



This Guidance Note is designed to assist companies in removing the authorised share capital, how shares are transferred within a private company.

## Authorised Share Capital

The concept of companies having an authorised share capital was abolished under the 2006 Companies Act. This means that there is no longer a ceiling on the amount of shares that a company can issue. This issue depends on whether the company was incorporated before or since the Companies Act 2006. Where a company has a restriction in the articles on all

### Companies incorporated before 2006

Companies that were incorporated before the Companies Act 2006 was implemented had to state an authorised share capital in their Articles of Association. This means that there is (and unless the restriction is removed) a limit on the maximum amount of shares that can be issued.

This becomes a problem when a company wishes to issue new shares above the maximum prescribed in the Memorandum of Association.

*Note that since the implementation of the Companies Act 2006, which came into force on 1<sup>st</sup> October 2009, any provisions of a company's memorandum of association that relate to the authorised share capital are to be treated as provisions of the company's articles of association. This provision will therefore (unless removed) apply to all companies.*

### Companies incorporated since 2006

The concept of authorised share capital was abolished by the 2006 Act, so companies incorporated since the relevant date (1<sup>st</sup> October 2009) will not have an authorised share capital. Such a limit on the share capital was not a requirement of the Articles of Association should be checked to ensure that the number of shares that can be issued is not limited.

### How to remove the authorised share capital

The limits imposed by the authorised share capital can be removed by one of two means, both of which require a general meeting of the shareholders.

#### 1. Delete the article(s) that relate to the authorised share capital

in relation to the administration of a company. This Guidance note considers removing the authorised share capital, how shares are transferred within a private company.

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#### 1. Delete the article(s) that relate to the authorised share capital

The regulations state that the authorised share capital may be removed by the company by **ordinary resolution** (See: [Shareholders' Resolution – Removal of Authorised Share Capital](#)) (note that normally, a special resolution is required to amend the articles of association, but in this case an ordinary resolution will suffice).

## 2. Adopt a completely new set of articles of association

Entirely new articles of association may be adopted by passing a shareholders' special resolution (See: [Shareholders' Resolution – Adoption of New Articles of Association](#)). Although this requires a greater majority (i.e. 75% rather than 50%), the new articles will assist them in complying with the regulations more efficiently.

Obviously, the new Articles of Association must not contain any limit on the number of shares that can be issued. Neither the [Model Articles for a Private Company Limited by Shares](#) (See: [Modified Model Articles for a Private Company Limited by Shares](#)) nor the [Model Articles for a Public Company Limited by Shares](#) (See: [Modified Model Articles for a Public Company Limited by Shares](#)) make any reference to an authorised share capital.

Whichever method is used, a copy of the new articles, along with Companies House (See: [How to Amend the Articles of Association](#)), must be filed with Companies House (See: [How to Amend the Articles of Association](#)), along with a printed copy of the new articles. If the amendment is minor, Companies House will accept a photocopy of the old articles with the new wording pasted over the top, and then photocopied.

## Steps to be taken by the company

1.	Call a board meeting. The directors should then decide whether to simply remove the articles relating to authorised share capital or to adopt a completely new set of articles. The directors should then call a general meeting of shareholders (See: <a href="#">Board Minutes – Calling a General Meeting of Shareholders</a> ) to circulate a shareholders' resolution.
2.	Send out notice of general meeting (14 days notice required).
3.	Hold the general meeting and pass the shareholders' resolution.
4.	Arrange to have the articles of association amended, or new articles adopted, and file the shareholders' resolution, along with the new articles, with Companies House.

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## Adoption

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## Issue and allotment of shares

Under the Companies Act 1985, a company must be authorised to do so. Under the 2006 Act, there is no requirement for authorisation for private companies with only one class of shares. For public companies with more than one class of shares, the 2006 Act regime is substantially the same as the 1985 Act regime.

### (A) 2006 Act Companies with only one class of shares

1. Check the articles of association for any prohibition on the allotment of shares by the directors.
2. If there is no prohibition, the directors may allot shares (section 550 Companies Act 2006) without the need for a shareholders' resolution.
3. If there is a prohibition (which is rare for private companies), the directors must pass a resolution of the shareholders (See: *Shareholders' Authority to Allot New Shares* described in 3) below.

### (B) 1985 Act Companies with more than one class of shares

*For 1985 Act companies, the authority to allot shares must be activated by an Ordinary Resolution of the shareholders (See: [Shareholders' Authority to Allot New Shares](#)).*

1. Check to see whether the articles of association permit the directors to issue and allot shares.
2. If they do not, or if the articles do permit the directors to issue and allot shares but only if a resolution of the shareholders is passed, check to see whether there is an authority to allot shares in place.

*A 'section 551 authorisation' is a resolution passed by the shareholders in a general meeting, which gives the directors a general authority to allot shares up to a specified maximum and for a specified period of time.*

3. If no section 551 authorisation is in place, the directors must pass such a resolution (See: *Shareholders' Authority to Allot New Shares*). A copy of the resolution must be lodged with Companies House (See: *Letter to Companies House*).

## Pre-emption Rights

*What are pre-emption rights?*  
Pre-emption rights give existing shareholders the right to be offered any new shares that the company proposes to issue for sale. This means that the existence of pre-emption rights acts as a bar to the issue of new shares to new shareholders and an anti-dilution device.

## Authority to issue and allot shares

Under the Companies Act 1985, a company must be authorised to allot shares if they were to be issued to shareholders of only one class of shares, of the same class. For private companies (which are not public companies), the 2006 Act regime is substantially the same as the 1985 Act regime.

### Authority to issue and allot shares

Under the Companies Act 2006, there is any prohibition on the directors issuing and allotting shares.

If there is no prohibition, the directors may have the authority to issue and allot shares without the need for any further authorisation.

If there is a prohibition (which is rare for private companies), the directors must pass a resolution of the shareholders (See: *Shareholders' Authority to Allot New Shares*), as described in 3) below.

### Authority to issue and allot shares and 2006 Act companies with more than one class of shares

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If no section 551 authorisation is in place, the directors must pass such a resolution (See: *Shareholders' Authority to Allot New Shares*). A copy of the resolution must be lodged with Companies House (See: *Letter to Companies House*).

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## General position under the Companies Act 2006

There is a statutory right of pre-emption. A company cannot allot shares unless it offers them first in proportion to their existing holdings (the offer must remain open for 14 days).

### How to disapply statutory pre-emption

A company can disapply the pre-emption rights in relation to a specified allotment, or to allotments in general.

Pre-emption rights in relation to a specified allotment can only be disapplied by passing a special resolution of the shareholders. The directors must recommend the special resolution and must set out:

- their reasons for making the allotment;
- the amount of payment to be made for the shares to be allotted; and
- the directors' justification for not offering the shares to existing shareholders in proportion to their existing holdings.

As a result of these cumbersome requirements, pre-emption rights in relation to a specified allotment are rarely used. The company will disapply the pre-emption rights made under that general authority.

- (i) be contained in the articles of association;
- (ii) be effected by way of a special resolution of the shareholders (See: *Shareholders' Special Resolutions*).

### Practical procedure for issuing shares

1	Check that any issues with the company's capital, (b) directors' authority to issue shares, and (c) right to issue shares have been resolved as set out above.
2	Set up a board meeting and pass a resolution to allot shares and (ii) if relevant, to disapply pre-emption rights.  Record the resolution(s) in the <a href="#">Minutes of the Board Meeting</a> and the <a href="#">Company's Register of Members</a> (See: <i>Register of Members</i> ).  <a href="#">Allot Shares for Cash</a> .
3	Once funds are received by the company, the secretary must enter an allotment in the company's Register of Members (See: <i>Register of Members</i> ). The entry must be made within two months of the date of allotment.
4	Prepare and send out share certificates to the new shareholders.
5	Within one month of the date of allotment, on Form SH01 (' <a href="#">Return of Allotment of Shares</a> '). The form must be accompanied by a Statement of Capital (which is a snapshot of the company's capital at a particular date).

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Below is a flow chart that runs through these issues. Follow it through according to whether your company has new or old style articles of association to see what approvals you need to put in place.

New Articles of Association  
(based on the Model Articles)

Old Articles of Association  
(based on Table A)

Check the authorised share  
Articles of Association  
(based on Table A) capital

Use the  
e capital

Authorised share capital is  
adequate

Remove the prohibition  
in the Memorandum of  
Association

NO  
  
Do the  
articles  
prohibit the  
directors?

than  
ass of  
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YES

Articles of  
Association  
allow directors to  
allot shares

NO

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YES

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# S A M P L E

## Share Transfers

### How to deal with a share transfer

In relation to shares that have been transferred from an existing shareholder, the seller (the transferor) has agreed with and the buyer (the transferee) to sell the shares to him or her. A company must register the transfer, which has been duly signed by the seller and the buyer.

*Note that there may be restrictions on the transfer of shares either because of the existence of pre-emption rights (see articles see above), or because of the terms of the contract under which the seller is bound. This is not the case in this Guidance Note, which assumes the seller has a free right to dispose of the shares. At the end of this Guidance Note.*

In the event of a freely transferable share, the company secretary will be required to handle the share transfer; to register the transfer and the registration paperwork.

#### **Sale of all the shares represented by one share certificate**

The following procedure applies to the sale of all the shares represented by one share certificate to the buyer:

1	The seller signs a stock transfer form (STF) and passes the form, along with the share certificate, to the buyer, who makes the payment for the shares to the seller.
2	The buyer arranges for the stamp duty to be paid, payable if the consideration for the shares is more than £1,000. A cheque for stamp duty should be made to 'HM Revenue & Customs'. See <a href="http://www.hmrc.gov.uk/stamp-duty/">www.hmrc.gov.uk/stamp-duty/</a> for more information.  If the transaction value is less than £1,000, the stock transfer form should be stamped.  The company secretary must stamp the form.
3	Once the stock transfer form is signed by the seller, the buyer should deliver the form to the company secretary.
4	On receipt, the company secretary should stamp the form by the Stamp Office. The stamp duty has been completed.  This is important, as the company secretary is personally liable for a penalty if he or she registers an improper transfer.  The company secretary must ensure the particulars of the seller and the shareholding match the Register of Members.

by the company, and are held by an individual. The company must ensure that the shareholder (the seller or transferor) has agreed with the transferee (the buyer or transferee) to sell the shares to him or her. A company must register such a transfer if an instrument of transfer (see below) has been delivered to it.

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3	Once the stock transfer form is signed by the seller, the buyer should deliver the form to the company secretary.
4	On receipt, the company secretary should stamp the form by the Stamp Office. The stamp duty has been completed.  This is important, as the company secretary is personally liable for a penalty if he or she registers an improper transfer.  The company secretary must ensure the particulars of the seller and the shareholding match the Register of Members.

5	<p>The stamped stock transfer form is then passed to the directors for consideration. If acceptable according to the articles (i.e. there are no restrictions on transfer of shares, and the directors do not wish to exercise any power of refusal), the board will resolve to pass the transfer for registration (See: <a href="#">Board Minutes – Approval of Share Transfer</a>).</p> <p>If a seal is in use by the company, the board can simultaneously authorise the use of the seal on the share certificate.</p>
6	The company secretary will update the Register of Members and send a share certificate out to the new member (See: <a href="#">Share Certificate</a> ). This must be done within two months of the transfer being lodged with the company.
7	The stock transfer form must be kept by the company as evidence of the transfer.

### ***Sale of part only of the shares represented by the share certificate***

Where only a portion of the shares represented by one certificate are being sold, the following procedure applies:

1	The seller lodges the stock transfer form and the share certificate(s) with the company.
2	The company secretary keeps the share certificate(s), and certifies the fact of lodgement on the margin of the transfer form, which is then returned to the seller.
3	The seller delivers the transfer form to the buyer and receives the consideration for the shares. The buyer will arrange to pay the stamp duty, and get the form stamped by the Stamp Office (if applicable, see Step 2 above). He or she will then submit the duly stamped stock transfer form with the company secretary for registration.
4	The company secretary will put the proposed share transfer to the Board of directors (see Step 5 above).
5	After completing the registration and updating the Register of Members, the company secretary will send out two new certificates, one to the seller for the shares retained, and the second one to the buyer for the shares transferred.

### **Transmission of Shares (on death or bankruptcy)**

When a shareholder dies or becomes bankrupt, his or her shares will vest with his personal representatives or his trustee in bankruptcy. Such representatives will have the right to take the shares into their own name, or to transfer them.

The company secretary must confirm the representative's right to the shares. This can be done by checking on the probate, letters of administration, certificate of appointment (or whatever document gives the representative his authority), to ensure that the person presenting themselves as the shareholder's representative is duly appointed as such. The representative will also need to produce the share certificate.



The company secretary should hold the shares in a representative capacity on the company's behalf. What this means is that, once it has been confirmed (see previous section) that the shareholder named on the Register is the owner of the shares.

### Joint shareholders

If a joint shareholder dies, the company secretary should be notified and then update the Register.

### Shareholders' agreement

A shareholders' agreement is a contract between the shareholders and the company itself).

A shareholders' agreement sets out the terms of the relationship between the shareholders with each other and often includes provisions for the company. It should one shareholder wishes to leave the company, should one shareholder wish to sell their shares, should one shareholder wish to bring in a new shareholder, should one shareholder wish to bring in a new company as a proportion of the company.

If a shareholders' agreement is entered into, the shareholders must agree to be bound by the terms of the agreement. The transfer. This can be achieved by a Deed of Adherence.

This subject is beyond the scope of this document. The steps needed to be taken to ensure the validity of the agreement. However, the Simply-docs documents include a template for a shareholders' agreement, related documents, which include a Deed of Adherence, and also a Deed of Adherence.

(See: [Shareholder Agreement](#))

shares are held in a representative capacity on the company's behalf. The company secretary should not accept any notice of trust. The company secretary should hold the shares *as representative* has been confirmed (see previous section) that the company secretary can treat the shares as if they were the absolute owner of the shares, though he or she were the absolute owner of the shares.

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(See: [Shareholder Agreement - Complementary Documents](#))