

Guidance Note on Share Capital

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This Guidance Note is designed to help you understand the requirements of the Companies Act 2006 in relation to the administration of a company and specifically in relation to the issues that arise in relation to share capital, the allotment of shares and share transactions in private companies.

ation to the administration of a company. This note considers the most common issues relating to authorised share capital, the issue and allotment of shares and the requirements in relation to the share capital of private companies.

Share capital in a company means the amount of money which is initially on its incorporation or subsequently issued share capital within its use.

any issues to its members. This can be done under the Companies Act 2006 includes allotted and issued share capital.

Each share in a limited company (section 542 Companies Act 2006), this is typically £1 but can be more. A shareholder is liable to contribute the amount of the share's value. It is important to note that once an investment has been made, it is the responsibility of the company that owns the money provided through dividends (paid to shareholders) or an increase in the value of the company when it is eventually sold.

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The rights attaching to shares are set out in the Companies Act 2006, the company's articles of association and any shareholder agreements.

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A limited company may, amongst other things, re-denominate its share capital or sub-divide it. We have templates in relation to all these and more scenarios [here](#).

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Authorised Share Capital

Under the Companies Act 2006 there is no limit on the number of shares that a company can issue, unless its articles of association otherwise provide.

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Authorised share capital as a concept was abolished under the Companies Act 2006. Prior to the Companies Act 1985 a company's authorised share capital was set out in its memorandum of association. A company was required to state in its memorandum of association the amount of share capital with which the company was authorised to be registered. This amount was divided into shares of a nominal value of the shares into which the company was authorised to be registered. If a company issued more than this specified amount of shares, it was in breach of the Companies Act 1985.

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From 1 October 2009, the Companies Act 2006 introduced the concept of authorised share capital.

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Companies incorporated before 1 October 2009

Companies that were incorporated before 1 October 2009 and have stated an authorised share capital in their memorandum of association or memorandum of incorporation only under the Companies Act 1985.

have stated an authorised share capital in their memorandum of association or memorandum of incorporation only under the Companies Act 1985. From 1 October 2006, this provision is treated as a historical provision.

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provision in the company's articles setting the maximum number of shares that the directors' ability to allot further shares.

How to remove authorised share capital

The limits imposed by the authorised share capital may be removed by one of the three following means:

- 1. Pass an ordinary resolution

From 1 October 2009, the authorised share capital in a company's articles may be removed by an ordinary resolution (Schedule 2, Companies (Amendment and Savings) Order 2009) at a general meeting or by a written resolution. Companies House will accept either form used.

- 2. Adopt a completely new set of articles

Entirely new articles of association may be adopted by passing a special resolution. Although a special resolution is in favour of the resolution (more than 75% of the members having a clear new set of articles), the directors may feel that it is in the best interests of the company under the 2006 Act and may prefer to have a general meeting. The resolution must be filed with Companies House with a printed copy of the new articles.

The new Articles must be adopted by a special resolution. Neither the Model Articles nor the new Model Articles make any provision for this.

Our templates related to this process are available [here](#).

- 3. Pass a special resolution

A stand-alone resolution may be passed to authorise the directors to increase the authorised share capital in excess of the maximum. The process is set out in the guidance note below.

Steps to be taken by the company

1.	Call a board meeting. The directors should then resolve to circulate a shareholders' written resolution relating to authorised share capital. The directors should then resolve to circulate a shareholders' written resolution relating to authorised share capital.
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of the Companies Act 2006) setting the maximum number of shares that the directors' ability to allot and therefore restricts the directors' ability to allot further shares.

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Whether to simply remove the article relating to authorised share capital or to pass new articles. The directors should then resolve to circulate a shareholders' written resolution relating to authorised share capital.
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2.	Send out notice of general meeting and resolution.	S	or circulate the relevant written
3.	Hold the general meeting if resolution.	A	ordinary or special shareholders'
4.	Arrange to have the articles and resolution, along with the rev	M	appropriate, and file the shareholders' Companies House.

Companies incorporated since the

The concept of authorised share capital for companies incorporated since the relevant Act (the 2006 Act), will not have an authorised share capital. Such companies are limited on the share capital is specific to the company's articles of association should always be checked. The number of shares that may be allotted

For a company with such a restriction, to change to their articles and like resolution to remove it. They can do this by paragraph 42(2)(b), Schedule 2, Provisions and Savings) Order 2009

Issue and Allotment of Shares

Under the Companies Act 1985, directors of a company authorised to do so. Under the Companies Act 2006, shares, may allot shares without any restriction in the company's articles of association. Companies Act 2006.

For private companies (i) incorporated on or after 1 October 2009, (ii) with more than one class of shares or (iii) where the power has been conferred by the 1985 Act. The directors may therefore do so without authorisation for the proposed allotment. A resolution under section 551 of the Companies Act 2006. A resolution under section 551 of the Companies Act 2006 has the effect of amending the company's articles. This is a special resolution, but this

In accordance with section 551, directors may create a new class or give the directors a general authority to create a new class. Note that section 550 will apply to a new class of shares. A company that has a general authority to allot under section 550 may however wish to give its directors a general authority to allot under section 551 as well as the new class. It is a special resolution rather than a special

by the 2006 Act, so companies incorporated on or after 1 October 2009, will not have an authorised share capital unless a limit is specified in the articles of association. The articles of association do not include any limit on the number of shares that may be allotted

to remove the restriction, this is a special resolution. To change the articles, will require a special resolution procedure as set out in paragraph 42(2)(b), Schedule 2, Provisions and Savings) Order 2009

allot shares if they were authorised to do so. Under the Companies Act 2006, companies with only one class of shares, may allot shares without any restriction in the company's articles of association. Companies Act 2006.

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specific number of shares of a new class or give the directors a general authority to create a new class. Note that section 550 will apply to a new class of shares. A company that has a general authority to allot under section 550 may however wish to give its directors a general authority to allot under section 551 as well as the new class. It is a special resolution rather than a special

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The resolution must state the maximum authority. A specific authority states authority usually states the maximum total number of shares. This means subsequently sub-divides or consolidates

that may be allotted under the authority to be allotted but a general authority states to be allotted rather than the authority must require changing if the company

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The resolution must also state when it expires. The date must be no more than 5 years from the date on which the resolution is passed.

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The resolution may be passed at a general meeting or by the written resolution procedure. Most private companies use the written resolution procedure.

shareholders or by the written resolution procedure. Most private companies use the resolution by the written resolution procedure.

A section 551 ordinary resolution must be passed in a general meeting or by the written resolution procedure.

Companies House within 15 days after it is passed.

How to allot shares:

1. Check the articles of association to see if there is any prohibition on the allotment of shares by the directors.
2. If there is no prohibition and the directors have authority, they can automatically have the authority to allot shares (section 550 Companies Act 2006). There is no need for a resolution.
3. For companies with a prohibition, check to see if there is an existing authority. If not, a section 551 authority must be given either by ordinary resolution, a provision in the articles, or a combination of both.
5. The authority must state the maximum number of shares to be allotted, the date on which the authority expires (not more than 5 years from either the date of the authorising resolution or, if provided in the company's articles, the date of incorporation).
6. A section 551 authority may be conditional or unconditional.
7. Consider whether the resolution is to be passed at a general meeting or via the written resolution procedure.
8. Make sure all necessary filing requirements are met with Companies House.

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There is any prohibition on the allotment of shares by the directors.

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Pre-emption Rights

Statutory pre-emption rights give effect to the company's articles that the company proposes to issue new shares (section 561 Companies Act 2006). This means that existing shareholders that allows them to have the first opportunity to purchase provided they have sufficient funds. If the company cannot allot shares for

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for a particular purpose, and it may be conditional or unconditional. Consider whether the resolution is to be passed at a general meeting or via the written resolution procedure.

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right to be offered any new shares in proportion to their existing holdings of such shares. This is an anti-dilution measure for existing shareholders to protect their percentage shareholding in a company, and it gives existing shareholders the first opportunity for new shares. This means that a company cannot allot shares for

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proportion to their existing holding (open for 14 days).

There are certain exceptions set out in section 561 of the Companies Act 2006, for example statutory pre-emption does not apply to the allotment of shares under employee share schemes. The members of a company must be given the opportunity to waive their pre-emption rights in relation to a proposed allotment.

How to disapply statutory pre-emption

Private companies can exclude the statutory pre-emption right altogether or it may be disapplied or modified in relation to an allotment of shares where they are given the power to do so either in the company's articles or by special resolution.

Normally, the directors are given general authority (referred to above), and at the same time the Companies Act 2006 in relation to the allotment of shares usually be in accordance with section 561 of the Companies Act 2006. If the directors of a company are generally authorised to allot shares under section 551, they may also be given the power to allot shares under section 561 if the regime in section 561 did not apply. A special resolution under section 570 must be passed as a special resolution.

Note that for a private company with general authority to allot shares without the authority of the members. This is in accordance with section 551 of the Companies Act 2006 and must be passed by special resolution.

The relevant resolutions may be passed by special resolution or at a general meeting of shareholders.

Practical procedure for issue and allotment

1	Check that any issues with (a) authority to issue shares, and (c) rights of pre-emption are resolved as set out above.
2	Set up a board meeting and pass a resolution to allot shares. Record the resolution(s) in the minutes.
3	Once funds are received by the company, the secretary must enter an allotment in the company's Register of Members as soon as practicable, and in any event within 1 month of the date of allotment. Update the PSC register (people with significant control) if any of the relevant thresholds have been triggered.
4	Prepare and send out share certificates.
5	Within one month of the date of allotment, on Form SH01 ('return of allotment'), return the details of the allotment to Companies House of the new shares.

made in writing and must remain in writing.

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The relevant resolutions may be passed by special resolution or at a general meeting of shareholders.

Check that any issues with (a) authority to issue shares, and (c) rights of pre-emption are resolved as set out above.

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Once funds are received by the company, the secretary must enter an allotment in the company's Register of Members as soon as practicable, and in any event within 1 month of the date of allotment.

Update the PSC register (people with significant control) if any of the relevant thresholds have been triggered.

Prepare and send out share certificates.

Within one month of the date of allotment, on Form SH01 ('return of allotment'), return the details of the allotment to Companies House of the new shares.

Below is a flow chart that runs th

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New Articles of Association
(based on the Model Articles)

Old Articles of Association
(based on Table A)

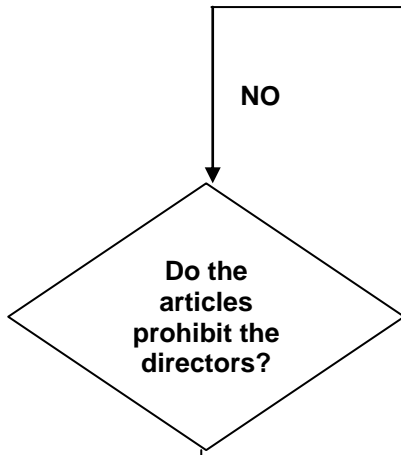
Check the authorised share
Old Articles of Association
(based on Table A) capital

the
capital

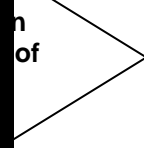
Authorised share capital is
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remove the prohibition
in the Memorandum of
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Statement of Capital

Companies with a share capital have to produce a statement of capital.

The statement of capital must be produced on the company's formation, when it alters its share capital, when it cancels any of its shares. In addition, it is also required when a company's confirmation statement, unless there has been no change to the company's share capital since the last statement was delivered. A confirmation statement came into force on 1 October 2016 and replaces the obligation on companies to submit an annual return to Companies House.

A statement of capital must be filed with Companies House as specified in the Companies Act 2006.

Companies must also provide members with a statement of capital on request.

Share Transfers

How to deal with a share transfer –

The general principle is that shares can be transferred at any time and to any person (subject to certain restrictions imposed by the company's articles of association (e.g. pre-emption rights), any restrictions contained in a company's articles of association (s 544 Companies Act 2006) or contractual restrictions such as those in a shareholders' agreement. If a shareholders' agreement does exist, any individual shareholder who is bound by the terms of the shareholders' agreement should agree to be bound by the terms of the shareholders' agreement. This can be achieved by way of a Deed of Assent.

A company is only able to register a share transfer if the instrument of transfer has been duly stamped (unless exempt) and has been signed by the company secretary. The company secretary will be required to handle the share transfer and will need to follow up the registration paperwork.

A stock transfer form transfers shares of £1,000 or less does not normally attract stamp duty. The stock transfer form must contain the details of the shares being transferred (quantity, class, etc.), the buyer and the seller. The consideration paid for the shares must also be included (whether cash or otherwise) and the consideration must be chargeable consideration. This must be stated as, 'Nil' if there is no chargeable consideration.

Note that since 25th March 2020, the stock transfer form should be emailed instead. It should not be posted to HMRC. The HMRC provides advice on the correct use of the form and care must be taken given the inherent risks of email. More details are available on www.gov.uk

Transmission of Shares (on death)

When a shareholder dies or becomes incapacitated, his personal representatives or his trustee in bankruptcy will have the right to take the shares into their own name, or to transfer them to another person.

The company secretary must confirm the person's right to the shares. This can be done by checking on the probate records, certificate of appointment (or whatever document gives the relevant authority), to ensure that the person presenting themselves as the shareholder is duly appointed as such. The representative will also need to provide evidence. The company secretary should *not* note that the shares are held in trust. The company secretary should register, as they should not accept evidence in this capacity on the company's share register, as they should not accept evidence. The company secretary should note what this means is that, once an individual's right to the shares as nominee is confirmed, the company secretary can treat the shareholder named on the register as though he or she were the absolute owner of the shares.

If a joint shareholder dies, the surviving shareholder is automatically entitled to the shares. The company secretary should check the Register of Members and then update the Register of Members with a copy of the death certificate, and

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