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STATUTORY INSTRUMENTS

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**2009 No. 388**

**COMPANIES**

**The Companies (Shares and Share Capital) Order 2009**

*Made* - - - - *26th February 2009*  
*Laid before Parliament* *27th February 2009*  
*Coming into force* - - *1st October 2009*

The Secretary of State makes the following Order in exercise of the powers conferred by sections 10(2)(c)(i), 32(2)(c)(i), 108(3)(c)(i), 555(3)(a) and (4)(c)(i), 556(3), 583(4), 619(3)(c)(i), 621(3)(c)(i), 625(3)(c)(i), 627(3)(c)(i), 644(2)(c)(i), 649(2)(c)(i), 663(3)(c)(i), 689(3)(c)(i), 708(3)(c)(i), 714(5), 727(3), 730(5)(c)(i) and 1167 of the Companies Act 2006<sup>(1)</sup>.

**Citation, commencement and interpretation**

1.—(1) This Order may be cited as the Companies (Shares and Share Capital) Order 2009 and shall come into force on 1st October 2009.

(2) In this Order, a reference to a section is a reference to a section of the Companies Act 2006.

**Statements of capital, and returns of allotment by unlimited companies: prescribed particulars of the rights attached to shares**

2.—(1) The particulars in paragraph (3) are prescribed for the purposes of the provisions in paragraph (2).

(2) The provisions are—

- (a) section 10(2)(c)(i);
- (b) section 32(2)(c)(i);
- (c) section 108(3)(c)(i);
- (d) section 555(4)(c)(i);
- (e) section 556(3);
- (f) section 619(3)(c)(i);
- (g) section 621(3)(c)(i);
- (h) section 625(3)(c)(i);

- (i) section 627(3)(c)(i);
  - (j) section 644(2)(c)(i);
  - (k) section 649(2)(c)(i);
  - (l) section 663(3)(c)(i);
  - (m) section 689(3)(c)(i);
  - (n) section 708(3)(c)(i); and
  - (o) section 730(5)(c)(i).
- (3) The particulars are—
- (a) particulars of any voting rights attached to the shares, including rights that arise only in certain circumstances;
  - (b) particulars of any rights attached to the shares, as respects dividends, to participate in a distribution;
  - (c) particulars of any rights attached to the shares, as respects capital, to participate in a distribution (including on winding up); and
  - (d) whether the shares are to be redeemed or are liable to be redeemed at the option of the company or the shareholder.

#### **Prescribed information for a return of an allotment by a limited company**

**3.—**(1) The information in paragraph (2) is prescribed for the purposes of section 555(3)(a) (information to be contained in a return of an allotment by a limited company).

- (2) The information is—
- (a) the number of shares allotted;
  - (b) the amount paid up and the amount (if any) unpaid on each allotted share (whether on account of the nominal value of the share or by way of premium); and
  - (c) where the shares are allotted as fully or partly paid up (as to their nominal value or any premium on them) otherwise than in cash, the consideration for the allotment.

#### **Shares deemed paid up in or allotted for cash, and sale of treasury shares for a cash consideration: meaning of cash consideration**

**4.—**(1) The creation of an obligation on the part of a settlement bank to make a relevant payment in respect of the allotment of a share to a system-member by means of a relevant system is to be regarded as a means of payment falling within section 583(3)(e).

(2) The creation of an obligation on the part of a settlement bank to make a relevant payment in respect of the payment up of a share by a system-member by means of a relevant system is to be regarded as a means of payment falling within section 583(3)(e).

(3) The creation of an obligation on the part of a settlement bank to make a relevant payment in respect of the transfer by a company to a system-member, by means of a relevant system, of a share held by the company as a treasury share is to be regarded as a means of payment falling within section 727(2)(e).

- (4) In this article—
- (a) the expressions “Operator”, “relevant system”, “rules”, “settlement bank” and “system-member” have the meanings given in the Uncertificated Securities Regulations 2001(2); and

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(2) [S.I. 2001/3755](#); relevant amending instruments are [S.I. 2003/1633](#), [2007/124](#).

- (b) “relevant payment” means a payment in accordance with the rules and practices of an Operator of a relevant system.

**Redemption or purchase of own shares out of capital by a private company: prescribed form of, and information with respect to the nature of the company’s business to be contained in, a directors’ statement**

5.—(1) The directors’ statement required by section 714 (directors’ statement to be made where a private company makes a payment out of capital for the redemption or purchase of its own shares) must—

- (a) be in writing;
  - (b) indicate that it is a directors’ statement made under that section; and
  - (c) be signed by each of the company’s directors.
- (2) The statement must state—
- (a) whether the company’s business includes that of a banking company; and
  - (b) whether its business includes that of an insurance company.

26th February 2009

*Ian Pearson*  
Economic and Business Minister,  
Department for Business, Enterprise and  
Regulatory Reform

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## EXPLANATORY NOTE

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

This Order makes provision in relation to shares and share capital for the purposes of various provisions of the Companies Act 2006 (c.46) (“the Act”).

The Act requires companies, in various circumstances, to deliver a statement of capital to the registrar of companies. It also requires a company to send a current statement of capital to any member of the company on request. A statement of capital must (among other things) state, for each class of the company’s shares, such particulars of the rights attached to shares as are prescribed by order or regulations. Article 2 prescribes these particulars. Where the company is a limited company, the shares are redeemable and the directors (duly authorised) determined the terms, conditions and manner of redemption, section 685(3)(b) of the Act also requires a statement of capital to state the terms, conditions and manner of redemption.

Article 2 does not apply to the statement of capital in a company’s annual return, the contents of which are regulated by section 856(2) of the Act as amended by the Companies Act 2006 (Annual Return and Service Addresses) Regulations 2008 (S.I. 2008/3000).

Where an unlimited company allots shares of a class with rights that are not in all respects uniform with shares previously allotted, section 556 of the Act requires the company to deliver a return of the allotment to the registrar of companies for registration. The return must contain such particulars of the rights attached to the shares as are prescribed by order or regulations. Article 2 prescribes these particulars.

Article 3 prescribes the information that must be included in a return of an allotment of shares delivered to the registrar of companies under section 555 of the Act by a limited company.

Section 583 of the Act provides that 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. “Cash consideration” is defined in subsection (3), which lists a number of methods of payment and provides also that “cash consideration” is constituted by 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. The definition may be supplemented by order providing that particular means of payment are to be regarded as falling into that last category. Article 4 provides that “cash consideration” includes a settlement bank’s obligation to make a payment in respect of the allotment or payment up of shares under the CREST system, which is the settlement system operated by Euroclear UK & Ireland Limited (see [www.euroclear.co.uk](http://www.euroclear.co.uk)). The CREST system is regulated by the Uncertificated Securities Regulations 2001 (S.I. 2001/3755, as amended).

Article 4 also supplements, in the same way, the definition of “cash consideration” which applies for the purposes of section 727(1)(a). That section permits a company to sell for a cash consideration any shares which it holds as treasury shares.

Section 713 of the Act provides that a payment out of capital by a private company for the redemption or purchase of its own shares is not lawful unless, among other things, the company’s directors make a statement in accordance with section 714. The statement must be in the form prescribed by order or regulations and must contain (among other things) such information with respect to the nature of the company’s business as may be so prescribed. Article 5 prescribes both the form of a directors’ statement under section 714 and the information as to the nature of the company’s business which such a statement must contain.

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