

ARTHUR COX

**Share Capital & certain other instruments  
Part 3 of the Companies Bill**

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## **Part 3 – Share Capital and Certain Other Instruments**

All law relating to share capital and certain other instruments will be codified in Part 3.

Consists of 7 Chapters,

Contain 63 sections of law.

Contains recommendations of CLRG reports – including the first report, second report and the Heads of Bill Report

## Part 3 – Share Capital and Certain Other Instruments

Consolidates the law in this area in one place.

Provisions currently spread across:

- Companies Act 1963 – most of Part III
- Companies Act 1963 – First Schedule (Model Regulations)
- Companies (Amendment) Act 1983 – most of Parts III & IV
- Companies Act 1990 – much of Part IV

## Part 3 – Share Capital and Certain Other Instruments

Save to the extent that the company's constitution provides otherwise, the following provisions in the Bill will apply:

- Calls on shares
- Liens
- Forfeiture of shares
- Transmission of shares
- Procedures for declarations, payments of dividends
- Bonus issues

This will reduce the detail required in articles of association

## Chapter 1 – Preliminary & Interpretation

Section 65 contains definitions relevant to Part 3, notably:

- “Company capital”, a new term which comprises the company’s share capital, share premium, capital conversion reserve fund and capital redemption reserve fund; and
- “Undenominated capital”, a new term which comprises the excess of company capital over the nominal value of issued shares.

Sections 66-68 set out basic provisions regarding shares.

## Chapter 2 – Offers of securities

Section 69 - Prohibition on public offering:

New model company may not offer securities to public.

Maximum number of offerees is 149, excluding:

- Qualifying investors; or
- Where certain extremely restrictive conditions are met

More restrictive than Prospectus Directive exemption

Applies to both shares and bonds

## Chapter 2 – Offers of securities

### Section 69 - Prohibition on listing securities

- Currently, private companies may list debt securities.
- The model company may not have securities or interests in them admitted to trading on a regulated market.
- Private companies wishing to have debt securities listed must re-register as DACs, with an objects clause.

## Chapter 3 – Allotment of shares

Section 70 brings together various previous provisions on allotment of shares, including from the model regulations.

Some amendments:

- No longer an exemption from pre-emption for:
  - Shares issued other than for cash; and
  - Employee share scheme shares
- Shares must be offered pre-emptively to all holders of voting shares (previously limited to holders of “relevant shares”)

## Chapter 3 – Allotment of shares

Section 72 clarifies definition of “Share premium” as meaning excess over nominal value.

Two new exceptions:

- Merger relief whereby excess value received on allotment may in certain circumstances be treated as a distributable reserve.
- Where shares allotted to holding or sister company in exchange for non-cash consideration, assets deemed to transfer at lower of book value or cost.

## Chapter 3 – Allotment of shares

Summary Approval Procedure replaces the “section 60” whitewash procedure regarding financial assistance.

There is still a requirement for:

- Statutory declaration of solvency by directors
- Special resolution of shareholders
- Key improvement is that same procedure will apply to “validate” a number of transactions.

## Chapter 3 – Allotment of shares

- Requirement for Summary Approval Procedure arises in case of “acquisition”, defined in statute, rather than “purchase or subscription” (defined in common law)
- “Acquisition” clearly though broadly defined
- Exemptions from scope
- Acquisition must be “principal purpose” of assistance

## Chapter 4 – Variation in Capital

Section 85 - Reduction in Share Capital:

Court order not obligatory: can be effected either:

- 1) By special resolution confirmed by the court; or
- 2) By using the Summary Approval Procedure.

In (2), report to be made by person qualified as auditor, opining that declaration of solvency not unreasonable.

## **Chapter 4 - Variation of Capital**

### Section 92 - Variation of Capital on Reorganisation

New provision whereby a company may dispose of assets, liabilities and/or undertakings in exchange for securities in the transferee being allotted to members of the company (i.e. rather than to the transferor company).

## Chapter 5 - Transfer of Shares

This Chapter brings together a number of provisions from various Companies Acts and from model regs.

The Part also gives statutory effect to the common law rule whereby the power to decline registration of a share must be actively exercised within 2 months, or will lapse.

## Chapter 6 - Acquisition of own shares

Sets out the power to acquire shares in positive terms.

Also, some minor measures to facilitate acquisition:

- Rule requiring 10% (in nominal value) at all times to be non-redeemable removed by the Bill.
- Requirement that contract be made available for inspection for 21 days prior to meeting removed by the Bill.
- Proceeds of issue of new shares may be used for payments incidental to the acquisition.

## Chapter 7 - Distributions

Chapter 7 largely restates:

- The provisions of the 1983 Act relevant to private companies
- The provisions currently in the Model Regulations regarding dividends and bonus issues

Two new provisions – section 124(5) and 127(9) – which may apply on the revaluation of assets.

## For Further Information Contact

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# Thank You.

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