

COMPANIES ACT 2006

EXPLANATORY NOTES

COMMENTARY

Part 17: a Company's Share Capital

Chapter 2: Allotment of Shares: General Provisions

Section 555: Return of allotment by limited company

855. This section replaces section 88 of the 1985 Act. As now, within one month of an allotment of new shares in a limited company, the company is required to make a return of allotments to the registrar. This return must contain "*prescribed information*" relating to the allotment (that is, prescribed by the Secretary of State by order or by regulations made under the Act).
856. A return of allotments made under this section must be accompanied by a statement of capital. A statement of capital is in essence a "snapshot" of a company's total subscribed capital at a particular point in time (in this context, the date to which the return of allotments is made up).
857. The requirement for a statement of capital when an allotment of new shares is made is new. It is based on a recommendation by the CLR (Final Report, paragraph 7.30) and for public companies, this implements a requirement in the Second Company Law Directive (77/91/EEC) which states:
- "the statutes or instruments of incorporation of the company shall always give at least the following information... (c) when the company has no authorized capital, the amount of the subscribed capital...."
- "Statutes" and "instruments of incorporation" equate to the articles and memorandum and the need to disclose information pertaining to the aggregate of a company's subscribed capital flows from the abolition of the requirement for a company to have an authorised share capital (see note on section 542).
858. Whilst this Directive only applies to public companies, the requirement to provide a statement of capital, here and elsewhere in the Act, has been extended to private companies limited by shares (and in certain cases to unlimited companies having a share capital, for example, where such companies make their annual return to the registrar). This will mean that the public register will contain up-to-date information on a company's share capital (the requirement for a statement of capital supplements existing provisions which require a company to give notice to the registrar when it amends its share capital in any way).
859. The information which will in future be set out in the statement of capital includes prescribed particulars of the rights attached to each class of shares. Again this information will be prescribed in regulations or by order made under the Act. Such information is currently required to be filed under either section 123 of the 1985 Act

*These notes refer to the Companies Act 2006 (c.46)
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(which relates to increases in authorised share capital) or section 128(1) and (2) of that Act (which relates to allotments of a new class of shares).

860. Currently, if shares are allotted as fully or partly paid up otherwise than in cash, the company must deliver the contract that it has with the allottee (or details of this contract if it is not in writing) to the registrar. Such a contract may contain commercially sensitive information which the company would not normally want to disclose. This section does not reproduce this requirement. It should be noted, however, that, in prescribing the information which must be included in the return of allotments, the Secretary of State may require details of any consideration received in respect of shares which are allotted as fully or partly paid up otherwise than in cash.