

**2008 No. 729**

**COMPANIES**

**The Companies (Authorised Minimum) Regulations 2008**

<i>Made</i>	- - - -	<i>12th March 2008</i>
<i>Laid before Parliament</i>		<i>14th March 2008</i>
<i>Coming into force</i>	- -	<i>6th April 2008</i>

The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 763(2), 766(1)(a) and (2) and 1292(1)(a) and (b) of the Companies Act 2006(a).

**Citation, commencement and interpretation**

**1.**—(1) These Regulations may be cited as the Companies (Authorised Minimum) Regulations 2008 and shall come into force on 6th April 2008.

(2) In these Regulations—

“the 1985 Act” means the Companies Act 1985(b);

“the 1986 Order” means the Companies (Northern Ireland) Order 1986(c);

“the 2006 Act” means the Companies Act 2006;

“the appropriate spot rate of exchange” is to be interpreted in accordance with regulation 4(1);

“the certified spot rate” has the meaning given in regulation 4(3);

“published spot rate” has the meaning given in regulation 4(2);

“reference date” is to be interpreted in accordance with regulation 4(7) and (8);

“relevant day” is to be interpreted in accordance with regulation 4(5) and (6); and

“working day” means a day which is not a Saturday or Sunday, Christmas Day, Good Friday or any day that is a bank holiday under the Banking and Financial Dealings Act 1971(d) in England and Wales.

**Authorised minimum in euros**

**2.** For the purposes of the definition of “the authorised minimum” in section 763(1) of the 2006 Act, the amount in euros that is to be treated as equivalent to the sterling amount(e) is €65,600.

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(a) 2006 c.46.

(b) 1985 c.6.

(c) S.I. 1986/1032 (N.I. 6).

(d) 1971 c.80.

(e) The sterling amount specified in section 763(1) of the 2006 Act is £50,000.

### **Application of the authorised minimum where a public company has shares denominated in more than one currency**

3.—(1) This regulation applies for either of the purposes in paragraphs (2) and (3).

(2) The first purpose is to determine whether, for the purposes of section 139 of the 1985 Act or Article 149 of the 1986 Order, a court order under section 137 of the 1985 Act or Article 147 of the 1986 Order has the effect of bringing the nominal value of a public company's allotted share capital below the authorised minimum.

(3) The second purpose is to determine whether, for the purposes of section 146(2)(b) of the 1985 Act or Article 156(2)(b) of the 1986 Order, the cancellation of a public company's shares under that section or that Article will have the effect of bringing the nominal value of the company's allotted share capital below the authorised minimum.

(4) This regulation applies only where the company has or will have allotted share capital denominated in more than one currency, taking account (where the purpose is that in paragraph (2)) of the effect of the court order or (where the purpose is that in paragraph (3)) of the cancellation of the shares.

(5) The nominal value of a public company's allotted share capital is to be treated as being below the authorised minimum if—

- (a) the sterling value is less than £50,000; and
- (b) the euro value is less than €65,600.

(6) The "sterling value" is the sum in sterling of—

- (a) the nominal value of the company's allotted share capital denominated in sterling;
- (b) the nominal value of the company's allotted share capital denominated in euros if it were to be converted into sterling at the appropriate spot rate of exchange; and
- (c) the nominal value of the company's allotted share capital denominated in a currency other than sterling or euros if it were to be converted into sterling at the appropriate spot rate of exchange.

(7) The "euro value" is the sum in euros of—

- (a) the nominal value of the company's allotted share capital denominated in euros;
- (b) the nominal value of the company's allotted share capital denominated in sterling if it were to be converted into euros at the appropriate spot rate of exchange; and
- (c) the nominal value of the company's allotted share capital denominated in a currency other than sterling or euros if it were to be converted into euros at the appropriate spot rate of exchange.

(8) Regulation 4 applies to determine the appropriate spot rate of exchange.

### **The appropriate spot rate of exchange**

4.—(1) The appropriate spot rate of exchange for a currency conversion referred to in regulation 3(6) and (7) is the published spot rate relevant to the currency conversion in question or, where the circumstances in paragraph (4) exist, the certified spot rate relevant to that currency conversion.

(2) The published spot rate is the middle spot exchange rate prevailing on the foreign exchange market at 4pm on the relevant day as published in respect of that day by the Financial Times.

(3) The certified spot rate is the middle spot exchange rate prevailing on the foreign exchange market at 4pm on the relevant day and stated in a certificate obtained by the company from—

- (a) a person, nominated by the company, who under Part 4 of the Financial Services and Markets Act 2000<sup>(a)</sup> has permission to accept deposits; or
- (b) a firm, nominated by the company, which has permission to carry on the activity of accepting deposits in the United Kingdom by virtue of Schedule 3 to that Act.

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(a) 2000 c.8.

(4) The circumstances in this paragraph exist where—

- (a) the Financial Times has not, on or before the reference date, published an exchange rate referred to in paragraph (2) relevant to the currency conversion in question; or
- (b) the Financial Times has, on or before the reference date, published what appears to be an exchange rate referred to in paragraph (2) relevant to the currency conversion in question but the company can show that there was a publication error; or
- (c) there is no evidence of what (if any) was the rate referred to in paragraph (2) relevant to the currency conversion in question as published on or before the reference date by the Financial Times.

(5) Where the currency conversion is relevant to the calculation of the sterling value or the euro value for the purpose in regulation 3(2), the “relevant day” is the working day which immediately preceded the working day immediately preceding the date of the court order under section 137 of the 1985 Act or Article 147 of the 1986 Order.

(6) Where the currency conversion is relevant to the calculation of the sterling value or the euro value for the purpose in regulation 3(3), the “relevant day” is—

- (a) in a case within section 146(1)(a) or (aa)(a) of the 1985 Act or Article 156(1)(a) or (aa)(b) of the 1986 Order, the working day immediately preceding the date of the forfeiture or surrender; and
- (b) in a case within section 146(1)(b), (c) or (d) of the 1985 Act or Article 156(1)(b), (c) or (d) of the 1986 Order, the working day immediately preceding the date of the acquisition.

(7) Where the currency calculation is relevant to the calculation of the sterling value or the euro value for the purpose in regulation 3(2), the “reference date” is the date of the court order under section 137 of the 1985 Act or Article 147 of the 1986 Order.

(8) Where the currency conversion is relevant to the calculation of the sterling value or the euro value for the purpose in regulation 3(3), the “reference date” is—

- (a) in the case within section 146(1)(a) or (aa) of the 1985 Act or Article 156(1)(a) or (aa) of the 1986 Order, the fifth working day following the date of the forfeiture or surrender; and
- (b) in the case within section 146(1)(b), (c) or (d) of the 1985 Act or Article 156(1)(b), (c) or (d) of the 1986 Order, the fifth working day following the date of the acquisition.

**Registration of a court order confirming a capital reduction and applications by public companies for re-registration: assumptions which may be made by the registrar**

5.—(1) This regulation applies where—

- (a) a public company delivers to the registrar under section 138 of the 1985 Act or Article 148 of the 1986 Order a copy of an order of the court confirming a reduction of its share capital and the court has not directed the order to be registered; or
- (b) an application is made to the registrar under section 147(3) of the 1985 Act or Article 157(3) of the 1986 Order for re-registration of a public company as a private company.

(2) Where the circumstances in paragraph (3), (4) or (5) exist, the registrar may make (in a case within paragraph (1)(a)) the assumption in paragraph (6) or (in a case within paragraph (1)(b)) the assumption in paragraph (7).

(3) The circumstances in this paragraph are that—

- (a) the company has or will have (taking account, where the case is within paragraph (1)(a), of the effect of the court order or, where the case is within paragraph (1)(b), of the effect

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(a) Section 146(1)(aa) was inserted by the Building Societies Act 1986, section 102C(5). Section 102C(5) of that Act was inserted by the Building Societies (Distributions) Act 1997, section 1(1).

(b) Article 156(1)(aa) was inserted by the Building Societies Act 1986, section 102C(6). Section 102C(6) of that Act was inserted by the Building Societies (Distributions) Act 1997, section 1(1).

- of the cancellation of shares under section 146(2)(a) of the 1985 Act or Article 156(2)(a) of the 1986 Order) allotted share capital denominated in more than one currency;
  - (b) either the Financial Times did not publish, on or before the reference date, an exchange rate referred to in regulation 4(2) relevant to converting into sterling a currency in which the company's allotted share capital is denominated or it did not publish, on or before that date, such a rate relevant to converting such a currency into euros; and
  - (c) the company has not delivered to the registrar, in respect of every such currency for which the Financial Times did not publish such an exchange rate on or before the reference date, a copy of a certificate referred to in regulation 4(3).
- (4) The circumstances in this paragraph are that—
- (a) the company has or will have (taking account, where the case is within paragraph (1)(a), of the effect of the court order or, where the case is within paragraph (1)(b), of the effect of the cancellation of shares under section 146(2)(a) of the 1985 Act or Article 156(2)(a) of the 1986 Order) allotted share capital denominated in more than one currency;
  - (b) the Financial Times published, on or before the reference date, what appears to be an exchange rate referred to in regulation 4(2) relevant to converting into sterling or euros a currency in which the company's allotted share capital is denominated but the company can show that there was a publication error; and
  - (c) the company has not delivered to the registrar, for every currency in respect of which the company can show such a publication error, a copy of a certificate referred to in regulation 4(3).
- (5) The circumstances in this paragraph are that—
- (a) the company has or will have (taking account, where the case is within paragraph (1)(a), of the effect of the court order or, where the case is within paragraph (1)(b), of the effect of the cancellation of shares under section 146(2)(a) of the 1985 Act or Article 156(2)(a) of the 1986 Order) allotted share capital denominated in more than one currency;
  - (b) in respect of one or more of the exchange rates referred to in regulation 4(2) relevant to converting into sterling or euros the currencies in which the company's allotted share capital is denominated there is no evidence of what (if any) was the rate published on or before the reference date by the Financial Times; and
  - (c) the company has not delivered to the registrar, for every such currency in respect of which there is no such evidence, a copy of a certificate referred to in regulation 4(3).
- (6) The registrar may (but is not required to) assume for the purposes of sections 138(1) and 139(2) of the 1985 Act or Articles 148(1) and 149(2) of the 1986 Order that the court order has the effect of bringing the nominal value of the company's allotted share capital below the authorised minimum.
- (7) The registrar may (but is not required to) assume for the purposes of section 147(4) of the 1985 Act or Article 157(4) of the 1986 Order that the effect of the cancellation of shares under section 146(2)(a) of the 1985 Act or Article 156(2)(a) of the 1986 Order is or will be that the nominal value of the company's allotted share capital is brought below the authorised minimum.

#### **Determination of exchange rates by the court in certain proceedings**

- 6.—(1) This regulation applies to—
- (a) proceedings against a public company or any officer of a public company for an offence under section 149(2) of the 1985 Act or Article 159(2) of the 1986 Order; and
  - (b) proceedings under section 757 or 758 or Part 30 of the 2006 Act.
- (2) Where the circumstances in paragraph (3) exist, the court may make a determination referred to in paragraph (4) in the proceedings.
- (3) The circumstances are that—
- (a) in proceedings referred to in paragraph (1)(a) it is alleged that, or in proceedings referred to in paragraph (1)(b) the question arises whether, the effect of a cancellation of the

company's shares under section 146(2)(a) of the 1985 Act or Article 156(2)(a) of the 1986 Order was or will be that the nominal value of the company's allotted share capital was or is brought below the authorised minimum; and

- (b) as a result of that cancellation the company had (or continued to have) allotted share capital denominated in more than one currency.

(4) The court may make such determination as it thinks fit as to the exchange rate to be applied to a currency conversion referred to in regulation 3(6) and (7) where—

- (a) the Financial Times did not publish, on or before the reference date, an exchange rate referred to in regulation 4(2) relevant to that currency conversion; or
- (b) the Financial Times published, on or before the reference date, what appears to be an exchange rate referred to in regulation 4(2) relevant to that currency conversion but the company or officer of the company (as the case may be) can show that there was a publication error; or
- (c) there is no evidence of what (if any) was the exchange rate referred to in regulation 4(2) as published on or before the reference date by the Financial Times relevant to that currency conversion,

and there has not been produced to the court in the proceedings a copy of a certificate referred to in regulation 4(3) in respect of that currency conversion.

(5) In this regulation, “the court” in relation to proceedings referred to in paragraph (1)(a) means the court of criminal jurisdiction in which the proceedings are brought.

#### **Exclusion of liability in respect of publication of spot rate**

7. No person shall be liable to any other person as a result of—

- (a) that or any other person having placed reliance for the purposes of these Regulations upon a rate published by the Financial Times; or
- (b) any error in a rate published by the Financial Times which is relied upon for the purposes of these Regulations; or
- (c) any act or omission as a result of which the Financial Times did not publish a rate capable of being relied upon for the purposes of these Regulations.

12th March 2008

*Gareth Thomas*  
Parliamentary Under Secretary of State for Trade and Consumer Affairs,  
Department for Business, Enterprise and Regulatory Reform

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations relate to provisions of the Companies Act 1985 (“the 1985 Act”), the Companies (Northern Ireland) Order 1986 (“the 1986 Order”) and the Companies Act 2006 (“the 2006 Act”) which refer to the “authorised minimum” share capital requirement for public companies.

There is a definition of “the authorised minimum” in section 763(1) of the 2006 Act, which is £50,000 or the prescribed euro equivalent. Regulation 2 prescribes, for the purposes of this definition, the amount in euros which is to be treated as equivalent to the sterling amount of the authorised minimum. The prescribed euro equivalent is €65,600.

Regulations 3 and 4 provide for the application of the authorised minimum requirement for the purposes of particular provisions of the 1985 Act and the 1986 Order which refer to it. The provisions in question have the effect of requiring a public company to re-register as a private company where certain events cause the nominal value of its allotted share capital to fall below the authorised minimum. The events are the making of a court order confirming a reduction of capital or a mandatory cancellation of shares in particular circumstances. Regulation 3 deals with the situation where, taking account of the effect of the order or the cancellation of shares, the company has or will have shares denominated in more than one currency. It requires the nominal value of the company’s allotted share capital to be treated as being below the authorised minimum if, applying the methods of calculation in regulation 3, both the sterling value is below £50,000 and the euro value is below €65,600.

The methods of calculation in regulation 3 involve converting the value of currencies into sterling or euros at the appropriate spot rate of exchange. “The appropriate spot rate exchange” is defined in regulation 4 and the definition refers, among other things, to rates published by the Financial Times. The published rates are available from [www.ft.com](http://www.ft.com).

If, taking account of the effect of the court order or the cancellation of shares, the company’s allotted share capital is denominated solely in sterling or solely in euros, then it is the definition of “the authorised minimum” in section 763 of the 2006 Act which will apply for the purpose of determining whether the nominal value of that share capital falls below the authorised minimum for the purposes of the relevant provisions of the 1985 Act and the 1986 Order.

Regulation 5 deals with registration by the registrar of companies of court orders confirming the reduction of public companies’ share capital and with re-registration of public companies as private companies where a mandatory cancellation of shares has the effect of bringing the nominal value of the company’s allotted share capital below the authorised minimum. It enables the registrar to assume, in certain circumstances, that the authorised minimum requirement is no longer satisfied by the company.

Regulation 6 enables the courts, in specified proceedings, to make a determination in certain circumstances about the exchange rates to be applied in working out whether a public company satisfies the authorised minimum requirement.

Regulation 7 prevents anyone from being liable as a result of reliance, for the purposes of these Regulations, on an exchange rate published by the Financial Times. It also prevents liability arising if an erroneous exchange rate published by the Financial Times is relied on for the purposes of the Regulations. Finally, it excludes liability for acts or omissions leading to the Financial Times not publishing an exchange rate capable of being relied on for the purposes of the Regulations.

An impact assessment in respect of these Regulations has been produced and copies are available from the Company Law and Governance Directorate, Department for Business, Enterprise and Regulatory Reform, 1 Victoria Street, London SW1H 0ET or from [www.berr.gov.uk](http://www.berr.gov.uk).

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STATUTORY INSTRUMENTS

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