

# Companies Act 2014

## Share Capital in the Private Limited Company

---

The law relating to shares, share capital and other instruments is set out in Part 3 of the Companies Act 2014 (the “Act”), in sections 64 to 126. Sub-divided into seven chapters, Part 3 provides the first modern comprehensive statutory statement on share capital, the chapters being:

- Preliminary and interpretation
- Offers of securities to the public
- Allotment of shares
- Variation in capital
- Transfer of shares
- Acquisition of own shares
- Distributions

In this note it is proposed to highlight some of the more important provisions which change the law relating to share capital in private companies limited by shares (LTDs). The key changes to the law in other specific areas will be the subject of separate notes.

### *General requirement for an LTD to have a share capital*

An LTD must have a share capital and its constitution must state, as respects its share capital, either the amount of its authorised share capital and the division of that capital into shares of a specified fixed amount *or* without stating an authorised share capital, that the share capital shall, at the time of its registration, stand divided into shares of a fixed amount specified in the constitution: *section 19(1)(d)*. A company’s constitutional provisions on share capital can only be amended subsequently in the manner and to the extent for which express provision is made in the Act: *section 20*.

Shares must have a nominal value; however, an LTD can allot shares of different nominal values, of different currencies, and with different amounts payable on them (*section 66(1) and (2)*). Unless all shares or shares of a particular class are fully paid up and rank *pari passu* for all purposes, each share shall be numbered (*section 67(1) and (2)*).

Shares may be issued with such preferred, deferred or other special rights or such restrictions, whether in regard to dividend, voting, return of capital or otherwise as the company may determine by ordinary

resolution (*section 66(3)*). An LTD can also allot redeemable shares (*section 66(4)*). However, an LTD shall not have power to issue any bearer instrument (*section 66(9)*).

Although an LTD shall not recognise any person as holding shares on trust, an LTD may - unless its constitution provides otherwise - require that a member shall on being so required, furnish information as to the beneficial ownership of any share where such is reasonably required by the company (*section 66(6)* and *(7)*).

#### *Prohibition of offers of securities to the public*

Subject to certain exceptions, an LTD cannot make any invitation to subscribe or offer any shares, debentures or other securities of the company, etc, and shall neither apply to have, or have, its securities (or interests in them) admitted to trading or to be listed on any market, whether in Ireland or elsewhere (*section 68(1)* and *(2)*). Existing private companies which have debt listings will, therefore, either have to delist or convert to a DAC or other company type.

#### *Allotment of shares*

The allotment of shares in an LTD is dealt with in Chapter 3. *Section 69* sets a number of rules:

- No share can be allotted unless the allotment is authorised, which authorisation can be provided by general authority in the constitution or by ordinary resolution; authorities granted under section 20 of the Companies (Amendment) Act 1983 are, however, preserved;
- Where a company's constitution sets an authorised share capital and a period of time within which allotments can take place, no share may be allotted outside of the specified period or other than from the authorised but unissued share capital;
- Save to the extent the constitution provides otherwise, shares can only be allotted by the directors;
- A director who knowingly contravenes, etc, a preceding provision will be guilty of a category 3 offence;
- Existing members will have pre-emption rights on new allotments unless those rights are disapplied by the constitution or by a special resolution, or other circumstances exist.

#### *Share premium*

Shares in an LTD can be paid up in money or money's worth (including goodwill and expertise). While shares may not be allotted at a discount to their nominal value, they can be allotted at a premium and where this is the case, the premium must be credited to the undenominated capital of the company and transferred to the share premium account (*section 71*).

This requirement (in *section 71(5)*) to treat share premium as undenominated capital and transfer it to a share premium account is relaxed in a number of particular cases:

- in a merger where shares in a company are allotted at a premium on foot of an agreement for the acquisition or cancellation of shares in another company, and particular conditions are met (*section 72*);
- in a group reconstruction where shares in a wholly-owned subsidiary are allotted at a premium to its holding company or another wholly-owned subsidiary in consideration for the transfer of assets other than cash from another member of the group, that member being a body corporate, and certain conditions are met (*section 73*);

- in return for the acquisition of issued shares in a body corporate, where a company allots and issues shares to the shareholders in a body corporate in consideration for the acquisition by it of all the issued shares in the body corporate, where particular conditions are met (*section 75*).

#### *Calls, liens and forfeiture*

*Sections 77 to 81* contains a series of statutory defaults in relation to *calls* on shares (i.e. to pay up partly paid shares), *liens* on shares (i.e. the circumstances in which a company has a lien over partly paid shares until they are fully paid up) and *forfeiture* of shares (i.e. the circumstances in which a company can forfeit partly paid shares from a member). At present, most companies adopt these provisions on adopting Table A in whole or in part. The position under the Act is that these provisions will apply save to the extent that a particular company's constitution provides otherwise.

#### *Variation in capital*

Variation in capital is set out in Chapter 4. Generally, just as is currently the law, most variations and increases in share capital may be effected by the members passing an ordinary resolution (*section 83*). Reductions in share capital have, historically, been treated differently and generally a private company limited by shares was prohibited from reducing its share capital without the sanction of the High Court,

*Section 84(1)* of the Act provides that, save to the extent that a company's constitution provides otherwise, and subject to compliance with *sections 85 to 87*, a company may reduce its company capital (i.e. share capital and undenominated capital) by, for example,

- extinguishing or reducing the liability on any of its shares in respect of share capital not paid up,
- cancelling any paid up company capital which is lost or unrepresented by available assets, or
- paying off any paid up company capital in excess of the wants of the company,

where it either employs the *Summary Approval Procedure* (the "SAP") or passes a special resolution that is confirmed by the High Court. The SAP is the subject of a separate note.

The provisions in respect of variation of share rights are also largely unchanged from the current law (*section 88*).

#### ***For further information on share capital contact:***

***Dr Tom Courtney, Partner, [tom.courtney@arthurcox.com](mailto:tom.courtney@arthurcox.com),***

***Daibhi O'Leary, Associate, [daibhi.oleary@arthurcox.com](mailto:daibhi.oleary@arthurcox.com)***

***or your usual Arthur Cox contact***

*This document contains a general summary of developments and is neither a complete nor definitive statement of the law. Specific legal advice should be obtained before taking action.*