain entitled to pursue.
- (6) If a person brings proceedings against another (“the contributor”) for a contribution in respect of liability to a company arising under any provision of this Chapter or Chapter

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6 and it appears to the court that the contributor is liable to make such a contribution, the court may, if and to the extent that it appears to it just and equitable to do so having regard to the respective culpability (in respect of the liability to the company) of the contributor and the person bringing the proceedings—

- (a) exempt the contributor in whole or in part from his liability to make such a contribution, or
- (b) order the contributor to make a larger contribution than, but for this subsection, he would be liable to make.

### **590 Penalty for contravention of this Chapter**

- (1) If a company contravenes any of the provisions of this Chapter, an offence is committed by—
  - (a) the company, and
  - (b) every officer of the company who is in default.
- (2) A person guilty of an offence under this section is liable—
  - (a) on conviction on indictment, to a fine;
  - (b) on summary conviction, to a fine not exceeding the statutory maximum.

### **591 Enforceability of undertakings to do work etc**

- (1) An undertaking given by any person, in or in connection with payment for shares in a company, to do work or perform services or to do any other thing, if it is enforceable by the company apart from this Chapter, is so enforceable notwithstanding that there has been a contravention in relation to it of a provision of this Chapter or Chapter 6.
- (2) This is without prejudice to section 589 (power of court to grant relief etc in respect of liabilities).

### **592 The appropriate rate of interest**

- (1) For the purposes of this Chapter the “appropriate rate” of interest is 5% per annum or such other rate as may be specified by order made by the Secretary of State.
- (2) An order under this section is subject to negative resolution procedure.

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#### **Commencement Information**

**I10** S. 592 wholly in force at 1.10.2009; s. 592 not in force at Royal Assent, see s. 1300; s. 592 in force for specified purposes at 20.1.2007 by S.I. 2006/3428, art. 3(3) (subject to art. 5, Sch. 1 and with arts. 6, 8, Sch. 5); s. 592 otherwise in force at 1.10.2009 by S.I. 2008/2860, art. 3(k) (with arts. 5, 7, 8, Sch. 2) (as amended by S.I. 2009/1802, art. 18)



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## CHAPTER 6

### PUBLIC COMPANIES: INDEPENDENT VALUATION OF NON-CASH CONSIDERATION

#### *Non-cash consideration for shares*

#### **593 Public company: valuation of non-cash consideration for shares**

- (1) A public company must not allot shares as fully or partly paid up (as to their nominal value or any premium on them) otherwise than in cash unless—
- (a) the consideration for the allotment has been independently valued in accordance with the provisions of this Chapter,
  - (b) the valuer's report has been made to the company during the six months immediately preceding the allotment of the shares, and
  - (c) a copy of the report has been sent to the proposed allottee.

- (2) For this purpose the application of an amount standing to the credit of—

- (a) any of a company's reserve accounts, or
- (b) its profit and loss account,

in paying up (to any extent) shares allotted to members of the company, or premiums on shares so allotted, does not count as consideration for the allotment.

Accordingly, subsection (1) does not apply in that case.

- (3) If a company allots shares in contravention of subsection (1) and either—

- (a) the allottee has not received the valuer's report required to be sent to him, or
- (b) there has been some other contravention of the requirements of this section or section 596 that the allottee knew or ought to have known amounted to a contravention,

the allottee is liable to pay the company an amount equal to the aggregate of the nominal value of the shares and the whole of any premium (or, if the case so requires, so much of that aggregate as is treated as paid up by the consideration), with interest at the appropriate rate.

- (4) This section has effect subject to—

- section 594 (exception to valuation requirement: arrangement with another company), and
- section 595 (exception to valuation requirement: merger).

#### **594 Exception to valuation requirement: arrangement with another company**

- (1) Section 593 (valuation of non-cash consideration) does not apply to the allotment of shares by a company (“company A”) in connection with an arrangement to which this section applies.
- (2) This section applies to an arrangement for the allotment of shares in company A on terms that the whole or part of the consideration for the shares allotted is to be provided by—
- (a) the transfer to that company, or
  - (b) the cancellation,

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of all or some of the shares, or of all or some of the shares of a particular class, in another company (“company B”).

- (3) It is immaterial whether the arrangement provides for the issue to company A of shares, or shares of any particular class, in company B.
- (4) This section applies to an arrangement only if under the arrangement it is open to all the holders of the shares in company B (or, where the arrangement applies only to shares of a particular class, to all the holders of shares of that class) to take part in the arrangement.
- (5) In determining whether that is the case, the following shall be disregarded—
  - (a) shares held by or by a nominee of company A;
  - (b) shares held by or by a nominee of a company which is—
    - (i) the holding company, or a subsidiary, of company A, or
    - (ii) a subsidiary of such a holding company;
  - (c) shares held as treasury shares by company B.
- (6) In this section—
  - (a) “arrangement” means any agreement, scheme or arrangement (including an arrangement sanctioned in accordance with—
    - (i) Part 26 (arrangements and reconstructions), or
    - (ii) section 110 of the Insolvency Act 1986 (c. 45) or Article 96 of the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)) (liquidator in winding up accepting shares as consideration for sale of company property)), and
  - (b) “company”, except in reference to company A, includes any body corporate.

#### **595 Exception to valuation requirement: merger**

- (1) Section 593 (valuation of non-cash consideration) does not apply to the allotment of shares by a company in connection with a proposed merger with another company.
- (2) A proposed merger is where one of the companies proposes to acquire all the assets and liabilities of the other in exchange for the issue of shares or other securities of that one to shareholders of the other, with or without any cash payment to shareholders.
- (3) In this section “company”, in reference to the other company, includes any body corporate.

#### **596 Non-cash consideration for shares: requirements as to valuation and report**

- (1) The provisions of sections 1150 to 1153 (general provisions as to independent valuation and report) apply to the valuation and report required by section 593 (public company: valuation of non-cash consideration for shares).
- (2) The valuer's report must state—
  - (a) the nominal value of the shares to be wholly or partly paid for by the consideration in question;
  - (b) the amount of any premium payable on the shares;
  - (c) the description of the consideration and, as respects so much of the consideration as he himself has valued, a description of that part of the consideration, the method used to value it and the date of the valuation;

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- (d) the extent to which the nominal value of the shares and any premium are to be treated as paid up—
  - (i) by the consideration;
  - (ii) in cash.
- (3) The valuer's report must contain or be accompanied by a note by him—
  - (a) in the case of a valuation made by a person other than himself, that it appeared to himself reasonable to arrange for it to be so made or to accept a valuation so made,
  - (b) whoever made the valuation, that the method of valuation was reasonable in all the circumstances,
  - (c) that it appears to the valuer that there has been no material change in the value of the consideration in question since the valuation, and
  - (d) that, on the basis of the valuation, the value of the consideration, together with any cash by which the nominal value of the shares or any premium payable on them is to be paid up, is not less than so much of the aggregate of the nominal value and the whole of any such premium as is treated as paid up by the consideration and any such cash.
- (4) Where the consideration to be valued is accepted partly in payment up of the nominal value of the shares and any premium and partly for some other consideration given by the company, section 593 and the preceding provisions of this section apply as if references to the consideration accepted by the company included the proportion of that consideration that is properly attributable to the payment up of that value and any premium.
- (5) In such a case—
  - (a) the valuer must carry out, or arrange for, such other valuations as will enable him to determine that proportion, and
  - (b) his report must state what valuations have been made under this subsection and also the reason for, and method and date of, any such valuation and any other matters which may be relevant to that determination.

## **597 Copy of report to be delivered to registrar**

- (1) A company to which a report is made under section 593 as to the value of any consideration for which, or partly for which, it proposes to allot shares must deliver a copy of the report to the registrar for registration.
- (2) The copy must be delivered at the same time that the company files the return of the allotment of those shares under section 555 (return of allotment by limited company).
- (3) If default is made in complying with subsection (1) or (2), an offence is committed by every officer of the company who is in default.
- (4) A person guilty of an offence under this section is liable—
  - (a) on conviction on indictment, to a fine;
  - (b) on summary conviction, to a fine not exceeding the statutory maximum and, for continued contravention, a daily default fine not exceeding one-tenth of the statutory maximum.
- (5) In the case of default in delivering to the registrar any document as required by this section, any person liable for the default may apply to the court for relief.

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- (6) The court, if satisfied—
- (a) that the omission to deliver the document was accidental or due to inadvertence, or
  - (b) that it is just and equitable to grant relief,
- may make an order extending the time for delivery of the document for such period as the court thinks proper.

*Transfer of non-cash asset in initial period*

**598 Public company: agreement for transfer of non-cash asset in initial period**

- (1) A public company formed as such must not enter into an agreement—
  - (a) with a person who is a subscriber to the company's memorandum,
  - (b) for the transfer by him to the company, or another, before the end of the company's initial period of one or more non-cash assets, and
  - (c) under which the consideration for the transfer to be given by the company is at the time of the agreement equal in value to one-tenth or more of the company's issued share capital,
 unless the conditions referred to below have been complied with.
- (2) The company's "initial period" means the period of two years beginning with the date of the company being issued with a certificate under section 761 (trading certificate).
- (3) The conditions are those specified in—
  - section 599 (requirement of independent valuation), and
  - section 601 (requirement of approval by members).
- (4) This section does not apply where—
  - (a) it is part of the company's ordinary business to acquire, or arrange for other persons to acquire, assets of a particular description, and
  - (b) the agreement is entered into by the company in the ordinary course of that business.
- (5) This section does not apply to an agreement entered into by the company under the supervision of the court or of an officer authorised by the court for the purpose.

**599 Agreement for transfer of non-cash asset: requirement of independent valuation**

- (1) The following conditions must have been complied with—
  - (a) the consideration to be received by the company, and any consideration other than cash to be given by the company, must have been independently valued in accordance with the provisions of this Chapter,
  - (b) the valuer's report must have been made to the company during the six months immediately preceding the date of the agreement, and
  - (c) a copy of the report must have been sent to the other party to the proposed agreement not later than the date on which copies have to be circulated to members under section 601(3).

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- (2) The reference in subsection (1)(a) to the consideration to be received by the company is to the asset to be transferred to it or, as the case may be, to the advantage to the company of the asset's transfer to another person.
- (3) The reference in subsection (1)(c) to the other party to the proposed agreement is to the person referred to in section 598(1)(a).

If he has received a copy of the report under section 601 in his capacity as a member of the company, it is not necessary to send another copy under this section.
- (4) This section does not affect any requirement to value any consideration for purposes of section 593 (valuation of non-cash consideration for shares).

### **600 Agreement for transfer of non-cash asset: requirements as to valuation and report**

- (1) The provisions of sections 1150 to 1153 (general provisions as to independent valuation and report) apply to the valuation and report required by section 599 (public company: transfer of non-cash asset).
- (2) The valuer's report must state—
  - (a) the consideration to be received by the company, describing the asset in question (specifying the amount to be received in cash) and the consideration to be given by the company (specifying the amount to be given in cash), and
  - (b) the method and date of valuation.
- (3) The valuer's report must contain or be accompanied by a note by him—
  - (a) in the case of a valuation made by a person other than himself, that it appeared to himself reasonable to arrange for it to be so made or to accept a valuation so made,
  - (b) whoever made the valuation, that the method of valuation was reasonable in all the circumstances,
  - (c) that it appears to the valuer that there has been no material change in the value of the consideration in question since the valuation, and
  - (d) that, on the basis of the valuation, the value of the consideration to be received by the company is not less than the value of the consideration to be given by it.
- (4) Any reference in section 599 or this section to consideration given for the transfer of an asset includes consideration given partly for its transfer.
- (5) In such a case—
  - (a) the value of any consideration partly so given is to be taken as the proportion of the consideration properly attributable to its transfer,
  - (b) the valuer must carry out or arrange for such valuations of anything else as will enable him to determine that proportion, and
  - (c) his report must state what valuations have been made for that purpose and also the reason for and method and date of any such valuation and any other matters which may be relevant to that determination.

### **601 Agreement for transfer of non-cash asset: requirement of approval by members**

- (1) The following conditions must have been complied with—

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- (a) the terms of the agreement must have been approved by an ordinary resolution of the company,
  - [<sup>F7</sup>(b) copies of the valuer's report must have been circulated to the members entitled to notice of the meeting at which the resolution is proposed, not later than the date on which notice of the meeting is given, and]
  - (c) a copy of the proposed resolution must have been sent to the other party to the proposed agreement.
- (2) The reference in subsection (1)(c) to the other party to the proposed agreement is to the person referred to in section 598(1)(a).
- (3) <sup>F8</sup> .....

#### Textual Amendments

- F7** S. 601(1)(b) substituted (1.10.2009) by The Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009 (S.I. 2009/1941), art. 2(1), **Sch. 1 para. 260(3)(a)** (with art. 10)
- F8** S. 601(3) omitted (1.10.2009) by virtue of The Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009 (S.I. 2009/1941), art. 2(1), **Sch. 1 para. 260(3)(b)** (with art. 10)

### 602 Copy of resolution to be delivered to registrar

- (1) A company that has passed a resolution under section 601 with respect to the transfer of an asset must, within 15 days of doing so, deliver to the registrar a copy of the resolution together with the valuer's report required by that section.
- (2) If a company fails to comply with subsection (1), an offence is committed by—
- (a) the company, and
  - (b) every officer of the company who is in default.
- (3) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, to a daily default fine not exceeding one-tenth of level 3 on the standard scale.

### 603 Adaptation of provisions in relation to company re-registering as public

The provisions of sections 598 to 602 (public companies: transfer of non-cash assets) apply with the following adaptations in relation to a company re-registered as a public company—

- (a) the reference in section 598(1)(a) to a person who is a subscriber to the company's memorandum shall be read as a reference to a person who is a member of the company on the date of re-registration;
- (b) the reference in section 598(2) to the date of the company being issued with a certificate under section 761 (trading certificate) shall be read as a reference to the date of re-registration.

### 604 Agreement for transfer of non-cash asset: effect of contravention

- (1) This section applies where a public company enters into an agreement in contravention of section 598 and either—

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- (a) the other party to the agreement has not received the valuer's report required to be sent to him, or
  - (b) there has been some other contravention of the requirements of this Chapter that the other party to the agreement knew or ought to have known amounted to a contravention.
- (2) In those circumstances—
- (a) the company is entitled to recover from that person any consideration given by it under the agreement, or an amount equal to the value of the consideration at the time of the agreement, and
  - (b) the agreement, so far as not carried out, is void.
- (3) If the agreement is or includes an agreement for the allotment of shares in the company, then—
- (a) whether or not the agreement also contravenes section 593 (valuation of non-cash consideration for shares), this section does not apply to it in so far as it is for the allotment of shares, and
  - (b) the allottee is liable to pay the company an amount equal to the aggregate of the nominal value of the shares and the whole of any premium (or, if the case so requires, so much of that aggregate as is treated as paid up by the consideration), with interest at the appropriate rate.

#### *Supplementary provisions*

### **605 Liability of subsequent holders of shares**

- (1) If a person becomes a holder of shares in respect of which—
- (a) there has been a contravention of section 593 (public company: valuation of non-cash consideration for shares), and
  - (b) by virtue of that contravention another is liable to pay any amount under the provision contravened,
- that person is also liable to pay that amount (jointly and severally with any other person so liable), unless he is exempted from liability under subsection (3) below.
- (2) If a company enters into an agreement in contravention of section 598 (public company: agreement for transfer of non-cash asset in initial period) and—
- (a) the agreement is or includes an agreement for the allotment of shares in the company,
  - (b) a person becomes a holder of shares allotted under the agreement, and
  - (c) by virtue of the agreement and allotment under it another person is liable to pay an amount under section 604,
- the person who becomes the holder of the shares is also liable to pay that amount (jointly and severally with any other person so liable), unless he is exempted from liability under subsection (3) below.
- This applies whether or not the agreement also contravenes section 593.
- (3) A person otherwise liable under subsection (1) or (2) is exempted from that liability if either—
- (a) he is a purchaser for value and, at the time of the purchase, he did not have actual notice of the contravention concerned, or

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- (b) he derived title to the shares (directly or indirectly) from a person who became a holder of them after the contravention and was not liable under subsection (1) or (2).
- (4) References in this section to a holder, in relation to shares in a company, include any person who has an unconditional right—
- (a) to be included in the company's register of members in respect of those shares, or
  - (b) to have an instrument of transfer of the shares executed in his favour.

### 606 Power of court to grant relief

- (1) A person who—
- (a) is liable to a company under any provision of this Chapter in relation to payment in respect of any shares in the company, or
  - (b) is liable to a company by virtue of an undertaking given to it in, or in connection with, payment for any shares in the company,
- may apply to the court to be exempted in whole or in part from the liability.
- (2) In the case of a liability within subsection (1)(a), the court may exempt the applicant from the liability only if and to the extent that it appears to the court just and equitable to do so having regard to—
- (a) whether the applicant has paid, or is liable to pay, any amount in respect of—
    - (i) any other liability arising in relation to those shares under any provision of this Chapter or Chapter 5, or
    - (ii) any liability arising by virtue of any undertaking given in or in connection with payment for those shares;
  - (b) whether any person other than the applicant has paid or is likely to pay, whether in pursuance of any order of the court or otherwise, any such amount;
  - (c) whether the applicant or any other person—
    - (i) has performed in whole or in part, or is likely so to perform any such undertaking, or
    - (ii) has done or is likely to do any other thing in payment or part payment for the shares.
- (3) In the case of a liability within subsection (1)(b), the court may exempt the applicant from the liability only if and to the extent that it appears to the court just and equitable to do so having regard to—
- (a) whether the applicant has paid or is liable to pay any amount in respect of liability arising in relation to the shares under any provision of this Chapter or Chapter 5;
  - (b) whether any person other than the applicant has paid or is likely to pay, whether in pursuance of any order of the court or otherwise, any such amount.
- (4) In determining whether it should exempt the applicant in whole or in part from any liability, the court must have regard to the following overriding principles—
- (a) that a company that has allotted shares should receive money or money's worth at least equal in value to the aggregate of the nominal value of those shares and the whole of any premium or, if the case so requires, so much of that aggregate as is treated as paid up;



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- (b) subject to this, that where such a company would, if the court did not grant the exemption, have more than one remedy against a particular person, it should be for the company to decide which remedy it should remain entitled to pursue.
- (5) If a person brings proceedings against another (“the contributor”) for a contribution in respect of liability to a company arising under any provision of this Chapter or Chapter 5 and it appears to the court that the contributor is liable to make such a contribution, the court may, if and to the extent that it appears to it, just and equitable to do so having regard to the respective culpability (in respect of the liability to the company) of the contributor and the person bringing the proceedings—
- (a) exempt the contributor in whole or in part from his liability to make such a contribution, or
  - (b) order the contributor to make a larger contribution than, but for this subsection, he would be liable to make.
- (6) Where a person is liable to a company under section 604(2) (agreement for transfer of non-cash asset: effect of contravention), the court may, on application, exempt him in whole or in part from that liability if and to the extent that it appears to the court to be just and equitable to do so having regard to any benefit accruing to the company by virtue of anything done by him towards the carrying out of the agreement mentioned in that subsection.

#### **607 Penalty for contravention of this Chapter**

- (1) This section applies where a company contravenes—  
section 593 (public company allotting shares for non-cash consideration), or  
section 598 (public company entering into agreement for transfer of non-cash asset).
- (2) An offence is committed by—  
(a) the company, and  
(b) every officer of the company who is in default.
- (3) A person guilty of an offence under this section is liable—  
(a) on conviction on indictment, to a fine;  
(b) on summary conviction, to a fine not exceeding the statutory maximum.

#### **608 Enforceability of undertakings to do work etc**

- (1) An undertaking given by any person, in or in connection with payment for shares in a company, to do work or perform services or to do any other thing, if it is enforceable by the company apart from this Chapter, is so enforceable notwithstanding that there has been a contravention in relation to it of a provision of this Chapter or Chapter 5.
- (2) This is without prejudice to section 606 (power of court to grant relief etc in respect of liabilities).

#### **609 The appropriate rate of interest**

- (1) For the purposes of this Chapter the “appropriate rate” of interest is 5% per annum or such other rate as may be specified by order made by the Secretary of State.
- (2) An order under this section is subject to negative resolution procedure.

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### Commencement Information

- I11** S. 609 wholly in force at 1.10.2009; s. 609 not in force at Royal Assent, see s. 1300; s. 609 in force for specified purposes at 20.1.2007 by S.I. 2006/3428, **art. 3(3)** (subject to art. 5, Sch. 1 and with arts. 6, 8, Sch. 5); s. 609 otherwise in force at 1.10.2009 by S.I. 2008/2860, **art. 3(k)** (with arts. 5, 7, 8, Sch. 2) (as amended by S.I. 2009/1802, art. 18)

## CHAPTER 7

### SHARE PREMIUMS

#### *The share premium account*

### 610 Application of share premiums

- (1) If a company issues shares at a premium, whether for cash or otherwise, a sum equal to the aggregate amount or value of the premiums on those shares must be transferred to an account called “the share premium account”.
- (2) Where, on issuing shares, a company has transferred a sum to the share premium account, it may use that sum to write off—
  - (a) the expenses of the issue of those shares;
  - (b) any commission paid on the issue of those shares.
- (3) The company may use the share premium account to pay up new shares to be allotted to members as fully paid bonus shares.
- (4) Subject to subsections (2) and (3), the provisions of the Companies Acts relating to the reduction of a company's share capital apply as if the share premium account were part of its paid up share capital.
- (5) This section has effect subject to—
  - section 611 (group reconstruction relief);
  - section 612 (merger relief);
  - section 614 (power to make further provisions by regulations).
- (6) In this Chapter “the issuing company” means the company issuing shares as mentioned in subsection (1) above.

### Commencement Information

- I12** S. 610 wholly in force at 1.10.2009; s. 610 not in force at Royal Assent see s. 1300; s. 610(2)-(4) in force for specified purposes at 1.10.2008 by S.I. 2008/1886, **art. 2** (with arts 6, 7); s. 610 in force at 1.10.2009 in so far as not already in force by S.I. 2008/2860, **art. 3(k)** (with arts. 5, 7, 8, Sch. 2) (as amended by S.I. 2009/1802, art. 18)

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### *Relief from requirements as to share premiums*

#### **611 Group reconstruction relief**

- (1) This section applies where the issuing company—
  - (a) is a wholly-owned subsidiary of another company (“the holding company”),  
and
  - (b) allots shares—
    - (i) to the holding company, or
    - (ii) to another wholly-owned subsidiary of the holding company,  
in consideration for the transfer to the issuing company of non-cash assets of a company (“the transferor company”) that is a member of the group of companies that comprises the holding company and all its wholly-owned subsidiaries.
- (2) Where the shares in the issuing company allotted in consideration for the transfer are issued at a premium, the issuing company is not required by section 610 to transfer any amount in excess of the minimum premium value to the share premium account.
- (3) The minimum premium value means the amount (if any) by which the base value of the consideration for the shares allotted exceeds the aggregate nominal value of the shares.
- (4) The base value of the consideration for the shares allotted is the amount by which the base value of the assets transferred exceeds the base value of any liabilities of the transferor company assumed by the issuing company as part of the consideration for the assets transferred.
- (5) For the purposes of this section—
  - (a) the base value of assets transferred is taken as—
    - (i) the cost of those assets to the transferor company, or
    - (ii) if less, the amount at which those assets are stated in the transferor company's accounting records immediately before the transfer;
  - (b) the base value of the liabilities assumed is taken as the amount at which they are stated in the transferor company's accounting records immediately before the transfer.

#### **612 Merger relief**

- (1) This section applies where the issuing company has secured at least a 90% equity holding in another company in pursuance of an arrangement providing for the allotment of equity shares in the issuing company on terms that the consideration for the shares allotted is to be provided—
  - (a) by the issue or transfer to the issuing company of equity shares in the other company, or
  - (b) by the cancellation of any such shares not held by the issuing company.
- (2) If the equity shares in the issuing company allotted in pursuance of the arrangement in consideration for the acquisition or cancellation of equity shares in the other company are issued at a premium, section 610 does not apply to the premiums on those shares.
- (3) Where the arrangement also provides for the allotment of any shares in the issuing company on terms that the consideration for those shares is to be provided—

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- (a) by the issue or transfer to the issuing company of non-equity shares in the other company, or
- (b) by the cancellation of any such shares in that company not held by the issuing company,

relief under subsection (2) extends to any shares in the issuing company allotted on those terms in pursuance of the arrangement.

- (4) This section does not apply in a case falling within section 611 (group reconstruction relief).

### **613 Merger relief: meaning of 90% equity holding**

- (1) The following provisions have effect to determine for the purposes of section 612 (merger relief) whether a company (“company A”) has secured at least a 90% equity holding in another company (“company B”) in pursuance of such an arrangement as is mentioned in subsection (1) of that section.
- (2) Company A has secured at least a 90% equity holding in company B if in consequence of an acquisition or cancellation of equity shares in company B (in pursuance of that arrangement) it holds equity shares in company B of an aggregate amount equal to 90% or more of the nominal value of that company's equity share capital.
- (3) For this purpose—
  - (a) it is immaterial whether any of those shares were acquired in pursuance of the arrangement; and
  - (b) shares in company B held by the company as treasury shares are excluded in determining the nominal value of company B's share capital.
- (4) Where the equity share capital of company B is divided into different classes of shares, company A is not regarded as having secured at least a 90% equity holding in company B unless the requirements of subsection (2) are met in relation to each of those classes of shares taken separately.
- (5) For the purposes of this section shares held by—
  - (a) a company that is company A's holding company or subsidiary, or
  - (b) a subsidiary of company A's holding company, or
  - (c) its or their nominees,
 are treated as held by company A.

### **614 Power to make further provision by regulations**

- (1) The Secretary of State may by regulations make such provision as he thinks appropriate—
  - (a) for relieving companies from the requirements of section 610 (application of share premiums) in relation to premiums other than cash premiums;
  - (b) for restricting or otherwise modifying any relief from those requirements provided by this Chapter.
- (2) Regulations under this section are subject to affirmative resolution procedure.

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### Commencement Information

- 113** S. 614 wholly in force at 1.10.2009; s. 614 not in force at Royal Assent, see s. 1300; s. 614 in force for specified purposes at 20.1.2007 by S.I. 2006/3428, **art. 3(3)** (subject to art. 5, Sch. 1 and with arts. 6, 8, Sch. 5); s. 614 otherwise in force at 1.10.2009 by S.I. 2008/2860, **art. 3(k)** (with arts. 5, 7, 8, Sch. 2) (as amended by S.I. 2009/1802, art. 18)

## 615 Relief may be reflected in company's balance sheet

An amount corresponding to the amount representing the premiums, or part of the premiums, on shares issued by a company that by virtue of any relief under this Chapter is not included in the company's share premium account may also be disregarded in determining the amount at which any shares or other consideration provided for the shares issued is to be included in the company's balance sheet.

### *Supplementary provisions*

## 616 Interpretation of this Chapter

(1) In this Chapter—

“arrangement” means any agreement, scheme or arrangement (including an arrangement sanctioned in accordance with—

- (a) Part 26 (arrangements and reconstructions), or
- (b) section 110 of the Insolvency Act 1986 (c. 45) or Article 96 of the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)) (liquidator in winding up accepting shares as consideration for sale of company property));

“company”, except in reference to the issuing company, includes any body corporate;

“equity shares” means shares comprised in a company's equity share capital, and “non-equity shares” means shares (of any class) that are not so comprised;

“the issuing company” has the meaning given by section 610(6).

(2) References in this Chapter (however expressed) to—

- (a) the acquisition by a company of shares in another company, and
  - (b) the issue or allotment of shares to, or the transfer of shares to or by, a company,
- include (respectively) the acquisition of shares by, and the issue or allotment or transfer of shares to or by, a nominee of that company.

The reference in section 611 to the transferor company shall be read accordingly.

(3) References in this Chapter to the transfer of shares in a company include the transfer of a right to be included in the company's register of members in respect of those shares.

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## CHAPTER 8

### ALTERATION OF SHARE CAPITAL

#### *How share capital may be altered*

#### **617 Alteration of share capital of limited company**

- (1) A limited company having a share capital may not alter its share capital except in the following ways.
- (2) The company may—
  - (a) increase its share capital by allotting new shares in accordance with this Part, or
  - (b) reduce its share capital in accordance with Chapter 10.
- (3) The company may—
  - (a) sub-divide or consolidate all or any of its share capital in accordance with section 618, or
  - (b) reconvert stock into shares in accordance with section 620.
- (4) The company may redenominate all or any of its shares in accordance with section 622, and may reduce its share capital in accordance with section 626 in connection with such a redenomination.
- (5) Nothing in this section affects—
  - (a) the power of a company to purchase its own shares, or to redeem shares, in accordance with Part 18;
  - (b) the power of a company to purchase its own shares in pursuance of an order of the court under—
    - (i) section 98 (application to court to cancel resolution for re-registration as a private company),
    - (ii) section 721(6) (powers of court on objection to redemption or purchase of shares out of capital),
    - (iii) section 759 (remedial order in case of breach of prohibition of public offers by private company), or
    - (iv) Part 30 (protection of members against unfair prejudice);
  - (c) the forfeiture of shares, or the acceptance of shares surrendered in lieu, in pursuance of the company's articles, for failure to pay any sum payable in respect of the shares;
  - (d) the cancellation of shares under section 662 (duty to cancel shares held by or for a public company);
  - (e) the power of a company—
    - (i) to enter into a compromise or arrangement in accordance with Part 26 (arrangements and reconstructions), or
    - (ii) to do anything required to comply with an order of the court on an application under that Part.

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### *Subdivision or consolidation of shares*

#### **618 Sub-division or consolidation of shares**

- (1) A limited company having a share capital may—
  - (a) sub-divide its shares, or any of them, into shares of a smaller nominal amount than its existing shares, or
  - (b) consolidate and divide all or any of its share capital into shares of a larger nominal amount than its existing shares.
- (2) In any sub-division, consolidation or division of shares under this section, the proportion between the amount paid and the amount (if any) unpaid on each resulting share must be the same as it was in the case of the share from which that share is derived.
- (3) A company may exercise a power conferred by this section only if its members have passed a resolution authorising it to do so.
- (4) A resolution under subsection (3) may authorise a company—
  - (a) to exercise more than one of the powers conferred by this section;
  - (b) to exercise a power on more than one occasion;
  - (c) to exercise a power at a specified time or in specified circumstances.
- (5) The company's articles may exclude or restrict the exercise of any power conferred by this section.

#### **619 Notice to registrar of sub-division or consolidation**

- (1) If a company exercises the power conferred by section 618 (sub-division or consolidation of shares) it must within one month after doing so give notice to the registrar, specifying the shares affected.
- (2) The notice must be accompanied by a statement of capital.
- (3) The statement of capital must state with respect to the company's share capital immediately following the exercise of the power—
  - (a) the total number of shares of the company,
  - (b) the aggregate nominal value of those shares,
  - (c) for each class of shares—
    - (i) prescribed particulars of the rights attached to the shares,
    - (ii) the total number of shares of that class, and
    - (iii) the aggregate nominal value of shares of that class, and
  - (d) 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).
- (4) If default is made in complying with this section, an offence is committed by—
  - (a) the company, and
  - (b) every officer of the company who is in default.
- (5) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.

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### Commencement Information

**I14** S. 619 wholly in force at 1.10.2009; s. 619 not in force at Royal Assent, see s. 1300; s. 619 in force for specified purposes at 20.1.2007 by S.I. 2006/3428, art. 3(3) (subject to art. 5, Sch. 1 and with arts. 6, 8, Sch. 5); s. 614 otherwise in force at 1.10.2009 by S.I. 2008/2860, art. 3(k) (with arts. 5, 7, 8, Sch. 2) (as amended by S.I. 2009/1802, art. 18)

## *Reconversion of stock into shares*

### 620 Reconversion of stock into shares

- (1) A limited company that has converted paid-up shares into stock (before the repeal by this Act of the power to do so) may reconvert that stock into paid-up shares of any nominal value.
- (2) A company may exercise the power conferred by this section only if its members have passed an ordinary resolution authorising it to do so.
- (3) A resolution under subsection (2) may authorise a company to exercise the power conferred by this section—
  - (a) on more than one occasion;
  - (b) at a specified time or in specified circumstances.

### 621 Notice to registrar of reconversion of stock into shares

- (1) If a company exercises a power conferred by section 620 (reconversion of stock into shares) it must within one month after doing so give notice to the registrar, specifying the stock affected.
- (2) The notice must be accompanied by a statement of capital.
- (3) The statement of capital must state with respect to the company's share capital immediately following the exercise of the power—
  - (a) the total number of shares of the company,
  - (b) the aggregate nominal value of those shares,
  - (c) for each class of shares—
    - (i) prescribed particulars of the rights attached to the shares,
    - (ii) the total number of shares of that class, and
    - (iii) the aggregate nominal value of shares of that class, and
  - (d) 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).
- (4) If default is made in complying with this section, an offence is committed by—
  - (a) the company, and
  - (b) every officer of the company who is in default.
- (5) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.



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### Commencement Information

**I15** S. 621 wholly in force at 1.10.2009; s. 621 not in force at Royal Assent, see s. 1300; s. 621 in force for specified purposes at 20.1.2007 by S.I. 2006/3428, **art. 3(3)** (subject to **art. 5**, **Sch. 1** and with **arts. 6**, **8**, **Sch. 5**); s. 621 otherwise in force at 1.10.2009 by S.I. 2008/2860, **art. 3(k)** (with **arts. 5**, **7**, **8**, **Sch. 2**) (as amended by S.I. 2009/1802, **art. 18**)

## *Redenomination of share capital*

### **622 Redenomination of share capital**

(1) A limited company having a share capital may by resolution redenominate its share capital or any class of its share capital.

“Redenominate” means convert shares from having a fixed nominal value in one currency to having a fixed nominal value in another currency.

(2) The conversion must be made at an appropriate spot rate of exchange specified in the resolution.

(3) The rate must be either—

- (a) a rate prevailing on a day specified in the resolution, or
- (b) a rate determined by taking the average of rates prevailing on each consecutive day of a period specified in the resolution.

The day or period specified for the purposes of paragraph (a) or (b) must be within the period of 28 days ending on the day before the resolution is passed.

(4) A resolution under this section may specify conditions which must be met before the redenomination takes effect.

(5) Redenomination in accordance with a resolution under this section takes effect—

- (a) on the day on which the resolution is passed, or
- (b) on such later day as may be determined in accordance with the resolution.

(6) A resolution under this section lapses if the redenomination for which it provides has not taken effect at the end of the period of 28 days beginning on the date on which it is passed.

(7) A company's articles may prohibit or restrict the exercise of the power conferred by this section.

(8) Chapter 3 of Part 3 (resolutions affecting a company's constitution) applies to a resolution under this section.

### **623 Calculation of new nominal values**

For each class of share the new nominal value of each share is calculated as follows:

#### *Step One*

Take the aggregate of the old nominal values of all the shares of that class.

#### *Step Two*

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Translate that amount into the new currency at the rate of exchange specified in the resolution.

*Step Three*

Divide that amount by the number of shares in the class.

## **624 Effect of redenomination**

- (1) The redenomination of shares does not affect any rights or obligations of members under the company's constitution, or any restrictions affecting members under the company's constitution.

In particular, it does not affect entitlement to dividends (including entitlement to dividends in a particular currency), voting rights or any liability in respect of amounts unpaid on shares.

- (2) For this purpose the company's constitution includes the terms on which any shares of the company are allotted or held.
- (3) Subject to subsection (1), references to the old nominal value of the shares in any agreement or statement, or in any deed, instrument or document, shall (unless the context otherwise requires) be read after the resolution takes effect as references to the new nominal value of the shares.

## **625 Notice to registrar of redenomination**

- (1) If a limited company having a share capital redenominates any of its share capital, it must within one month after doing so give notice to the registrar, specifying the shares redenominated.
- (2) The notice must—
- (a) state the date on which the resolution was passed, and
  - (b) be accompanied by a statement of capital.
- (3) The statement of capital must state with respect to the company's share capital as redenominated by the resolution—
- (a) the total number of shares of the company,
  - (b) the aggregate nominal value of those shares,
  - (c) for each class of shares—
    - (i) prescribed particulars of the rights attached to the shares,
    - (ii) the total number of shares of that class, and
    - (iii) the aggregate nominal value of shares of that class, and
  - (d) 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).
- (4) If default is made in complying with this section, an offence is committed by—
- (a) the company, and
  - (b) every officer of the company who is in default.
- (5) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.

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### Commencement Information

**I16** S. 625 wholly in force at 1.10.2009; s. 625 not in force at Royal Assent, see s. 1300; s. 625 in force for specified purposes at 20.1.2007 by S.I. 2006/3428, **art. 3(3)** (subject to **art. 5, Sch. 1** and with **arts. 6, 8, Sch. 5**); s. 625 otherwise in force at 1.10.2009 by S.I. 2008/2860, **art. 3(k)** (with **arts. 5, 7, 8, Sch. 2**) (as amended by S.I. 2009/1802, **art. 18**)

## 626 Reduction of capital in connection with redenomination

- (1) A limited company that passes a resolution redenominating some or all of its shares may, for the purpose of adjusting the nominal values of the redenominated shares to obtain values that are, in the opinion of the company, more suitable, reduce its share capital under this section.
- (2) A reduction of capital under this section requires a special resolution of the company.
- (3) Any such resolution must be passed within three months of the resolution effecting the redenomination.
- (4) The amount by which a company's share capital is reduced under this section must not exceed 10% of the nominal value of the company's allotted share capital immediately after the reduction.
- (5) A reduction of capital under this section does not extinguish or reduce any liability in respect of share capital not paid up.
- (6) Nothing in Chapter 10 applies to a reduction of capital under this section.

## 627 Notice to registrar of reduction of capital in connection with redenomination

- (1) A company that passes a resolution under section 626 (reduction of capital in connection with redenomination) must within 15 days after the resolution is passed give notice to the registrar stating—
  - (a) the date of the resolution, and
  - (b) the date of the resolution under section 622 in connection with which it was passed.

This is in addition to the copies of the resolutions themselves that are required to be delivered to the registrar under Chapter 3 of Part 3.

- (2) The notice must be accompanied by a statement of capital.
- (3) The statement of capital must state with respect to the company's share capital as reduced by the resolution—
  - (a) the total number of shares of the company,
  - (b) the aggregate nominal value of those shares,
  - (c) for each class of shares—
    - (i) prescribed particulars of the rights attached to the shares,
    - (ii) the total number of shares of that class, and
    - (iii) the aggregate nominal value of shares of that class, and
  - (d) 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).

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- (4) The registrar must register the notice and the statement on receipt.
- (5) The reduction of capital is not effective until those documents are registered.
- (6) The company must also deliver to the registrar, within 15 days after the resolution is passed, a statement by the directors confirming that the reduction in share capital is in accordance with section 626(4) (reduction of capital not to exceed 10% of nominal value of allotted shares immediately after reduction).
- (7) If default is made in complying with this section, an offence is committed by—
  - (a) the company, and
  - (b) every officer of the company who is in default.
- (8) A person guilty of an offence under this section is liable—
  - (a) on conviction on indictment to a fine, and
  - (b) on summary conviction to a fine not exceeding the statutory maximum.

#### **Commencement Information**

**I17** S. 627 wholly in force at 1.10.2009; s. 627 not in force at Royal Assent, see s. 1300; s. 627 in force for specified purposes at 20.1.2007 by S.I. 2006/3428, art. 3(3) (subject to art. 5, Sch. 1 and with arts. 6, 8, Sch. 5); s. 627 otherwise in force at 1.10.2009 by S.I. 2008/2860, art. 3(k) (with arts. 5, 7, 8, Sch. 2) (as amended by S.I. 2009/1802, art. 18)

### **628 Redenomination reserve**

- (1) The amount by which a company's share capital is reduced under section 626 (reduction of capital in connection with redenomination) must be transferred to a reserve, called “the redenomination reserve”.
- (2) The redenomination reserve may be applied by the company in paying up shares to be allotted to members as fully paid bonus shares.
- (3) Subject to that, the provisions of the Companies Acts relating to the reduction of a company's share capital apply as if the redenomination reserve were paid-up share capital of the company.

## **CHAPTER 9**

### CLASSES OF SHARE AND CLASS RIGHTS

#### *Introductory*

### **629 Classes of shares**

- (1) For the purposes of the Companies Acts shares are of one class if the rights attached to them are in all respects uniform.
- (2) For this purpose the rights attached to shares are not regarded as different from those attached to other shares by reason only that they do not carry the same rights to dividends in the twelve months immediately following their allotment.

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### Commencement Information

**118** S. 629 wholly in force at 1.10.2009; s. 629 not in force at Royal Assent see s. 1300; s. 629 in force for certain purposes at 1.10.2007 by S.I. 2007/2194, **art. 2(3)(g)** (with saving in art. 12); s. 629 in force for certain further purposes at 6.4.2008 by S.I. 2007/3495, **art. 3(3)(f)** (with savings in arts. 7, 12); s. 629 in force otherwise at 1.10.2009 by S.I. 2008/2860, **art. 3(k)** (with arts. 5, 7, 8, Sch. 2) (as amended by S.I. 2009/1802, art. 18)

## Variation of class rights

### 630 Variation of class rights: companies having a share capital

- (1) This section is concerned with the variation of the rights attached to a class of shares in a company having a share capital.
- (2) Rights attached to a class of a company's shares may only be varied—
  - (a) in accordance with provision in the company's articles for the variation of those rights, or
  - (b) where the company's articles contain no such provision, if the holders of shares of that class consent to the variation in accordance with this section.
- (3) This is without prejudice to any other restrictions on the variation of the rights.
- (4) The consent required for the purposes of this section on the part of the holders of a class of a company's shares is—
  - (a) consent in writing from the holders of at least three-quarters in nominal value of the issued shares of that class (excluding any shares held as treasury shares), or
  - (b) a special resolution passed at a separate general meeting of the holders of that class sanctioning the variation.
- (5) Any amendment of a provision contained in a company's articles for the variation of the rights attached to a class of shares, or the insertion of any such provision into the articles, is itself to be treated as a variation of those rights.
- (6) In this section, and (except where the context otherwise requires) in any provision in a company's articles for the variation of the rights attached to a class of shares, references to the variation of those rights include references to their abrogation.

### 631 Variation of class rights: companies without a share capital

- (1) This section is concerned with the variation of the rights of a class of members of a company where the company does not have a share capital.
- (2) Rights of a class of members may only be varied—
  - (a) in accordance with provision in the company's articles for the variation of those rights, or
  - (b) where the company's articles contain no such provision, if the members of that class consent to the variation in accordance with this section.
- (3) This is without prejudice to any other restrictions on the variation of the rights.

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- (4) The consent required for the purposes of this section on the part of the members of a class is—
  - (a) consent in writing from at least three-quarters of the members of the class, or
  - (b) a special resolution passed at a separate general meeting of the members of that class sanctioning the variation.
- (5) Any amendment of a provision contained in a company's articles for the variation of the rights of a class of members, or the insertion of any such provision into the articles, is itself to be treated as a variation of those rights.
- (6) In this section, and (except where the context otherwise requires) in any provision in a company's articles for the variation of the rights of a class of members, references to the variation of those rights include references to their abrogation.

### **632 Variation of class rights: saving for court's powers under other provisions**

Nothing in section 630 or 631 (variation of class rights) affects the power of the court under—

- section 98 (application to cancel resolution for public company to be re-registered as private),
- Part 26 (arrangements and reconstructions), or
- Part 30 (protection of members against unfair prejudice).

### **633 Right to object to variation: companies having a share capital**

- (1) This section applies where the rights attached to any class of shares in a company are varied under section 630 (variation of class rights: companies having a share capital).
- (2) The holders of not less in the aggregate than 15% of the issued shares of the class in question (being persons who did not consent to or vote in favour of the resolution for the variation) may apply to the court to have the variation cancelled.
 

For this purpose any of the company's share capital held as treasury shares is disregarded.
- (3) If such an application is made, the variation has no effect unless and until it is confirmed by the court.
- (4) Application to the court—
  - (a) must be made within 21 days after the date on which the consent was given or the resolution was passed (as the case may be), and
  - (b) may be made on behalf of the shareholders entitled to make the application by such one or more of their number as they may appoint in writing for the purpose.
- (5) The court, after hearing the applicant and any other persons who apply to the court to be heard and appear to the court to be interested in the application, may, if satisfied having regard to all the circumstances of the case that the variation would unfairly prejudice the shareholders of the class represented by the applicant, disallow the variation, and shall if not so satisfied confirm it.

The decision of the court on any such application is final.

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- (6) References in this section to the variation of the rights of holders of a class of shares include references to their abrogation.

### **634 Right to object to variation: companies without a share capital**

- (1) This section applies where the rights of any class of members of a company are varied under section 631 (variation of class rights: companies without a share capital).
- (2) Members amounting to not less than 15% of the members of the class in question (being persons who did not consent to or vote in favour of the resolution for the variation) may apply to the court to have the variation cancelled.
- (3) If such an application is made, the variation has no effect unless and until it is confirmed by the court.
- (4) Application to the court must be made within 21 days after the date on which the consent was given or the resolution was passed (as the case may be) and may be made on behalf of the members entitled to make the application by such one or more of their number as they may appoint in writing for the purpose.
- (5) The court, after hearing the applicant and any other persons who apply to the court to be heard and appear to the court to be interested in the application, may, if satisfied having regard to all the circumstances of the case that the variation would unfairly prejudice the members of the class represented by the applicant, disallow the variation, and shall if not so satisfied confirm it.

The decision of the court on any such application is final.

- (6) References in this section to the variation of the rights of a class of members include references to their abrogation.

### **635 Copy of court order to be forwarded to the registrar**

- (1) The company must within 15 days after the making of an order by the court on an application under section 633 or 634 (objection to variation of class rights) forward a copy of the order to the registrar.
- (2) If default is made in complying with this section an offence is committed by—
- the company, and
  - every officer of the company who is in default.
- (3) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.

*Matters to be notified to the registrar*

### **636 Notice of name or other designation of class of shares**

- (1) Where a company assigns a name or other designation, or a new name or other designation, to any class or description of its shares, it must within one month from doing so deliver to the registrar a notice giving particulars of the name or designation so assigned.

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- (2) If default is made in complying with this section, an offence is committed by—
  - (a) the company, and
  - (b) every officer of the company who is in default.
- (3) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.

#### **637 Notice of particulars of variation of rights attached to shares**

- (1) Where the rights attached to any shares of a company are varied, the company must within one month from the date on which the variation is made deliver to the registrar a notice giving particulars of the variation.
- (2) If default is made in complying with this section, an offence is committed by—
  - (a) the company, and
  - (b) every officer of the company who is in default.
- (3) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.

#### **638 Notice of new class of members**

- (1) If a company not having a share capital creates a new class of members, the company must within one month from the date on which the new class is created deliver to the registrar a notice containing particulars of the rights attached to that class.
- (2) If default is made in complying with this section, an offence is committed by—
  - (a) the company, and
  - (b) every officer of the company who is in default.
- (3) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.

#### **639 Notice of name or other designation of class of members**

- (1) Where a company not having a share capital assigns a name or other designation, or a new name or other designation, to any class of its members, it must within one month from doing so deliver to the registrar a notice giving particulars of the name or designation so assigned.
- (2) If default is made in complying with this section, an offence is committed by—
  - (a) the company, and
  - (b) every officer of the company who is in default.
- (3) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.



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## **640 Notice of particulars of variation of class rights**

- (1) If the rights of any class of members of a company not having a share capital are varied, the company must within one month from the date on which the variation is made deliver to the registrar a notice containing particulars of the variation.
- (2) If default is made in complying with this section, an offence is committed by—
  - (a) the company, and
  - (b) every officer of the company who is in default.
- (3) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.

## **CHAPTER 10**

### REDUCTION OF SHARE CAPITAL

#### *Introductory*

## **641 Circumstances in which a company may reduce its share capital**

- (1) A limited company having a share capital may reduce its share capital—
  - (a) in the case of a private company limited by shares, by special resolution supported by a solvency statement (see sections 642 to 644);
  - (b) in any case, by special resolution confirmed by the court (see sections 645 to 651).
- (2) A company may not reduce its capital under subsection (1)(a) if as a result of the reduction there would no longer be any member of the company holding shares other than redeemable shares.
- (3) Subject to that, a company may reduce its share capital under this section in any way.
- (4) In particular, a 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—
    - (i) cancel any paid-up share capital that is lost or unrepresented by available assets, or
    - (ii) repay any paid-up share capital in excess of the company's wants.
- (5) A special resolution under this section may not provide for a reduction of share capital to take effect later than the date on which the resolution has effect in accordance with this Chapter.
- (6) This Chapter (apart from subsection (5) above) has effect subject to any provision of the company's articles restricting or prohibiting the reduction of the company's share capital.

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#### **Modifications etc. (not altering text)**

- C12** S. 641 modified (1.10.2008) by [The Companies Act 2006 \(Commencement No. 7, Transitional Provisions and Savings\) Order 2008 \(S.I. 2008/1886\)](#), [art. 3](#) (which article was revoked (1.10.2009) by [S.I. 2008/2860](#), [art. 6](#) (subject to [Sch. 2](#)) (with arts. 5, 7, 8))

#### **Commencement Information**

- I19** S. 641 wholly in force at 1.10.2009; s. 641 not in force at Royal Assent see s. 1300; s. 641(1)(a)(2)-(6) in force at 1.10.2008 by [S.I. 2008/1886](#), [art. 2](#) (with [arts. 6, 7](#)); s. 641(1)(b) in force at 1.10.2009 by [S.I. 2008/2860](#), [art. 3\(k\)](#) (with [arts. 5, 7, 8](#), [Sch. 2](#)) (as amended by [S.I. 2009/1802](#), [art. 18](#))

*Private companies: reduction of capital supported by solvency statement*

### **642 Reduction of capital supported by solvency statement**

- (1) A resolution for reducing share capital of a private company limited by shares is supported by a solvency statement if—
  - (a) the directors of the company make a statement of the solvency of the company in accordance with section 643 (a “solvency statement”) not more than 15 days before the date on which the resolution is passed, and
  - (b) the resolution and solvency statement are registered in accordance with section 644.
- (2) Where the resolution is proposed as a written resolution, a copy of the solvency statement must be sent or submitted to every eligible member at or before the time at which the proposed resolution is sent or submitted to him.
- (3) Where the resolution is proposed at a general meeting, a copy of the solvency statement must be made available for inspection by members of the company throughout that meeting.
- (4) The validity of a resolution is not affected by a failure to comply with subsection (2) or (3).

### **643 Solvency statement**

- (1) A solvency statement is a statement that each of the directors—
  - (a) has formed the opinion, as regards the company's situation at the date of the statement, that there is no ground on which the company could then be found to be unable to pay (or otherwise discharge) its debts; and
  - (b) has also formed the opinion—
    - (i) if it is intended to commence the winding up of the company within twelve months of that date, that the company will be able to pay (or otherwise discharge) its debts in full within twelve months of the commencement of the winding up; or
    - (ii) in any other case, that the company will be able to pay (or otherwise discharge) its debts as they fall due during the year immediately following that date.
- (2) In forming those opinions, the directors must take into account all of the company's liabilities (including any contingent or prospective liabilities).

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- (3) The solvency statement must be in the prescribed form and must state—
  - (a) the date on which it is made, and
  - (b) the name of each director of the company.
- (4) If the directors make a solvency statement without having reasonable grounds for the opinions expressed in it, and the statement is delivered to the registrar, an offence is committed by every director who is in default.
- (5) A person guilty of an offence under subsection (4) is liable—
  - (a) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine (or both);
  - (b) on summary conviction—
    - (i) in England and Wales, to imprisonment for a term not exceeding twelve months or to a fine not exceeding the statutory maximum (or both);
    - (ii) in Scotland or Northern Ireland, to imprisonment for a term not exceeding six months, or to a fine not exceeding the statutory maximum (or both).

#### Commencement Information

**I20** S. 643 wholly in force at 1.1.2008; s. 643 not in force at Royal Assent, see s. 1300; s. 643 in force for specified purposes at 20.1.2007 by S.I. 2006/3428, art. 3(3) (subject to art. 5, Sch. 1 and with arts. 6, 8, Sch. 5); s. 643 in force at 1.10.2008 in so far as not already in force by S.I. 2008/1886, art. 2 (with arts. 6, 7)

### 644 Registration of resolution and supporting documents

- (1) Within 15 days after the resolution for reducing share capital is passed the company must deliver to the registrar—
  - (a) a copy of the solvency statement, and
  - (b) a statement of capital.

This is in addition to the copy of the resolution itself that is required to be delivered to the registrar under Chapter 3 of Part 3.

- (2) The statement of capital must state with respect to the company's share capital as reduced by the resolution—
  - (a) the total number of shares of the company,
  - (b) the aggregate nominal value of those shares,
  - (c) for each class of shares—
    - (i) prescribed particulars of the rights attached to the shares,
    - (ii) the total number of shares of that class, and
    - (iii) the aggregate nominal value of shares of that class, and
  - (d) 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).
- (3) The registrar must register the documents delivered to him under subsection (1) on receipt.
- (4) The resolution does not take effect until those documents are registered.

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- (5) The company must also deliver to the registrar, within 15 days after the resolution is passed, a statement by the directors confirming that the solvency statement was—
  - (a) made not more than 15 days before the date on which the resolution was passed, and
  - (b) provided to members in accordance with section 642(2) or (3).
- (6) The validity of a resolution is not affected by—
  - (a) a failure to deliver the documents required to be delivered to the registrar under subsection (1) within the time specified in that subsection, or
  - (b) a failure to comply with subsection (5).
- (7) If the company delivers to the registrar a solvency statement that was not provided to members in accordance with section 642(2) or (3), an offence is committed by every officer of the company who is in default.
- (8) If default is made in complying with this section, an offence is committed by—
  - (a) the company, and
  - (b) every officer of the company who is in default.
- (9) A person guilty of an offence under subsection (7) or (8) is liable—
  - (a) on conviction on indictment, to a fine;
  - (b) on summary conviction, to a fine not exceeding the statutory maximum.

**Modifications etc. (not altering text)**

**C13** S. 644 modified (1.10.2008) by [The Companies Act 2006 \(Commencement No. 7, Transitional Provisions and Savings\) Order 2008 \(S.I. 2008/1886\)](#), [art. 4](#) (which article was revoked (1.10.2009) by [S.I. 2008/2860](#), [art. 6](#) (with [arts. 5, 7, 8, Sch. 2](#)))

**Commencement Information**

**I21** S. 644 wholly in force at 1.10.2008; s. 644 not in force at Royal Assent, see [s. 1300](#); s. 644 in force for specified purposes at 20.1.2007 by [S.I. 2006/3428](#), [art. 3\(3\)](#) (subject to [art. 5](#), [Sch. 1](#) and with [arts. 6, 8, Sch. 5](#)); s. 644 in force at 1.10.2008 in so far as not already in force by [S.I. 2008/1886](#), [art. 2](#) (with [arts. 6, 7](#))

*Reduction of capital confirmed by the court*

**645 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.
- (2) If the proposed reduction of 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,
 section 646 (creditors entitled to object to reduction) applies unless the court directs otherwise.
- (3) The court may, if having regard to any special circumstances of the case it thinks proper to do so, direct that section 646 is not to apply as regards any class or classes of creditors.

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(4) The court may direct that section 646 is to apply in any other case.

#### **646 Creditors entitled to object to reduction**

- (1) Where this section applies (see section 645(2) and (4)), every creditor of the company who
- [<sup>F9</sup>(a)] at the date fixed by the court is entitled to any debt or claim that, if that date were the commencement of the winding up of the company would be admissible in proof against the company, [<sup>F10</sup> and
  - (b) can show that there is a real likelihood that the reduction would result in the company being unable to discharge his debt or claim when it fell due,]
- is entitled to object to the reduction of capital.
- (2) The court shall settle a list of creditors entitled to object.
- (3) For that purpose the court—
- (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.
- (4) 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.
- (5) For this purpose the debt or claim must be secured 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, 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, an amount fixed by the court after the like enquiry and adjudication as if the company were being wound up by the court.

#### **Textual Amendments**

- F9** Words in s. 646(1) inserted (1.10.2009) by [The Companies \(Share Capital and Acquisition by Company of its Own Shares\) Regulations 2009 \(S.I. 2009/2022\)](#), [reg. 3\(a\)](#)
- F10** S. 646(1)(b) and word inserted (1.10.2009) by [The Companies \(Share Capital and Acquisition by Company of its Own Shares\) Regulations 2009 \(S.I. 2009/2022\)](#), [reg. 3\(b\)](#)

#### **647 Offences in connection with list of creditors**

- (1) If an officer of the company—
- (a) intentionally or recklessly—
    - (i) conceals the name of a creditor entitled to object to the reduction of capital, or
    - (ii) misrepresents the nature or amount of the debt or claim of a creditor, or

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(b) is knowingly concerned in any such concealment or misrepresentation, he commits an offence.

- (2) A person guilty of an offence under this section is liable—
- (a) on conviction on indictment, to a fine;
  - (b) on summary conviction, to a fine not exceeding the statutory maximum.

#### **648 Court order confirming reduction**

- (1) The court may make an order confirming the reduction of capital on such terms and conditions as it thinks fit.
- (2) The court must not confirm the reduction unless it is satisfied, with respect to every creditor of the company who 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.
- (3) Where the court confirms the reduction, it may order 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 that led to the reduction.
- (4) The court may, if for any special reason it thinks proper to do so, make an order directing that the company must, 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”.

If such an order is made, those words are, until the end of the period specified in the order, deemed to be part of the company's name.

#### **649 Registration of order and statement of capital**

- (1) The registrar, on production of an order of the court confirming the reduction of a company's share capital and the delivery of a copy of the order and of a statement of capital (approved by the court), shall register the order and statement.

This is subject to section 650 (public company reducing capital below authorised minimum).

- (2) The statement of capital must state with respect to the company's share capital as altered by the order—
  - (a) the total number of shares of the company,
  - (b) the aggregate nominal value of those shares,
  - (c) for each class of shares—
    - (i) prescribed particulars of the rights attached to the shares,
    - (ii) the total number of shares of that class, and
    - (iii) the aggregate nominal value of shares of that class, and
  - (d) 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).
- (3) The resolution for reducing share capital, as confirmed by the court's order, takes effect—

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- (a) in the case of a reduction of share capital that forms part of a compromise or arrangement sanctioned by the court under Part 26 (arrangements and reconstructions)—
    - (i) on delivery of the order and statement of capital to the registrar, or
    - (ii) if the court so orders, on the registration of the order and statement of capital;
  - (b) in any other case, on the registration of the order and statement of capital.
- (4) Notice of the registration of the order and statement of capital must be published in such manner as the court may direct.
- (5) The registrar must certify the registration of the order and statement of capital.
- (6) The certificate—
- (a) must be signed by the registrar or authenticated by the registrar's official seal, and
  - (b) is conclusive evidence—
    - (i) that the requirements of this Act with respect to the reduction of share capital have been complied with, and
    - (ii) that the company's share capital is as stated in the statement of capital.

#### **Commencement Information**

**I22** S. 649 wholly in force at 1.10.2009; s. 649 not in force at Royal Assent, see s. 1300; s. 649 in force for specified purposes at 20.1.2007 by S.I. 2006/3428, art. 3(3) (subject to art. 5, Sch. 1 and with arts. 6, 8, Sch. 5); s. 649 otherwise in force at 1.10.2009 by S.I. 2008/2860, art. 3(k) (with arts. 5, 7, 8, Sch. 2) (as amended by S.I. 2009/1802, art. 18)

#### *Public company reducing capital below authorised minimum*

### **650 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 that has the effect of bringing the nominal value of its allotted share capital below the authorised minimum.
- (2) The registrar must not register the order unless either—
  - (a) the court so directs, or
  - (b) the company is first re-registered as a private company.
- (3) Section 651 provides an expedited procedure for re-registration in these circumstances.

### **651 Expedited procedure for re-registration as a private company**

- (1) The court may authorise the company to be re-registered as a private company without its having passed the special resolution required by section 97.
- (2) If it does so, the court must specify in the order the changes to the company's name and articles to be made in connection with the re-registration.

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- (3) The company may then be re-registered as a private company if an application to that effect is delivered to the registrar together with—
  - (a) a copy of the court's order, and
  - (b) notice of the company's name, and a copy of the company's articles, as altered by the court's order.
- (4) On receipt of such an application the registrar must issue a certificate of incorporation altered to meet the circumstances of the case.
- (5) The certificate must state that it is issued on re-registration and the date on which it is issued.
- (6) On the issue of the certificate—
  - (a) the company by virtue of the issue of the certificate becomes a private company, and
  - (b) the changes in the company's name and articles take effect.
- (7) The certificate is conclusive evidence that the requirements of this Act as to re-registration have been complied with.

#### *Effect of reduction of capital*

### **652 Liability of members following reduction of capital**

- (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—
  - (a) the nominal amount of the share as notified to the registrar in the statement of capital delivered under section 644 or 649, and
  - (b) 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) This is subject to section 653 (liability to creditor in case of omission from list).
- (3) Nothing in this section affects the rights of the contributories among themselves.

#### **Modifications etc. (not altering text)**

**C14** S. 652 modified (1.10.2008) by [The Companies Act 2006 \(Commencement No. 7, Transitional Provisions and Savings\) Order 2008 \(S.I. 2008/1886\)](#), [art. 5](#) (which article was revoked (1.10.2009) by [S.I. 2008/2860](#), [art. 6](#) (with arts. 5, 7, 8, Sch. 2))

#### **Commencement Information**

**I23** S. 652 wholly in force at 1.10.2009; s. 652 not in force at Royal Assent see s. 1300; s. 652(1)(3) in force for specified purposes at 1.10.2008 by [S.I. 2008/1886](#), [art. 2](#) (with arts 6, 7); s. 652 in force at 1.10.2009 in so far as not already in force by [S.I. 2008/2860](#), [art. 3\(k\)](#) (with arts. 5, 7, 8, Sch. 2) (as amended by [S.I. 2009/1802](#), [art. 18](#))



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### **653 Liability to creditor in case of omission from list of creditors**

- (1) This section applies where, in the case of a reduction of capital confirmed by the court—
  - (a) a creditor entitled to object to the reduction of share capital is by reason of his ignorance—
    - (i) of the proceedings for reduction of share capital, or
    - (ii) of their nature and effect with respect to his debt or claim, not entered on the list of creditors, and
  - (b) after the reduction of capital the company is unable to pay the amount of his debt or claim.
- (2) Every person who was a member of the company at the date on which the resolution for reducing capital took effect under section 649(3) is liable to contribute for the payment of the debt or claim 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.
- (3) If the company is wound up, the court on the application of the creditor in question, and proof of ignorance as mentioned in subsection (1)(a), may if it thinks fit—
  - (a) settle accordingly a list of persons liable to contribute under this section, and
  - (b) make and enforce calls and orders on them as if they were ordinary contributories in a winding up.
- (4) The reference in subsection (1)(b) to a company being unable to pay the amount of a debt or claim has the same meaning as in section 123 of the Insolvency Act 1986 (c. 45) or Article 103 of the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)).

## **CHAPTER 11**

### **MISCELLANEOUS AND SUPPLEMENTARY PROVISIONS**

### **654 Treatment of reserve arising from reduction of capital**

- (1) A reserve arising from the reduction of a company's share capital is not distributable, subject to any provision made by order under this section.
- (2) The Secretary of State may by order specify cases in which—
  - (a) the prohibition in subsection (1) does not apply, and
  - (b) the reserve is to be treated for the purposes of Part 23 (distributions) as a realised profit.
- (3) An order under this section is subject to affirmative resolution procedure.

#### **Commencement Information**

**I24** S. 654 wholly in force at 1.10.2008; s. 654 not in force at Royal Assent see s. 1300; s. 654 in force for specified purposes at 20.1.2007 by S.I. 2006/3428, art. 3(3) (subject to art. 5, Sch. 1 and with arts. 6, 8, Sch. 5); s. 654 in force at 1.10.2008 in so far as not already in force by S.I. 2008/1886, art. 2 (with arts. 6, 7)

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### **655 Shares no bar to damages against company**

A person is not debarred from obtaining damages or other compensation from a company by reason only of his holding or having held shares in the company or any right to apply or subscribe for shares or to be included in the company's register of members in respect of shares.

### **656 Public companies: duty of directors to call meeting on serious loss of capital**

- (1) Where the net assets of a public company are half or less of its called-up share capital, the directors must call a general meeting of the company to consider whether any, and if so what, steps should be taken to deal with the situation.
- (2) They must do so not later than 28 days from the earliest day on which that fact is known to a director of the company.
- (3) The meeting must be convened for a date not later than 56 days from that day.
- (4) If there is a failure to convene a meeting as required by this section, each of the directors of the company who—
  - (a) knowingly authorises or permits the failure, or
  - (b) after the period during which the meeting should have been convened, knowingly authorises or permits the failure to continue,
 commits an offence.
- (5) A person guilty of an offence under this section is liable—
  - (a) on conviction on indictment, to a fine;
  - (b) on summary conviction, to a fine not exceeding the statutory maximum.
- (6) Nothing in this section authorises the consideration at a meeting convened in pursuance of subsection (1) of any matter that could not have been considered at that meeting apart from this section.

### **657 General power to make further provision by regulations**

- (1) The Secretary of State may by regulations modify the following provisions of this Part—
  - sections 552 and 553 (prohibited commissions, discounts and allowances),
  - Chapter 5 (payment for shares),
  - Chapter 6 (public companies: independent valuation of non-cash consideration),
  - Chapter 7 (share premiums),
  - sections 622 to 628 (redenomination of share capital),
  - Chapter 10 (reduction of capital), and
  - section 656 (public companies: duty of directors to call meeting on serious loss of capital).
- (2) The regulations may—
  - (a) amend or repeal any of those provisions, or
  - (b) make such other provision as appears to the Secretary of State appropriate in place of any of those provisions.
- (3) Regulations under this section may make consequential amendments or repeals in other provisions of this Act, or in other enactments.

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(4) Regulations under this section are subject to affirmative resolution procedure.

**Commencement Information**

**I25** S. 657 wholly in force at 1.10.2009; s. 657 not in force at Royal Assent, see s. 1300; s. 657 in force for specified purposes at 20.1.2007 by S.I. 2006/3428, **art. 3(3)** (subject to **art. 5**, **Sch. 1** and with **arts. 6, 8**, **Sch. 5**); s. 657 otherwise in force at 1.10.2009 by S.I. 2008/2860, **art. 3(k)** (with **arts. 5, 7, 8**, **Sch. 2**) (as amended by S.I. 2009/1802, **art. 18**)

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