

Particular requirements for re-registration of limited company as unlimited

1296. (1) A limited company may be re-registered as an unlimited company if, in addition to compliance by the company with the relevant Chapter 2 requirements, all the members of it have assented to its being so re-registered and the following requirements are complied with—

(a) the company delivers to the Registrar—

(i) the prescribed form of assent to the company's being re-registered as an unlimited company subscribed to by, or on behalf of, all members of the company, and

(ii) subject to subsection (2), the financial statements specified in subsection (3) and the report specified in subsection (6),

and

(b) the statement of compliance includes confirmation by a director or secretary of the company that—

(i) the persons by whom, or on whose behalf, the form of assent referred to in paragraph (a) is subscribed constitute the whole membership of the company, and

(ii) if any of the members have not, themselves, subscribed that form, that the directors have taken all reasonable steps to satisfy themselves that each person who subscribed it on behalf of a member was lawfully empowered to do.

(2) Subsection (1)(a)(ii) does not apply if—

(a) within the period of 3 months prior to the date of the application to re-register, the company has delivered to the Registrar, in accordance with Part 6, an annual return with the financial statements required by that Part annexed to it, or

(b) the company was incorporated in that period of 3 months.

(3) The financial statements referred to in subsection (1)(a)(ii) are financial statements of the company covering a period that—

(a) ends on a date that is not more than 3 months prior to the date of the application to re-register, and

(b) subject to subsection (4), is of at least 12 months duration.

(4) If, by reason of the company's recent incorporation, it is not possible for the duration of the foregoing period — that will be covered by the foregoing financial statements — to be one of 12 months, then

the period covered by them shall be a period beginning on the date of the company's incorporation and ending on the first-mentioned date in subsection (3)(a).

(5) The provisions of Part 6 as to the form and content of, and the notes to accompany, the financial statements required by that Part shall apply to the financial statements specified in subsection (3).

(6) Unless the company would be entitled to avail itself of the audit exemption conferred by Chapter 15 or 16 of that Part in respect of financial statements that are required to be prepared by that Part (being statements that would cover the period covered by the financial statements specified in subsection (3)), the provisions of Part 6 as to the auditing of financial statements required to be prepared by that Part shall apply to the financial statements specified in subsection (3); accordingly there shall accompany the latter statements that are delivered to the Registrar a report of the company's statutory auditors on them that complies with Part 6.

(7) For the purposes of this section—

(a) subscription to a form of assent by the personal representative of a deceased member of a company shall be deemed to be subscription by the member,

(b) an assignee in bankruptcy of a person who is a member of a company shall, to the exclusion of that person, be deemed to be a member of the company.

(8) Where a company is re-registered as an unlimited company, a person who at the time when the application for it to be re-registered was delivered to the Registrar, was a past member of the company and did not thereafter again become a member thereof shall not, in the event of the company's being wound up, be liable to contribute to the assets of the company more than he or she would have been liable to contribute thereto had it not been so-registered.

(9) Subsection (10) applies if the provisions of Part 6 on abridged financial statements (being statements that would cover the period covered by the financial statements specified in subsection (3)) could be availed of by the company with respect to the financial statements required by that Part to be prepared.

(10) Where this subsection applies, then the provisions of Part 6 on abridged financial statements may be availed of by the company with respect to the financial statements specified in subsection (3) and those provisions shall have effect accordingly and the reference in subsection (6) to a report of the company's statutory auditors shall, if those provisions are availed of by the company, be read as a reference to a special report of those auditors referred to in section 356.