

# FL MEMO

EXTRACTS

Company  
Law

2010



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# Preface

*Company Law Memo 2010* provides **practical guidance** and **up to date commentary** on company law and practice. It is based on an internationally successful formula, which is accessible and easy to navigate, whilst retaining depth of coverage on a wide range of company law issues.

*Company Law Memo 2010* takes the reader through the full life-span of a company, **covering** day to day management and administrative matters as well as the key transactions and insolvency procedures in which a company may become involved. It also looks at the duties and liabilities of the individuals associated with a company, principally its shareholders and directors. The work focuses on private and public companies limited by shares, but also discusses those limited by guarantee and unlimited companies. Listed/quoted companies, partnerships and banking or insurance companies are, however, outside the scope of this work.

This edition has been extensively updated to include commentary on the **Companies Act 2006**. *Company Law Memo 2010* reflects the law at the time of writing, which includes the final implementation stage of the new Act on 1 October 2009.

*Company Law Memo 2010* also includes commentary on the **new Model Articles**, which replaced Table A for companies incorporated on or after 1 October 2009. The Model Articles for private companies limited by shares, private companies limited by guarantee and public companies are reproduced in the appendix. The appendix also includes a comparison between Table A 1985 and the Model Articles for private companies limited by shares and public companies. Transitional amendments have been made to Table A to reflect some of the provisions of the new Act which were brought into force on 1 October 2007. They apply to companies incorporated on or after this date. They are noted in the text where relevant and included in the version of Table A reproduced in the appendix.

*Company Law Memo 2010* covers the **law applying to** England and Wales. While much of the law applicable in Scotland and Northern Ireland is similar, there are important differences and specialist advice should be sought.

This work is intended to reflect law and practice as at 1 December 2009, although later amendments have been noted where possible. *Company Law Memo 2010* provides a reliable source of information throughout the year using:

- an **online updating facility**, giving detailed updates to individual paragraphs on the latest developments. This is available via our website ([www.flmemo.co.uk](http://www.flmemo.co.uk));
- an **online product updating facility**, automatically incorporating the online updates into the text of the online version of *Company Law Memo 2010*; and
- **regular newsletters**, which highlight and explore developments in company and insolvency law and other subjects of interest. Subscribers are notified via email each time a newsletter is published on the website.

The editors are always interested in feedback from readers, who are welcome to contact them at [companyeditors@flmemo.co.uk](mailto:companyeditors@flmemo.co.uk).

## CHAPTER 3

# Company formation and constitution

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Setting up and registering a company is a relatively simple **process**. It involves preparing and filing certain documents at Companies House for a fee. Actions and decisions which are taken on behalf of the unformed company **before incorporation** may have legal consequences for the person acting on its behalf, as the company has no legal status at this stage (¶345+).

**Once incorporated**, the subscribers and future shareholders become part of a body corporate (s 16 CA 2006): a legal entity in its own right capable of making its own decisions and taking responsibility for its acts independently of the individuals involved in it (*Salomon v A Salomon & Co Ltd* [1897] AC 22). The company can now enter into transactions, own property, and bring and defend court actions in its own name without the shareholders incurring personal liability for its acts or debts. This separation between the identities of the company and the individuals running it is referred to as the “**corporate veil**”; the situations in which this veil may be “lifted” to stop people taking advantage of a company’s independent status are discussed at ¶7125.

The new company will have to make a number of decisions relating to **administrative** and **commercial matters**. The common issues are considered in overview at ¶565+.

## 2. Articles

**435** A company's articles of association **set out** regulations governing managerial and administrative matters. They also contain provisions dealing with shareholders' rights, although sometimes these are contained in a separate shareholders' agreement (see ¶2079+).

**436** The **form** of the articles is flexible, giving companies the freedom to use it to address whatever matters they see fit. The only **compulsory aspects** are that they are (s 18 CA 2006):

- contained in a single document; and
- divided into consecutive numbered paragraphs.

**437** Most companies rely on **default** articles set out in legislation, which cover the usual matters that they need to deal with in their articles. Default articles can either be relied on entirely, or amended to suit the company's needs. The applicable set of articles depends on when the company was incorporated, unless it has specifically adopted a different set at a later date. The default articles that apply to companies **incorporated before 1 October 2009** are known as Table A (there are different versions, depending on when the company was incorporated, see ¶442 below). Companies **incorporated since then** can rely on Model Articles appropriate to their type (i.e. whether a private company limited by shares, a private company limited by guarantee or a public company).

As most companies were incorporated prior to 1 October 2009, **references** to Table A are given throughout this work, as well as references to the Model Articles for new companies. Since this work focuses on companies limited by shares, references to the Model Articles for companies limited by guarantee are not given unless the discussion specifically deals with this type of company. The guarantee company articles are very similar to those for private companies limited by shares in any event. References to the Model Articles for private and public companies limited by shares are given, unless one or other of them does not deal with the point under discussion.

### Table A

**441** Table A is the **default** set of **articles for** private and public companies limited by shares incorporated before 1 October 2009 (also known as "existing companies" because they were in existence when the new Companies Act provisions regarding the constitution came into force). The latest form was Table A 1985, which is reproduced in the Appendix at ¶9910. Companies limited by shares did not have to adopt Table A on incorporation, but it applied unless it was expressly excluded.

Usually, existing companies state that Table A applies except for particular regulations, which are expressly excluded or modified. These are known as "**short form**" articles. If a Table A regulation is modified, the articles must state to what extent this is the case. However, it is usually clearer to exclude the relevant Table A regulation altogether and replace it with the modified wording. Most companies also set out additional regulations.

If a lot of exclusions and/or modifications are required, companies set out their own amended version in full instead. These are known as "**long form**" articles.

The various possibilities are summarised in the table below.

Company's articles	Extent to which Table A is relied upon
Company's own articles exclude Table A	Not at all
Company's own articles do not exclude Table A	Both Table A and the company's own articles are applicable. This can lead to conflict, so the company's own articles only apply to matters not dealt with in Table A
Company's own articles exclude/modify Table A	The company's articles prevail as far as Table A is excluded/modified, or as far as they deal with matters not in Table A. Otherwise, Table A applies
Company does not have its own articles, or its own articles state that Table A applies	Table A applies

**MEMO POINTS** The default form of articles for **other types of company** were as follows:

- company limited by guarantee with a share capital: Table A;
- company limited by guarantee without a share capital: Table C; and
- unlimited company with a share capital: Table E.

**Companies not limited by shares** had to file articles of association in the appropriate form (and so could not choose to file no articles and automatically rely on the relevant Table), but they could modify, exclude and add to the relevant Table as necessary (*Gaiman v National Association for Mental Health* [1970] 2 All ER 362).

Table A evolved in line with legislative changes. If a company's articles incorporate Table A, the **applicable form** of articles is that which was in force when the company was incorporated or when it adopted Table A. Any subsequent changes to Table A will not affect the company, unless it specifically adopts the change as it would any other change to its articles. The table below can be used to check which default Table A is to be used. The most common **historical** Table A is Table A 1948. The differences between Table A 1948 and Table A 1985 are summarised at ¶9915+, and significant differences are highlighted within each topic as relevant.

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Date of incorporation	Default set of articles <sup>1</sup>	Reference
01/07/85 – 30/09/09	Table A 1985 <sup>2</sup>	SI 1985/805
22/12/80 – 30/06/85	Table A 1948, Pt I	Pt I, Sch 1, CA 1948
01/07/48 – 21/12/80	Private company – Table A 1948, Pt II Public company – Table A 1948, Pt I	Pt II, Sch 1, CA 1948 Pt I, Sch 1, CA 1948
01/11/29 – 30/06/48	Table A 1929	Sch 1, CA 1929

**Note:**

1. For **more historical** Tables A, see CA 1908 and CA 1862.
2. Table A 1985 has been **updated** on:
  - 1 August 1985 (SI 1985/1052);
  - 22 December 2000 (SI 2000/3373); and
  - 1 October 2007 (SI 2007/2541 and SI 2007/2826). These amendments make specific changes in line with the provisions of the new Companies Act that were in force at the time, with different changes applicable to private and public companies.

As with the different versions of Table A, these amendments only apply to a company where it was incorporated on or after the date on which they came into force. So, for example, only a company incorporated on or after 1 October 2007 needs to consider the transitional amendments made to fit in with the new Companies Act. The specific amendments, and the dates on which they came into force, can be seen at ¶9910.

Table A covers many of the issues companies find useful to regulate in their articles. However, it will not suit every company and it is common for companies to alter at least some of the regulations, usually when drafting their articles for incorporation. The **common alterations** are summarised in the table below.

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Alteration	Reference (TA 1985)	¶¶
Grant <b>authority</b> to the board to <b>allot shares</b> for up to 5 years	n/a	¶921+
Attach <b>class rights</b> to particular shares	n/a	¶914+
Include <b>pre-emption rights</b> giving existing shareholders first refusal of allotments or transfers. This is common in small and joint venture companies	n/a	¶940+ ¶1842+
Give the directors a wider/narrower power to <b>refuse to register transfers of shares</b>	reg 24	¶1891+
<b>Directors:</b>		
– change the minimum/maximum number	– reg 64	¶2230+
– exclude retirement by rotation	– regs 73-80 <sup>1</sup>	¶2925+
– provide for appointment and removal by a particular class of shareholder (e.g. where the company is controlled by its holding company)	– n/a	-
– add further automatic removal provisions (e.g. on conviction of a criminal offence resulting in a custodial sentence)	– reg 81	¶2939
– make adaptations to enable a sole director to manage the company	– regs 89, 64, 94-98	¶3460+
– place restrictions on the directors' power to borrow	– n/a	¶4762

Alteration	Reference (TA 1985)	¶¶
<b>Board decisions:</b> <ul style="list-style-type: none"> <li>– enable meetings to be held remotely</li> <li>– change the quorum, or provide that directors present remotely count in the quorum</li> <li>– allow directors to count in the quorum and vote on matters in which they have an interest</li> </ul>	<ul style="list-style-type: none"> <li>– n/a</li> <li>– reg 89</li> <li>– regs 94-98</li> </ul>	<ul style="list-style-type: none"> <li>¶3255+</li> <li>¶3258+</li> <li>¶3341+</li> </ul>
<b>Shareholder decisions:</b> <ul style="list-style-type: none"> <li>– set out an alternative written resolution procedure</li> <li>– require certain decisions to be made by special resolution</li> <li>– change the quorum</li> </ul>	<ul style="list-style-type: none"> <li>– n/a</li> <li>– n/a</li> <li>– reg 40<sup>1</sup></li> </ul>	<ul style="list-style-type: none"> <li>¶3580+</li> <li>¶3554</li> <li>¶3747</li> </ul>
<b>Document retention:</b> companies increasingly use electronic storage methods and so include an article specifically allowing them to destroy original documents after a certain length of time, e.g. stock transfer forms, cancelled share certificates etc	n/a	-
<b>Note:</b> 1. For companies <b>incorporated on or after 1 October 2007</b> that adopt Table A, amendments have been made to certain provisions of Table A to correspond with the provisions of the new Companies Act which were in force by that date. For private companies only, retirement by rotation no longer applies and the quorum of two does not apply if there is only one shareholder (see ¶9910).		

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Companies that use Table A, and those that use a tailored set of articles, should consider altering their articles to **fit in with the new Companies Act**. Some provisions commonly found in articles of companies incorporated before 1 October 2009 are no longer necessary because the matter is dealt with in the new Companies Act. Others prevent the company from taking advantage of flexibility introduced by the new law. The main issues to consider are summarised in the table below. In some cases, companies can choose whether to prohibit or restrict the directors' powers. This table assumes that a company wishes to cede such decisions to the directors, but of course the company may choose to prohibit or restrict the use of these powers instead; follow the cross-references for details.

Alteration	¶¶
Remove the provisions of the memorandum that are deemed to be in the articles	¶450
Remove the provisions of the articles that are now dealt with in CA 2006, for example methods of voting at shareholder meetings	¶9935
Add an alternative method of changing the company's name, for example by board resolution	¶268
Remove references to authorised share capital	¶707
Private companies: <ul style="list-style-type: none"> <li>– remove the power for directors to issue redeemable shares;</li> <li>– remove any prohibition or restriction on issuing redeemable shares;</li> <li>– empower directors to determine their terms and manner of redemption;</li> <li>– remove the provisions setting out the terms and manner of redemption from the articles</li> </ul> Public companies: <ul style="list-style-type: none"> <li>– empower directors to issue redeemable shares and determine their terms and manner of redemption;</li> <li>– remove the provisions setting out the terms and manner of redemption from the articles</li> </ul>	¶765, ¶769
<ul style="list-style-type: none"> <li>– Remove the power to consolidate/subdivide share capital;</li> <li>– remove any prohibition or restriction on this power</li> </ul>	¶1317
<ul style="list-style-type: none"> <li>– Remove the power to carry out an own share purchase;</li> <li>– remove any prohibition or restriction on this power</li> </ul>	¶1374
Remove the power to suspend the registration of share transfers	¶1891
Empower the directors to make provision for the employees on cessation of the business	¶2984
Harmonise directors' interests provisions with CA 2006	¶3308+

Alteration	¶¶
Amend the provisions setting out when a director must vacate office so that physical and mental incapacity are treated in the same way	¶2939
Enable remote participation at shareholder meetings	¶3724
Remove the chairman's casting vote at shareholder meetings	¶3839

## Model Articles

Table A was replaced by the Model Articles as the **default** form of articles for companies incorporated on or after 1 October 2009 under the new Companies Act (s 19 CA 2006; SI 2008/3229). Like Table A, they apply where a company has not registered its own articles, or so far as its own articles do not exclude or modify the Model Articles (s 20 CA 2006).

There are separate Model Articles **for**:

- private companies limited by shares;
- public companies; and
- private companies limited by guarantee.

The text of each is reproduced at ¶9920, ¶9925 and ¶9930 respectively.

The Model Articles for private companies concentrate on board decisions. Those for public companies are more similar to Table A, containing detailed provisions about shareholders and shareholder meetings as well. They are all written in plain English and are designed to be more user-friendly than Table A.

### MEMO POINTS

Companies **incorporated before 1 October 2009** may choose to adopt the Model Articles instead of Table A or their own tailored articles (which they can do in the same way as they would make any other changes to their articles, see below). A **comparison** of Table A and the Model Articles for private companies limited by shares and public companies can be found at ¶9935 so readers can easily see the similarities and differences between the different sets of articles and judge whether it would be appropriate to adopt the Model Articles instead of Table A (or articles based on Table A). Alternatively, companies may prefer to adapt their current articles to the new law, ¶444 above.

## Alterations

A company has the power, subject to certain constraints, to change its articles, ensuring that these managerial and administrative regulations reflect its needs as the company changes. The company's ability to do so is **restricted** in four main ways:

- a.** by entrenchment of a particular provision in the articles, see ¶452;
- b.** by the **legislation** prohibiting or setting out special rules for the proposed changes, for example:
  - a company cannot change rights attaching to a class of shares without following the proper procedure (see ¶1270+); or
  - a company which has permission to omit the word "limited" from its name cannot change its articles so that it no longer qualifies to do so (¶248+);
- c.** the company may be subject to a **court order** prohibiting it from making the change following an application for relief from unfair prejudice (s 996 CA 2006); or
- d.** the change may be challenged if it is **unfairly prejudicial** to minority shareholders (see ¶2105+). However, objections on this ground are rare. It is for the company to decide whether the change is for its benefit; the court will only overrule the company's decision if it is clearly unreasonable (*Shuttleworth v Cox Bros & Co (Maidenhead) Ltd* [1927] 2 KB 9). It does not automatically follow that a change which benefits one group of shareholders over another will be invalid.

Assuming that none of the above restrictions apply, the articles can be formally **changed by** special resolution (s 21 CA 2006). The special resolution must be **filed** at Companies House within 15 days of being passed (ss 29, 30 CA 2006). The registrar will then **publish** notice of the change in the *Gazette* (s 1077 CA 2006). A copy of the articles as amended must also be filed at Companies House, within 15 days of the amendment taking effect (s 26 CA 2006). This

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can be later than the resolution being passed, but in practice the two will be filed together. Failure to file alterations to the articles is a criminal offence, rendering the company and every officer in default liable to a fine. In addition, Companies House can serve notice on the company requiring it to rectify the breach within 28 days. If the company does not comply, in addition to the criminal penalties, it will be liable to an automatic penalty of £200 levied by Companies House (s 27 CA 2006).

Once an amendment has been registered, any **copy of the articles** issued by the company must be the up to date version, or at least have all resolutions or agreements amending them attached (s 36 CA 2006). Failure to do so renders the company and any officer in default liable to a fine.

- MEMO POINTS**
1. If the alteration requires a shareholder to take or subscribe for **more shares** or otherwise **increases his liability** to contribute to the company's share capital or pay the company money, he must consent in writing to the change (either before or after the alteration is made) (s 25 CA 2006). He is not bound by the alteration until his written consent is obtained.
  2. The articles can also be **informally altered**, either by the express agreement of all shareholders, or by the acquiescence of all shareholders to a change over a period of time (¶3590+). However, since the legislation requires a special resolution, the articles cannot allow changes to be made on the approval of a **lower majority** (for example, by ordinary resolution).
  3. If the company's constitution is **changed by a specific enactment** (i.e. one not changing all company's articles generally), it must file Form CC05 within 15 days of the enactment taking effect, along with a copy of the articles, resolution or agreement affected as amended by the enactment (s 34 CA 2006). If the constitution is **changed by a court order or the order of another authority**, Form CC06 must be filed at Companies House within 15 days of the alteration taking effect, again with a copy of the affected part of the constitution as amended (s 35 CA 2006).

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**Companies incorporated before 1 October 2009** are now deemed to have various provisions included in their articles that used to be in their memoranda (s 28 CA 2006). **Companies incorporated after** that date may choose to include these provisions if they wish. These provisions can be changed as follows:

Type of provision	How to alter	Reference
Company's name	See ¶264+	-
Statement of shareholders' limited liability <sup>1</sup>	- As for other articles; and - shareholder(s) affected must agree to be bound by the alteration	ss 21, 25, 28 CA 2006
Company's objects <sup>2</sup>	- As for other articles; and - the company must file notice of the alteration at Companies House using Form CC04 <sup>3</sup> . Amendment takes effect when the notice is placed on the public register	ss 21, 28, 31 CA 2006
Company's authorised share capital	- Ordinary resolution; and - file resolution at Companies House	s 28 CA 2006 para 42 Sch 2 SI 2008/2860
Domicile	See ¶484	-
Additional provisions <sup>4</sup>	As for other articles	ss 21, 28 CA 2006

**Note:**

1. If the shareholders are to have unlimited liability, the company must change its status to an unlimited company (¶684+).
2. A company's objects used to set out its powers and any restrictions on those powers, often in detail (although this was not required). Companies now have unlimited objects, unless specific restrictions are included in their articles (s 31 CA 2006). Therefore, since objects from old-style memoranda are now deemed to be included in the articles, existing companies have the same objects as before the change in the law. If they want to take advantage of the new freedom to have unlimited objects, they need to remove these restrictions.
3. This form must be filed to inform Companies House when objects are included in the company's articles (whether on incorporation or later), changed or removed. However, an existing company does not have to give Companies House notice of the existence of objects in its articles just because they have been automatically imported from the memorandum (para 8 Sch 2 SI 2008/2860).
4. These were rare in practice, but sometimes important matters were included in the memorandum rather than the articles because the procedure for altering the memorandum allowed minority shareholders to object to the alteration, or because alteration could be prohibited altogether (known as "entrenching" the provision). Now, a company can entrench a provision in its articles if it wishes, but only by making it more difficult (not impossible) to change, see ¶452 below.

## Restrictions

The **general rule** is that a company cannot restrict its ability to alter its articles by special resolution, for example in another contract such as a shareholders' agreement, as to do so would fetter its statutory powers. Therefore, a regulation **in the articles** stating that certain regulations cannot be changed is void (*Allen v Gold Reefs of West Africa Ltd* [1900] 1 Ch 656). A provision **in another contract** whereby the company agrees not to change certain regulations in its articles would not be enforceable in terms of preventing the change (*Russell v Northern Bank Development Corp Ltd* [1992] 3 All ER 161), although damages may be obtainable for breach of that other contract (*Southern Foundries (1926) Ltd v Shirlaw* [1940] 2 All ER 445). The only exception to this principle is that a company is allowed to entrench a provision in its articles.

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If a company wants to make it more difficult to change certain articles, it can include an **entrenchment provision** setting out which articles are entrenched and what conditions must be met or procedures complied with (s 22 CA 2006). This can only be used to impose conditions or procedures which are more onerous than a special resolution, for example by requiring unanimous consent for the change or requiring a special resolution plus compliance with a certain procedure. It cannot be used to make certain articles impossible to change, nor can it be used to allow articles to be altered more easily by a less onerous procedure than the normal special resolution.

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In addition to the usual filing requirements (on incorporation or a change of the articles), Companies House must be notified of a new entrenchment provision on Form CC01 (s 23 CA 2006). This also applies when an entrenchment provision is **removed**, using Form CC02 (as well as the usual filings on a change to the articles).

If an **entrenched article** (i.e. one which is subject to the special rules set out in the entrenchment provision) **is changed**, the company must file a notice at Companies House confirming that the entrenchment provision was complied with (s 24 CA 2006). This should be done on Form CC03. The resolution and an updated copy of the articles must also be filed, as usual.

**MEMO POINTS** The new Companies Act provides that **entrenchment provisions** can **only** be **included when**:

- the company is first incorporated; or
- by unanimous agreement of the shareholders later on.

However, the government stopped this provision coming into force, as was expected, on 1 October 2009 to enable further consideration and consultation on this point (reg 2(2) SI 2009/2476). Readers should check updates for developments.

## CHAPTER 5

## Dividends and other distributions

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## 1600

“Distribution” is the general term used to describe a payment made by a company to its shareholders based on their shareholdings. A “dividend” is a division of profits amongst shareholders and is the most usual type of distribution. Distributions are usually paid in cash, although other forms of payment are possible. The discussion below relates to distributions made by a company while it is solvent. Different rules apply where a company is insolvent, so distributions during insolvency proceedings are dealt with in the chapter relevant to the type of procedure in question.

There is a strict statutory framework which governs a company’s **ability to make** distributions, which imposes additional requirements on public companies. All companies must also refer to their articles for the procedure to be followed, and their directors must comply with their duties.

In the case of dividends, there are particular issues relating to their **declaration and payment**, which are governed largely by the provisions in the company’s articles. Most articles (including Table A 1985 and the Model Articles) provide for dividends to be declared by shareholders but give the directors the power to pay interim dividends without a shareholder declaration. Although there is no general right to a dividend, some share classes may have

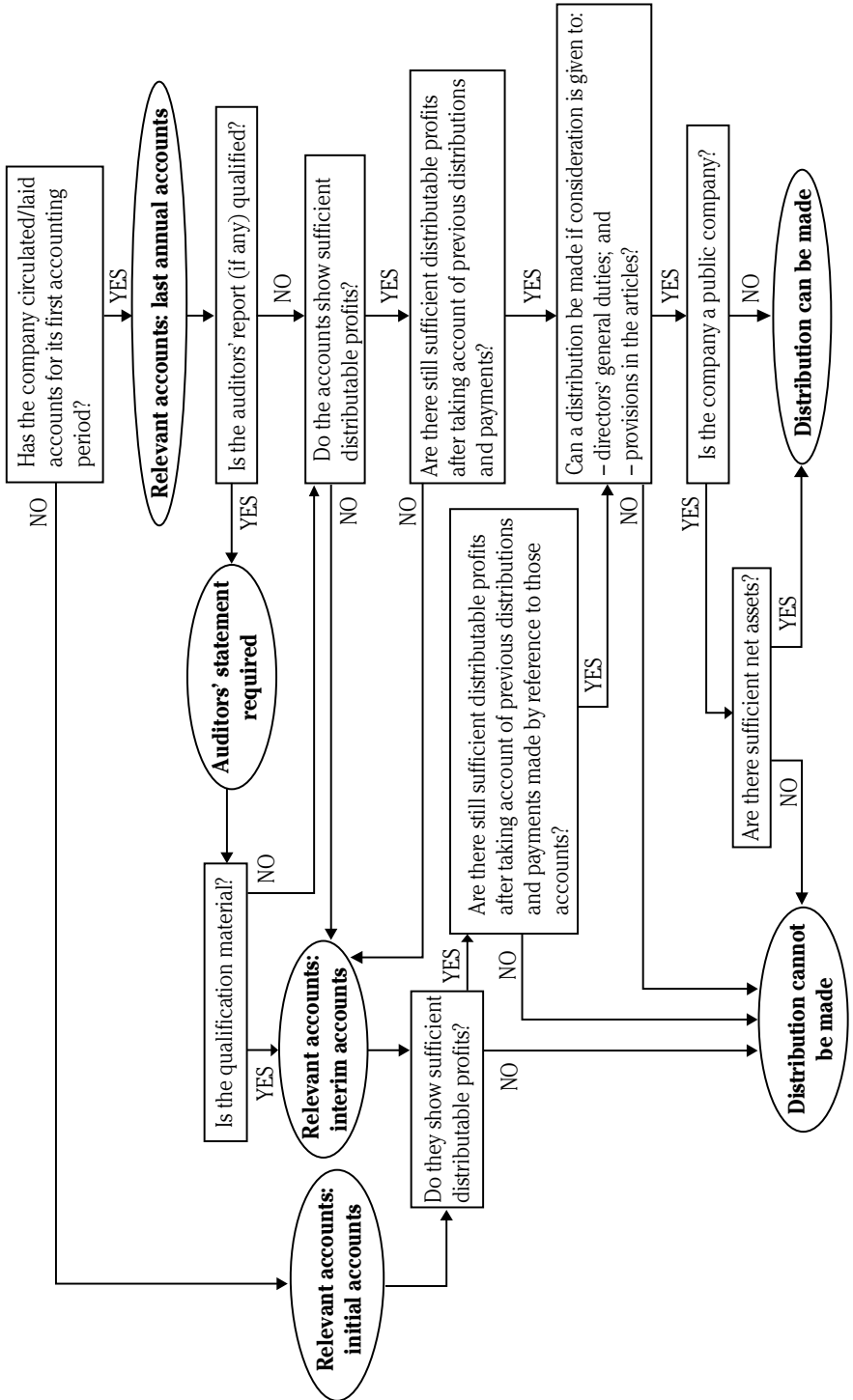
particular dividend rights. Once a dividend becomes due, a shareholder has the right to enforce it as a debt due to him from the company.

It is important that the relevant requirements are complied with, as an **unlawful distribution** may have to be repaid to the company by the recipient shareholders and/or the company's directors.

A distribution has **tax consequences** for both the recipient shareholder and the company. The distributing company will generally have to pay corporation tax on the profit distributed. Shareholders will have to pay tax on any distributions they receive. In most cases, they will be taxed as having received a distribution, but distributions to employees and directors may be taxed as a benefit in kind instead.

5. Flowchart: can a distribution be made?

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#### d. Comparison of attendees’ rights

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Right/action	Shareholders <sup>1</sup>	Proxies	Corporate representatives	¶¶
Receive notice of meetings	✓	✗	✗	¶3692+
Attend meetings	✓ Subject to restrictions	✓ Subject to the same restrictions as his appointor – i.e. if his appointor cannot attend, neither can the proxy – and any other restrictions in the appointment form	✓ Subject to the same restrictions as the shareholder he represents	¶3724+
Count in the quorum	✓ The articles may restrict this ability, e.g. by stating that a shareholder has to have the right to vote	✓ Subject to the same restrictions as his appointor	✓ Subject to the same restrictions as the shareholder he represents	¶3746+
Speak at meetings	✓	✓ Subject to any restrictions in the appointment form	✓	¶3724+

Right/action	Shareholders <sup>1</sup>	Proxies	Corporate representatives	¶¶
<b>Vote:</b>  1. On a show of hands 2. On poll	Subject to voting restrictions  1. ✓ 2. ✓	Subject to the same restrictions as his appointor, and any in the appointment form  1. ✓ 2. ✓	Subject to the same restrictions as the shareholder he represents  1. ✓ 2. ✓	¶3810+
<b>Freedom of vote</b>	✓ Complete freedom as to how to exercise his vote, <b>unless</b> he is a nominee/trustee/bankrupt/transferor where the transfer is not yet registered, who must vote as instructed or in the beneficial holder's best interests	✗ Must vote as instructed	✗ Must vote in accordance with his authority	¶3824+
<b>Demand a poll</b>	✓ If he qualifies	✓ If his appointor would qualify	✓ If the shareholder he represents would qualify	¶3842+
<b>Appoint a representative to attend</b>	✓ Proxy – can appoint more than one; Corporate representative – if corporate shareholder (can appoint more than one)	✗	✓ Corporate representative can appoint a proxy to attend in his place	¶3727+ ¶3743+
<b>Proof of entitlements</b>	Name entered on the register of shareholders	Proxy appointment form lodged with the company	Evidence (e.g. copy board resolution of the corporate shareholder he represents) submitted to the company	¶3915+ ¶3727+ ¶3743+
<b>Revocation of appointment</b>	n/a But rights can be suspended or restricted	✓ By notice to the company before the meeting or poll	✓ By notice to the company before the meeting or poll	¶3727+ ¶3743+
<b>Note:</b> 1. "Shareholders" <b>includes:</b> beneficiaries on death or bankruptcy; authorised representatives such as trustees, nominees, receivers, trustees in bankruptcy; and transferors of shares where a transfer has not yet been registered.				

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## Financial assistance in share acquisitions

There are strict **statutory restrictions** on the ability of a target company or any of its subsidiaries to give financial assistance for the purpose of an acquisition of shares in the target company. These restrictions now only **apply to** the acquisition of shares in public companies (or, in the case of a public subsidiary of a private company, giving financial assistance for the acquisition of shares in its private holding company).

The restrictions amount to a **general prohibition** on the giving of financial assistance with very specific exceptions. The consequences of a **breach** and giving unlawful financial assistance are severe, most notably, the transaction is void and unenforceable.

The statutory provisions are relatively loosely drafted (perhaps surprising, given the severity of the consequences of breach). This has led to much judicial interpretation of them and uncertainty as to their application. The **result in practice** is that all parties to any transaction which involves a transfer of shares in a public company (or a private company with a public subsidiary) must be alive to the possibility of financial assistance. If there is any doubt, financial assistance should be assumed and (if no exception applies) the transaction should be restructured. It is in the interests of both parties to the transaction to ensure that there is no breach.

Case law has emphasised the importance of directors obtaining **independent professional advice** (both legal and accountancy) (*Belmont Finance Corporation Ltd v Williams Furniture Ltd (No 2)*

[1980] 1 AllER 393). Professional advisers should ensure that their client is fully informed of the legal position and of any doubts over the validity of the proposed transaction or they may be found guilty of negligence (see for example *Hill v Mullis & Peake* [1999] BCC 325).

- 5558** The new Companies Act has abolished the prohibition on a **private company** giving financial assistance for the acquisition of its own shares or the shares of another private company (art 5(2), Sch 3 SI 2007/3495). The repeal applies to financial assistance given on or after 1 October 2008, even if the shares were already acquired or liability was already incurred before that date (para 51 Sch 4 SI 2007/3495). However, despite this relaxation in the law applying to a private company, its **directors must still consider** whether the assistance:
- is within **the company's objects and powers** (as set out in its constitution);
  - is likely to **promote the success of the company** (see ¶2379);
  - amounts to an unauthorised **distribution to shareholders** (see ¶1728+); and/or
  - amounts to an **avoidable transaction** under insolvency law, such as a preference or a transaction at an undervalue (see ¶17808+).

## 1. General prohibition

- 5565** Subject to a number of exceptions, a public company is generally prohibited from giving financial assistance for the purpose of an acquisition of its own shares. In a **group structure**, the following restrictions apply (ss 678, 679 CA 2006):
- a subsidiary of a public company (whether it is itself public or private) cannot give financial assistance for the acquisition of shares in its public holding company; and
  - a public subsidiary of a private company cannot give financial assistance for the acquisition of shares in its private holding company.

### EXAMPLE

A Ltd holding co of B plc, C plc and D Ltd



B plc subsidiary of A Ltd/holding co of C plc and D Ltd



C plc subsidiary of A Ltd and B plc/holding co of D Ltd



D Ltd subsidiary of A Ltd, B plc and C plc

✗ = prohibition applies: financial assistance cannot be given

✓ = prohibition does not apply: financial assistance can be given

### When can financial assistance be given?

		Shares being acquired			
		A Ltd	B plc	C plc	D Ltd
Giving assistance	A Ltd	✓	✓	✓	✓
	B plc	✗	✗	✓	✓
	C plc	✗	✗	✗	✓
	D Ltd	✓	✗	✗	✓

### MEMO POINTS

1. See ¶199+ for the **definitions** of subsidiary and holding company.
2. **Foreign companies** and foreign subsidiaries (i.e. those incorporated outside the UK) are permitted to give financial assistance without restriction (*Arab Bank plc v Mercantile Holdings Ltd* [1994] 1 BCLC 330; *AMG Global Nominees (Private) Limited v Africa Resources Limited* [2008] EWCA Civ 1278). However, a UK company to which the prohibition applies must be careful not to give financial assistance indirectly by, for example, procuring a foreign subsidiary to give it instead.

- 5566** The **prohibition applies** regardless of (*Chaston v SWP Group plc* [2003] 1 BCLC 675):
- the form of the acquisition (for example, a purchase, a subscription for new shares or a share exchange);
  - the identity of the party to whom the assistance is given (for example, a buyer or seller or any of their subsidiaries, associated companies or nominees, or even the company itself); and
  - whether the assistance was given directly or indirectly.

The prohibition applies to assistance given **before or at the same time as the acquisition**. “Pre-transactional” assistance is covered, even though a person may only be proposing to acquire the shares and no acquisition may ultimately take place. The distinction between “pre-transactional” assistance and a company merely preparing itself for sale is uncertain, particularly when a definite buyer is on the scene.

5567

Assistance given **after the acquisition** is prohibited if it reduces or discharges a liability that was incurred for the purpose of the acquisition (ss678(3), 679(3) CA2006). A person may incur a liability for the purpose of an acquisition by changing its financial position, and that liability could be reduced or discharged by the company wholly or partly restoring that position to what it was before the acquisition took place.

5568

**MEMO POINTS** Where the assistance is given after the acquisition, the prohibition will only apply if the target is a **public company** at the **time that the assistance is given**. Accordingly, the prohibition will not apply where the target has re-registered as a private company since the shares were acquired and is a private company at the time the assistance is given (unless the assistance is given by its public subsidiary). However, the prohibition will apply where the target was a private company at the time the shares were acquired, but has re-registered as a public company at the time the assistance is given.

## What constitutes financial assistance?

There are five main **categories of financial assistance** (s677(1) CA2006):

5569

- financial assistance by way of a gift (which could include a sale at an undervalue or the acquisition of an asset at an overvalue);
- financial assistance by way of a release, waiver, guarantee, security or indemnity (except for an indemnity against the company’s own neglect or default);
- financial assistance by way of a loan (or the novation of a loan or assignment of rights arising under a loan);
- any other financial assistance given by a company with no or negative net assets; or
- any other financial assistance which reduces the net assets of a company to a material extent, or where the assistance is given when it has no net assets (see below).

**EXAMPLE** Typical examples of unlawful financial assistance are:

1. The buyer borrows the purchase money and those borrowings are secured on the assets of the target.
2. At the buyer’s and the seller’s request, the target sells assets at an undervalue or for deferred consideration to make it more attractive for sale.
3. The target pays some of the consideration for the sale, for example:
  - the target loans the purchase money to the buyer;
  - following the acquisition, the target pays a dividend to the buyer which repays the purchase money; or
  - the target pays a bonus to the seller (who is also a director of the target) which exceeds the value of his services.
4. Following the sale, the target (which is now a subsidiary of the buyer) enters into a group banking arrangement so that the buyer’s borrowings (including the acquisition debt) are secured on the assets of the target.
5. The target pays the transactional costs of the buyer or the seller (e.g. legal or accountancy fees).

**MEMO POINTS** Financial assistance **also includes** any agreement under which any of the obligations of the person giving the assistance are to be fulfilled before those of the other party to the agreement (or by way of the novation of or the assignment of rights arising under such an agreement). This catches agreements which are similar to loans such as credit or deferred payment agreements. For example, if the target gave assistance by selling an asset but payment did not have to be made until a future date, that would be an agreement where the obligations of the company giving assistance had to be fulfilled before those of the other party.

The final category is a catch-all so that assistance which results in a **material reduction in a company’s positive net assets** will be caught even if it does not fall into any of the previous discrete categories. If there is no reduction and none of the other categories is relevant, then the prohibition will not apply.

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**MEMO POINTS** If a reduction has occurred, whether it is **material** or not is a question of degree dependent upon the facts of the particular case and the court has declined to set out a general rule on the matter (*Parlett v Guppys (Bridport) Ltd* [1996] 2 BCLC 34).

**5571** For the two final categories of financial assistance, a company's **net asset figure equals** its actual total assets less its actual total liabilities (including contingent or prospective liabilities), not just those assets and liabilities recorded in the accounts or their book value (s 677(2) CA2006). The date upon which the effect on net assets should be assessed is that on which the assistance is given. Where the assistance consists of the assumption of a liability to make payments in the future, the date on which the assistance is given is that on which the liability is assumed and not when any payment becomes due (*Parlett v Guppys (Bridport) Ltd* [1996] 2 BCLC 34). The calculation of a company's assets and liabilities depends upon general accounting principles (see *Accountancy and Financial Reporting Memo*).

**5572** There is no statutory **definition of** the term "**financial assistance**". Case law has determined that the term conveys a commercial concept and does not have a technical legal meaning; what matters is the commercial substance of the transaction (*Charterhouse Investment Trust Ltd v Tempest Diesels Ltd* [1986] BCLC 1). It is also necessary for assistance, in the nature of aid or help, to be given to someone; it is not "assistance" to give someone something to which they are already entitled (*MT Realisations Ltd (in liquidation) v Digital Equipment Co Ltd* [2003] 2 BCLC 117). For example, the repayment of a debt which is properly due is not financial assistance (*Anglo Petroleum Ltd v TFB (Mortgages) Ltd* [2007] EWCA Civ 456). If money in some shape or form is involved, then the assistance will be "financial" (*Armour Hick Northern Ltd v Armour Trust Ltd* [1980] 3 All ER 833).

**5573** The **test** is one of "**commercial reality**" (*Charterhouse Investment Trust Ltd v Tempest Diesels Ltd* [1986] BCLC 1). The court will examine the transaction as a whole to see who gained the financial advantage. It is not necessary for the company giving the assistance to suffer a detriment, so for example, a loan repayable with interest would benefit the company that made the loan but would still constitute financial assistance. The only case where a disadvantage to the company is required is when the assistance results in a material reduction in the company's net assets (*Chaston v SWP Group plc* [2003] 1 BCLC 675).

**5574** One grey area is whether an **inducement to enter into a share transaction** constitutes financial assistance. On the one hand, a company can give covenants and warranties for the purpose of a share acquisition (*Barclays Bank plc v British & Commonwealth Holdings plc* [1996] 1 BCLC 1), but on the other hand it cannot pay the fees of the buyer's solicitors or other advisers (*Chaston v SWP Group plc* [2003] 1 BCLC 675). However, payment of the buyer's fees for an agent who introduced the seller to the shares does not constitute financial assistance (*Corporate Development Partners LLC v E-Relationship Marketing Ltd* [2007] EWHC 436).

**EXAMPLE**

**No financial assistance**

MTR Ltd was a loss-making insolvent subsidiary company funded by its parent, DEC Ltd, to the tune of about £8m. MTI Ltd bought the shares of MTR Ltd for £1 and at the same time agreed to pay £6.5m for an assignment to it of the £8m loan, the price to be paid in instalments. Following the sale and assignment, MTI Ltd could not meet the price instalments due to DEC Ltd. The payments were rescheduled so that all sums payable from DEC Ltd's group to MTR Ltd would be paid to DEC Ltd and reduce the outstanding instalments. The court decided the commercial realities of the arrangement did not involve financial assistance. Before the rescheduling, DEC Ltd's group would have paid the money it owed to MTR Ltd, which would have paid money to MTI Ltd to repay the £8m loan. MTI Ltd would have paid the money back to DEC Ltd for the loan assignment. All the rescheduling did was short-circuit this position (*MT Realisations Ltd (in liquidation) v Digital Equipment Co Ltd* [2003] 2 BCLC 117).

**Financial assistance**

DRC Ltd, a subsidiary of DRCH Ltd, paid accountants' fees for work they carried out to assist SWP plc's due diligence exercise during negotiations between the shareholders of DRCH Ltd for the sale of their shares to SWP plc. The court decided that as a commercial matter, financial assistance was given. The accountants received payment for their services and both the buyer and the sellers were relieved of their obligation to pay for this service themselves. The assistance was clearly financial, even though it had no impact on the share price paid by SWP plc (*Chaston v SWP Group plc* [2003] 1 BCLC 675).

## Purpose of assistance

The prohibition will not apply where the assistance is given **for one purpose** only and that purpose is not the acquisition of shares.

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**EXAMPLE** Mrs D, Mr EB and Mr PB were partners in a residential care home business run from a property known as “The Mount”. The business was operated through a company of which they were all shareholders and directors but The Mount was owned by them individually. The local authority subsequently cancelled the business’ care home registration because Mr EB was charged with assault and Mr EB and Mr PB had failed to disclose spent convictions. In order to prevent permanent de-registration, Mr EB and Mr PB agreed to transfer their shares in the company to Mrs D, Mrs D gave up her interest in The Mount to Mr EB and Mr PB, who in turn granted the company a 21-year lease of that property. The rent charged to the company was £29,000 per annum in excess of market rent and it was alleged that this amounted to unlawful financial assistance. The court decided that the financial assistance had not been given for the purpose of the acquisition. Mrs D’s purpose in agreeing to the onerous lease was to secure the premises for the company as it needed a lease of The Mount if it was going to continue in business. The company entering into the lease was in connection with the acquisition but not for the purpose of it (*Dyment v Boyden* [2005] 1 BCLC 163).

Where the assistance is given **for a number of purposes**, one of which is the share acquisition, it will be permitted in two situations (ss 678(4), 679(4)CA 2006):

5576

- the principal purpose of the assistance is not for the acquisition or, in other words, the acquisition is a subsidiary purpose; or
- the acquisition is an incidental part of some larger purpose of the company giving the assistance.

In both cases, the assistance must be given **in good faith in the interests of the company** giving it. This means that those responsible for procuring that the company provides the assistance must act in the genuine belief that it is being done in that company’s interests (*Brady v Brady* [1988] 2 All ER 617). Financial assistance given by an insolvent company is not in the interests of the company as the interests of the creditors would be disadvantaged (*Plaut v Steiner* (1989) 5 BCC 352). Where intra-group assistance is proposed, the interests of the individual company giving the assistance should be considered (and not sacrificed to the interests of the whole group) and the directors should ensure that this is recorded in board minutes.

5577

It is important in this context to **distinguish between “purpose” and “reason”**. “Purpose” is the object of the transaction and must be considered from the point of view of the company giving the assistance, not the person receiving the assistance. “Reason” is why the transaction is being carried out. The ultimate reason for the financial assistance may, and in most cases probably will, be more important than the transaction itself. For example, if a buyer proposes to finance its purchase using the company’s own funds, the reason for the assistance could be because the company was failing and a change of management was required. However, this “more important” reason does not constitute a “larger purpose”; the purpose of the assistance remains that of enabling the shares to be acquired. The financial or commercial advantages flowing from the acquisition are a by-product of that, rather than an independent purpose (*Brady v Brady* [1988] 2 All ER 617).

5578

### EXAMPLE

1. A family run group of companies reached a deadlock in management. A complicated scheme of reorganisation was implemented so that one side of the business would be split from the other. At the end of the reorganisation, one side of the business was headed by M Ltd (with subsidiary B Ltd) and the other by A Ltd. M Ltd owed £341,838 to A Ltd for the transfer to it of B Ltd. The last stage of the reorganisation involved a transfer of assets from B Ltd to A Ltd to satisfy the debt owed by M Ltd which clearly amounted to financial assistance. The court decided that the resolution of the management deadlock was merely the result of the scheme, not the purpose. The only purpose of B Ltd transferring assets to A Ltd was to pay for the shares of B Ltd to vest in M Ltd. The acquisition was not a mere incident of the scheme devised to break the deadlock. It was the essence of the scheme itself and the object which the scheme set out to achieve (*Brady v Brady* [1988] 2 All ER 617).

2. DRC Ltd, a subsidiary of DRCH Ltd, paid accountants’ fees for work they carried out to assist SWP plc’s due diligence exercise during negotiations between the shareholders of DRCH Ltd for

the sale of their shares to SWP plc. The court decided that the liability to pay the accountants' fees was incurred for the purpose of the acquisition by SWP plc of DRCH Ltd's shares. It was irrelevant that the directors of DRCH Ltd were motivated by the best interests of their company; this was a reason for their acts not a purpose in itself (*Chaston v SWP Group plc* [2003] 1 BCLC 675).

## Exceptions to the prohibition

**5580** The exceptions are set out in the table below with a reference to other parts of the book where further information about each exception can be found (ss 681, 682 CA 2006).

Exception	¶¶
Lawful dividend payment	¶1603+
Assistance relating to the acquisition of shares by employees or their families <sup>1,2</sup>	-
Redemption of shares or a purchase by the company of its own shares <sup>3</sup>	¶1337+
Allotment of bonus shares (but not the paying-up of already allotted bonus shares)	¶1013
Reduction of share capital	¶1435+
Assistance given under a court approved scheme of arrangement with the company's creditors or shareholders	¶6500+
Assistance given under an arrangement with the company's liquidator in a voluntary liquidation to accept shares as consideration for the sale of property (i.e. a section 110 reorganisation)	¶6465+
Distribution of assets (including cash) to shareholders in the course of the company's liquidation	¶8087+
Assistance given under any company voluntary arrangement between the company and its creditors which is binding on the creditors	¶9435+
Where lending money is part of the ordinary business of the company and the assistance is given in the ordinary course of business <sup>2</sup>	-
<p><b>Note:</b></p> <p>1. The assistance must fall within one of the following categories:</p> <ul style="list-style-type: none"> <li>- assistance by a company for the purposes of its <b>employees' share scheme</b> if the assistance is given in good faith and is in the interests of the company;</li> <li>- assistance by a company or any of its subsidiaries to enable or facilitate <b>transactions between bona fide employees</b> or former employees of any company in the group or their families (spouses, civil partners, surviving spouses, surviving civil partners, children or stepchildren under the age of 18 years) so that any of those people could acquire the beneficial ownership of shares in the company; or</li> <li>- a company making a <b>loan to its employees</b> (other than directors) in good faith with a view to enabling them to acquire beneficial ownership of fully-paid shares in itself or its holding company.</li> </ul> <p>2. This exception only applies if the company's net assets are not reduced or the assistance is provided out of distributable profits.</p> <p>3. This exception had been thought to apply to any assistance given for the purpose of a <b>redemption or own share purchase</b>. However, obiter comments by Arden LJ in <i>Chaston v SWP Group plc</i> [2003] 1 BCLC 675 have cast doubt on this interpretation. In that case, Arden LJ gave the grant of security by a company to secure a borrowing raised to purchase its own shares as an example of a company giving financial assistance to itself. It may therefore be prudent to assume that the exception only applies to a payment by the company for a redemption or own share purchase.</p>	

**5581** Even **if one of the exceptions applies**, financial assistance can only be given lawfully if:

**a.** it is within the **company's objects and powers** as set out in its constitution. This will not be a problem for most companies as they have unlimited objects (unless they have included a specific restriction within their articles) and the power will usually come within the general management powers of the directors. However, a company operating under Table A 1948 that was registered on or before 2 December 1981 will need to amend its articles as they specifically restrict its ability to give financial assistance (reg 10 TA 1948); and

**b.** it is likely to **promote the success of the company**, so that the directors are not in breach of their fiduciary duties (see ¶2379+).

Consideration should also be given to whether the assistance amounts to an unauthorised **distribution to shareholders** (see ¶1728+), or an **avoidable transaction** under insolvency law, such as a preference or a transaction at an undervalue (see ¶17808+).

**5582** **If none of the exceptions apply**, the consequences of breaching the prohibition and giving unlawful financial assistance set out below will follow.

## CHAPTER 17

**Compulsory liquidation**

## OUTLINE



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**7570**

Compulsory liquidation, or compulsory winding up, is the most draconian of the formal insolvency procedures, with its **aim** of selling off as many of the company's assets as possible in order to repay its debts. Unless the liquidation is converted into another insolvency procedure (see ¶7481), it will **result** in the company being dissolved. Therefore, compulsory liquidation is usually **initiated by** the company's creditors, although others involved in the company, including the company itself and its board, can also do so. It is often used as a last resort after other ways of dealing with the company's financial difficulties (whether informal or formal solutions, ¶7323+, ¶7334+) have been tried, because creditors are very unlikely to recover all of their debts in a compulsory liquidation. However, sometimes liquidation is opted for instead of a less drastic insolvency procedure because it involves investigating the company's affairs and management thoroughly and may lead to action being taken against the directors and others involved.

Compulsory liquidation differs from other insolvency procedures in the level of control exercised over the procedure through the legislation and Rules and by the court. A **liquidator** usually takes control of the company itself and has wide powers to deal with its assets in order to achieve the purpose of the liquidation. Due to the serious consequences of liquidation on the company and those dealing with it, the liquidator's powers are balanced by corresponding duties and liabilities. The **official receiver** also has the important role of investigating the conduct of the company and reporting any wrongdoing. He will usually be appointed as liquidator when the company is first placed into compulsory liquidation, but

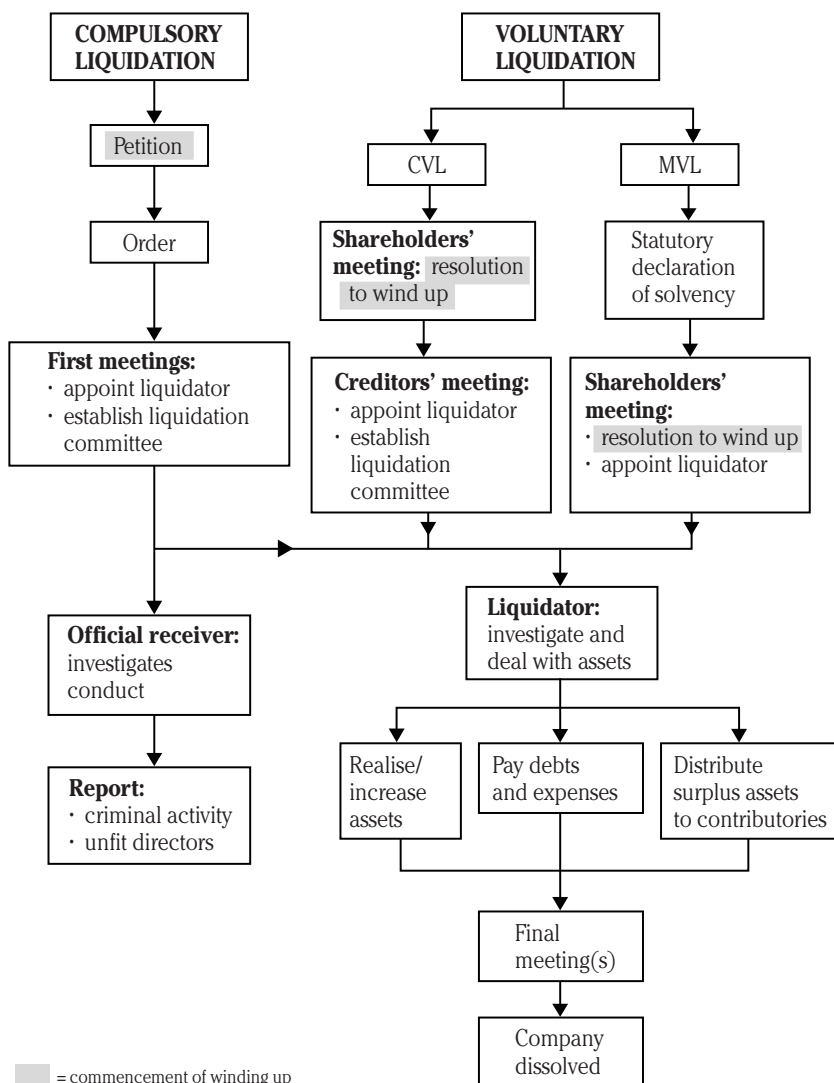
most liquidations will be handed over to an insolvency practitioner while the official receiver conducts his investigations separately.

**Other procedures** (principally, voluntary liquidation and administration) share common elements with compulsory liquidation, therefore readers will find **memo points** noting similarities and differences between compulsory liquidation and other procedures within various topics. These are only relevant to readers of the chapters on these other procedures which **cross-refer** to this chapter.

The **terms** “liquidation” and “winding up” are synonymous, although “liquidation” is preferred here, where the context allows.

## Summary of compulsory and voluntary liquidation procedures

This flowchart summarises and compares the compulsory and voluntary liquidation **procedures**. It shows that although the entry routes are different, the liquidator’s functions, conduct and result of the liquidation itself are largely the same, with the official receiver’s investigatory functions being confined to compulsory liquidation.



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## SECTION 1

## Obtaining the order

**7585** A company is compulsorily wound up by a court order, which is applied for by presenting a **petition** to court. Once it has been presented, there is a period during which the company's activities are restricted to a certain degree, and in some cases a provisional liquidator will be appointed to control the company, until an order is made. The petition is then considered by the court at a **hearing**, at which the different parties concerned have the opportunity to express their views.

If the court decides to make the winding up **order**, the company is placed into liquidation. The liquidation commences retrospectively from the presentation of the petition to prevent the company from putting its assets beyond the liquidator's reach once it knows that it might go into liquidation (¶7747). Although the company does not cease to exist when the winding up order is made, control of it passes to the liquidator, who must investigate and **deal with its assets**. The official receiver will also **investigate** the conduct of the company and those involved in it leading up to its liquidation, reporting any conduct warranting the disqualification of directors or any criminal activities as necessary.

## A. Presenting the petition

**7587** Compulsory liquidation is **initiated by** presenting a petition (a "winding up petition"), which is a form of application, to the court. A petition can only be presented by a person who is eligible to do so (usually the company itself or one of its creditors), who must base it on particular grounds.

## 1. Grounds

**7592** The **main** grounds on which a petition for compulsory liquidation can be based are that (s 122(1) IA 1986):

- the company is unable to pay its debts (below); and
- it is just and equitable to wind the company up (¶7602+).

The **other** grounds, which are less commonly relied on, are that (¶7606+):

- it is in the public interest to wind the company up (which can only be relied on by the secretary of state);
- the company was incorporated over 1 year ago and has still not commenced its business, or it has suspended its business for at least a whole year;
- the company was incorporated as a public company over 1 year ago and has still not obtained a trading certificate;
- the shareholders have passed a special resolution that the company should be wound up in this way;
- the company does not have enough shareholders; or
- the company had the benefit of a pre-CVA moratorium without then entering into CVA.

**MEMO POINTS** 1. Companies can also be wound up on specific grounds by **official petitioners**, who have the power to present petitions under separate legislation (¶7628).

2. An **unregistered company** can be wound up if (s 221(5) IA 1986):

- it was registered in another country and has been dissolved;
- it has ceased business;
- it is only carrying on business to wind its affairs up;
- it is unable to pay its debts; or
- it is just and equitable to wind the company up.

## a. Unable to pay debts

There are **four methods** by which it can be shown that a company is unable to pay its debts. The petitioner can provide **evidence** that (s 123IA 1986):

- he has served a statutory demand on the company, which the company neglected to pay by the deadline;
- he has unsuccessfully attempted to enforce a judgment debt;
- the company cannot pay its debts as they fall due; or
- the company’s liabilities outweigh its assets.

**Which method** is used will depend on the circumstances. For instance, if a creditor has obtained an order in other court proceedings for the company to pay him a certain sum, and he has attempted to enforce the judgment debt without success, he has a clear route to winding the company up. Similarly, serving a statutory demand is a clear-cut way of establishing that a company is unable to pay its debts as they fall due. However, it may be inappropriate to use a statutory demand, in case it gives the company advance warning that it may be wound up. This could leave the petitioning creditor with a reduced chance of recovery if, for example, a large creditor (such as a bank) has extended its security over other assets, or the company has dissipated its assets before the petition is presented.

A creditor should not try to wind a company up on this ground on the basis of a genuinely **disputed debt**, otherwise his petition is liable to be struck out (¶7705+; *Re a Company* [1984] 3 All ER 78) or the company may succeed in having its presentation restrained (¶7641+). In such cases, the appropriate course is for the parties to resolve the dispute, whether between themselves or by commencing other legal proceedings as the circumstances require.

**MEMO POINTS** A petition cannot be based on a **debt** which is **statute barred** because the petitioner is no longer a creditor of the company. An exception is made in cases of judgment debts, since presenting a winding up petition does not count as “bringing an action” upon a judgment debt (*Ridgeway Motors (Isleworth) Ltd v ALTS Ltd* [2005] 2 BCLC 61).

## Statutory demands

If a company owes a creditor more than £750 (the “**minimum value**”), that creditor can serve a statutory demand for payment (s 123(1)(a) IA 1986).

The demand must be in the standard **form**, Form 4.1, and contain the following **details** (rr 4.5, 4.6 IR 1986):

- the amount of the debt and how it arose;
- if the amount claimed includes any interest or other charge which was not previously notified to the debtor, the basis of the demand must be explained. The amount claimed must not be more than the debt (plus interest and charges) accrued at the date of the demand;
- the purpose of the demand;
- the fact that if the demand is not satisfied, the creditor may petition for the company’s liquidation;
- the time limit for payment of the debt (21 days from service of the demand on the company);
- the methods of compliance open to the company;
- contact details for a named person whom the company can contact about the debt;
- the date of the demand; and
- the signature of a person authorised to make the demand on the creditor’s behalf (for example, a director, other authorised officer or solicitor).

**MEMO POINTS** 1. If the statutory demand contains **errors** or is **defective** in some way, it will remain valid until set aside by the court (*Re a Debtor (No 001 of 1987, Lancaster)* [1989] 2 All ER 46; *Khan v Breezevale SARL, Re a Debtor (No 106 of 1992)* [1996] BPIR 190. These cases concern statutory demands against individuals rather than companies, but in the absence of any reported cases on this point specifically relating to demands against companies, the bankruptcy position is likely to apply). An ineffective statutory demand can still be used as evidence of the company’s inability to pay its debts as they fall due.

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2. As with winding up petitions, statutory demands should not be used as a tactical manoeuvre in a dispute to force an alleged debtor to pay, despite a genuine dispute, or to establish liability. The court will set aside a **statutory demand** in such circumstances, for example where:

- there is a genuine dispute over the debt (*Re Janeash Ltd* [1990] BCC 250);
- the statutory demand was used to decide whether or not the company presenting the demand was entitled to dismiss its director summarily (*Ashworth v Newnate Ltd* [2007] EWCA Civ 793); or
- it was based on compensation for harassment, where neither the harassment nor the company's liability to compensate had been established (*Re Rare Ltd* [2007] All ER (D) 381 (Jun)).

**7595** The **debtor** must be the company which owes the debt to the creditor. It does not have to be insolvent. In fact, persistent failure to pay the debt without good reason may in itself indicate that the company is unable to do so, justifying a demand for payment under threat of liquidation (*Cornhill Insurance plc v Improvement Services Ltd* [1986] BCLC 26).

A **creditor** making the statutory demand must be capable of discharging the debt, so that, once it is paid, the company is not under any further obligation to the creditor in relation to it. Most creditors would be able to do so, although an equitable assignee of part of a debt, for example, could not (*Re Steel Wing Co* [1920] All ER Rep 292).

**7596** The demand must be based on a **debt** which is:

- for a liquidated sum;
- absolutely due and payable; and
- not contingent on any event (*JSF Finance & Currency Exchange Co Ltd v Akma Solutions Inc* [2001] 2 BCLC 307).

A creditor can make a statutory demand for an undisputed **portion of a debt** even if another part is genuinely disputed by the company, provided that the undisputed portion still exceeds the minimum value (*Re a Company (No 008122 of 1989)*, *ex parte Trans Continental Insurance Services Ltd* [1990] BCLC 697).

The same principles apply to any **deductions** made from the sum claimed, so the amount that the creditor owes (or might owe) the company can only be deducted if it is a liquidated sum (*Re Humberstone Jersey Ltd* [1977] LS Gaz R 711, where it was held that a reduction could not be made for unliquidated damages claimed by the company for the creditor's alleged breach of contract).

**MEMO POINTS** 1. If the debt is due in a **foreign currency**, it can be expressed in that currency (*Re a Debtor (No 051-SD-1991)*, *ex parte Richie Bros Auctioneers v Debtor* [1993] 2 All ER 40; a case concerning bankruptcy, but the judge specifically stated that the same would be true of corporate insolvency cases as well). However, the sterling equivalent must also be stated (r4.91 IR 1986).

2. Regardless of whether liabilities under a **guarantee** are expressed to be **payable "on demand"**, if the guarantors are actually primary obligors then liability is not contingent on a demand being made (*Bradford Old Bank Ltd v Sutcliffe* [1918] 2 KB 833; *MS Fashions Ltd v Bank of Credit and Commerce International SA (in liquidation) (No 2)* [1993] 3 All ER 789). The guarantee must be interpreted according to its real meaning. Simply stating that the liabilities are payable "on demand" does not override the guarantors' status as primary obligors if that is how the rest of the guarantee treats them. Therefore, it is possible for a statutory demand to be issued without a demand for payment being made first under the guarantee (*TS & S Global Ltd v Fithian-Franks and others* [2007] EWHC 1401 (Ch)). On the other hand, if a demand for payment under the guarantee is properly required to render the liability due and payable, a statutory demand will not constitute that demand because it serves an entirely different purpose.

**7597** The statutory demand must be **served** on the company by leaving it at the registered office. The case law has been contradictory as to whether or not it can be served by post, but it has been held that if the creditor can prove that the demand was delivered, it will have been served properly (*Re a Company (No 008790 of 1990)* [1991] BCLC 561). **In practice**, most solicitors use "process servers", who are agents specialising in serving documents personally and provide a witness statement to prove that they did (or did not) serve the demand.

**MEMO POINTS** If the **company does not have a registered office**, the statutory demand can be served at its actual office (*Re Fortune Copper Mining Co* (1871) LR 10 Eq 390).

**7598** If the **company does not pay** its debt within 21 days of service of the demand, it is deemed to be unable to do so and the creditor can petition for its liquidation. This period is calculated

without including the day on which the demand was served and that on which the petition will be presented.

**EXAMPLE** If a statutory demand is served on A Ltd on 1 March and A Ltd fails to pay, the earliest the winding up petition can be presented is 23 March.

The company must have “neglected” to pay the debt demanded, that is failed or omitted to pay without a **good reason**; therefore a refusal to pay on the basis of a substantial dispute over the debt does not entitle the creditor to present a petition.

## Enforcement of judgment debts

If the **creditor** has previously obtained a **judgment in its favour** ordering the company to pay a certain sum and the company does not or is unable to pay on enforcement, it will be deemed to be unable to pay its debts and the creditor can petition to wind it up (s 123(1)(b) IA 1986). To establish this ground, the execution must actually be carried out; it is not enough for the enforcement officer to report that he could not gain access to the premises (*Re a Debtor (No 340 of 1992), ex parte the Debtor v First National Commercial Bank plc* [1996] 2 All ER 211). A petition can still be presented on these grounds even if the judgment is under appeal, or the company has a counterclaim (*Re Amalgamated Properties of Rhodesia (1913) Ltd* [1917] 2 Ch 115; *Re Douglas (Griggs) Engineering Ltd* [1962] 1 All ER 498).

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## Unable to pay debts as they fall due

If a company cannot pay its debts as they fall due, it is presumed to be insolvent and can be wound up; this is known as “**cash-flow insolvency**”, or the “cash-flow test” (s 123(1)(e) IA 1986). It can be difficult for a creditor to obtain financial information about the company which is not filed at Companies House, so this test allows him to rely on more accessible factual information, such as the fact that the company has not paid one or more creditors without good reason. This can be illustrated by a letter being sent to the company reminding it of the debt due and requiring payment within a certain period (e.g. 7 days), often known as a “7 day letter”. If payment is not made, or no response is received, within the 7 days, this is prima facie evidence that the company is unable to pay its debts as they fall due.

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If the company can **prove that it can pay its debts**, it will be able to rebut the presumption of insolvency that arises in these circumstances (*Re Bradford Tramways Co* (1876) 4 Ch D 18). Even if the company can only pay up with the help of loans, it is still considered able to pay its debts for these purposes.

The company’s ability to pay its debts is **judged at** the time of the petition. The fact that it may be able to pay its debts once its assets are realised is irrelevant (*Re European Life Assurance Society* (1869) LR 9 Eq 122). The court will also only look at the debts due and demanded at that time, rather than looking at the wider financial position of the company.

### EXAMPLE

1. **Non-payment of interest** due, without explanation (*Re Richbell Strategic Holdings Ltd* [1997] 2 BCLC 429).
2. A company which persistently and deliberately **does not pay** its debts **until** it is **compelled** to do so (*Re a Company* [1986] BCLC 261).
3. There are **outstanding judgments** against the company and **several creditors** demanding payment (*Re Tweeds Garages Ltd* [1962] 1 All ER 121).
4. A company’s directors told a creditor there were **no assets** against which execution could be carried out (*Re Douglas (Griggs) Engineering Ltd* [1962] 1 All ER 498).

## Company’s liabilities outweigh its assets

The company will be deemed to be unable to pay its debts if it can be shown that its assets are worth less than its total liabilities (s 123(2) IA 1986). This method is known as “**balance sheet insolvency**”, or the “balance sheet test”, and can be difficult for a creditor to establish without access to the company’s books and records.

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“**Assets**” are given a wide definition for these purposes, with both existing and probable assets being taken into account (*Re Capital Annuities Ltd* [1978] 3 All ER 704). “**Probable**” assets only

include those which the company hopes to acquire with some legal right to do so (although the fact that a company is likely to acquire assets before its liabilities fall due may persuade the court to use its discretion not to make a winding up order (*Byblos Bank SAL v Al-Khudhairi* [1987] BCLC 232)). Similarly, **prospective and contingent liabilities** can also be taken into account if they are likely to become current liabilities (*Re a Company* [1986] BCLC 261).

**MEMO POINTS**

1. The company's subscribed but **uncalled capital** can be taken into account as an **asset**, although evidence of a shareholder's own insolvency may counteract this (*Re European Life Assurance Society* (1869) LR 9 Eq 122).
2. A **contingent liability** is one which arises from an existing legal obligation but depends upon an event happening, which may or may not occur (*Stonegate Securities Ltd v Gregory* [1980] 1 All ER 241). A **prospective liability** is a possible liability under an existing contract, not a potential liability that the company may incur in the future. For example, a company may be obliged by a contract to purchase shares in a new company if that new company is incorporated and starts to trade (a contingent liability); or a company may have prospective liabilities under a supply contract if the goods it supplies are defective. However, the fact that a company will incur liabilities by entering into contracts or otherwise carrying on its business in the future is not to be taken into account for these purposes.

## b. Just and equitable

**7602** This ground has been deliberately left open to the courts to interpret, so that it does not become confined to a particular set of **circumstances**. Therefore, each case is assessed on its own facts. Examples of successful petitions are given below to illustrate the situations in which this ground can be relied on (although it should be noted that this is not a "closed list", *Re St Piran Ltd* [1981] 3 All ER 270). The court's judgment is **based on** the circumstances at the date of the hearing, rather than that of the petition (*Re Fildes Bros Ltd* [1970] 1 All ER 923). Therefore, the petitioner must bear in mind that the company's circumstances may change between these two events.

**EXAMPLE**

### Oppressive management and misconduct

1. The company's affairs were being conducted in bad faith, because the directors had failed to hold general meetings, produce accounts, appoint auditors or recommend a dividend, all in order to acquire the shareholders' shares at a bargain (*Loch v John Blackwood Ltd* [1924] All ER Rep 200).
2. The company was established on the basis of a relationship of mutual trust and confidence between the shareholders, which had broken down irreparably (*Re Zinotty Properties Ltd* [1984] 3 All ER 754).
3. A director/shareholder of the company was wrongfully removed as a director and chairman (*Tay Bok Choon v Tahansan Sdn Bhd* [1987] BCLC 472).
4. The directors failed, on several occasions, to recommend reasonable dividends despite the company's profitability (*Re a Company (No 000370 of 1987), ex parte Glossop* [1988] BCLC 570).
5. The company failed to pay a creditor on a number of occasions, and it was also in the best interests of the other creditors to wind it up (*Re a Company* [1986] BCLC 261).

### Lack of commercial benefit

The company's business arrangements (in providing bankruptcy advice to debtors and assisting them in transferring their beneficial interest in their residential property to their spouse or partner before becoming bankrupt) lacked any commercial benefit to the debtors, was detrimental to the debtors' creditors and undermined the bankruptcy process (*Re Abacrombie & Co limited* [2008] EWHC 2520 (Ch)).

### Company without a purpose

1. The company's articles provided that it would be wound up when a particular event occurred, and that event happened, e.g. a single purpose vehicle (*Re American Pioneer Leather Co* [1918] 1 Ch 556).
2. The main object for which the company was formed became impracticable (*Re Eastern Telegraph Co Ltd* [1947] 2 All ER 104).

### Illegality

1. The company was formed (or was being carried on) for a fraudulent purpose (*Re Thomas Edward Brinsmead & Sons* [1895-9] All ER Rep Ext 1861).
2. The company's affairs needed to be investigated (*Re Peruvian Amazon Co Ltd* (1913) 29 TLR 384).

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Since the court's decision rests on the circumstances of the case, usually evidenced by setting one party's version of events against another's, **petitioners** are likely to rely on a ground which is more straightforward to establish, if possible. However, it is quite usual for this to be relied upon as an alternative ground. It is often, but by no means exclusively, shareholders who have to resort to using this ground alone.

The petitioner's **conduct** will be taken into account because the court assesses each case on an equitable basis. The equitable principle that requires the petitioner to come to court with "clean hands" applies. Therefore, if the petitioner's own misconduct caused the dispute or he had previously acquiesced in the conduct about which he now complains, the court will not grant his petition (*Vujnovich v Vujnovich* [1990] BCLC 227; *Re Fildes Bros Ltd* [1970] 1 All ER 923). However, even if his conduct contributed in some way to the breakdown, he may still obtain the order if he can show that the respondent's conduct was the substantial cause (*Re RA Noble & Sons (Clothing) Ltd* [1983] BCLC 273).

This ground is also discussed in the context of a **shareholder remedy** of last resort (§2133+), which deals with circumstances such as the examples of oppressive management and misconduct above. Where a shareholder seeks compulsory liquidation on this ground, the circumstances can be similar to those in which he may petition for unfair prejudice. The fact that he has an alternative course of action will not prevent the court from ordering the company's liquidation, unless he is acting unreasonably in not seeking another remedy (s125(2)IA1986). However, liquidation should not be used routinely as an alternative to unfair prejudice. Shareholders should only present a petition if they genuinely want to wind the company up (para1 CPRPD49B).

A **contingent creditor** may petition for a company's liquidation on this ground, in which case the court will assess whether he has a sufficient interest in the company to render it just and equitable that it is wound up. He will have to show that it will be unable to pay its debts when the contingent debt becomes due (*Re a Company (No 003028 of 1987)* [1988] BCLC 282).

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### c. Other grounds

#### Public interest

The secretary of state can petition to have a company wound up in the public interest (s124A IA1986). The court will make the order if it is satisfied that it is just and equitable to do so (§17602+). The secretary of state can base his petition on information obtained:

- as part of a CIB investigation (§17195+);
- in a report by inspectors made under their powers in FSMA 2000;
- following a request for information or documents under FSMA 2000 (ss 165, 171-173, 175 FSMA 2000);
- as part of an investigation into fraud under the Criminal Justice Act 1987 (s2 Criminal Justice Act 1987); or
- through assisting overseas regulatory authorities (§17250).

The company does not necessarily have to act unlawfully for a petition on this ground to succeed (*Re Senator Hanseatische Verwaltungsgesellschaft mbH* [1996] 2 BCLC 562). The secretary of state has the **discretion** to determine if it is in the public interest to petition to wind up the company in the circumstances.

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#### EXAMPLE

##### Winding up order made

1. Companies operating illegal trading schemes under the Fair Trading Act 1973 (*Re Delfin International (SA) Ltd, Re Delfin Marketing (UK) Ltd* [2000] 1 BCLC 71).
2. A company which was set up to receive income from housing benefit but was badly mismanaged (*Secretary of State for Trade and Industry v Leyton Housing Trustees Ltd* [2000] 2 BCLC 808).
3. A company acting as a company formation agent which established companies for foreign investors in such a way as to conceal the identities of the persons running them (*Re London Citylink Ltd* [2005] EWHC 2875 (Ch)).

4. A company which failed to keep proper accounting records and failed to co-operate with a CIB investigation. Other factors contributing to its liquidation included a lack of transparency in its affairs and confusion between its affairs and those of its director/owners and their other companies (*Re Atlantic Properties Ltd* [2006] EWHC 610 (Ch)).

5. Companies which were run with a serious lack of commercial probity, with their directors making misleading and exaggerated statements about their business models and income (*Secretary of State for Business, Enterprise and Regulatory Reform v Charter Financial Solutions Ltd and others* [2009] EWHC 1118 (Ch)).

#### Winding up order not made

1. Telephone canvassing companies (*Re a Company (No 005669 of 1998)* [2000] 1 BCLC 427).

2. A company operating a marketing model close to a pyramid selling scheme was spared liquidation by the court agreeing to accept various undertakings by the company to change its business model. The court considered that the CIB investigation to which it had been subject and the winding up petition were enough of a deterrent to similar companies. The decision was upheld on appeal, where the argument by the secretary of state that the past misconduct could not be remedied was rejected (*Secretary of State for Business, Enterprise and Regulatory Reform v Amway (UK) Ltd* [2009] EWCA Civ 32).

**MEMO POINTS** 1. The secretary of state **cannot petition** on the public interest ground if the company is already being wound up by the court (s 124A(2) IA 1986).

2. The court may still wind the company up even if the **part of the business** which was not in the public interest has been **removed or ceased**, e.g. to illustrate its disapproval at the way in which the company was run (*Re Walter L Jacob & Co Ltd* [1989] BCLC 345; *Re Equity & Provident Ltd* [2002] 2 BCLC 78).

## Public company with no trading certificate

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Public companies are required to have a trading certificate (¶510+). If a public company has been incorporated for more than 1 year and still has not obtained a trading certificate, it can be wound up.

## Not trading for 1 year

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This ground is not often relied upon because companies usually prefer to ask Companies House to strike it off the register if it has ceased trading (¶7502+; or Companies House may do so on its own initiative, ¶7517). The **petitioner must establish** that the company has not traded for 1 year, which can be difficult. For example, the order will not be made if:

- the company's objects allow it to be a non-trading company;
- it has only ceased business in part (for example, it has ceased to operate in one area but not in others), unless that part was substantially the whole of the company's business (*Re Kronand Metal Co* [1899] WN 14); or
- the company itself ceases business, but it is or becomes the parent of a company which continues to trade (*Re Eastern Telegraph Co Ltd* [1947] 2 All ER 104).

The **court will consider** the good faith of the directors and shareholders, and will take account of the majority of the shareholders' wishes (*Re Capital Fire Insurance Association* (1882) 21 Ch D 209; *Re Tomlin Patent Horse Shoe Co Ltd* (1886) 55 LT 314).

If non-trading is established, the court can decide whether or not to make the order in the **circumstances**. For example, if it can be shown that there was a good reason for not trading and the company is likely to (re)commence its business the court may be persuaded not to make the order (*Re Capital Fire Insurance Association* (1883) 24 Ch D 408).

**Comment:** The default position is that companies now have unlimited **objects**, unless their articles state otherwise (¶450), making it potentially more difficult to rely on this ground. However, most companies incorporated before 1 October 2009 effectively now have the same objects as they had before the change in the law because those set out in their old-style memoranda have automatically been imported into their articles under the new Companies Act, operating as restrictions on their unlimited objects.

## Shareholder special resolution

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This is not a common ground for a compulsory liquidation because shareholders are more likely to wind the company up voluntarily. The shareholders might have to put the company into compulsory liquidation if the directors are not prepared or able to make the statutory

declaration of solvency required for an MVL, or the creditors will not support a CVL. Alternatively, they may choose to do so in order to initiate an investigation into the company's affairs by the official receiver, where they suspect that the company has not been managed properly (¶8120+).

If the shareholders **cannot pass a special resolution** because fewer than 75% are in favour, they can pass an ordinary resolution to wind the company up compulsorily on other grounds (see the table at ¶7629).

## Not enough shareholders/members

**Public companies** and **unlimited private companies** can technically be wound up if they have fewer than two shareholders. This ground is a hangover from the Companies Act 1985, which required such companies to have at least two members. It was usually relied on by the remaining shareholder to avoid the personal liability he would otherwise incur for the company's debts. Since 1 October 2009, all companies can be formed with just one shareholder (s7 CA2006). However, insolvency legislation has not been updated to take this into account. It is therefore likely that if this ground is now relied on, the court will only grant the petition if the company has no shareholders at all. It would therefore be safer for remaining shareholder petitioners to rely on the just and equitable ground instead.

**Private limited companies** (by shares or guarantee) can be wound up for having no shareholders or members on the ground that it would be just and equitable.

Insolvency legislation uses the term **"member"** rather than shareholder in relation to this ground, and **defines** it in slightly wider terms than companies legislation. As well as the subscribers to the memorandum and every other person who agrees to be a member whose name is in the company's register, insolvency legislation includes those to whom shares are transferred or transmitted. Therefore, a transferee whose name is not yet in the register of shareholders, or a personal representative or trustee in bankruptcy who has not chosen to have his name on the register, counts as a member for these purposes.

**MEMO POINTS** In the case of a **transferee**, a proper instrument of transfer (executed and delivered to the transferee or company) will be required as evidence of membership; an agreement to transfer will not suffice (*Re Quickdome Ltd* [1988] BCLC 370, an unfair prejudice case based on a provision that extends the definition of "member" in the same way (¶2105)).

## Pre-CVA moratorium ends without voluntary arrangement

Some companies can benefit from a moratorium prior to entering into a CVA (¶9466+). To prevent a company from taking advantage of this freeze on action against it, a creditor can petition for the company's compulsory liquidation if the moratorium ends without a CVA proposal having been approved.

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## Appendix

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### Companies House forms and filing deadlines

#### 9900

This table lists the Companies House forms that a company needs to file with the registrar at different stages in its life. The **names** of Companies House forms changed on 1 October 2009 with the final implementation phase of the new Companies Act, and several new forms were introduced. For readers used to dealing with the old filing requirements, the former names of the forms (where applicable) are included in the table. There are separate forms for overseas companies, limited partnerships, LLPs, EEIGs and SEs, as well as documents that have to be filed under IA 1986 and IR 1986, which are not listed here (but see Chapter 1 for the main forms applicable to these types of company).

All of the forms listed can be found on the Companies House website.

Form/ document	Purpose of form/document	Documents to accompany form	Filing deadline <sup>1</sup>	¶¶	Former name
<b>Names</b>					
NE01 <sup>2</sup>	Declaration on a change of name omitting "limited"	– Resolution; and – fee	15 days (of passing resolution)	¶249	30(5)(c)
NM01	Notice of a change of name by special resolution	– Resolution; – Form NM06, if applicable; – if the name is the "same" as another company in the group, that company's consent; and – fee	15 days (of passing resolution)	¶266	-
Res CA2006	Special resolution on change of name	– Either Form NM01 or NM02; – Form NM06, if applicable; and – if the name is the "same" as another company in the group, that company's consent	15 days (of passing resolution)	¶266	-
Written Res CA2006	Written special resolution on change of name	– Either Form NM01 or NM02; – Form NM06, if applicable; and – if the name is the "same" as another company in the group, that company's consent	15 days (of passing resolution)	¶266	-
NM02	Notice of a change of name by conditional special resolution	– Resolution; – Form NM06, if applicable; – if the name is the "same" as another company in the group, that company's consent; and – fee, if the condition has been fulfilled	15 days (of passing resolution)	¶267	-
NM03	Notice confirming the satisfaction of the conditional special resolution to change the company's name	Fee; if not already paid with Form NM02	None, but the change will not take effect until the form is filed and a new certificate of incorporation has been issued	¶267	-

Form/ document	Purpose of form/document	Documents to accompany form	Filing deadline <sup>1</sup>	₹	Former name
NM04	Notice of change of name as provided for in the company's articles	<ul style="list-style-type: none"> <li>– Resolution, if it would normally have to be filed (see under "Resolutions" below);</li> <li>– Form NM06, if applicable;</li> <li>– if the name is the "same" as another company in the group, that company's consent; and</li> <li>– fee</li> </ul>	15 days (of passing resolution)	₹268	-
NM05	Notice of change of name by board resolution (either on direction by secretary of state to reinstate "Limited"/"ltd", or on restoration of the company to the register where the company is restored with its registration number as its name)	<ul style="list-style-type: none"> <li>– Form NM06, if applicable;</li> <li>– if the name is the "same" as another company in the group, that company's consent; and</li> <li>– fee</li> </ul>	<ul style="list-style-type: none"> <li>– Direction: as specified in the direction;</li> <li>or</li> <li>– Restoration: name must be changed within 14 days (of restoration)</li> </ul>	₹249 ₹7534	-
NM06 <sup>2</sup>	Confirmation that the consent of a government body or other specified body has been sought re. the change of name/name for a new company	A copy of the response	-	₹254	-
<b>Incorporation</b>					
IN01	Application to incorporate a new company	<ul style="list-style-type: none"> <li>– Articles, unless the company intends to rely entirely on the relevant Model Articles;</li> <li>– if consent for the name is required from a government or other specified body, a copy of the response;</li> <li>– if the name is the "same" as another company in the group, that company's consent; and</li> <li>– fee</li> </ul>	-	₹479+	-

Form/ document	Purpose of form/document	Documents to accompany form	Filing deadline <sup>1</sup>	¶¶	Former name
<b>Articles</b>					
CC01	Notice of a restriction on the company's articles	<ul style="list-style-type: none"> <li>– Resolution (unless the restriction was inserted or amended by a court or other order); and</li> <li>– amended articles (unless company is being incorporated, in which case Form IN01 and the relevant enclosures need to be filed)</li> </ul>	<ul style="list-style-type: none"> <li>– 15 days (of passing resolution)</li> <li>– 15 days of amendment taking effect (articles)</li> </ul>	¶452	-
CC02	Notice of the removal of a restriction on the company's articles	<ul style="list-style-type: none"> <li>– Resolution (unless the restriction was inserted or amended by a court or other order); and</li> <li>– amended articles</li> </ul>	<ul style="list-style-type: none"> <li>– 15 days (of passing resolution)</li> <li>– 15 days of amendment taking effect (articles)</li> </ul>	¶452	-
CC03	Statement of compliance where a restricted article is changed	<ul style="list-style-type: none"> <li>– Resolution or other evidence that the amendment was made properly (if a resolution was not required); and</li> <li>– amended articles</li> </ul>	<ul style="list-style-type: none"> <li>– 15 days (of passing resolution)</li> <li>– 15 days of amendment taking effect (articles)</li> </ul>	¶452	-
CC04	Notice of a change to the company's objects	<ul style="list-style-type: none"> <li>– Resolution; and</li> <li>– amended articles</li> </ul>	<ul style="list-style-type: none"> <li>– 15 days (of passing resolution)</li> <li>– 15 days of amendment taking effect (articles)</li> </ul>	¶450	-
CC05	Notice of a change to the company's constitution by an enactment	<ul style="list-style-type: none"> <li>– Amended articles;</li> <li>– amended resolution or agreement forming part of the constitution; and</li> <li>– if amended by a special enactment, a copy of the enactment</li> </ul>	<ul style="list-style-type: none"> <li>15 days of amendment taking effect (articles/other constitutional document)</li> </ul>	¶449	-
CC06	Notice of a change to the company's constitution by a court order or an order of another authority	<ul style="list-style-type: none"> <li>– Amended articles;</li> <li>– amended resolution or agreement forming part of the constitution; and</li> <li>– a copy of the order</li> </ul>	<ul style="list-style-type: none"> <li>15 days of amendment taking effect (articles/other constitutional document)</li> </ul>	¶449	-

Form/ document	Purpose of form/document	Documents to accompany form	Filing deadline <sup>1</sup>	ᄁᄁ	Former name
<b>Registered office</b>					
AD01	Change of registered office	-	Change takes effect on delivery of the notice to Companies House so it is advisable for companies to file it as soon as the change occurs	ᄁ570	287
AD05	Change of domicile of a company registered in England and Wales or in Wales	Resolution	15 days (of passing resolution)	ᄁ484	-
<b>Re-registration</b>					
RR01	Application by a private company for re-registration as public	<ul style="list-style-type: none"> <li>- Resolution;</li> <li>- amended articles;</li> <li>- net asset confirmation documents;</li> <li>- valuation report on shares issued for non-cash consideration; and</li> <li>- fee</li> </ul>	<ul style="list-style-type: none"> <li>- 15 days (of passing resolution)</li> <li>- 15 days of amendment taking effect (articles)</li> </ul>	ᄁ668	43(3), 43(3)(e)
RR05	Application by a private company for re-registration as unlimited	<ul style="list-style-type: none"> <li>- Shareholder assents;</li> <li>- amended articles; and</li> <li>- fee</li> </ul>	15 days of amendment taking effect (articles)	ᄁ685	49(1), 49(8)(a), G49(8)(b)
RR07	Application by a public company for re-registration as unlimited	<ul style="list-style-type: none"> <li>- Shareholder assents;</li> <li>- amended articles; and</li> <li>- fee</li> </ul>	15 days of amendment taking effect (articles)	ᄁ685	-
RR06	Application by an unlimited company to be re-registered as limited	<ul style="list-style-type: none"> <li>- Resolution;</li> <li>- amended articles;</li> <li>- Form SH19(108) may also be required; and</li> <li>- fee</li> </ul>	<ul style="list-style-type: none"> <li>- 15 days (of passing resolution)</li> <li>- 15 days of amendment taking effect (articles)</li> </ul>	ᄁ688	51
SH19 (108)	Statement of capital for unlimited company re-registering as limited	See RR06	15 days of re-registration	ᄁ688	-

Form/ document	Purpose of form/document	Documents to accompany form	Filing deadline <sup>1</sup>	¶¶	Former name
RR02	Application by a public company to be re-registered as private (limited)	- Resolution; - amended articles; and - fee	- 15 days (of passing resolution) - 15 days of amendment taking effect (articles)	¶677	53
RR03	Notice by a company of an application to court for the cancellation of a special resolution for re-registration of a public company as private	-	As soon as the application is served on the company	¶678	54
RR04	Notice by the applicant(s) of an application to court for the cancellation of a special resolution for re-registration of a public company as private	-	As soon as the application is made	¶681+	-
RR08	Application by a public company for re-registration as private after a court order reducing capital	- Court order; - amended articles; and - fee	15 days of amendment taking effect (articles)	¶680	139
RR09	Application by a public company for re-registration as private after a cancellation of shares	- Resolution; - amended articles; and - fee Form SH07 should also have been filed	- 15 days (of passing resolution) - 15 days of amendment taking effect (articles)	¶681	147
RR10	Application by a public company for re-registration as private after redenomination	- Resolution; - amended articles; and - fee	- 15 days (of passing resolution) - 15 days of amendment taking effect (articles)	¶682	-
<b>Shares</b>					
SH01	Notice of an allotment of shares	Copy of valuation report for non-cash consideration, if required (see ¶1152+)	1 month	¶1087	88(2), 128(1)
SH09	Notice by an unlimited company of an allotment of a new class of shares	-	1 month	¶1087	128(1)
SH50	Application by a public company for a trading certificate	-	None, but the company will not be able to do business or borrow before the application is made	¶510+	117

Form/ document	Purpose of form/document	Documents to accompany form	Filing deadline <sup>1</sup>	¶¶	Former name
SH02	Notice of a consolidation, division, sub-division, redemption of shares, or a re-conversion of stock into shares	-	1 month	¶1318 ¶1378 ¶1331	122
SH10	Statement of variation of share rights	-	1 month	¶1288	128(3)
SH08	Notice of the assignment of a name or a new name to a class of shares	-	1 month	¶1288	128(4)
SH11	Statement by a company without a share capital of the rights attached to a new class of members	-	1 month	¶1288	129(1)
SH12	Statement by a company without a share capital of the variation of members' class rights	-	1 month	¶1288	129(2)
SH13	Notice by a company without a share capital of the assignment of a name or other designation to a class of members	-	1 month	¶1288	129(3)
SH14	Notice of redenomination of shares (without reduction of capital)	-	1 month	¶1326	-
SH15	Notice of reduction of capital following redenomination	- Resolution; and - statement by the directors that the reduction does not exceed 10% of the company's allotted share capital after the reduction	15 days (of passing resolution)	¶1328	-
SH19 (644 & 649)	Notice of reduction of capital by court or solvency statement procedure	- Both cases: resolution; and - court procedure: copy of the court order; or - solvency statement procedure: copy of the statement and confirmation by the directors that it was made at the proper time and was properly provided to the shareholders	- Court procedure: 15 days (of passing resolution); or - solvency statement procedure: 15 days of passing resolution (form and all documents)	¶1493 ¶1509	-

Form/ document	Purpose of form/document	Documents to accompany form	Filing deadline <sup>1</sup>	¶¶	Former name
SH07	Notice of cancellation of shares held by or for a public company	-	1 month	¶1223	-
SH03 <sup>3</sup>	Notice by a company purchasing its own shares	-	28 days	¶1394	169
SH06	Notice of cancellation of shares by a company purchasing its own shares	-	28 days	¶1395	-
SH16	Notice by the applicant(s) of an application to court for the cancellation of a resolution for the redemption or purchase of shares out of capital	-	As soon as the application is made <sup>4</sup>	¶1417	176
SH17	Notice by the company of an application for the cancellation of a resolution for the redemption or purchase of shares out of capital	-	As soon as the application has been served on the company <sup>4</sup>	¶1417	176
<b>Officers</b>					
AP01	Appointment of an individual director	-	14 days	¶2288	288a
AP02	Appointment of a corporate director	-	14 days	¶2288	288a
AP03	Appointment of an individual secretary	-	14 days	¶4151	288a
AP04	Appointment of a corporate secretary	-	14 days	¶4151	288a
TM01	Termination of a director's appointment	-	14 days	¶2957	288b
TM02	Termination of a secretary's appointment	-	14 days	¶4160	288b
CH01	Change in an individual director's details	-	14 days	¶3902+	288c
CH02	Change in a corporate director's details	-	14 days	¶3902+	288c
CH03	Change in an individual secretary's details	-	14 days	¶3902+	288c
CH04	Change in a corporate secretary's details	-	14 days	¶3902+	288c

Form/ document	Purpose of form/document	Documents to accompany form	Filing deadline <sup>1</sup>	අඟ	Former name
<b>Resolutions</b>					
Resolutions to be filed	<ul style="list-style-type: none"> <li>- Special resolutions and resolutions that should have been passed in this way</li> <li>- Extraordinary resolutions and resolutions that should have been passed in this way</li> <li>- Ordinary resolution to authorise share allotments</li> <li>- Ordinary resolution to voluntarily wind the company up</li> <li>- Ordinary resolution approving the transfer of a non-cash asset from a shareholder to a public company</li> <li>- All resolutions or agreements binding a whole class where unanimous consent of the class was not obtained</li> <li>- Resolutions that were agreed to unanimously but should have been passed in a particular way</li> <li>- Board resolution for re-registration of an old public company as a public company (s2(3)CC(CPIA) 1985, amended by para38 Sch 4(SI 2007/2194)</li> <li>- Board resolution to allow non-written evidence of title to the company's shares and any ordinary resolution revoking it (reg 16(8A) SI 2007/3755)</li> </ul>		<ul style="list-style-type: none"> <li>අ3553+</li> <li>අ3560</li> <li>අ927</li> <li>අ8457, අ8616</li> <li>අ1181</li> <li>-</li> <li>-</li> <li>-</li> <li>-</li> </ul>		
			15 days of passing resolution		

Form/ document	Purpose of form/document	Documents to accompany form	Filing deadline <sup>1</sup>	₹₹	Former name
<b>Record keeping</b>					
AD02	Notice of the company's SAIL	-	14 days	₹3890	various
AD03	Notice of a change in the company's SAIL	-	14 days	₹3890	various
AD04	Notice of the company's records being moved from its SAIL to its registered office	-	14 days	₹3890	various
AD06	Notice of opening an overseas branch register	-	14 days	₹3950	362
AD07	Notice of the discontinuance of an overseas branch register	-	14 days	₹3950	362
<b>Annual return</b>					
AR01	Annual return	Fee	28 days of return date	₹4060+	363a
<b>Companies House register</b>					
RP01	Application for rectification of the register where the original document was not properly delivered or included irrelevant material	- Replacement document; and - Form PR03, if the company has signed up to the Companies House PROOF scheme	-	₹4081	-
RP02A	Application for rectification of the register where, regarding officers' details, the original document derives from anything invalid or ineffective or done without the company's authority, or is factually inaccurate or forged	-	-	₹4086	-
RP02B	Application for rectification of the register where, regarding a change in the company's registered office or UK establishment office, information was provided to Companies House without the company's authority or the original document was forged	-	-	₹4086	-

Form/ document	Purpose of form/document	Documents to accompany form	Filing deadline <sup>1</sup>	₹₹	Former name
RP03	Notice of an objection to an application for rectification of the register	-	Within 28 days of the notice being issued	₹₹4087	-
VT01	Notice to accompany voluntary translation of a document already delivered to Companies House (on or after 1 January 2007)	- Translation; and - Form PR03, if the company has signed up to the Companies House PROOF scheme	-	₹₹4049	-
<b>Accounts</b>					
AA01	Notice of a change of accounting reference date	-	Any time before the period for filing the accounts has expired	₹₹4221	225
AA03	Notice that a company has passed an ordinary resolution to remove an auditor from office	-	14 days (of passing resolution)	₹₹4344	391
<b>Charges</b>					
MG01	Particulars of a mortgage or charge	- Original instrument creating charge; and - fee	21 days of creation of the charge	₹₹4641+	395
MG07	Particulars of a charge to secure a series of debentures	- Original instrument creating the series/one of the debentures in the series; and - fee	21 days of creation of the charge	₹₹3980	397
MG08	Particulars of the issue of secured debentures in a series	-	21 days of execution of the deed/first debenture	₹₹3980	397(a)
MG09	Certificate of registration in Scotland or Northern Ireland of a charge comprising property there	- Copy Form MG01 registering charge originally; and - verified copy of instrument creating the charge	-	₹₹4643	398

Form/ document	Purpose of form/document	Documents to accompany form	Filing deadline <sup>1</sup>	¶¶	Former name
MG06	Particulars of a mortgage or charge on property that the company has acquired	– Verified copy of instrument creating the charge; and – fee	21 days of acquiring the property	¶4645	400
MG02	Declaration of the satisfaction in full or in part of a mortgage or charge	-	-	¶4657	403(a)
MG04	Declaration that part of the property or undertaking which is subject to a charge has either been released from the charge, or no longer forms part of the company's property	-	-	¶4657	403(b)
<b>Mergers</b>					
CB01	Notice of a cross-border merger involving a UK company	– Copy draft terms of the merger; and – copy of any court order summoning a meeting of creditors or shareholders	2 months before the shareholder meeting	¶6536	-
<b>Dissolution and restoration</b>					
DS01	Application to strike a company off the register	Fee	-	¶7506	652a
DS02	Withdrawal of an application to strike a company off the register	-	-	¶7508	652c
RT01	Application for administrative restoration to the register	Fee	-	¶7546	-
<b>Insolvency</b>					
LQ01	Notice of the appointment of a receiver or manager	-	7 days of appointment	¶3980, ¶9248	405(1)
LQ02	Notice that an ordinary receiver or manager has ceased to act	-	On ceasing to act	¶3980, ¶9405	405(2)

Form/ document	Purpose of form/document	Documents to accompany form	Filing deadline <sup>1</sup>	¶¶¶	Former name
AP05	Appointment of – manager under s 47 Companies (Audit, Investigations and Community Enterprise) Act 2004; – a receiver and manager under s 18 Charities Act 1993; or – a Scottish judicial factor	-	– Judicial factor: 14 days of appointment; – Others: no deadline	-	-
TM03	Termination of the appointment of one of the above	-	-	-	-
CH05	Change in the service address of one of the above	-	-	-	-
600	Notice of appointment of liquidator in a CVL or MVL	-	14 days of appointment	CVL: ¶8457 MVL: ¶8616	-
<b>Investment companies</b>					
IC01	Notice of intention to carry on business as an investment company	-	Prior to the commencement of investment business	-	266(1)
IC02	Notice that the company no longer wishes to be an investment company	-	On the decision not to be an investment company	-	266(3)
<p><b>Note:</b></p> <ol style="list-style-type: none"> <li>Many of the filing deadlines are attached to the accompanying documents, rather than the form. Normally, companies file the form with the additional documents. Where the deadline only relates to an attachment, companies can send the form later, but the relevant change will usually only be effective when the form is filed (follow the relevant cross-references for any noteworthy effects of filing in individual cases). Deadlines relating to the attachments, rather than the form, are indicated by the name of the relevant document in brackets.</li> <li>On incorporation, this is part of Form IN01.</li> <li>The form will have to be stamped by Revenue and Customs before filing, if stamp duty is due (¶1875+).</li> <li>The company must file the order itself within 15 days of it being made by the court (¶1419).</li> </ol>					

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The numbers refer to paragraphs and the plus sign (+) indicates that the entry covers a number of paragraphs.

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