

Guidance Note: Re

Premium Account

Share premium is the difference between the subscription price paid for the shares and the nominal value of the shares. The total amount of share premium is credited to the share premium account. The provisions of the Companies Act 2006 are set out in section 610. It is a reserve, and it forms part of the company's reserves, but it is not the same as the cash received from the issue of shares, but it is a separate reserve.

For some privately owned companies, they are unable to pay out dividends. However, they may have a significant distributable.

Whilst the share premium account is treated in the same way as share capital, a company must go through a capital reduction if a share premium is recorded in a company's accounts for shares that gave rise to it. The share premium account, the amount of which is recorded for any class of share. As such it is not a dividend. An alternative to paying a dividend is to pay a share dividend.

The Companies Act 2006 introduced the ability for companies to reduce the amount of their share premium account.

From 1 October 2008 private limited companies can pass a special resolution and obtain a dividend of up to 15% of the amount of their share capital based on the value of the statement made by the directors. This is a new right to a company's share premium account.

Authorisation to reduce share
longer required but the ability of
share premium) will be subject
or prohibits the reduction of sh

Since the solvency statement is simpler and cheaper means for or share premium. This procedure

The following are the steps that reduce its share premium account advice and is the process **only** advice as to whether, when and

value of shares issued and the
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premium account. The
the share premium account
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and loss reserves means they
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reserve, which is non-

It can be reduced or cancelled (Companies Act 2006). The company can do this. Note that once the company is no longer connected to the shareholder, the reduction or cancellation of the share is not binding on any shareholder/s holding the share. The shareholder/s made as an

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applicable to the reduction of its

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a private limited company to
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premium account.

STEP 1 – Board Resolutions

- **The board should propose to reduce the share premium account.**

The board of directors is responsible for the business of the company, so the decision to propose to the shareholders that the share premium account be reduced must initially be taken by the board. The “Special Resolution – Reduction of Share Premium” contains the details of the proposal, and it includes the text of the special resolution (see STEP 3 below as to the special resolution).

STEP 2 – Solvency Statement

- **The directors of the company must prepare a solvency statement not more than 15 days before the special resolution is passed.**

The solvency statement is a statement of the company. The document “Solvency Statement” is a statement that each of the directors has formed the opinion that:

- as regards the company's assets and liabilities, there is no ground on which the company can be found to be unable to pay its debts; and
- if it is intended to start the winding up of the company within 12 months of the date of the solvency statement, the company will be able to pay its debts in full within 12 months of the commencement of the winding up (if this is the case, the words “if it is intended to start the winding up of the company within 12 months of the date of the solvency statement” should be deleted); or
- if a winding up is not intended, the company will be able to pay its debts within 12 months of the date of the solvency statement (if this is the case, the words “if a winding up is not intended, the company will be able to pay its debts within 12 months of the date of the solvency statement” should be deleted).

If the solvency statement is made in accordance with the provisions of the Companies Act 2006, then every director who has signed the statement, if convicted, may face imprisonment or a fine or both. Because of the potential penalties, it is advisable for the directors to have reasonable grounds for expressing the opinion that the company is able to pay its debts as they fall due during the period of 12 months.

If the special resolution to reduce the share premium account is proposed at a general meeting of the company, a copy of the solvency statement must be made available to the shareholders when they vote on that resolution and throughout the meeting.

If the special resolution to reduce the share premium account is proposed by a written resolution, a copy of the solvency statement must be sent to every eligible member at or before the date on which the proposed resolution is passed.

sent. Care should be taken if the resolution. Most private companies specify a lapse date of 28 days for written resolutions. Since the resolution must be made not more than 15 days before the date of the meeting, it may be safer to propose the resolution at a general meeting with 15 days' notice otherwise there is a risk that shareholders may not be able to attend the meeting within 15 days even if they agree to it.

If the solvency statement is not made, every officer who is in default will be liable to a fine.

STEP 3 – Shareholder Approval

- **The share premium account must be approved by the shareholders.**

The share premium account resolution must be approved by the shareholders of the company by special resolution and must be worded to take effect on the date on which it is passed.

The approval may be by way of a written resolution or at a shareholders' meeting.

In either case, the special resolution must be passed by not less than 75% of the total votes of the shareholders entitled, vote on the special resolution on the date when the resolution is circulated.

See the document "Written Resolution for the Reduction of Share Premium" which can be used as a written resolution of the company for the reduction of the share premium.

STEP 4 – Statutory Forms

- **The company must complete the following forms:**
 - a statement of capital (Form SH20) (Note that the reduction of the share premium will remain unchanged on the change to the reduced share capital. The Companies House will be aware from the reduction of the share premium account balance).
 - a statement made by the directors that the solvency statement was made not more than 15 days before the date on which the resolution was passed, and a copy of the resolution is available to the shareholders (see "Section 644 – Statutory Forms").

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STEP 5 – Companies House

- The company, within 15 days of the special resolution being passed, must send to the Registrar the following supporting documents:

Within 15 days after the special resolution is passed, the company must deliver the following documents to Companies House:

- a copy of the solvency statement (Form SH16)
- the statement of capital (Form SH10)
- a copy of the special resolution
- the statement of the directors

the fee. This is £10 for a standard service. Companies House may change the fee, so you should check the current fee on their website.

A covering letter that can be seen at [Companies House – Register a company](#).

Please note that if any director is insolvent, the company will not be able to reduce its share capital unless the directors who are insolvent resign. However, it is possible to proceed through court approval.

Please also note that if your company has different classes of shares, you should consider the effect of any reduction on the voting rights of the different classes of shares and the share premium account. If you are in any doubt at all, please seek legal advice.

shareholders' resolution, a copy of the resolution and

the share premium account is required for all companies:

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relevant documents can be found at [Companies House – Register a company](#).

make a solvency statement. The standard route to effect a reduction of share capital is to make the solvency statement and proceed through court approval.

classes of shares, you should consider the effect of any reduction on the voting rights, to ensure that the proportion after the reduction of share capital will be required for each class of shares. If you are in any doubt at all, please seek legal advice.