

Structure and Governance:

Share Capital, Resolutions and the Summary Approval Procedure

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This information leaflet refers to a Private Company Limited by Shares (LTD company) registered under the Companies Act 2014.

1. Legal Nature of Shares

Sections 64 to 67 deal with interpretation and definitions regarding share capital and shares. Under section 65, a company may by ordinary resolution convert any of its paid up share capital into stock and reconvert it.

Shares in the capital of a company have a nominal value. A company may allot shares of different values, of different currencies, and with different amounts payable on them. A company is allowed to allot redeemable shares under section 66(4). (These shares which are redeemable must be known as “redeemable shares”).

Shares may be paid up in money or money’s worth (goodwill and expertise). Shares of a company cannot be allotted at a discount to their nominal value (section 71). Shares cannot be offered to the public (if a LTD company) under section 68.

An allotment of debentures can be made where certain conditions are met.

- Such an offer of debentures is addressed solely to qualified investors
- an offer of debentures is addressed to less than 150 persons
- an offer of debentures is addressed to investors who acquire securities for a total consideration of at least €100,000 per investor for each separate offer,
- an offer of debentures whose denomination per unit amounts to at least €100,000,
- an offer of debentures with a total consideration in the European Union less than €100,000, which is calculated over a period of 12 months,
- an allotment of debentures, or an agreement to make such an allotment, with a view to those debentures being the subject of any one or more of the offers referred to above.

An offer of shares can be made where certain conditions are met.

- Such an offer of shares is addressed to qualified investors
- an offer of shares is addressed to less than 150 persons

or a combination of both.

A certificate under the common seal of the company is prima facie evidence of the title of the member to the share.

Under section 99, a company must within 2 months after the date of an allotment or transfer of shares, complete and have ready for delivery the certificates of all shares and debentures allotted or transferred unless the condition for the shares issue otherwise provides.

If any person falsely and deceitfully claims to be a shareholder or to have an interest in a company and obtains or tries to obtain any share/interest in the company, or receives any money due to the owner of the share/interest or votes at any meeting is guilty of a category 2 offence.

2. Company Capital

No shares can be allotted by a company unless the allotment is authorised by ordinary resolution or by the constitution of the company.

There are a number of means in which a person may become a shareholder in a company. Principally, upon allotment of newly issued shares by the company or upon transfer or transmission from an existing shareholder.

Pre-emption rights are stated in section 69(6). This means that shares cannot be offered without the shares having been offered to any shareholder in the company first. The period in which that offer may be accepted has been reduced in the 2014 Act from 21 days down to 14 days.

However, the pre-emptive offer does not apply to allotments of shares:

- to the extent that either the constitution, or a special resolution or the terms of issue of already allotted shares provide to the extent so provided;
- to allotments of shares for a consideration wholly or partly paid for, otherwise than in cash;
- to allotments of shares to the subscriber or subscribers to the company's constitution upon the company's incorporation, being the shares taken by the subscriber or those subscribers before such incorporation;
- to allotments of shares to persons in pursuance of the terms of an employees' share scheme established by the company;
- to the allotment of bonus shares.

Allotments of shares are submitted on a form B5 and should be submitted within 30 days of the allotment. Failure to file on time constitutes a category 4 offence. Rectification of the register can be effected under section 174 Companies Act 2014 where there has been an understatement or overstatement. Form B42a should be submitted.

Call on Shares

Under section 77 of the Companies Act 2014, except where the company's constitution provides otherwise, the directors may from time to time make calls on the members in respect of moneys unpaid on shares. Each member shall pay subject to receiving at least 30 days notice.

Calls can be revoked, postponed and calls shall be deemed to have been made at the time when the resolution of the directors was passed. The provisions relating to calls on shares are stated in sections 77, 78 and 79 of the Companies Act.

Forfeiture of Shares

Except where the company's constitution provides otherwise, section 81 deals with the procedures regarding the forfeiture of shares.

A statement is required to be made by the director or secretary of the company that the share has been duly forfeited on a date stated which shall be conclusive evidence of the facts.

Variation

Save where a company's constitution provides otherwise, a company can vary its capital by ordinary resolution. A copy of the resolution together with the amended constitution is filed along with the relevant form.

Form B7 is submitted where the company has

- consolidated and divided its share capital into shares of larger amount than its existing shares;
- converted any shares into stock;
- reconverted stock into shares;
- subdivided its shares or any of them;
- redeemed any redeemable shares;
- redeemed any preference shares;
- cancelled any shares, otherwise than in connection with a reduction of company capital (section 84).

The form B7 is submitted within 30 days. Failure to do so is a category 3 offence.^{1,2}

Form B4 is submitted where there is an increase in the authorised capital of the company. The form must be submitted within 30 days. Failure to do so is a category 3 offence.^{3,4}

¹ Category 3 offence – is a summary offence only, attracting a term of imprisonment of up to six months and a "Class A fine" (or both); and A "Class A fine" is a fine within the meaning of the Fines Act 2010 (i.e. a fine not exceeding €5,000).

² Section 92 Companies Act 2014

³ Category 3 offence – is a summary offence only, attracting a term of imprisonment of up to six months and a "Class A fine" (or both); and A "Class A fine" is a fine within the meaning of the Fines Act 2010 (i.e. a fine not exceeding €5,000).

⁴ Section 93 Companies Act 2014

Registration of particulars of special rights.

Under section 90 of the Companies Act 2014, Form B11 should be submitted to the CRO where a company allots shares with rights which are not stated in its constitution or in any resolution or agreement to which section 198 applies and this delivery should be effected within 30 days. This does relate to shares where the only difference is in relation to dividends (within a 12 month period of the previous allotment). Form B12 should be submitted where the rights to any existing shares, other than by constitutional change/resolution, are varied. Form B13 is submitted to the CRO where there is an assignment of (new) name or other designation to any class of shares otherwise than by changing its constitution/resolution of the company.

Transfer of shares

These are completed in compliance with sections 94 and 95 of the Companies Act 2014 and any restrictions that apply in a company's constitution. The CRO does not receive notification of the transfer of shares at the time of the transfer and the only form that would show the updated information is the form B1 - annual return, which each company is obliged to file. A Stock Transfer form is not a CRO form and should not be submitted to the CRO.

The ability of the directors to decline to register the transfer of shares is in section 95. This ability ceases 2 months after the date of delivery to the company of the instrument of transfer and the directors must send to the prospective transferee notice of the refusal.

Where an individual passes away, the personal representative of the deceased, is the only person recognised by the company as having any title to the shares (unless otherwise provided for in the company's constitution).

Redemption of Shares

A company can acquire its own shares by purchase, or in the case of redeemable shares, by redemption or purchase under section 105 Companies Act 2014. The redemption can be made under such terms as specified in the company constitution, as specified in the rights attaching to the shares in question or by special resolution. Under section 116 of the Companies Act 2014 a form H5 must be filed with the Registrar of Companies when a private company acquires its own shares whether by purchase or, in the case of redeemable shares, by redemption of purchase. Section 116 is not dis-applied in the case of ULC, PUC, PULC and PLCs.

Purchase of Shares

Subject to restrictions in the company's constitution, a company can purchase its own shares under section 105 Companies Act 2014. Any such acquisition is subject to the payment being made out of profits available for distribution or where the company proposes to cancel the shares, out of the proceeds of a fresh issue of shares made for the purpose of the acquisition. Within 30 days after the delivery of the acquired shares to the company, Form H5 must be sent to the CRO. Under section 116 of the Companies Act 2014 a form H5 must be filed with the Registrar of Companies when a private company acquires its own shares whether by purchase or, in the case of redeemable shares, by redemption of purchase. Section 116 is not dis-applied in the case of ULC, PUC, PULC and PLCs.

Acquisition of Shares in Holding Company

Under section 114 Companies Act 2014, a company may purchase shares in a company which is its holding company subject to certain conditions, being that –

- (a) the consideration for the acquisition of such shares shall be provided for out of the profits of the subsidiary available for distribution;
- (b) upon the acquisition of such shares and for so long as the shares are held by the subsidiary
 - (i) the subsidiary shall not exercise any voting rights in respect of the shares and any purported exercise of those rights shall be void;
 - (ii) the manner in which shares so held by the subsidiary are to be treated in –
 - I) the subsidiary's entity financial statements is provided for in section 320(2) (which also contains provision restricting the profits available for distribution by reference to the accounting treatment of such shares there provided); and

Treasury Shares

Shares acquired by a company under a purchase acquired under section 105 shall be cancelled or held by the company as treasury shares. No cancellation however shall have the effect of reducing the amount of the company's authorised share capital.⁵

The nominal value of treasury shares held by a company cannot exceed 10 percent of its company capital. As long as a company holds treasury shares, the voting rights (if any) of those shares are void and no dividend is payable either.⁶ The group financial statements, if any, of the holding company is provided for in section 320(3).

The contract must be authorised in advance by both parties.

A holding company is defined in section 8 of the 2014 Act and a company is defined as being another company's holding company if, but only if, that other is its subsidiary.

Disclosure Order

A disclosure order means an order of the Court to any person to give information on share ownership. Anyone who has a financial interest in a company may apply to the Court for a disclosure order. The applicant shall cause notice on Form H2 together with a copy of the order to be sent by registered post within seven days of the making of the order to the CRO, to the company etc.⁷

3. Financial assistance for the acquisition of Shares

Section 82 of the Companies Act 2014. It is not lawful for a company to give any financial assistance for the purchase of shares in the company or in the company's holding company (if applicable). The prohibition applies whether the assistance is given directly or indirectly or is by means of a loan or guarantee, the provision of security or otherwise.

There are exceptions and section 82(5) allows the financial assistance where the company's principal purpose in giving the assistance is not for the purpose of the acquisition or where it is incidental in relation to some larger purpose and the assistance is given in good faith.

Section 82(6) lists the exceptions to the prohibition which include:

- the giving of assistance in accordance with the Summary Approval Procedure (please see section 5)
- for dividends or distribution out of profits
- for discharge of lawfully incurred liabilities
- lending money as part of ordinary business
- employee share schemes
- refinancing
- representations, warranties and indemnities
- fees, commissions and expenses.

It is a category 2 offence for contravention of section 82.⁸

4. Resolutions and Meetings

Chapter 6, Part 4 of the Companies Act 2014 deals with General Meetings and Resolutions. A company is required to hold an Annual General Meeting in each year under section 175, which no more than 15 months elapsing between AGMs. A company is still required to hold an AGM within 18 months of its incorporation.

Annual General Meeting and the LTD company

Meeting not held

A Private Company Limited by Shares registered under Part 2 of the Companies Act 2014 (LTD company), does not need to hold an AGM where all the members entitled to attend and vote at such general meeting, sign, before the latest date for the holding of that meeting, a written resolution.⁹

⁵ Section 106(3) Companies Act 2014

⁶ Section 109(4) Companies Act 2014

⁷ Section 812 Companies Act 2014.

⁸ Category 2 offence is – conviction on indictment can result in a term of imprisonment of up to five years or a fine of up to €50,000 or both; Category 2 offence is where- summary conviction can result in a class A fine or imprisonment for a term not exceeding 12 months or both; A "Class A fine" is a fine within the meaning of the Fines Act 2010 (i.e. a fine not exceeding €5,000).

⁹ Section 175 (3) Companies Act 2014

The written resolution must

- acknowledge receipt of the financial statements that would have been laid before the meeting,
- resolve all such matters as would have been resolved at the AGM and also
- confirm no change is proposed in the appointment of the person (if any) who, at the date of the resolution, stands appointed as statutory auditor of the company.

All other company types, whether Public Limited Companies, Designated Activity Companies, Unlimited Companies or Companies Limited by Guarantee, must hold an AGM where they have 2 or more members.

Meeting held outside the State

An Annual General Meeting can be held outside the State where there is unanimous agreement, otherwise, there is a duty to make necessary arrangements to ensure that members can by technological means participate in such a meeting without leaving the State.¹⁰ The business that must be included at an AGM is set out in Section 186.

The business of the annual general meeting shall include:

- the consideration of the company's statutory financial statements and the report of the directors and, unless the company is entitled to and has availed itself of the audit exemption under section 360 or 365, the report of the statutory auditors on those statements and that report;
- the review by the members of the company's affairs;
- save where the company's constitution provides otherwise
 - the declaration of a dividend (if any) of an amount not exceeding the amount recommended by the directors; and
 - the authorisation of the directors to approve the remuneration of the statutory auditors (if any);
- where the company's constitution so provides, the election and re-election of directors;
- save where the company is entitled to and has availed itself of the audit exemption, the appointment or re-appointment of statutory auditors; and
- where the company's constitution so provides, the remuneration of the directors.

Extraordinary General Meeting

All general meetings, other than an AGM, are deemed to be Extraordinary General Meetings.¹¹ Notice must be given of each general meeting to every member, director and the secretary of the company as well as the personal representative of a deceased member. If an auditor is appointed they would receive notice too.¹²

Each general meeting must have 7 days notice before being called. However an AGM or a meeting at which a special resolution is to be passed must have 21 days notice.¹³ Section 181(2) allows for short notice of meetings where all members entitled to attend and vote agree and where the auditors also agree (if appointed).

A quorum can consist of 2 people under section 182 unless its constitution states otherwise or where the company is a single member company. Section 183 of the Act deals with proxies and section 184 sets out the form of proxy.

Special and ordinary resolutions

A special resolution requires 75% majority of the votes cast by the members entitled to vote.¹⁴ An ordinary resolution is defined in this Act (section 191) and means a resolution passed by a simple majority of the votes cast by the members, entitled to vote, to be voted in person or by proxy at a general meeting of the company.

Written resolutions

A written resolution under this 2014 Act, can be either a special or an ordinary resolution. Please see sections 193 and 194.

¹⁰ Section 176 Companies Act 2014

¹¹ Section 177(1) Companies Act 2014

¹² Section 180 (6) Companies Act 2014

¹³ Section 181 Companies Act 2014

¹⁴ Section 191 (3) Companies Act 2014

A unanimous written resolution is one in writing, signed by all the members of a company that are for the time being entitled to attend and vote.

A majority written resolution

- includes either an ordinary or a special resolution and the requirements vary according to the requisite majority.
- A majority written resolution takes effect later than an unanimously passed written resolution.
- A majority written ordinary resolution takes effect seven days after the last signature, a majority written special resolution takes effect 21 days after the final signature unless members waive that right under section 194(10) or resolution specifies certain date.
- A majority written resolution cannot be used by Public Limited Companies (PLC), by Companies Limited by Guarantee (CLG) or by Unlimited Companies (ULC/PUC/PULC).
- A resolution to remove an auditor or director cannot be passed by unanimous/majority written resolution.
- In a majority written ordinary resolution, the requisite majority of members means a member or members who alone or together, at the time of the signing of the resolution concerned, represent more than 50 percent of the total votal rights of all the members who, at that time, would have the right to attend and vote at a general meeting of the company.¹⁵
- In a majority written special resolution, the requisite majority of members means a member or members who alone or together, at the time of the signing of the resolution concerned, represent more than 75 percent of the total votal rights of all the members who, at that time, would have the right to attend and vote at a general meeting of the company.¹⁶
- The resolution can consist of several documents in like form each signed by one or more members.

Single Member Companies

A single member company is simply a company that has a sole member.¹⁷ All powers exercisable by a company in general meeting are exercisable by the sole member without the need to hold a general meeting. This does not apply however to the power to remove an auditor. The resolution would then be submitted to the CRO within 15 days.

Submission of resolutions - General

A copy of a special resolution is required under section 198 Companies Act 2014 to be submitted to the CRO within 15 days of the passing. Form G1 is used for this purpose.

Resolutions that need to be submitted include:¹⁸

- Resolutions that are required by this Act or a company's constitution to be special resolutions;
- Resolution which would have been agreed to by all the members of a company, but which, if not so agreed to, would not have been effective for their purpose unless they had been passed as special resolutions;
- Resolutions or agreements which have been agreed to by all members of some class of shareholder but which if not so agreed to, would not have been effective for their purpose unless they had been passed by some particular majority or otherwise in some particular manner, and all resolutions or agreements which effectively bind all the members of any class of shareholder though not agreed to by all those members;
- resolutions increasing or decreasing the authorised share capital (if any) of a company;
- resolutions conferring authority for the allotment of shares;
- resolutions that a company be voluntarily wound up;
- resolutions attaching rights or restrictions to any share;
- resolutions varying any such right or restriction to a share;
- resolutions classifying any unclassified share;
- resolutions converting shares of one class into shares of another class;
- resolutions converting share capital into stock and resolutions converting stock into share capital.

¹⁵ Section 194(3) Companies Act 2014

¹⁶ Section 194(6) Companies Act 2014

¹⁷ Section 196(1) Companies Act 2014

¹⁸ Section 198 Companies Act 2014

Retaining records

Records must be maintained by the company. Sections 213 to 218 of the Companies Acts 2014 deal with the form of the register and the need to maintain it. Notice is required to be sent to the CRO where a company does not maintain the register at its registered office and where it changes the place where the registers are kept. Form B3 is used for this purpose.

5. Summary Approval Procedure

The Summary Approval Procedure is covered in Chapter 7 of Part 4 of the Companies Act. The Summary Approval Procedure covers several different areas of the Act and the procedure permits certain restricted activities that would otherwise be prohibited. It is a means by which companies can engage in restricted activities by ensuring that the persons those restrictions are designed to protect, consent to the action.

The restricted activities are

- the financial assistance for the acquisition of shares (section 82),
- reduction in company capital (section 84),
- variation of company capital on reorganisations (section 91),
- prohibition on pre-acquisition profits or losses being treated in holding company's financial statements as profits available for distribution (section 118),
- prohibition of loans to directors and connected persons (section 239),
- domestic merger (section 464),
- members voluntary winding up (section 579).

The Summary Approval Procedure means the procedure where a resolution (special) is passed conferring authority, passed not more than 12 months prior to the commencement of the activity and the company delivers to the Registrar a copy of the declaration as required under section 202. The company must deliver the declaration not later than 21 days after the date on which the activity is commenced. Certain of the restricted activities have extra requirements and the nature of the declaration differs according to the restricted activity being dealt with.

Civil sanction is available to a liquidator, creditor or member of a company or to the ODCE where a declaration was made without reasonable grounds for doing so under section 210 of the Companies Act 2014 and a director, who has signed the declaration may be held personally responsible without limited liability for all and any of the debts and liabilities of the company.

Not all company types may use the Summary Approval Procedure - there are restrictions on the use of procedures by Public Limited Companies. Certain company types must pass special resolutions rather than ordinary resolutions to effect certain procedures.

5.1 Financial assistance for the acquisition of Shares

Section 82 of the Companies Act 2014. It is not lawful for a company to give any financial assistance for the purchase of shares in the company or in the company's holding company (if applicable).¹⁹ The prohibition applies whether the assistance is given directly or indirectly or is by means of a loan or guarantee, the provision of security or otherwise.²⁰

There are exceptions and section 82(5) allows the financial assistance where the company's principal purpose in giving the assistance is not for the purpose of the acquisition or where it is incidental in relation to some larger purpose and the assistance is given in good faith.

Section 82(6) lists the exceptions to the prohibition which include:

- the giving of financial assistance in accordance with the Summary Approval Procedure
- for dividends or distribution out of profits
- for discharge of lawfully incurred liabilities
- lending money as part of ordinary business
- employee share schemes
- refinancing

¹⁹ Section 82(2) Companies Act 2014

²⁰ Section 82(4) Companies Act 2014

- representations, warranties and indemnities
- fees, commissions and expenses.

It is a category 2 offence for contravention of section 82.²¹

The Summary Approval Procedure

The Summary Approval Procedure is set out in section 202 and 203 of the Companies Act 2014 regarding financial assistance for the acquisition of shares.

The authority for the restricted activity to be allowed is by a special resolution of the company. The resolution cannot have been passed more than 12 months prior to the activity commencing and with notice of the meeting has enclosed a copy of the declaration and other documents where required.²²

A copy of the declaration must be attached to the notice of the meeting not earlier than 30 days before the date of the meeting to pass the special resolution or if the resolution is being passed in writing not earlier than 30 days before the signature of the last person to sign.

The declaration is completed by the directors or a majority of the directors, in relation to a transaction under section 82 or 239 (prohibition of loans to directors, connected persons) and the declaration must state ²³

- the circumstances in which the transaction or arrangement is to be entered into;
- the nature of the transaction or arrangement;
- the person or persons to or for whom the transaction or arrangement is to be made;
- the purpose for which the company is entering into the arrangement or transaction;
- the nature of the benefit which will accrue to the company directly or indirectly from entering into the transaction or arrangement; and
- the declarants have made a full inquiry into the affairs of the company and that, having done so, they have formed the opinion that the company, having entered into the transaction or arrangement, will be able to pay or discharge its debts and other liabilities in full as they fall due within a 12 month period from the date of entering into the transaction or arrangement.

The declaration must be submitted to the Registrar of Companies within 21 days after the date on which the carrying on the restricted activity concerned is commenced.

If the declaration is not submitted within the time limit, the failure to do so invalidates the carrying on of the activity.²⁴ Under section 203(4) Companies Act 2014, the High Court has the power to validate the Summary Approval Procedure which was done incorrectly.

5.2 Reduction in Company Capital or variation of Company Capital on Reorganisation

Section 84 of the Companies Act 2014 allows a company to reduce its capital without the need for court intervention as it provides a secondary method to be used under the Summary Approval Procedure.

Section 84 of the Companies Act 2014 allows for a company, unless a company's constitution prohibits, to reduce its capital in any way and therefore:

- it may extinguish or reduce the liability on any of its shares in respect of share capital not paid up;
- it may either with or without extinguishing or reducing liability on any of its shares, cancel any paid up company capital which is lost or unrepresented by available assets; or
- it may either with or without extinguishing or reducing liability on any of its shares, pay off any paid up company capital which is in excess of the wants of the company.

²¹ Category 2 offence is – conviction on indictment can result in a term of imprisonment of up to five years or a fine of up to €50,000 or both; Category 2 offence is where- summary conviction can result in a class A fine or imprisonment for a term not exceeding 12 months or both; A “Class A fine” is a fine within the meaning of the Fines Act 2010 (i.e. a fine not exceeding €5,000).

²² Section 202(1) Companies Act 2014

²³ Section 203(1) Companies Act 2014

²⁴ Section 201(3) Companies Act 2014

Company capital, under section 64 of the Companies Act 2014, refers to the aggregate value, expressed as a currency amount, of the consideration received by the company in respect of the allotment of shares of the company and that part of the company's undenominated capital constituted by the transfer of sums referred to in sections 106(4) and 108(3).²⁵

Section 91(1) enables a company to vary its capital on reorganisation. A company can enter into a transaction to dispose of assets, undertakings or liabilities or a combination to another body corporate in return for shares or securities being allotted to the members of the company as consideration (or to its holding company).

The Summary Approval Procedure

The Summary Approval Procedure is set out in sections 202 and 204 of the Companies Act 2014 regarding reduction in company capital or a variation of company capital on reorganisation.

The authority for the restricted activity to be allowed is by a special resolution of the company. The resolution cannot have been passed more than 12 months prior to the activity commencing and with notice of the meeting has enclosed a copy of the declaration and other documents where required.²⁶

A copy of the declaration must be attached to the notice of the meeting not earlier than 30 days before the date of the meeting to pass the special resolution or if the resolution is being passed in writing not earlier than 30 days before the signature of the last person to sign.

The declaration is completed by the directors or a majority of the directors, in relation to a transaction under section 84 or 91. The declaration must state ²⁷

- the circumstances in which the transaction or arrangement is to be entered into;
- the nature of the transaction or arrangement;
- the person or persons to or for whom the transaction or arrangement is to be made;
- the total amount of the company's assets and liabilities as at the latest practicable date before the date of making of the declaration and in any event at a date not more than 3 months before the date of that making;
- the anticipated total amount of the company's assets and liabilities immediately after the restricted activity having taken place;
- that the declarants have made a full inquiry into the affairs of the company and that, having done so, they have formed the opinion that the company is able to pay or discharge its debts and other liabilities in full during the 12 month period following the restricted activity; (being the debts and liabilities identified for the purposes of the total amount of the company's assets and liabilities and so far as not already paid or discharged) and
- that the declarants do not have actual or constructive notice that the company will incur any material, extraordinary, future liability within the period of 12 months after the date of the making of the declaration.

The declaration must be submitted to the Registrar of Companies within 21 days after the date on which the carrying on the restricted activity concerned is commenced.

The declaration has no effect unless accompanied by a report. The report forms part of the document and must include a statement by a person who is qualified to be appointed, or continue to be, the statutory auditor of the company. The statement must be as to whether, in the opinion of that person, the declaration is not unreasonable.

If the declaration is not submitted within the time limit, the failure to do so invalidates the carrying on of the activity.²⁸ Under section 204(2) Companies Act 2014, the High Court has the power to validate the Summary Approval Procedure which was completed incorrectly.

²⁵ Section 106 relates to the Acquisition of own shares under section 105 and section 108 refers to power to redeem preference shares issued before 5 May 1959.

²⁶ Section 202(1) Companies Act 2014

²⁷ Section 204(1) Companies Act 2014

²⁸ Section 201(3) Companies Act 2014

Application to the Court

The other method for the reduction of the share capital is by an application to the High Court for confirming order.²⁹ The company must cause notice of the passing of the resolution to be advertised at least once in 2 daily newspapers circulating in the district where the registered office or principal place of business is situated and all creditors, resident outside the State, must be informed by ordinary post.

Creditors have the right to object where they can credibly demonstrate that the reduction would put the satisfaction of their debt at risk.

The court order must be sent to the CRO for registration thereafter.

Unlimited Companies

Private and Public Unlimited Companies may reduce their company capital using section 1252 Companies Act 2014. A special resolution must be passed.

5.3 Report of the Independent Person - Summary Approval Procedure

A declaration pursuant to section 204/205/207 of the Act of 2014 shall have no effect for the purposes of the Act of 2014 unless it is:

- (i) accompanied by a report that contains, at least, relevant information in accordance with the headings set out below, and
- (ii) drawn up by a person who is qualified at the time of making the report to be appointed, or continue to be, the statutory auditor of the company.

The report shall be addressed to the declarant company and shall contain, at least, the following information:

- I. Introductory paragraph identifying the directors' declaration and accompanying documents to which the report relates;
- II. Statement on the responsibilities of directors;
- III. Statement on the responsibilities of statutory auditor;
- IV. Scope of work performed by statutory auditor;
- V. Other relevant facts (if any) that the statutory auditor has relied on in reaching his/her opinion that the declaration is not unreasonable;
- VI. The opinion of the statutory auditor that the declaration pursuant to section 204/205/207 is not unreasonable; and
- VII. Date and signature of statutory auditor, who having compiled the report, has formed the opinion that the declaration pursuant to section 204/205/207 is not unreasonable.

Table A and the 2014 Companies Act

Table A of the First Schedule to Companies Act 1963 contained the main voluntary provisions of company law for companies that were limited by shares. Companies incorporated under the old 1963-2013 acts had the provisions of Table A form part of the Articles of Association. Companies incorporated under the Companies Act 2014 instead have a constitution. A LTD company, private company limited by shares, has a constitution in the form of the constitution in Schedule 1 of the Act.

Many of the regulations of Table A from the Companies Acts 1963 -2013 were incorporated into the primary Act - the Companies Act 2014 either as voluntary provisions or as compulsory provisions. Some of the regulations of Table A are omitted altogether eg. Regs 10, 47, 52, 77, 79, 99 and 108. Reg 10 was already in the previous Companies Acts as s60 of the 1963 and regulation 99 was included in the text of s182 of the 1963 Act. A company can include some of these regulations if they wish as supplemental regulations to a new constitution.

²⁹ Section 85 Companies Act 2014

Save to the extent constitution provides otherwise

Where the regulations are incorporated into the 2014 Act as voluntary provisions, there is reference in the Act to the effect that the section applies to a LTD company “save to the extent that the company’s constitution provides otherwise”. Therefore unless the company has disapplied the section in its constitution these sections will apply to a company incorporated as a LTD company.

Save to the extent that the company’s constitution provides otherwise relates to the following sections in the Companies Act 2014.

- Section 65 - Power to convert shares into stock
- Section 66 - Shares - s. 66(4) - power of company to issue redeemable shares
- Section 69 - Allotment of Shares - s.69(4) - Shares are only allotted by directors of the company and that the directors may allot, grant options over or otherwise dispose of shares to such persons as they may consider to be in the best interests of the company.
- Section 77, 78 and 79 - Call on Shares - These sections deal with the procedures for a call on shares
- Section 80 - Liens - That a company has a first and paramount lien on every share (not being fully paid up) for all moneys called or payable in respect of that share.
- Section 81 - Forfeiture of Shares - Section allows directors to serve notice on a member that unpaid call will result in forfeiture of those shares, which can be effected by a resolution of the directors.
- Section 83 - Variation of Company Capital - allows company to consolidate shares, increase or reduce the nominal value of any of its shares.
- Section 84 - Reduction in Company Capital - allows company to reduce its company capital in any way it thinks expedient by using the Summary Approval Procedure or by resolution confirmed by the court.
- Section 88 - Variation of rights attached to special classes of shares
- Section 94 - Transfer of shares and debentures - s.94(8) - regarding regulation of instruments and that the transfer of shares is without prejudice to the Stock Transfer Act 1963.
- Section 95 - regarding the ability of the directors to decline to register the transfer of shares.
- Section 96-97 - Transmission of shares in special circumstances - (death of shareholder) (mergers).
- Section 124 and 125 - Procedure for declarations, payments of dividends.
- Section 126 - Bonus shares
- Section 144 - Appointment of directors.
- Section 148 - Vacation of office of director.
- Section 155 - Remuneration of director.
- Sections 158 to 165 - Relating to proceedings of directors.
- Section 178 - Convening of EGMs by members
- Section 180 - Persons entitled to receive notice of meetings.
- Section 181 - Notice of General Meetings - s.181(6) - the accidental omission to give notice of a meeting doesn’t invalidate the proceedings at the meeting.
- Section 182 - Quorum - s.182(2) - 2 members present shall constitute a quorum - 1 person in single member company.
- Sections 186 - 187 - Business of and proceedings at meetings.
- Section 188 - Vote of members
- Section 218 - Service of notice on members
- Section 229 - Other Interests of directors - a director may become an officer of another company promoted by the company or in which the company may be a shareholder.
- Section 230 - Powers of directors to act in a professional capacity for the company.

Certain areas of table A are included in the 2014 Companies Act as compulsory provisions. Such regulations include:

- the form for the appointment of a proxy (s.183-184) - regulations 69 to 71 although the constitution can provide for the number of proxies that can attend.
- the representation of bodies corporate at meetings (s.185) - regulation 74
- the renewal of a share certificate where defaced, lost or destroyed - (s.99(6)) regulation 9
- the signing, drawing of negotiable instruments and receipts to be done in such manner as the directors by resolution determine - (S.164) regulation 88.

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