

**COMPANIES ACT 2006**

**SHARE CAPITAL**

**ADVICE NOTE**

Following Simon Porter's article on the final implementation of the Companies Act 2006 (the "2006 Act"), we now address the changes to the law concerning the share capital of private owner-managed companies.

Authorised Share Capital

The provisions of the new Act abolish the requirement for both private and public companies to have an authorised share capital. Directors are now free to allot an unlimited amount of shares, provided they have received the required authorisation from the company's members to do so. Should they wish to, members can still restrict the number of shares allotted by inserting a provision in the company's articles.

For those companies incorporated before the 1<sup>st</sup> October 2009, the authorised share capital stated in their articles will continue to restrict how many shares can be allotted. However, this restriction can be removed by passing an ordinary resolution to that effect. This would bring an existing company into line with those companies created since 1<sup>st</sup> October 2009.

Allotment of Shares

Directors of newly incorporated private companies will not require any authority to allot shares, provided their company has only one class of share and the company articles do not provide otherwise. This allows shares to be allotted by a Board resolution. Companies in existence before the 1<sup>st</sup> October 2009 can bestow on the directors provided its members pass an ordinary resolution.

Those companies with more than one class of share still require authorisation from their members before any shares may be allotted.

Statement of Capital

Although companies are no longer required to have an authorised share capital, they are required to provide the Registrar at Companies House with information regarding their issued share capital at a certain point in time. This is done in the form of a 'Statement of Capital' which encompasses, amongst other things, how many shares of each class have been issued, the prescribed rights attached to each class of shares and the total number of shares that have been issued. A Statement of Capital should be submitted along with the relevant forms to the Registrar in specified circumstances such as when a company allots shares or submits in their annual return. This also applies when a new company's initial shareholding is submitted or a company is buying-back some of its own shares.

Share buy-back

The 2006 Act replicates the majority of the provisions of the Companies Act 1985 and therefore a company is still generally prohibited from purchasing its own shares unless it meets one of the limited exceptions. If it can, then it may fund the purchase out of distributable profits, capital (if a private company) or the money raised from issuing new shares.

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Some changes have been made. Authorisation is no longer required in a company's articles allowing a company to purchase its own shares, provided its articles do not contain a prohibition. When buying-back shares, the directors of the company are no longer required to swear a statutory declaration, but must submit a statement detailing the financial position of the company. There must be reasonable grounds on which the statement is based as it is an offence for the directors to give inaccurate information. Directors must also take all the company's liabilities (including contingent and prospective liabilities) into account when making the statement. Finally, a Statement of Capital must also be submitted to the Registrar, along with the required form, in these circumstances.

### Redemption of Shares

Directors can now issue redeemable shares without requiring authorisation from the company's members or having provision to do so in the company's articles. All terms of the redemption, as well as the manner in which the shares are to be issued, must be agreed beforehand. However, members can place a restriction in the articles to prevent the directors from issuing such shares.

### Reduction of Share Capital

Further to the 'solvency statement' procedure brought in on 1<sup>st</sup> October 2008, which simplified the way in which a private company could reduce its share capital, a company can now reduce its share capital without its articles specifically stating its ability to do so. The requirement for a Memorandum of Capital has also been replaced by the requirement for a Statement of Capital which shows the share capital after the reduction has taken place.

The major change brought in by the 1<sup>st</sup> October 2009 implementation is regarding the court procedure used for reduction approval. The burden is no longer with the company and instead falls on the creditors objecting to the reduction. The creditors must now prove that there is a likelihood that the company will not be able to discharge the creditor's claims or debts should the reduction proceed as proposed. Should the creditor fail to do this, the court can allow the reduction and impose any terms and conditions that it may deem to be appropriate. Approval by the court must not be given unless all creditors who may object to the reduction have either given their consent, or had their debt discharged, determined or secured.

### Further Information

The most recent implementation of the 2006 Act also introduces a number of changes to areas such as Company Formation and Company Restoration. As a consequence, Companies House has now changed all their forms with the numbering of the new forms no longer bearing any relation to the section numbers of the new Act.

If you require further information, please contact our Corporate & Commercial Department on 01306 880110 or 01483 861848.

Details of our full range of legal services can be found on our website - [www.downslaw.co.uk](http://www.downslaw.co.uk).