

The Companies Act 2006 introduced a new power for private limited companies to reduce the amount of their share capital.

From 1 October 2008 private limited companies can reduce their share capital by passing a special resolution and obtaining the approval of the creditors. This is a simpler and cheaper means for private limited companies to reduce their share capital than the previous method of making an application to the court. The company's articles of association must not prohibit the reduction of share capital or prohibit the company from issuing shares as to leave the company with a share capital of less than the authorised share capital.

Since the solvency statement is a simpler and cheaper means for private limited companies to reduce their share capital, public companies must use the court route.

The following are the steps that a private limited company must follow to reduce its share capital.

### **STEP 1 – Board Resolutions**

- **The board must propose a resolution to reduce the share capital.**

The board of directors is responsible for the decision to reduce the share capital. The board must pass a resolution to reduce the share capital and record this in the board minutes.

### **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's financial position. It is a statement that the directors have prepared and signed, stating that the company is solvent.

- 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 a new business, the company will be able to pay its debts within 12 months of the date of the solvency statement.

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order for a private limited company to reduce its share capital.

reduction.

business of the company, so the directors must prepare a solvency statement. The solvency statement contains the necessary information for the directors to make a decision on whether to reduce the share capital.

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- if a winding up is not ordered within 12 months of the date of the solvency statement, the company will be able to pay its debts as they fall due during that period (if this is the case, the company must state in section (b) of the document)

If the solvency statement is made by a director, for the opinions expressed in it. If the company is a public company, then every director who is not a director at the time of the statement, if convicted, may face imprisonment for up to 2 years or a fine or both. Because of the potential penalties, it is advisable for the directors to seek legal advice before making the statement. It is a prerequisite for the directors to state in the statement that they have reasonable grounds for expressing the opinion.

If the special resolution to reduce the share capital is to be proposed at a general meeting of the shareholders, a copy of the solvency statement must be made available to the shareholders at the meeting and throughout the period of 14 days before the meeting.

If the special resolution to reduce the share capital is to be proposed by a written resolution, a copy of the solvency statement must be sent to every eligible shareholder at or before the time when the resolution is sent. Care should be taken if the special resolution is to be passed by a written resolution. Most private companies will have articles that specify a procedure for written resolutions. Since the solvency statement must be made available to the shareholders 14 days before the resolution is passed, it may be necessary to ensure that the resolution is passed at a meeting on 14 days' notice after the solvency statement has been made available to the shareholders.

If the solvency statement is not made, every officer who is in default when the company is wound up may be liable to a fine of up to £1,000.

### **STEP 3 – Shareholder Approval**

- **The share capital reduction**

The share capital reduction must be approved by a special resolution. The special resolution must be passed on the date on which it is passed and must be passed by a majority of 75% of the total voting rights of the shareholders.

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

In either case, the special resolution must be passed by not less than 75% of the total voting rights of the shareholders who are entitled to vote on the special resolution. The special resolution must be passed on the date when the solvency statement is made available to the shareholders.

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See the document “Written Resolution – Reduction Share Capital” which can be used to record the resolution.

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#### **STEP 4 – Statutory Forms**

- **The company must complete the following forms:**
  - a statement of capital (see “Form SH10 – Statement of Capital”); and
  - a statement made by the directors confirming that the solvency statement was made not more than 14 days before the date on which the resolution was passed, and a copy of the statement is available to the shareholders (see “Section 644 – Statement of Capital”).

#### **STEP 5 – Companies House**

- **The company, within 15 days of passing the resolution, must send to the Registrar for registration the resolution and supporting documents.**

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

- a copy of the solvency statement (see “Section 644 – Statement of Capital”);
  - the statement of capital (Form SH10 – Statement of Capital);
  - a copy of the special resolution; and
  - the statement of the directors confirming that the solvency statement was made not more than 14 days before the date on which the resolution was passed, and a copy of the statement is available to the shareholders (see “Section 644 – Statement of Capital”).
- On 6<sup>th</sup> April 2010, Companies House introduced a new system which must be submitted together with Form SH19. The new system is free of charge or £50 for a same day service.

A covering letter that can be seen in the “Letter Companies House – Reduction of Share Capital” document. The documents can be found at [Companies House](#).

Please note that if any director is unable to make a solvency statement, the company will not be able to use the new route to effect a reduction of capital unless the directors who are unable to make the solvency statement resign. However, it is possible to proceed with the old system 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, to ensure that the proportion after the reduction is correct.

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