

Procedure for reduction of share capital

(The provisions relating to reduction of capital under Companies Act, 2013 is not yet notified, the provisions of Companies Act, 1956, are dealt under 'Reduction of Capital')

1. Ensure that its articles of association contain a provision authorizing it to reduce its share capital. If there is no such provision then the articles have to be first altered in accordance with the provisions of Section 31 of the Companies Act, 1956.
2. Convene and hold a Board meeting to –
 - (i) approve the scheme of capital reduction by a resolution;
 - (ii) fix time, date and venue for holding a general meeting of the company for passing a special resolution for reduction of share capital subject to confirmation by Court* as per provisions of Section 100 of the Act and for altering the capital clause in the memorandum of association of the company, as a consequence of reduction in the share capital of the company;
 - (iii) Approve notice, agenda and explanatory statement to be annexed to the notice of the general meeting as per Section 173(2) of the Act; and
 - (iv) Authorize the company secretary or some other competent officer to issue notice of the general meeting as approved by the Board.
3. Soon after the conclusion of the Board meeting, send to the stock exchanges, where the securities of the company are listed, particulars of the proposed reduction in the share capital of the company.
4. Issue notice of the general meeting to all members, directors and auditors of the company. Also send three copies of the notice of the general meeting to the stock exchanges where the securities of the company are listed.
5. Hold the general meeting and have the special resolution(s) passed.
6. Forward a copy of the proceedings of the general meeting to the concerned stock exchanges as per the Listing Agreement.
7. File e-form 23 along with a certified true copy of the special resolution(s), copy of explanatory statement under Section 173 and copy of altered Memorandum of Association and Articles of Association with the ROC within thirty days of the passing of the resolutions along with the prescribed filing fee for its registration under Section 192 of the Act.
8. Apply to Court for confirmation of the capital reduction by way of a petition in Form No.18 of the Companies (Court) Rules, 1959 [Refer Rule 11 of the said Rules].
9. The petition must be accompanied by an application by summons to the judge in chambers for directions as to the advertisement of the petition, the notices to be served and the proceedings to be taken.
10. The petition must be verified by an affidavit in Form No. 3 of the said Rules [Refer Rule 21 of the Companies (Court) Rules].
11. The petition should be accompanied by the following documents:
 - (a) A certified true copy of the memorandum and articles of association of the company.
 - (b) A certified true copy of the notice of the general meeting together with the explanatory statement annexed to the notice, at which the special resolution had been passed.
 - (c) A certified true copy of the special resolution authorizing the reduction of capital.
 - (d) A certified true copy of the latest audited balance sheet and profit and loss account of the company together with all the schedules and other papers attached/annexed thereto.
 - (e) A certified true copy of the minutes of proceedings at the general meeting at which the special resolution was passed.
12. Publish an advertisement of the petition not less than fourteen days before the date fixed for hearing in one issue of the Official Gazette of the State or the Union Territory concerned and in one issue each of a daily newspaper in English language and a daily newspaper in the regional language circulating in the concerned State or Union Territory if the Judge so directs on receiving the petition.
13. The directions, if any, given by the Judge are to be adhered to with regard to:

- (a) The proceeding to be taken for setting the list of creditors entitled to object including the dispensing with the observance of the provisions of Section 101(2) of the Companies Act, 1956 as regards any class or classes of creditors;
- (b) Fixing the date with reference to which the list of creditors entitled to object including the dispensing with the observance of the provisions of Section 101(2) of the Companies Act, 1956 as regards any class or classes of creditors;
- (c) Fixing the date with reference to which the list of such creditors is to be made out;
- (d) The publication of notice; and
- (e) Generally fixing the time for and giving directions as to all other necessary or proper steps in the matter.

14. A list of creditors in Form No. 21 of the Companies (Court) Rules, 1959, made out by an officer of the company competent to make the same should be filed by the company within the time allowed by the Judge. The list should contain the particulars as enumerated in Rule 49 of the Companies (Court) Rules, 1959. Copies of such list shall be kept at the registered office of the company and at the office of the advocate for the company, and any person desirous of inspecting the same, may, at any time, during the ordinary business hours, inspect and take extracts from the same on payment of the sum of one rupee.

15. The list of creditors should be verified by an affidavit made by an officer of the company competent to make the same. The affidavit should be in Form No. 22 with such variations as circumstances of the case may require [Rule 50 of the Companies (Court) Rules, 1959].

16. Within 7 days after the filing of the list of creditors or such further time as the Judge may allow, the company should send to each creditor a notice of presentation of the petition and the said list. The notice should contain the particulars as are enumerated in Rule 52 of the Companies (Court) Rules, 1959.

17. According to Rule 53, notice of the presentation of the petition and of the list of creditors in Rule 49 should within 7 days after the filing of the said list or such further time as Judge may allow, be advertised by the company in the manner prescribed by the Judge. The notice should be in Form No. 24 of the Rules.

18. The company should also, as soon as may be, file an affidavit proving the dispatch and the publication of the notices referred to in Rules 52 and 53, in Form No. 25 of the Rules.

19. Within the time fixed by the Judge, the company should also, according to Rule 55, file a statement signed and verified by the advocate of the company stating the result of the notices mentioned in the Rules 52 and 53.

20. The advocate of the company has to prepare the result of settlement of the list of creditors in the form of certificate which is to be signed by the Judge. Such certificate should contain the parts as enumerated in Rule 58.

21. After the expiry of not less than 14 days from the filing of the certificate mentioned above, petition will be set down for hearing. Notice of the hearing of the petition has to be advertised in Form No. 29 of the Rules, in such time and in such newspapers as the Judge may direct.

22. At the hearing of the petition the Judge may give such directions as he may deem proper with reference to securing in the manner mentioned in Section 101(2) (c) of the Act, the debts or claims of any creditors who do not consent to the proposed reduction, and the further hearing of the petition may be adjourned to enable the company to comply with such directions.

23. Before confirming reduction of capital, the Court will satisfy itself that the interest of the creditors and different classes of shareholders, if any, are not affected adversely by the said reduction of capital.

Where the Court makes an order confirming reduction, it may also make an order, for any special reason, directing the company to add to its name as the last words thereof, the words "and reduced" during such period commencing on or at any time after the date of its order and also require the company to publish the reasons for the reduction of such other information in regard thereto, as it thinks proper. If the Judge makes an order directing the company to

publish the reasons for the reduction or such other information in regard thereto, the company should comply with the same as per Rule 64.

24. The order of the Court confirming the reduction of capital and approving the minutes shall be in Form No. 30 of the Rules with such authorisation as may be necessary.

25. File e-form 21 prescribed in the Companies (Central Government's) General Rules and Forms (Amendment) Rules, 2006 with the Registrar.

26. Deliver to the Registrar, a certified copy of the order of the Court confirming the reduction of the share capital of the company and of the minute approved by the Court* and produce before him, if so required, the original copy of the order. The Registrar will register the copy of the order and the minute and will certify the same under his hand. On the registration of the order and the minute, the resolution for reducing share capital as confirmed by the order, shall take effect. The minutes when registered shall be deemed to be substituted for the corresponding part of the memorandum of the company, and shall be valid and alterable as if it had been originally contained therein.

27. Publish the notice of registration in such manner as the Court directs.

28. Make necessary alteration in the records of the company, on all stationery items, share certificates, blank forms of share certificates lying in the office of the company and all copies of the memorandum and articles of association of the company lying in the office of the company..

29. Take all other steps in accordance with the scheme of reduction of share capital of the company as approved by the Court, e.g. to pay-up share capital which is in excess of the wants of the company.

30. The company must send to the concerned stock exchanges in case of listed company three copies of all the notices, circulars etc. issued and/or published in newspapers by the company in connection with the reduction of the share capital of the company as per the Listing Agreements signed with the stock exchanges.