

The sub-folder of template documents deals with the mechanical processes involved with (1) issuing shares and (2) transfer its shares. A company can issue shares at any subsequent time if it wishes to raise capital or to new shareholders provided the relevant provisions are adhered to. This guidance note therefore aims to provide the reader with a clear understanding of how shares are issued and transferred. This guidance note is often complex, but essential, administrative

1. What is a shareholder?

A shareholder is the registered owner of shares in a company, referred to as a *member* of the company. When a shareholder enters into a contract with the company, it is as if a contract would (subject to the articles of association) be replaced - by the shareholder's agreement - often also be bound by a set of rules (and the company) to regulate their relationship.

As the company has a separate legal personality, the acts of the company (including those of its shareholders) do not have any effect on the company. The shareholder's liability is limited to the share, to a share of the dividends, and to the surplus assets of the company.

2. What is share capital?

On registration of a company, the company must have at least one shareholder detailed on the register (see the Companies Act 2006). Invested in a company by the shareholder, a specified nominal value (the share price), the company issues shares, the company issues shares means the shareholders gain control over the company.

Each share must have a fixed value. Each share's value (per share) if the company's investment in a company's shares is the money provided. The company pays dividends (payments out of the company's profits) when it is eventually sold.

The rights attaching to shares are set out in the company's articles of association.

Allotment of Shares, deals with the process of (1) issue and allot new shares and (2) transfer its shares when it is first set up as well as to raise capital and/or introduce new shareholders. The articles of association are transferred between shareholders and the relevant provisions are adhered to.

This guidance note provides the reader as to what a company's articles of association are and for those readers new to these documents.

A shareholder is also referred to as a member of a company, that is, a member of a company, that is, a member of a company. The articles of association bind its members in the same way that a contract would (subject to the articles of association) be replaced - by the shareholder's agreement - often also be bound by a set of rules (and the company) to regulate their relationship.

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3. How many types or classes of shares can a company have?

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A company may have as many classes of shares as it wishes all with different conditions attached to them. The rights attaching to each class of share will be set out in the company's articles of association. However, there are some restrictions on the types of shares that can be issued. Typically the most common types of shares are:

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3.1 *Ordinary shares* – the most basic type of share. They carry no special restrictions attached to them and form the basis of the rights of the company.

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3.2 *Preference shares* – carry no right to vote at general meetings but carry a right to annual dividends available for distribution before ordinary shares. They are usually issued to investors.

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3.3 *Non-voting shares* – carry no right to vote at general meetings except the right to vote on winding-up.

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3.4 *Redeemable shares* – carry an agreement that it will be redeemed by the company or the shareholder after a specified period. A company can only redeem shares if it has sufficient funds. Redeemable shares are usually issued by the company with an agreement that it will be redeemed by the company or the shareholder after a specified period. A company cannot have redeemable shares unless it has sufficient funds. Redeemable shares are usually issued by the company with an agreement that it will be redeemed by the company or the shareholder after a specified period. A company cannot have redeemable shares unless it has sufficient funds.

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3.5 *Convertible shares* – carry the right to be converted into shares of another class. They are usually issued to investors. Convertible shares are preference shares which are convertible into ordinary shares.

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3.6 *Deferred shares* – carry no right to vote, to participate in profits or, except in extreme circumstances, to participate on a winding-up. They normally serve a purpose in a company that is being re-organised in such a way that a proportion of the existing share capital is no longer needed or relevant. They are usually issued to investors. Deferred shares are ordinary shares which carry no right to vote, to participate in profits or, except in extreme circumstances, to participate on a winding-up. They normally serve a purpose in a company that is being re-organised in such a way that a proportion of the existing share capital is no longer needed or relevant.

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One of the main reasons for issuing shares to different groups of investors on different terms is to allow a company to issue shares to different groups for voting rights and dividends. There are no restrictions on the number of classes of shares which carry some of these rights. However, the rights of each class but have different rights attached to them. These rights will need to be reflected in a company's articles of association.

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4. Is there a maximum and...

All limited companies must... concept of authorised sha... 2006, there is no ceiling of... the company chooses to i... the necessary allotment au...

are on incorporation and as the... blished under the Companies Act... that a company can issue (unless...) provided that the directors have

5. What powers does a com...

The directors of a private... shareholder authority to is... have the necessary author... in the company's articles (s...

Can I allot new shares?

ne class of shares do not need... that class. They will automatically... class unless there is a restriction... 6).

Private companies with mo... shareholder authority for th... provision in the company... shareholders (s.551 Com... maximum amount of share... the authorisation is valid,... conditions such as specify... identity of the allottees.

re (and public companies) require... v shares. This can either be by a... n or by ordinary resolution of its... ch authorisation must state the... d must limit the time during which... han 5 years. It may also impose... e purpose of the allotment or the

Therefore, in many cases t... allot new shares. Even w... people, these procedures r...

en authority by the shareholders to... the shareholders are the same

In accordance with section... of a new class or give the... existing and the new class... once it has more than one... the authority to allot unde... general authority to allot s... therefore more common to... specific authority.

r allot a specific number of shares... thority to allot shares of both the... will no longer apply to a company... any that has previously relied on... ever wish to give its directors a... ss as well as the new class. It is... g a general authority rather than a

The resolution must state t... the authority. A specific a... general authority usually s... rather than the total number... changing if the company su...

shares that may be allotted under... er of shares to be allotted but a... inal value of shares to be allotted... s that the authority will not require... or consolidates its shares.

The resolution may be pas... resolution procedure. Mos... written resolution procedur...

g of shareholders or by the written... opt to pass the resolution by the

A section 551 ordinary res... after it is passed.

Companies House within 15 days

6. What are pre-emption rig...

Before a company can allo... and if they do, whether th... contains pre-emption rights

whether pre-emption rights apply,... applied. The Companies Act 2006... issue of new shares for cash (but

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not for other consideration. If a company proposes to allot shares (except those allotted under an employee share scheme), the shares must first be offered to the existing shareholders in proportion to their existing shareholding. This is effectively an anti-dilution mechanism.

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Pre-emption rights can be exercised by the company or can be exercised by the shareholders in accordance with the company's articles of association.

resolution of the shareholders of the company or can be exercised by the shareholders in accordance with the company's articles of association.

Note that for a private company, the directors can give a general authority to allot shares in accordance with pre-emption provisions. This is subject to any provisions in the company's articles that must be passed by special resolution.

class of shares, members can give a general authority to allot shares in accordance with pre-emption provisions. This is subject to any provisions in the company's articles that must be passed by special resolution.

For companies with more than 100 shareholders, pre-emption rights in accordance with section 569 of the Companies Act 2006 and at the same time as the directors are given general authority to allot shares.

it is usual to disapply pre-emption rights in accordance with section 569 of the Companies Act 2006 and at the same time as the directors are given general authority to allot shares.

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A special resolution passed by the shareholders at a general meeting of the company is required to disapply pre-emption rights.

sections 569 or 570 may be passed at a general meeting of the company in resolution procedure.

It is possible that as part of an arrangement with investors or lenders, a company may agree to disapply pre-emption rights. Accordingly, agreements with investors will have to be reviewed and any necessary consequences of the disapplication of pre-emption rights.

arrangements, it will have agreed to disapply pre-emption rights. Accordingly, agreements with investors will have to be reviewed and any necessary consequences of the disapplication of pre-emption rights.

7. How are new shares then issued?

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Once you have established the number of shares and their price, the price of the shares must be at least equal to their nominal value. Any excess must be transferred to the company.

to issue new shares, the number of shares must be at least equal to their nominal value. Any excess must be transferred to the company.

If new shares are to have pre-emption rights, they are said to form a new class of shares and this must be reflected in the Articles of Association.

rights to existing shares, they are said to form a new class of shares and this must be reflected in the Articles of Association.

Shares may be issued on a non-cash basis. The Articles do not permit partly paid shares. Payment for shares need not be in cash (e.g. the shares may be issued at a value) and there are few restrictions on the basis of payment. However, with public companies there are requirements as to the basis of payment for shares prior to allotment.

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Share certificates must be issued to the shareholders. Within one month of such issue, the company must file a statement with Companies House accompanied by a copy of the resolutions passed to give the directors authority to allot shares as well as disapply pre-emption rights, if they are to be disapplied.

holders within two months of issue. The company must file a statement with Companies House accompanied by a copy of the resolutions passed to give the directors authority to allot new shares as well as disapply pre-emption rights, if they are to be disapplied.

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8. How are shares transferred?

If a shareholder wishes to transfer shares to another person, he should present to the company the share certificate being transferred together with a completed, stamped stock transfer form. If the transfer is to be effected by receipt, the following issues will need to be addressed:

shares, he should present to the company the share certificate being transferred together with a completed, stamped stock transfer form. If the transfer is to be effected by receipt, the following issues will need to be addressed:

8.1 Stock Transfer Form

You should ensure that the stock transfer form has been sent by the transferor showing the number of shares, the price and the name of the transferee. You should ensure that the form has been signed by the transferor and that the consideration for the transfer of shares has been paid. There is more information below on the requirements and completion of this form.

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8.2 Restrictions

You should check whether there are any restrictions on the transfer of shares in the Company's Articles of Association.

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8.3 Share Certificates

Most standard private companies incorporate a counterfoil system of share certificates which have been completed and issued. When a share certificate is transferred, the old share certificate should be cancelled and a new share certificate must be issued to the transferee. Where a shareholder still holds other shares, a new share certificate must be issued to him covering his remaining shares. All share certificates should be kept with the register of members for a period of 10 years.

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8.4 Stamp Duty

Stamp duty is a tax on certain documents. It is chargeable on a transfer of shares.

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Shares transferred by a company to a shareholder or by a shareholder to another shareholder are exempt from stamp duty. Shares transferred to or from a company are chargeable. Shares transferred to or from a company are chargeable only if the consideration for the transfer exceeds £1,000. Stamp duty is chargeable on transactions where the consideration is more than £1,000. Stamp duty is chargeable at a rate of 0.5% of the share price, rounded to the nearest penny. If the stamp duty is certified to be £1,000 or more, the instrument is chargeable at the full rate of 0.5%.

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For example, if the share price is £1,995, the stamp duty payable will be £1,995 x 0.5% = £9.97. This is rounded up to the nearest penny, so £10 of stamp duty is payable.

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Whilst there is no stamp duty on a transfer of shares, the failure to do so can have several consequences. Unstamped documents cannot be used as evidence in court. Any secretary will almost certainly refuse to update the register if the stock transfer is not stamped.

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10. Stock Transfer Form

Section 770(1)(a) of the Companies Act 2006 states that a company must not register a transfer of shares in the company's register of members until a transfer instrument of transfer has been delivered to it. There are a number of forms available to do this but they will largely not be relevant to the transfer of shares in a private company.

A *proper* transfer is one that complies with the company's articles of association. The company's articles of association will often specify the form of transfer instrument to be used and article 26 of the model articles for private companies, require shares to be transferred by an instrument in the prescribed form or any other form approved by the directors. The usual form is the Stock Transfer Form governed by the Stamp Transfer Act 1963 (STA) (as amended).

The STA only applies to the transfer of shares in a company whose articles of association require that a transfer instrument must be used. For private companies using model articles this will not be the case. It is essential that a different form is used for the transfer of shares that the liability to pay future calls is also transferred.

Stock Transfer Form J30 should be used to transfer fully paid shares, but Form J10 should be used to transfer shares that are not fully paid (whereas Form J30 should only be used for fully paid shares, but Form J10 should be used for shares that are not fully paid). Form J10 is effectively the same as Form J30 with the exception that the person receiving the shares – the transferee, as in doing so, must also assume the liability to pay any future calls which might be made on the shares. The responsibility for settling it rests with the transferee (the person to whom the shares are transferred).

There is more detail on shares which can be a subject of a stock transfer in our guidance note on partly paid shares which can be a subject of a stock transfer.

Under the STA a stock transfer instrument must:

- specify the particulars of the shares to be transferred;
- include the name of the transferor;
- set out the name of the transferee, or the person to whom the shares are to be transferred;
- include the description of the transferred shares; and
- be executed by the transferor, or the transferor and the transferee, in the case of shares transferred in joint names, all the transferees.

If more than one class of shares is transferred, separate stock transfer forms should be used.

If there is no consideration for the shares, you should enter 'Nil' as the consideration. If you give consideration for the shares, state how much. If you give consideration other than money, state what you've given, for example, 100 ordinary Shares assumed £70,000.