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1. Introduction

This Guidance Note is designed to provide information on the procedural steps involved in the process of re-classifying shares according to the rights of the newly re-classified shares.

The process of converting one class of shares or group into another is called re-classification of shares. It is referred to as share re-classification. In ordinary usage, the term share re-classification will be used throughout this guidance note, the term

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2. Re-classification of shares

Companies may seek to re-classify shares simply for administrative, historical or other reasons. For example, a company may have two classes of shares, 100 ordinary shares with a nominal value of £1 each. The company may wish to re-classify those shares into 50 "A" shares and 50 "B" shares.

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Although the Companies Act 2006, section 636 of the Companies Act 2006 requires a company to notify the Registrar of Companies if a new name or description is assigned to any class or description of its shares. The Companies Act 2006 does not require that, for example, ordinary shares remain classified as ordinary shares.

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As the Companies Act 2006 does not require the classification of a share, a company's articles of association may require a higher majority to change the classification of shares. If the articles do state a specific procedure, that procedure must be followed.

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In order to comply with section 636 of the Companies Act 2006, form SH08 (notice of name or other designation of class of shares) must be filed with Companies House within one month of the conversion.

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Note that shares are also sometimes issued as preference shares. Investors are often attracted to shares which have preferential rights attaching to them. When issuing preference shares, the specific class rights attaching to those preference shares is set out in the company's articles of association.

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3. Class rights & consents

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the newly created classes of shares will, following the re-classification, have the same rights attaching to them, they will be treated as ordinary shares. However on the basis of the rights attaching to them, they will be treated as ordinary shares. However on the basis of the rights attaching to them, they will be treated as ordinary shares. However on the basis of the rights attaching to them, they will be treated as ordinary shares.

Section 630 of the Companies Act 2006 allows the rights attaching to shares to be varied either by special resolution or by ordinary resolution where the company's articles of association allow. In either case, the relevant class *consent* to the variation. For example, the "A" shares grant the right to elect directors. If the company wants to differentiate the rights of the "A" shares from the "B" shares, it will need to obtain the consent of the holders of the "A" shares (shareholder) or the consent of the holders of the "B" shares (class of shares).

Usual examples of where rights are varied relate to voting and rights to capital on a winding up. Section 630 of the Companies Act 2006 requires the consent of three-quarters in nominal value of the shares of that class passed at a separate general meeting.

Form SH10 (notice of particular variation) is required to be filed with Companies House when the variation is made.

Note that class rights and class consent is a complex and thought needing to be given to the consent in order to make the variation. In the event of any doubt, it is recommended that legal advice is sought.

4. Amending the Articles of Association

As the rights attaching to shares are defined in the company's articles of association, (although they may also be in a separate contract, such as a shareholders' agreement), the articles may also need to be amended.

A company may, by special resolution, vary the rights attaching to shares and/or class rights varied, if the company's articles of association allow. These changes must be filed with Companies House. A copy of the relevant articles must be filed within 15 days of the resolution being passed. The articles will need to be amended to allow for the changes made to reflect the new rights. Any specific provisions relating to the rights will need to be included in the articles.

5. Alteration to share capital

When re-classifying shares, the total share capital must be considered. An alteration to the company's share capital must be considered under section 611 of the Companies Act 2006 (alteration of share capital).

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For example, the 50 "A" and 50 "B" shares. In this example, the 50 "A" and 50 "B" shares constitute separate classes or groups of shares. If the 50 "A" shares had the same rights as the 50 "B" shares, then these same rights and liabilities would apply to both classes. If consent is sought in order to credit the 50 "A" shares with one another. Shareholder (or class) consent is where the holders of the class of shares *consent* to the variation.

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Usual examples of where rights are varied relate to voting, dividends and rights to capital on a winding up. Section 630 of the Companies Act 2006 requires the consent of three-quarters in nominal value of the shares of that class, or a special resolution of that class sanctioning the variation.

Form SH10 (notice of particular variation) is required to be filed with Companies House when the variation is made.

Note that class rights and class consent is a complex and thought needing to be given to the consent in order to make the variation. In the event of any doubt, it is recommended that legal advice is sought.

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share capital of a limited company can be altered by changing its share capital, for example by issuing new shares. Section 617 does **not** include converting share capital. However, if the number of shares is increased by a conversion of shares, the company must file a statement of capital and it is **widely** **accepted** that section 617 will not apply.

permitted ways a company may alter its share capital to allot new shares. Section 617 does not include the method of a company altering its share capital if the nominal value remain the same following a conversion of share capital and it is **widely** **accepted** that section 617 will not apply.

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In the example above, when new shares are issued, the total number of shares (notwithstanding the fact that the share capital has increased) remains the same and so the various methods of altering share capital will be relevant, but this **must** in any case be considered.

the shares and the overall number of shares remains the same, there will be no alteration of share capital. The various methods in connection with the various ways of altering share capital will be relevant, but this **must** in any case be considered.

6. Statement of Capital

A statement of capital must be filed with Companies House when any relevant changes to its share capital are made for each class of shares:

Companies House when any relevant changes to its share capital are made for each class of shares:

- Particulars of any voting rights;
- Particulars of any rights to participate in a distribution;
- Particulars of any rights to participate in a distribution (including any special rights);
- Whether the shares are redeemable or liable to be redeemed at the option of the company or the shareholder.

as regards dividends to participate in a distribution;

as regards capital to participate in a distribution (including any special rights);

liable to be redeemed at the option of the company or the shareholder.

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Therefore if following a share capital change, see above, a statement of capital will need to be filed. However in the example used above, a statement of capital to be filed at this stage is not required. A statement of capital *within* the next annual return is required for the new class of shares. The requirements mentioned above will therefore not apply. A statement of capital is required for each class of shares. See Companies House website, www.companieshouse.gov.uk

an accompanying allotment (or other change of capital) will need to be filed. However in the example used above, a statement of capital to be filed at this stage is not required. A statement of capital in the next annual return is filed, the requirements mentioned above will therefore not apply. A statement of capital to reflect the rights attaching to each class of shares. See Companies House website, www.companieshouse.gov.uk

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7. Simply Docs package of documents

We have put together a pack of documents below in relation to the re-classification of shares. This may however be adapted to suit your needs.

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ect a particular scenario as outlined in the accompanying change of class rights.

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The assumptions made in draft documents are:

- A company has 1 class of shares with a nominal value of £1 each with the same number of shares. It is proposed to re-classify the shares into 2 new classes of 50 "A" shares and 50 "B" shares.
- The company has 2 shareholders. One shareholder will hold 50 "A" shares and the other shareholder will hold 50 "B" shares.

each with a nominal value of £1 and the same number of shares. It is proposed to re-classify the shares into 2 new classes of 50 "A" shares and 50 "B" shares. Each still with a nominal value of £1. The company has 2 shareholders. One shareholder will hold 50 "A" shares and the other shareholder will hold 50 "B" shares.

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- The company's articles of association do not prohibit the variation of class rights
- The re-classification complies with section 636 of the Companies Act 2006
- The rights attaching to the shares will be amended with shareholder consent
- The nominal value and number of shares will remain the same after re-classification, and the company will comply with section 617 of the Companies Act 2006
- The articles of association will be amended accordingly.

On this basis the procedural steps to enable a share re-classification and change of class rights are:

- Convening a board meeting to consider the re-classification and variation of class rights. Adjournment may be necessary if resolutions are not passed and consents are not obtained.
- Passing an ordinary resolution to approve the re-classification and variation of class rights. However, if the variation of class rights is to be made by special resolution, an ordinary resolution is not sufficient.
- Obtaining the necessary consents of the shareholders in accordance with section 630 of the Companies Act 2006. The consent of the holders of at least three-quarters in nominal value of the shares to be re-classified is required.
- Amending the company's articles of association to include the newly re-classified shares.
- Filing the relevant re-classification documents with the Registrar of Companies, including the name or other designations of the shares, the variation of rights attached to the shares and the time limits.
- Writing up the company's new articles of association and cancelling the old shares.

Note that in providing this guidance we have assumed that the re-classifying shares have not been classified as preference shares. If they are, then additional considerations may be relevant in re-classifying them. If you are unsure, tax advice should be sought if necessary. In addition, as this is a practical guide, it is based on the assumptions we have made or on the law, whether your scenario fits the assumptions or not. It is not intended to consider seeking independent legal advice.

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