

**2009 No. 2425**

**COMPANIES**

**The Companies (Authorised Minimum) Regulations 2009**

*Made* - - - - *4th September 2009*

*Laid before Parliament* *7th September 2009*

*Coming into force* - - *1st October 2009*

The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 763(2) to (4), 766(1)(a) and (2) and 1292(1) and (2) of the Companies Act 2006(a).

**Citation, commencement and interpretation**

**1.**—(1) These Regulations may be cited as the Companies (Authorised Minimum) Regulations 2009 and come into force on 1st October 2009.

(2) In these Regulations—

“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(b) in England and Wales.

(3) In these Regulations a reference to any Part or section is, unless otherwise stated, a reference to a Part or section of the Companies Act 2006.

**Authorised minimum in euros**

**2.** For the purposes of the definition of “the authorised minimum” in section 763(1), but subject to regulation 9, the amount in euros that is to be treated as equivalent to the sterling amount(c) is €57,100.

**Application of the authorised minimum requirement for certain purposes**

**3.**—(1) This regulation applies for either of the purposes in paragraphs (2) and (3), and is subject to regulation 9.

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(a) 2006 c.46.

(b) 1971 c.80.

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

(2) The first purpose is to determine, for the purposes of section 650, whether a reduction of a public company's share capital confirmed by a court order under section 648 has the effect of bringing the nominal value of the company's allotted share capital below the authorised minimum.

(3) The second purpose is to determine, for the purposes of section 662(2)(b), whether the cancellation of a public company's shares and the diminution of the amount of its share capital under section 662(2)(a) have the effect of bringing the nominal value of the company's allotted share capital below the authorised minimum.

(4) This regulation only applies where the company has allotted share capital denominated in more than one currency, taking account of the effect of the reduction of the company's share capital or (as the case may be) the effect of the cancellation of the company's shares and the diminution of the amount of its allotted share capital.

(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 €57,100.

(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.

### **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(a) 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.

(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

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(a) 2000 c.8.

- (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.

(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 662(1)(a) or (b), the working day immediately preceding the date of the forfeiture or surrender; and
- (b) in a case within section 662(1)(c), (d) or (e), 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.

(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 a case within section 662(1)(a) or (b), the fifth working day following the date of the forfeiture or surrender; and
- (b) in a case within section 662(1)(c), (d) or (e), the fifth working day following the date of the acquisition.

#### **Registration of a court order confirming a capital reduction: assumptions which may be made by the registrar**

5.—(1) This regulation applies where a public company delivers to the registrar under section 649 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.

(2) Where the circumstances in paragraph (3), (4) or (5) exist, the registrar may make the assumption in paragraph (6).

(3) The circumstances in this paragraph are that—

- (a) taking account of the effect of the reduction of its capital, the company has 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) taking account of the effect of the reduction of its share capital, the company has 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) taking account of the effect of the reduction of its share capital, the company has 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 649(1) and 650(1) and (2) that the reduction of the company's share capital has the effect of bringing the nominal value of the company's allotted share capital 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 667 ; and
- (b) proceedings under section 757 or 758 or Part 30.

(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 under section 667 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 and diminution of the amount of the company's share capital under section 662(2)(a) was that the nominal value of the company's allotted share capital was brought below the authorised minimum; and
- (b) as a result of that cancellation and diminution 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 the publication or non-publication of a 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.

## Revocation

8. Regulation 2 of the Companies (Authorised Minimum) Regulations 2008(a) is revoked.

## Transitional provisions and savings

9.—(1) The figure of €57,100 in regulation 2 is to be read as €65,600 where that regulation applies for any of the purposes in paragraph (2).

(2) The purposes are—

- (a) to determine whether the nominal value of a public company's allotted share capital is less than the authorised minimum for the purposes of an application for a trading certificate under section 761 where the application was received by the registrar before 1st October 2009;
- (b) to determine for the purposes of section 91(1)(a) whether the nominal value of a private company's allotted share capital is less than the authorised minimum in a case where the special resolution that the company should be re-registered as a public company was passed before 1st October 2009(b);
- (c) to determine whether, for the purposes of section 139 of the Companies Act 1985 or Article 149 of the Companies (Northern Ireland) Order 1986(c), the effect of a reduction of share capital is to bring the nominal value of a company's allotted share capital below the authorised minimum;
- (d) to determine for the purposes of section 650 whether the effect of a reduction of capital is to bring the nominal value of a company's allotted share capital below the authorised minimum in a case where the special resolution for reducing the company's share capital was passed before 1st October 2009(d);
- (e) to determine for the purposes of section 662(2)(b) whether the effect of cancelling shares and diminishing a company's share capital under section 662(2)(a) is to bring the nominal value of the company's allotted share capital below the authorised minimum in a case where the period for complying with the obligations under section 662(2) began before 1st October 2009(e).

(3) The figure of €57,100 in regulation 3(5)(b) is to be read as €65,600 where that regulation applies for either of the purposes in paragraph (4).

(4) The purposes are—

- (a) to determine for the purposes of section 650 whether the effect of a reduction of capital is to bring the nominal value of a company's allotted share capital below the authorised minimum in a case where the special resolution for reducing the company's share capital was passed before 1st October 2009(f);

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(a) S.I. 2008/729.

(b) See S.I. 2008/2860 (C. 126), Schedule 2, paragraph 22(1) and (5).

(c) See S.I. 2008/2860 (C. 126), Schedule 2, paragraph 68.

(d) See S.I. 2008/2860 (C. 126), Schedule 2, paragraph 68(1) and (2).

(e) See S.I. 2008/2860 (C. 126), Schedule 2, paragraph 70(2).

(f) See S.I. 2008/2860 (C. 126), Schedule 2, paragraph 68(1) and (2).

- (b) to determine for the purposes of section 662(2)(b) whether the effect of cancelling shares and diminishing a company's share capital under section 662(2)(a) is to bring the nominal value of the company's allotted share capital below the authorised minimum in a case where the period for complying with the obligations under section 662(2) began before 1st October 2009<sup>(a)</sup>.

4th September 2009

*Davies*  
Minister for Trade, Investment and Business,  
Department for Business, Innovation and Skills

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<sup>(a)</sup> See S.I. 2008/2860 (C. 126), Schedule 2, paragraph 70(2).

## EXPLANATORY NOTE

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

These Regulations relate to provisions of the Companies Act 2006 (“the 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 Act: it 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 €57,100.

Regulations 3 and 4 provide for the application of the authorised minimum requirement for the purposes of certain provisions of the Act. 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 a reduction of share capital confirmed by court order or the mandatory cancellation of shares in particular circumstances.

Regulation 3 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 that regulation, the sterling value is below £50,000 and the euro value is below €57,100.

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 of exchange is defined in regulation 4 and, for particular purposes, the definition refers to rates published by the Financial Times. These published rates are also available at [www.ft.com](http://www.ft.com).

Regulations 3 and 4 only apply where (taking account of the reduction or diminution of the company’s share capital) the company has or will have shares denominated in more than one currency. If the company’s allotted share capital is denominated solely in sterling or euros, then it is the definition of “the authorised minimum” in section 763 of the Act which applies for the purpose of determining whether the nominal value of that share capital falls below the authorised minimum.

Regulation 5 deals with registration by the registrar of companies of court orders confirming the reduction of public companies’ share capital. 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.

Regulation 8 revokes regulation 2 of the Companies (Authorised Minimum) Regulations 2008 (S.I. 2008/729); and regulation 9 makes transitional provisions and savings. Those transitional provisions and savings take account of transitional provisions and savings in Schedule 2 to the Companies Act 2006 (Commencement No. 8, Transitional Provisions and Savings) Order 2008 (S.I. 2008/2860 (C. 126)).

An impact assessment has not been produced for these Regulations because they have no impact on the costs of business, charities or voluntary bodies.

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STATUTORY INSTRUMENTS

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**2009 No. 2425**

**COMPANIES**

The Companies (Authorised Minimum) Regulations 2009

£5.50