



Circular No 14 @ Nov 2016

Public Limited Companies

What is a public company?

A public limited company is a limited liability company that offers its securities (stock/shares, bonds/loans, etc.) for sale to the general public, typically through a stock exchange, or directly in the financial markets. Public companies can be either unlisted or listed on a stock exchange depending on their size and local legislation.

Definition

The Companies Act 2014 defines a public company as “a company limited by shares or limited by guarantee and having a share capital, being a company (a) whose certificate of incorporation states that it is a public company; and (b) in relation to which the provisions of this Act or the former Companies Act as to the registration or re-registration of a company as a public company have been complied with.” There is no longer a requirement for a minimum number of members to form a public company.

The differences between Public and Private Companies

In broad terms, the most important difference between a public company and a private company is that a public company is intended as a vehicle not only for a business but also for public investment in that business, whereas a private company is the private concern of the persons engaged in the business incorporated in it, and is generally incorporated to confer a separate legal personality on the business.

The following are some of the differences in the requirements that apply to public and private companies:

- **Invitation to public**

By issuing a prospectus, a public company may invite the public to subscribe to its shares whereas a private company cannot extend such invitation to the public.

- **Minimum Share Capital for a public company**

A minimum amount of £20,500 is required as share capital for a public limited company.

- **Number of Directors**

A public company must have at least two directors whereas a private company may have one director.

- **Restrictions on the appointment of Directors**

A director of a public company must file with the Registrar consent to act as such. He must sign a memorandum and enter into a contract for qualification shares as necessary.

- **Secretary**

The secretary must file with the Registrar consent to act as such. The directors of a public company must take all reasonable steps to ensure that the person appointed as secretary has the requisite knowledge and experience to discharge his functions; that is, that for at least 3 out of the preceding 5 years he has held the appointment of secretary to a company other than a private company; or that he is a person who by reason of his previous appointments appears to the directors to be capable of discharging the functions of secretary; or that he is a barrister or a member of a recognised accounting body or of the Institute of Chartered Secretaries and Administrators.

- **Commencement of business**

A private company can commence its business as soon as it is incorporated. A public company may not commence business unless it has been granted the certificate of commencement of business.

- **Transferability of Shares**

There is no restriction on the transfer of shares in the case of a public company. A private company by its articles must restrict the rights of members to transfer shares.

- **Statutory Meeting**

A public company must hold a statutory meeting and file with the Registrar a statutory report (section 194, Companies Act 2014).

- **Allotment of Shares**

A public company may not allot shares unless at least one-quarter of their nominal value and the whole of any premium has been paid up.

The requirements listed above, as well as several other matters, are set out in more detail below.

Incorporation of a Public Limited Company

Documents necessary for incorporation:

- An application containing all the required information as per section 9(1) of the Companies Act 2014;
- Memorandum of Association;

The memorandum must state that it is a public company and the name must end with the words “public limited company” or the abbreviation “plc” [section 2(1)(a) of the Companies Act 2014]. The share capital must satisfy the statutory minimum requirements of £20,500 [sections 135(1) and 135(2)].

- Articles of Association;
- Notice of Situation of Registered Office;
- Statement of Compliance;
- Statement of Capital and initial shareholdings or Statement of Guarantee;
- Written consent of the company’s proposed officers to act in the relevant capacity;

Under sections 216(5) and 218(2) respectively, no person can be appointed secretary or director of a public company by the articles or be named as a director or secretary or proposed director in any prospectus or statement in lieu of prospectus unless he has signed and filed a notice of his consent to act as such with regard to his qualification shares, if any.

Additional Information

As stated above, a public company must have at least two directors [section 215]. It must also have an experienced or qualified company secretary in accordance with sections 217(1) and 217(2).

If all is in order, the Registrar will issue a certificate of incorporation.

Registrar’s Certificate required before a public company can do business

Even if a public company has already been incorporated it may not commence business on incorporation but must make an application to the Registrar for a Certificate to Commence Business (section 181), or re-register the company as a private company.

Before issuing a certificate, the Registrar must be satisfied that the nominal value of the company’s allotted share capital is not less than the authorised minimum, and the company must deliver a statutory declaration complying with the requirements of the Companies Act. Accordingly, no public company may do business until it has shareholder funds of a value equal to at least one-quarter of the authorised minimum.

Prospectus or Statement in Lieu of Prospectus

Before a Public Limited Company can allot shares it needs to decide if it is going to offer shares to the public. If it decides to offer shares to the public it must prepare and file a prospectus. If it is not going to offer shares to the public it must issue a Statement in Lieu of Prospectus.

At this stage:-

if it is the intention to offer shares to the **Public**, then the following will have to be filed:

- Prospectus (see Schedule 2);
- Consent of Directors to be appointed as Directors under section 218(2)(a);
- Application by a Public Company for Certificate to Commence Business and Statutory Declaration in support [section 181(2)];

On approval, the Registrar will issue a Certificate for the Commencement of Business.

If a public company has not issued a Prospectus then it cannot allot any shares until 3 days after it has filed a statement in lieu of prospectus (section 84)

Therefore if the shares are to be allotted privately then the following will have to be filed:

- A Statement in Lieu of Prospectus (Schedule 3);
- Consent of Directors to be appointed as Directors under section 218(2)(a);
- Application by a Public Company for Certificate to commence Business and Statutory Declaration in support [section 181(3)];

Restriction on alteration of terms mentioned in prospectus or statement in lieu of prospectus.

A public company shall not previously to the statutory meeting vary the terms of a contract referred to in the prospectus or statement in lieu of prospectus, except subject to the approval of the statutory meeting [section 80(1)].

Additional information

Prohibition of allotment unless minimum subscription received

A public company may not allot shares unless the amount stated in the prospectus as the minimum amount which in the opinion of the directors must be raised by the issue of share capital (to provide for the matters specified in paragraph 5 of Part I of Schedule 2 of the Companies Act,) has been subscribed.

Non-cash consideration for shares

A public company may not allot shares as fully or partly paid up (as to their nominal value or any premium on them) otherwise than in cash if the consideration for the allotment is or includes an undertaking which is to be, or may be, performed more than five years after the date of the allotment [section 90(1)]. If the allotment for non-cash consideration is permissible, then an expert's prior valuation and report on the consideration given is usually required. In any event, a public company may not allot shares in consideration of an undertaking to do work or perform services [section 88(1)].

Acquisition of non-cash asset in initial period

A public company formed as such may not enter into an agreement with a subscriber to its memorandum of association for the transfer by him during the 'initial period' (two years from the date the company was issued with a certificate by the Registrar that it was entitled to commence business) of any non-cash assets if the consideration to be given by the company is worth one-tenth or more of the company's nominal share capital then in issue (section 93). Such an agreement may be validated if there is an independent valuation of the consideration and the non-cash asset, the terms are approved by ordinary resolution of the company and copies of the resolution and valuation report are circulated to members no later than the giving of the notice of the meeting at which the resolution is proposed.

Statutory Meeting and Statutory Report

Every public company within the period of not less than 1 month and not more than 3 months from the date it is entitled to commence business must hold its statutory meeting. A statutory report must be sent to every member at least 7 days before the day on which the meeting is held. The directors must also deliver a copy of the statutory report, certified as required by section 194, with Registrar for registration after sending it to the members of the company (section 194(6)).

The report shall be certified by not less than 2 directors of the company and shall state:

- The total numbers of shares allotted;
- The total amount of cash received by the company in respect of all the shares allotted;
- An abstract of the receipts of the company and of the payments made there out, up to date within 7 days of the date of the report;
- Names, addresses and descriptions of the directors, auditors, managers (if any) and secretaries;
- Particulars of any contracts.

Meetings and shareholder resolutions

A public company must hold an Annual General Meeting within 18 months of its incorporation, and no more than 15 months should elapse between one meeting and the next (section 193). A public company may not dispense with the holding of annual general

meetings by special resolution, as may a private company. Shareholder resolutions in a public company have to be passed by the appropriate majority at a properly convened meeting, whereas most shareholder resolutions in a private company can be passed by a written resolution, which can be a quicker and simpler process.

Auditors' reports

A public company's accounts must be accompanied by an auditor's report. There is no exemption available to public companies under the exemptions granted to small and medium sized companies because a public company cannot be classified as a small or medium sized company (see section 3 of Schedule 9).

Meaning of "private company"

Under section 19 of the Companies Act 2014, a "private company" means a company limited by shares or limited by guarantee (whether or not having a share capital) which by its articles restricts the right to transfer its shares and prohibits any invitation to the public to subscribe for any shares or debentures of the company.

Circumstances in which a company ceases to be, or to enjoy privileges of a private company

Under section 20(1) of the Companies Act 2014, if a private company alters its articles in such manner that they no longer include the provisions which, under section 19, are required to be included in the articles of every private company, it will cease to be a private company from the date of such alterations to the articles, and is obliged, within 14 days, to file with the Registrar a prospectus or a statement in lieu of prospectus in the applicable form.

Re-registration as a Public Company

A Private Company may apply to re-register as a public company under section 38 of the Companies Act 2014. In order to do so, the company must meet the necessary minimum criteria to become a public company. Namely, it must:

- Satisfy the statutory minimum share capital requirements of £20,500 (section 39);
- Satisfy requirements as to the company's net assets (section 40);
- Have at least 2 directors in accordance with section 215;
- Have a qualified company secretary in accordance with section 217(2); and
- Not have been previously re-registered as unlimited.

It must also decide whether it will issue a Prospectus or a Statement in Lieu of Prospectus.

An application to the Registrar for the re-registration of a private company as a public company must contain the following documents:

- A statement of the company's proposed name upon re-registration;
- A statement of the company's proposed secretary (including consent to act as such);
- A copy of the special resolution that the company should re-register as a public company (unless a copy has already been forwarded to the Registrar under section 206);
- A copy of the company's Memorandum and Articles of Association as are proposed to be amended;
- A copy of the prospectus or statement in lieu of prospectus;
- A copy of the balance sheet and such other documents as may be required under section 40(1);
- Where applicable, a copy of the valuation report under section 41(2)(a);
- Statement of Compliance;

On approval the Registrar will issue a certificate of incorporation stating that the company is a public company.

Exemption for collective investments schemes (section 78)

Sections 77 and 79 to 85 of the Companies Act shall not apply to a company that is licensed, authorised or otherwise regulated under the Financial Services (Collective Investment Schemes) Act 2011.

Sec 77 — Dating and registration of prospectus;

Sec 79 — Specific requirements as to particulars in prospectus;

Sec 80 — Restriction on alteration of terms mentioned in prospectus or statement;

Sec 81 — Liability for statements in prospectus;

Sec 82 — Document containing offer of shares or debentures for sale to be deemed prospectus;

Sec 83 — Prohibition of allotment unless minimum subscription received;

Sec 84 — Prohibition of allotment in certain cases unless statement in lieu of prospectus delivered to Registrar;

Sec 85 — Effect of irregular allotment.

Filing Fee

A statutory filing fee of £100.00 sterling is payable for the incorporation of a public company.

A statutory filing fee of £200.00 sterling is payable for the Registration of a Prospectus. £15.00 is payable for filing a Statement in lieu of Prospectus.

A statutory filing fee of £15.00 sterling is payable for the lodging of any document required to be given, delivered, sent, forwarded, lodged or filed by the Registrar

Method of Payment

Payment Method – UK clearing cheques should be crossed and made payable to Companies House Gibraltar.

Guidance only

This Circular is intended for general guidance only and is only a brief summary of what is a public limited company. Companies House Gibraltar does not assume legal responsibility for the accuracy of any particular statement. In the case of a specific problem, we recommend that you seek professional advice.

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