



This Guidance Note is designed to assist companies in relation to the administration of a company and specifically in relation to removing the authorised share capital, how shares are allotted and how shares are transferred within a private company.

## Authorised Share Capital

The concept of companies having an authorised share capital was abolished under the 2006 Companies Act. This means that there is no longer a ceiling on the amount of shares that a company can issue. This issue depends on whether the company was incorporated before or since the Companies Act 2006. Where a company has a restriction in the articles on all

### Companies incorporated before 2006

Companies that were incorporated before the Companies Act 2006 was implemented had to state an authorised share capital in their Articles of Association. This means that there is (and unless the restriction is removed) a limit on the maximum amount of shares that can be issued.

This becomes a problem when a company wishes to issue new shares above the maximum prescribed in the Memorandum of Association.

*Note that since the implementation of the Companies Act 2006, which came into force on 1<sup>st</sup> October 2009, any provisions of a company's memorandum of association relating to the authorised share capital are to be treated as provisions of the company's articles of association. This provision will therefore (unless removed) apply to companies incorporated since 2006.*

### Companies incorporated since 2006

The concept of authorised share capital was abolished by the 2006 Act, so companies incorporated since the relevant date (1<sup>st</sup> October 2009) will not have an authorised share capital. Such a limit on the share capital was not imposed by the Companies Act 2006. The Articles of Association should be checked to ensure that there is no limit on the number of shares that can be issued.

### How to remove the authorised share capital

The limits imposed by the authorised share capital can be removed by one of two means, both of which require a general meeting of the shareholders.

#### 1. Delete the article(s) that restrict the authorised share capital

in relation to the administration of a company. This Guidance note considers removing the authorised share capital, how shares are allotted and how shares are transferred within a private company.

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#### 1. Delete the article(s) that restrict the authorised share capital

The regulations state that the authorised share capital may be removed by an **ordinary resolution** (See: [Shareholders' Resolution – Removal of Authorised Share Capital](#)) (note that normally, a special resolution is required, but in this case an ordinary resolution will suffice).

## 2. Adopt a completely new set of articles

Entirely new articles of association may be adopted by passing a shareholders' special resolution (See: [Shareholders' Resolution – Adoption of New Articles of Association](#)). Although this requires a greater majority (i.e. 75% rather than 50%), the new articles will assist them in complying with the regulations more efficiently.

Obviously, the new Articles to be adopted must not contain anything that can be issued. Neither the new Articles nor the *Company Limited by Shares* (See: [Modified Model Articles for Companies Limited by Shares](#)) can contain an authorised share capital.

Whichever method is used, a copy of the new Articles, along with a printed copy of the old Articles, must be filed with Companies House (See: [Articles of Association – File New Articles and Resolution](#)). If the amendment is minor, Companies House will accept the new Articles pasted over the top, and then photocopy the new Articles.

## Steps to be taken by the company

1.	Call a board meeting. The directors should then decide whether to simply remove the articles relating to authorised share capital or to adopt entirely new articles. The directors should then pass a resolution (See: <a href="#">Board Minutes – Call a General Meeting</a> ) to circulate a shareholders' resolution.
2.	Send out notice of general meeting (14 days notice required).
3.	Hold the general meeting and pass the shareholders' resolution.
4.	Arrange to have the articles of association removed, along with the resolution, filed with Companies House.

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## Adoption

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Hold the general meeting and pass the shareholders' resolution.

Arrange to have the articles of association removed, along with the resolution, filed with Companies House.

## Issue and allotment of shares

Under the Companies Act 1985, a company must be authorised to do so. Under the 2006 Act, there is no requirement for authorisation for private companies with only one class of shares. For public companies with more than one class of shares, the 2006 Act regime is substantially the same as the 1985 Act regime.

### (A) 2006 Act Companies with only one class of shares

1. Check the articles of association for any prohibition on the allotment of shares by the directors.
2. If there is no prohibition, the directors may allot shares (section 550 Companies Act 2006) without the need for a shareholders' resolution.
3. If there is a prohibition (which is rare for private companies), the directors must pass a resolution of the shareholders (See: *Shareholders' Authority to Allot New Shares* described in 3) below.

### (B) 1985 Act Companies with more than one class of shares

*For 1985 Act companies, the authority to allot shares must be activated by an Ordinary Resolution of the shareholders (See: [Shareholders' Authority to Allot New Shares](#)).*

1. Check to see whether the articles of association permit the directors to issue and allot shares.
2. If they do not, or if the articles do permit the directors to issue and allot shares but only if the shareholders' resolution is required, check to see whether there is an 'authorisation' in place.

*A 'section 551 authorisation' is a resolution passed by the shareholders in a general meeting, which gives the directors a general authority to allot shares up to a specified maximum and for a specified period.*

3. If no section 551 authorisation is in place, the directors must pass such a resolution (See: *Shareholders' Authority to Allot New Shares*). A copy of the resolution must be lodged with Companies House (See: *Letter to Companies House*).

## Pre-emption Rights

*What are pre-emption rights?*  
Pre-emption rights give existing shareholders the right to be offered any new shares that the company proposes to issue for sale. This means that the existence of pre-emption rights acts as a bar to the issue of new shares to new shareholders and an anti-dilution device.

## Authority to issue and allot shares

Under the Companies Act 1985, a company must be authorised to allot shares if they were to be issued to shareholders of only one class of shares, of the same class. For private companies (which are not public companies), the 2006 Act regime is substantially the same as the 1985 Act regime.

### 2006 Act Companies

Under the 2006 Act, there is no prohibition on the directors of a private company with only one class of shares to issue and allot shares without the need for any further authorisation.

For public companies, the directors may have the authority to issue and allot shares without the need for any further authorisation.

For private companies with more than one class of shares, the authority to allot shares must be activated by an Ordinary Resolution of the shareholders (See: *Shareholders' Authority to Allot New Shares*), as described in 3) below.

### 1985 Act Companies with more than one class of shares and 2006 Act companies with more than one class of shares

*For 1985 Act companies, the authority to allot shares must be activated by an Ordinary Resolution of the shareholders (See: [Shareholders' Authority to Allot New Shares](#)).*

Under the 1985 Act, the directors of a company with more than one class of shares must have the authority to issue and allot shares.

If the directors do not have the authority to issue and allot shares, the shareholders' resolution is required, check to see whether there is an 'authorisation' in place.

*A 'section 551 authorisation' is a resolution passed by the shareholders in a general meeting, which gives the directors a general authority to allot shares up to a specified maximum and for a specified period, limited to a maximum of five years.*

If no section 551 authorisation is in place, the directors must pass such a resolution (See: *Shareholders' Authority to Allot New Shares*). A copy of the resolution must be lodged with Companies House (See: *Letter to Companies House*).

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## General position under the Companies Act 2006

There is a statutory right of pre-emption. A company cannot allot shares unless it offers them first in proportion to their existing holdings (the offer must remain open for 14 days).

### How to disapply statutory pre-emption

A company can disapply the pre-emption rights in relation to a specified allotment, or to allotments generally.

Pre-emption rights in relation to a specified allotment can only be disapplied by passing a special resolution of the shareholders. The directors must recommend the special resolution and state:

- their reasons for making the recommendation;
- the amount of payment to be made for the shares to be allotted; and
- the directors' justification for not offering the shares to existing shareholders in proportion to their existing holdings.

As a result of these cumbersome requirements, pre-emption rights in relation to a specified allotment are rarely used. The company will disapply the pre-emption rights made under that general authority.

- (i) be contained in the articles of association;
- (ii) be effected by way of a special resolution of the shareholders' Special Resolution.

### Practical procedure for issuing shares

1	Check that any issues with the company's capital, (b) directors' authority to issue shares, and (c) right to issue shares have been resolved as set out above.
2	Set up a board meeting and pass a resolution to allot shares and (ii) if relevant, to disapply pre-emption rights.  Record the resolution(s) in the <a href="#">Minutes of the Board Meeting</a> .  <a href="#">Allot Shares for Cash</a> .
3	Once funds are received by the company, the secretary must enter an allotment in the company's Register of Members (See: <a href="#">Register of Members</a> ). The entry must be made within two months of the date of allotment.
4	Prepare and send out share certificates.
5	Within one month of the date of allotment, on Form SH01 (' <a href="#">Return of Allotment of Shares</a> '). This form must be accompanied by a Statement of Capital (which is a snapshot of the company's capital at a particular date).

Companies Act 2006, which means that a company cannot allot shares unless it offers them to each existing holder in proportion to their existing holdings. The offer must be made in writing, and must remain open for 14 days.

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	point in time – in this case, the date to which the return of allotments is made up).
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Below is a flow chart that runs through these issues. Follow it through according to whether your company has new or old style articles of association to see what approvals you need to put in place.

New Articles of Association  
(based on the Model Articles)

Old Articles of Association  
(based on Table A)

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

Use the  
capital

Authorised share capital is  
adequate

Remove the prohibition  
in the Memorandum of  
Association

NO  
  
Do the  
articles  
prohibit the  
directors?

NO

than  
class of  
re?

YES

Articles of  
Association  
allow directors to  
allot shares

YES

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## Share Transfers

### How to deal with a share transfer

In relation to shares that have been transferred from an existing shareholder, the seller (the transferor) has agreed with and the buyer (the transferee) to sell the shares to him or her. A company secretary must ensure that a transfer, which has been duly signed by the company, and are held by an

*Note that there may be restrictions on the transfer of shares either because of the existence of pre-emption rights (see articles see above), or because of the terms of the contract under which the seller is bound. This is not the case here. The seller has a free right to dispose of the shares. At the end of this Guidance Note.*

In the event of a freely transferable share, the company secretary will be required to handle the share transfer; to ensure that the transfer is properly registered and to follow up the registration paperwork.

#### **Sale of all the shares represented by one share certificate**

The following procedure applies to the sale of all the shares represented by one share certificate to the buyer:

1	The seller signs a stock transfer form (STF) and passes the form, along with the share certificate, to the buyer, who makes the payment for the shares to the seller.
2	The buyer arranges for the stamp duty to be paid, if the consideration for the shares is more than £1,000. A cheque for stamp duty should be made to 'HM Revenue & Customs'. See <a href="http://www.hmrc.gov.uk/stamps/">www.hmrc.gov.uk/stamps/</a> for more information. If the transaction value is £1,000 or less, the stock transfer form should be stamped.
3	Once the stock transfer form is properly signed, the buyer should deliver it to the company secretary.
4	On receipt, the company secretary should ensure that the form is properly stamped by the Stamp Office. The stamp duty has been completed. This is important, as the company secretary is personally liable for a penalty if he or she registers an improper transfer. The company secretary must ensure that the shareholding match the Register of Members.

by the company, and are held by an existing shareholder (the seller or transferor) to sell the shares to the buyer (the transferee) to sell the shares to him or her. A company secretary must ensure that a transfer, which has been duly signed by the company, and are held by an

*individual to transfer his or her shares; these can be statutory or set out in the company's articles of association or the existing shareholders' agreement to which this Guidance Note, which assumes there is a brief note on this subject at the end of this Guidance Note.*

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Alternatively, the exemption certificate should be attached to the share certificate with the stock transfer form.
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5	<p>The stamped stock transfer form is then passed to the directors for consideration. If acceptable according to the articles (i.e. there are no restrictions on transfer of shares, and the directors do not wish to exercise any power of refusal), the board will resolve to pass the transfer for registration (See: <a href="#">Board Minutes – Approval of Share Transfer</a>).</p> <p>If a seal is in use by the company, the board can simultaneously authorise the use of the seal on the share certificate.</p>
6	The company secretary will update the Register of Members and send a share certificate out to the new member (See: <a href="#">Share Certificate</a> ). This must be done within two months of the transfer being lodged with the company.
7	The stock transfer form must be kept by the company as evidence of the transfer.

### ***Sale of part only of the shares represented by the share certificate***

Where only a portion of the shares represented by one certificate are being sold, the following procedure applies:

1	The seller lodges the stock transfer form and the share certificate(s) with the company.
2	The company secretary keeps the share certificate(s), and certifies the fact of lodgement on the margin of the transfer form, which is then returned to the seller.
3	The seller delivers the transfer form to the buyer and receives the consideration for the shares. The buyer will arrange to pay the stamp duty, and get the form stamped by the Stamp Office (if applicable, see Step 2 above). He or she will then submit the duly stamped stock transfer form with the company secretary for registration.
4	The company secretary will put the proposed share transfer to the Board of directors (see Step 5 above).
5	After completing the registration and updating the Register of Members, the company secretary will send out two new certificates, one to the seller for the shares retained, and the second one to the buyer for the shares transferred.

### **Transmission of Shares (on death or bankruptcy)**

When a shareholder dies or becomes bankrupt, his or her shares will vest with his personal representatives or his trustee in bankruptcy. Such representatives will have the right to take the shares into their own name, or to transfer them.

The company secretary must confirm the representative's right to the shares. This can be done by checking on the probate, letters of administration, certificate of appointment (or whatever document gives the representative his authority), to ensure that the person presenting themselves as the shareholder's representative is duly appointed as such. The representative will also need to produce the share certificate.



The company secretary shall have the capacity on the company's books. What this means is that, once it has been confirmed (see previous section), the shareholder named on the register is the owner of the shares.

## Joint shareholders

If a joint shareholder dies, the company secretary must be notified of the death and the death certificate. The company secretary must then inform the Registrar of the death and then update the Register of Members.

## Shareholders' agreement

A shareholders' agreement, articles of association, which and the company itself).

A shareholders' agreement with each other and often in should one shareholder wish from muscling in on the company as a proportion of the

If a shareholders' agreement must agree to be bound by the transfer. This can be achieved

This subject is beyond the scope of the steps needed to be taken. However, the Simply-docs contains related documents, which include, in itself, and also a Deed of Assignment.

(See: [Shareholder Agreement](#))

shares are held in a representative  
should not accept any notice of trust.  
to the shares *as representative* has  
company secretary can treat the  
though he or she were the absolute

er(s) are automatically entitled to the certified copy of the death certificate, /.

## ghs

the shareholders (in contrast to the  
between the shareholders of a company

ents of the shareholders' relationship  
refusal ('pre-emption') for the parties,  
his helps to prevent outside investors  
each members' shareholding in the  
g.

Individuals to whom shares are transferred under the Shareholder agreement, as a precondition to their becoming a Shareholder of Adherence.

te, which only deals with the practical  
tary to affect a transfer of shares.  
ite of shareholders' agreements and  
ersions of the shareholder agreement

ment - Complementary Documents)