included in the Annual Return (see Sect. 124 (1) (c) and the Sixth Schedule to the 1948 Act). There are various methods by which this index may be kept—

(a) The ordinary card index—simple in use, effective, and economical.

(b) Loose leaf books of small dimensions—have all the advantages of card indexes with these additional merits: (1) A card must be extracted in order to be written upon; not so a page in a book. Moreover, the back of the page can be written upon without disturbing its position, a feat not possible with a card index; (2) less possibility of upsetting the pages; (3) leaves occupy less space and cheaper equipment than cards; (4) small books are more easily carried about than card indexes.

(c) Visible card indexes—an arrangement whereby the cards lie flat on a shallow tray, the edge of each card being visible and showing the various names at a glance. This method has much to recommend it, and further information concerning such indexes will be found on page 36.

(d) An alphabetically indexed book—sub-indexed if necessary. This method is inferior to the others outlined.

If it is desired that the index should show the state of each member’s account at all times, it will, of course, be necessary to make alterations in the index every time a transfer takes place. This will entail much additional work if transfers are numerous, but the expediency or necessity of so changing the index depends on the circumstances and requirements of each company. (Sect. III requires that all alterations in the index be made within 14 days of alterations in the register, but this, of course, refers only to names of shareholders and not to details of their holdings.) A suggested ruling for a share register index is given on page III.

In order to provide some degree of protection against forged transfers most companies keep specimen
signatures of all their members for purposes of comparing signatures on transfers. A common method is to ask all members to give an authenticated specimen signature on a card provided for the purpose, and to file such cards in alphabetical order in drawers, the cards also serving as an index to the register of members. Alternatively, the specimen signature may be made on a special slip of paper which is subsequently pasted on to the index sheet or card.

Writing Up of Share Register

Before the register can be written up, the shares allotted are generally numbered. It is, however, not now essential that shares should have a distinguishing number. This provision was introduced by Sect. 74, it having been felt that many companies would welcome the opportunity to avoid the labour of keeping a record of numbers every time a transfer is made. The shares must, however, be fully paid up (i.e. akin to stock, which never bears distinguishing numbers) and rank pari passu for all purposes. The numbers (if any) assigned to the shares should be written in the appropriate columns of the application and allotment sheets, commencing with number one for the first allotment entered on the first page of the sheets, and the accuracy of the numbering should be carefully checked at regular intervals, say, at the end of each page, otherwise an error made is repeated throughout the whole of the subsequent numerations.

The writing up of the register can then be begun, particular care being exercised to ensure that the correct details are registered. Where the register is to be on the loose leaf principle, the work can be easily divided amongst a number of clerks if necessary.

If the register is to be divided into a number of books, a note must be kept of the total number of shares entered in each separate part, if it is desired to put into
practice a system of making the share registers self-balancing in order to locate errors when the register is balanced at dividend times.

Balancing of the Share Registers

The object of balancing the share register is to ensure that the shares registered agree in total with the issued capital. In the case of a small company, balancing is not difficult—a list of shareholders is drawn up from the register showing the number of shares held by each, and the total should agree with the total issued capital. Where the register is divided into several parts, any error would necessitate a search through all the registers. The registers should therefore be kept upon the sectional or self-balancing principle. To effect this it is necessary to know (a) the total number of shares in each register at the time they were first written up, or at the date of the last balancing, (b) the total number of shares posted to transferees’ accounts in each ledger, (c) the total number of shares transferred out of accounts in each register. The totals of the shares entered in each register will in the first place be ascertained when the registers were written up, and subsequently when the registers are balanced, a note of these totals being regularly preserved. To ascertain the numbers of shares transferred to and by members it will be necessary to analyse transfers, transmissions, changes of name, etc. If a register of transfers is kept, additional columns can be ruled to effect the analysis, or a separate analysis book kept. If a register of transfers is not kept, it will be necessary to keep an analysis book.

A specimen ruling is shown on page 109, and it should be observed that the totals of the "Transferees" and "Transferors" columns should agree, and should equal the total number of shares transferred. The ruling shown will accommodate extraordinary changes brought
about by (a) registration of personal representatives as members, (b) forfeiture and surrender, (c) change of name of shareholder, (d) transfers to and from dominion registers, etc., although a separate analysis book can be kept to record such changes, if considered more convenient.

When the books are closed for balancing in order to pay dividends, or for other purposes, e.g. issues of bonus shares, pro rata allotments, etc., an adjustment account will be prepared, as shown below.

The total of each of the lists compiled from each part of the register should agree with the total shown by the adjustment account to be the number of shares entered in that register at the date of balancing. Errors will be localized to a particular register or registers, unless, of course, it is impossible to agree any register.

<table>
<thead>
<tr>
<th></th>
<th>No. 1 Register</th>
<th>No. 2 Register</th>
<th>No. 3 Register</th>
<th>Totals</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Dr</td>
<td>Cr</td>
<td>Dr</td>
<td>Cr</td>
</tr>
<tr>
<td>Opening balances</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Postings to Transferees' A/cs</td>
<td>1,000</td>
<td>-</td>
<td>2,000</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td>50</td>
<td>-</td>
<td>100</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Postings from Transferors' A/cs</td>
<td>-</td>
<td>75</td>
<td>-</td>
<td>150</td>
</tr>
<tr>
<td></td>
<td>1,050</td>
<td>-</td>
<td>2,100</td>
<td>75</td>
</tr>
<tr>
<td></td>
<td>-</td>
<td>75</td>
<td>-</td>
<td>150</td>
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<tr>
<td></td>
<td>1,050</td>
<td>-</td>
<td>2,025</td>
<td>-</td>
</tr>
</tbody>
</table>

Issuing of Share Certificates

Sect. 80 requires that share certificates shall be delivered within two months after allotment, unless the conditions of issue prescribe otherwise. If the shares are to be paid up in full by a number of calls or instalments payable on specified dates, it would be inconvenient to issue share certificates before payment in full had been made, and in such cases it is usually a condition that the share certificates shall be issued as
soon as possible after payment of the final call, and that in the meantime the allotment letter and bankers’ receipts for calls shall constitute evidence of title. Alternatively, (a) certificates may be issued showing the shares to be partly paid, and when calls are paid the certificates can be endorsed accordingly, (b) scrip certificates may be issued. These are provisional certificates evidencing the title of the holders to receive share certificates as and when ready for delivery, in exchange for the scrip certificate.

Particular care should be exercised in drawing a form of share certificate, and if the shares are to be quoted, the Stock Exchange requirements should be observed.

Procedure on Issuing Share Certificates

1. The share certificates should be written up from the register of members, and each certificate carefully checked and initialed. Mistakes may have quite unexpected consequences, as it must be remembered that a company is estopped from denying its certificate.

2. The share certificate must be sealed and signed in accordance with the articles, and in pursuance of a valid resolution passed at a board meeting.

3. Draft and forward to members a circular advising them when the certificate will be ready in exchange for the allotment letters and bankers’ receipts for calls (or scrip certificates if these have been issued). For the convenience of those members who are unable to attend personally to take up their certificates, form letters should be annexed to the circular authorizing the company to send the certificate by post or to hand it to the member’s nominee. A specimen circular is given on page 112.

4. Issue certificates on surrender of necessary documents, being careful to obtain a receipt for every certificate issued. The usual practice is to have a printed form of receipt annexed to each share certificate
which is detached and signed by the recipient and returned to the company. An excellent plan for filing these receipts is to attach them to their respective counterfoils in the share certificate book, and if the certificate is forwarded by post or handed to a nominee, the letter authorizing the company to do so should also be annexed to the appropriate counterfoil.

The precautions outlined should be strictly observed as the company must be able to produce clear evidence as to how the certificates have been disposed of, because if through the company's negligence a certificate gets into the hands of a party not entitled to it, and the shares are afterwards dealt with by him, the company may be liable in damages to a third party acting in good faith and relying on the company's certificate, and the shareholder actually entitled to the certificate may take proceedings against the company for not delivering the certificate within the prescribed time after being called upon to do so.

**Issues of Bonus Shares**

Bonus shares are shares issued by a company to its members either fully or partly paid-up out of accumulated profits in lieu of a dividend or bonus in cash—or, in other words, instead of profits being paid away in cash, they are capitalized, retained in the business, the members benefiting by an allotment of shares instead of a payment of cash. Such issues are subject to the consent of the Capital Issues Committee, and permission must be obtained, as explained hereafter. From the point of view of accountancy, the issue of bonus shares means that the share capital of the company is brought more in accord with its actual capital possessions, and the revenue available for dividends is effectively earmarked for retention in the business as capital. From the standpoint of economics, it appears that the object of issuing bonus shares is to
discourage attention being called to the huge profits made by many companies, which would or might otherwise be a pointer for initiating agitation for a reduction in the prices of the companies’ products, especially where the company concerned enjoys a virtual monopoly. When bonus shares have been issued, subsequent years’ profits, whilst being perhaps of larger amounts, would be declared as a lesser percentage on a larger “watered capital.” It is worthy of note that bonus distributions almost always fall to the members holding the “equity” shares, i.e. the shares entitled to the balance of profits remaining after the claims of those shareholders ranking in priority have been satisfied. (Sect. 154 (5) defines equity share capital, for the first time, as “issued share capital excluding any part thereof which, neither as respects dividends nor as respects capital, carries any right to participate beyond a specified amount in a distribution.”) In the case of most companies, the ordinary shares (but in some cases, deferred, founders’, or management shares) constitute the equity holding. The ultimate position of the equity shareholders is not affected in any way by bonus distributions if they have the right in the event of liquidation to receive the assets remaining after repaying capital paid-up on other classes of shares, but their immediate position is benefited by the fact that they can, if they wish, dispose of the bonus shares in the market, although the advisability of doing so must be viewed in the light of the future level of dividends, for if the dividends are not maintained at the former percentage, the income from the original holding will, of course, be depleted, and those holders who rely on their shares as a source of regular income may thus suffer by selling their bonus allotment.

Bonus shares are not “shares issued for nothing”—this is forbidden by law; they are, in effect, dividends
payable in shares instead of in cash. The Government's tax of ten per cent, imposed in 1947, and aimed at limiting the dividends of companies, has now been withdrawn.

Methods of Issuing Bonus Shares

One method of effecting an issue of bonus shares is to declare a dividend or bonus free of income-tax, and to make a new issue of capital at the same time, making a provision that the bonus or dividend shall be satisfied by allotment of shares, or alternatively inviting members to use the dividend or bonus to subscribe for the new shares, thus giving them an option to take cash or shares. This method necessitates a provision in the articles authorizing satisfaction of dividends otherwise than in cash. Another and more common method is to appropriate a portion of the reserves or accumulated profits and to apply the same in payment of shares to be issued pro rata to the members, without mention of declaration of bonuses or dividends (see specimen resolution on page 330). Most companies have specially framed articles dealing with the question of bonus issues and outlining the method of effecting them, but it is submitted that the making of a bonus issue without express authority in the articles would not be restrained by the courts, as a company which does irregularly that which might be done regularly has not in the eye of the court committed any offence (Foss v. Harbottle (1843)).

Points on Procedure

The amount of and rate of distribution of the bonus issue having been agreed, application for consent to the issue must be made on Form Q.3 to the Capital Issues Committee, Treasury Chambers, Whitehall, S.W.1, if the nominal value of the issue exceeds £10,000. As allotment letters bearing a form of
renunciation will probably be necessary, permission for their use must be obtained from the same quarter. If, however, the nominal value of the issue is less than that stated above, then permission to use such allotment letters has to be obtained from the Exchange Control Office of the Bank of England, as it will not be necessary to apply to the Capital Issues Committee at all. The stamp duty on forms of renunciation and also on allotment letters was abolished by the Finance Act, 1949.

It must be decided on what date the register of members shall be closed to ascertain those members who are to participate, and this date should be stated in the resolution. Bonus shares are usually allotted at par, although they may be allotted as partly paid-up or at a premium, but the only effect of issuing at a premium is to diminish the rate of allotment and to create a premium on shares account. If they are to be allotted at a premium or as partly paid, the resolution should state so. A return of allotments must of course be made within one month after allotment. Where shareholders are given the option of accepting cash or shares, if they elect to take shares, they in effect pay for them in cash, but where they do not have such an option, then the shares are paid otherwise than in cash, and accordingly to comply with Sect. 52 (1) (b) there must be a contract in writing constituting the title of the allottees or, alternatively, the prescribed particulars of the contract (Form No. 52) must be completed and filed with the return of allotments. As it would be inconvenient to enter into a contract with every allottee, the resolution allotting bonus shares should appoint some member or director as agent of the shareholders to enter into the necessary contract on their behalf, or delegate the duty of making such an appointment to the board. The more simple procedure is to dispense with a formal contract, and to take advantage of Sect. 52 (2) and utilize the official form of particulars above
FRACTIONAL CERTIFICATE

EXEMPLARY COMPANY LIMITED
(Incorporated under the Companies Act, 1948)

99 LUNE STREET, LONDON, E.C.1

NOMINAL CAPITAL £
DIVIDED INTO SHARES OF £ EACH.
ISSUE OF SHARES OF £ EACH.

This is to certify that the Bearer of this Fractional Certificate, representing one ........... th/rd of one Fully paid ............ Share of £ ............... , upon presenting it with such other Fractional Certificates as shall make up one Fully paid ............ Share of £ ............ shall be entitled to an Allotment of one Fully paid ............ Share of £ .... .... in the Capital of this Company, with this proviso: That on or before the ............ day of ............ next this Fractional Certificate, together with the other Fractional Certificates making up one Fully paid Share shall be lodged at the Office of the Company.

Dated this ............ day of ............ 19 ............

By order of the Board.

Entd............

Secretary.

NOTE.—This Fractional Certificate cannot be Registered, nor can it participate in any Dividend declared, until it has been exchanged with other Fractional Certificates for one Fully paid Share.

Please sign the Form on the back of this Certificate, and return it, with the necessary other Certificates, to the Company’s Office.

referred to. The stamp duty on the contract or on the official form No. 52 would probably be a nominal stamp duty of 10s. In addition there would be the 5s. registration fee.

Where the bonus issue involves fractions owing to the fact that the rate of allotment is not evenly divisible into some members’ holdings, some method of dealing with such fractions should be decided upon. Two methods are available—

1. To issue fractional certificates. These are not equivalent to share certificates because a share cannot
be split—they are merely statements acknowledging that the person named therein has become entitled to a stated fraction of one share, and bear a memorandum that on the certificate holder presenting the certificate, together with another or other certificates to make up one share, he shall be entitled to be registered as holder thereof. The certificates may be made out to bearer, which is the more usual practice. The intention of issuing fractional certificates is that some member shall purchase fractional certificates from other members desirous of selling their fractions, and thus make up his fraction into a whole number. A specimen is shown on the previous page.

2. Instead of issuing fractional certificates, the shares representing the fractions are allotted to the secretary, or to some other person, to be sold, and after paying the expense of sale, etc., cash is remitted to members according to the fractions they are entitled to. Postal orders can be used for the purpose of remitting fractions, as they save the considerable trouble of writing out cheques and are not so expensive. This method of dealing with fractions is more common than that of issuing fractional certificates, and it relieves the secretarial department of considerable work in writing out and issuing fractional certificates and saves the expense of printing and stamping the certificates—moreover, the return of allotments and completion of the entries in the register of members is not delayed until the fractions have been disposed of (and some members may be lax in dealing with their fractions), as would be the case if certificates had been issued.

The allotment of bonus shares may necessitate an increase of capital if the whole of the registered capital has been issued, or if the unissued capital is less than the amount of the bonus allotment. If such an increase of capital is necessary, the requisite steps for that purpose must be taken (see Chapter XI).
If the capital of the company is held as stock and not as shares, and it is desired to make a bonus issue, as stock cannot be issued, it will be necessary to declare a bonus in shares in the first place, the resolution providing that the holding of a stated amount of stock shall entitle the holder to an allotment of one or more bonus shares. Subsequently, a further resolution can be passed converting the shares into stock if so desired.

Procedure on Allotment of Bonus Shares

If the register of members is to be closed and transfers suspended for the purpose of balancing the register to ascertain those entitled to bonus allotments, the requisite notice should be advertised.

A list of members registered on the appropriate date should be prepared (a copy of the dividend list would suffice if a dividend was being paid at the same time). The list should state the full name, address, and description of each member, his holding, and should be provided with columns to show the number of new shares and fractions to which each member is entitled. The total of these two columns should equal the total number of new shares being allotted. The allotment is then made at a board meeting, the necessary new certificates prepared and dispatched to shareholders, with a form of receipt therefor to be returned duly signed, and the appropriate entries made in the share registers. Within one month after allotment a return thereof must be made in compliance with Sect. 52 (see page 81). In the case of deceased members, bonus allotments must be made to their personal representatives in their personal capacity, whether they have been registered as members or not, as shares cannot be allotted to a deceased person, neither can they be allotted to representatives as representatives.

Instead of issuing share certificates direct, as outlined above, an alternative method is to issue allotment
letters, with a letter of renunciation and form of acceptance annexed, for the use of those members who wish to dispose of their shares and/or nominate another person to receive the allotment. In this case a date should be fixed, after the passing of which letters of renunciation and acceptances will be barred, so that the work of issuing share certificates may proceed. The only advantage of this latter method is that it saves transfer duty for those persons acquiring the new shares from the members entitled to them, and as it greatly increases the work of the transfer department and involves the expense of printing the letters of allotment, this method is not advisable, although it is attractive to those whose business it is to market shares, and on this ground companies which have an active market for their shares sometimes adopt it. In this case it should be noted that the list of members entitled to bonus allotments will have to be ruled with additional columns to record renunciations and splitting of letters of allotments, and the list will have to be balanced after the last day appointed for acceptance of renunciations or splitting allotment letters.

Where the resolution making the bonus issue gives members the option of accepting the bonus in cash or in shares, letters of application or acceptance (or alternatively, provisional allotment letters) will have to be issued. A date will be fixed before which acceptances must be acknowledged, and those members failing so to acknowledge acceptance will be presumed to desire cash. As the acceptances come to hand, the list will be marked off accordingly, so that on the appointed day it is ascertained which members desire shares, and which desire cash. The allotment is made accordingly, and share certificates or cheques are forwarded to members. Observe that where applications are invited for the shares to be allotted in payment of the dividend or bonus, if a member replies applying
for shares or accepting allotment in lieu of cash, the contract to take shares is complete, and does not require acceptance by the company, as is the case when applications are invited in response to a prospectus, and therefore allotment letters need not be issued, although allotment letters may be issued with the object of facilitating dealings with the shares, and, as pointed out previously, provisional allotment letters may be issued in the first instance with a view to easing the work of the secretarial department, those members accepting the allotment returning their allotment letters to the company for a memorandum of acceptance to be endorsed.

Whatever method is to be adopted, the secretary should draw up a programme of the procedure which will be necessary according to the circumstances as outlined in the foregoing pages, and he should also draft and have printed all necessary documents, forms, and circulars, and should give attention to the organization for dealing with the allotment. A specimen circular accompanying bonus share certificates will be found on page 71, and a resolution allotting bonus shares is given in Chapter XV.

Income Tax and Bonus Shares

It was decided in *Commissioners of Inland Revenue v. Blott* (1919) that a recipient of bonus shares is not liable to account for them in computation of his liability for income tax or sur-tax in the year they are issued. This decision is based on that of *Brouche v. Sproule* (1887), where it was held that in the circumstances of that case, bonus shares must be regarded as capital as between tenant-for-life and remainderman. But if a shareholder has the option, and elects to take cash instead of shares, the amount of the bonus must be included in his return for income tax at the grossed amount, i.e. as the dividend or bonus is free of income
tax, it is regarded as being the net amount after
deduction of tax at the standard rate. (Note that
bonus allotments are bonuses free of income tax, as tax
would have been paid or payable by the company at
the standard rate on the reserves or profits out of which
the bonus is given.)

As already stated, duty at ten per cent on approved
bonus distributions under authority of the Finance Act,
1947, is not now payable.

**Other Methods of Giving Shareholders a Bonus**

1. Issuing new capital to shareholders at a price less
than the market value of similar existing shares. This
is dealt with in the next paragraph.

2. Issuing new shares publicly but giving share-
holders a right of pre-emption as to allotment.

3. Declaring a dividend applicable to satisfying
unpaid liabilities on shares. Articles should authorize
payment of a dividend otherwise than in cash, and a
resolution making the call should be passed at the same
time as the resolution declaring the dividend.

4. Scrip bonuses. Finance and holding companies
sometimes receive allotments of shares from other com-
panies in which they are interested, and instead of retain-
ing these shares, they may elect to distribute them
amongst their members. If such a distribution was
effected by means of transfers to the various members,
such transfers would have to be stamped with a
nominal stamp duty of 10s. The better method is to
decide in the first place whether the company entitled
to allotment wishes to retain the shares or wishes to
distribute them amongst its members, and in the latter
case, the company will nominate the members to
receive allotment in equitable proportions direct from
the company making the allotment, provision being
made for dealing with fractions. If the shares have
already been allotted to the company entitled thereto,
this latter method is of course out of the question, and the distribution must be effected by means of transfers.

**Issues of Shares to Members Pro Rata to Their Holdings**

Many companies, when making new issues of capital, invite their members to take up the shares in the first instance, instead of offering to the public, and such offers usually entitle members to participate in the new capital proportionately to their existing holdings. Some companies have specially-framed articles to that effect. The first step in making a new issue is, of course, the resolution authorizing the issue. Articles may vest such power in the directors, otherwise a resolution in general meeting will be necessary. The resolution should state the amount of the issue, the class of share to be issued (and defining the rights thereof if a new class of shares is being issued), the date on which the offer is to be made, thus determining those members entitled to participate, the date the offer lapses, the terms upon which the shares are to be offered, i.e. at par or at a premium, and the rate at which they are to be offered to the members, for example, one share for every five shares held, or sometimes the offer is simply made pro rata to existing holdings in which case the rate is, of course, determined by the ratio of the new to the old capital. Sometimes a portion only of the new issue is offered to members, the balance being reserved for allotment to the staff, customers, and others. The resolution should also deal with the question as to how any balance of shares not taken up by members is to be dealt with—the resolution may provide that such balance be at the disposal of the directors on such terms as they shall think fit, or a price may be fixed, or the balance may be offered to members desiring to take up more shares, or the articles
may provide as to how the balance is to be dealt with. Fractions are usually ignored in these cases for the sake of simplicity and convenience. A specimen resolution will be found on page 329. Another point to be settled, although not part of the resolution, is whether provisional allotment letters shall be issued to members, allotting them the number of shares to which they are entitled conditionally on their accepting the allotment within a specified time, or whether applications to subscribe for the shares shall be invited from members, the allotment being made subsequently when the period fixed for making applications has expired. In the case of prosperous companies, when it is certain that almost the whole of the new capital will be taken up by members or their nominees, the former method is commonly adopted, and recommended, as it saves much routine work—it is only necessary to communicate with the members once, i.e. when the provisional allotment letters are issued, whereas if applications are invited, allotment letters must be issued subsequently to those members subscribing for shares, and the procedure outlined hereafter indicates other economies.

Procedure on Making Pro Rata Offers of Shares

1. The necessary resolution must be passed. If a general meeting is necessary this must be convened, and if an extraordinary or special resolution is required by the articles, a printed copy thereof must be filed with the Registrar within 15 days.

2. If the register of members is to be closed, due notice thereof must be advertised in compliance with Sect. 115. It is not strictly necessary to close the register of members—the offer may be to those members registered on a past date or on a future date, and in either case a list of members must be drawn up, and in the case of an offer to members registered on a future date registration of transfers can be temporarily
suspended in order to balance the register without the necessity of closing the register to inspection, or giving notice closing the transfer books, unless, of course, articles demand such a notice. For the convenience of the stock markets it is customary to close the transfer books in the proper manner (see Chapter IX).

3. All necessary documents must be drafted and printed. If subscriptions are to be invited, letters of application must be drafted, and these are usually accompanied by an explanatory circular to shareholders (specimen letter of application will be found on page 114). If provisional allotment letters are to be issued, these must be drafted and printed and in this case the provisional allotment letter may itself be framed to constitute a circular to shareholders, or it may be thought more desirable to issue a separate circular (specimen on page 70). Provisional allotment letters may be drawn in two ways: (a) with a form of acceptance annexed for signature by the shareholder (or his nominees where, as is usual, right of renunciation is given), and this acceptance is handed to the bankers along with the allotment letter and remittance for the allotment moneys. The form of acceptance is retained by the bankers and forwarded to the company—the allotment letter is receipted and returned to the shareholder (or his nominee). A specimen of such an allotment letter is given on page 115. (b) No form of acceptance is required to be signed—payment of the allotment moneys on or before the specified date being all that is necessary—the bank detaching a perforated slip showing the number of the allotment letter, amount, and date of payment, and forwarding it to the company. Share certificates must also be printed if the stock is exhausted or if a new class of shares is being issued.

4. A list of members must be prepared, showing names, addresses, descriptions, present holdings,
number of new shares to which each is entitled, and with columns to record renunciations, splitting of allotment letters, etc.

5. The company's bankers should be instructed to open a new account to which will be credited the moneys received in respect of the new shares. The number of the allotment letter should be shown in the pass book to facilitate subsequent checking.

6. If shareholders are to be permitted to renounce their rights in favour of others, a copy of the circular to the shareholders (or a copy of the allotment letter where this also constitutes the circular) must be filed with the Registrar before its issue to the shareholders, as the inclusion of the letter of renunciation makes the offer an indirect offer to the public, and therefore constitutes a prospectus and must be filed, although the provisions of Sect. 38 as to the contents of a prospectus would not apply (see Sect. 38 (5)).

7. Issue the forms to the shareholders registered on the date when the offer is to be made.

8. If the new shares are to be quoted on the Stock Exchange, the Stock Exchange requirements must be complied with.

9. Where the procedure of inviting applications is adopted—

(a) Collect the letters of application from the bankers and write up the application and allotment sheets.

(b) When the period specified for making applications has expired, convene a board meeting to make the allotment.

(c) Prepare letters of allotment, showing amounts payable on allotment, and call (if any) and forward them to members, preserving a record of the posting thereof.

Where provisional allotment letters have been issued a note should be made on the list of members of those who take up their allotments by signing the
form of acceptance and paying the allotment moneys, or by paying the allotment moneys only, according to whichever method is adopted as pointed out under head (3) above, and when the time limit fixed for acceptances has expired, the list should be balanced to ascertain the total number of shares applied for.

10. Within one month after allotment, make a return thereof in compliance with Sect. 52.

11. Make the necessary entries in the register of members and share ledger, and financial books.

12. If the whole amount due on the shares is payable on allotment, the preparation of the necessary new share certificates can be put in hand at once. If the amount due is payable by instalments, the recording of these must be attended to, and share certificates prepared and issued when all instalments are paid.

Splitting Allotment Letters, Dealing with Renunciations, etc.

If allottees are accorded the privilege of having their allotment letters split or divided, the procedure would be as follows. The allottee surrenders his allotment letter and states how he wishes it to be divided. The necessary split allotment letters are then prepared and issued to the allottee on payment of the prescribed fee (usually 1s. for each split letter issued). The allotment list should be amended to show the change, the original entry being ruled out and a note made that split letters have been issued, quoting the numbers thereof, and the new letters should be entered on the allotment list in the proper numerical sequence with a note indicating that they represent "splits from No. ——:" The split letters should also be marked "split from No. ——."

The purpose of desiring "splits" is to enable the allottees to deal more effectively with their shares where members are allowed to renounce their allotments in
favour of others, in which case each letter of allotment has a letter of renunciation and acceptance annexed, and if a member has sold part of his allotment or wishes to have part registered in the name of his nominee, he applies for split letters to be issued in the requisite proportions. The allottee then signs the letter of renunciation annexed to the split letter representing the shares to be parted with, and hands the entire document to the purchaser or nominee who completes and signs the form of acceptance thereto annexed, and lodges the whole with the company (or its bankers), the letter of allotment being returned to him duly receipted and endorsed to indicate that the shares are vested in him, the letter of renunciation and acceptance being retained by the company. An allottee may in this manner dispose of his shares to several others, or dispose of some of them and retain the remainder himself. Where shares are renounced, the name of the original allottee in the allotment list should be struck out, and the name of the new allottee inserted and a reference to the allotment letter noted. The above procedure applies equally in the case of an offer inviting applications and giving members the right to subscribe for a certain number of shares where the offeree is given permission and wishes to divide his right to subscribe, the term “letter of application” being substituted for that of “allotment letter.”

Underwriting

When a public company is being formed it is usual to arrange with some financial house to guarantee or underwrite the issue, that is to say, in consideration of either a fixed sum or a commission of so much per cent (maximum 10 per cent of the price at which the shares are issued or the amount or rate authorized by the articles, whichever is the less—Sect. 53) the financial house or a body of underwriters guarantees or
underwrites the issue of shares. The financial house usually sub-underwrites either the whole or a portion of the issue at, of course, a somewhat lower rate of commission. In addition to these payments to secure the necessary capital of a company, there is usually a further small commission, known as "over-riding commission," which is paid to brokers and others as a consideration for finding persons to underwrite.

If a private company desires to pay underwriting commission it must deliver to the Registrar a statement in the prescribed form (Sect. 53 (1) (c) (ii)).

There is no standard form of underwriting letter, and the conditions of this document vary considerably, each issuing house having its own form.

When the whole of a share issue is taken up by the public, the underwriters are, of course, relieved wholly of their liability, and merely take their commission. It may so happen that the underwriters wish to have an allotment of the shares in any case, and underwriting agreements usually contain a clause for so much stock or so many shares to be taken "firm." It will thus be seen that the apportioning of underwriters' liability may sometimes be rather complicated.

Let us take a rather simple example to show apportionment: assume an issue of 50,000 shares, underwritten thus—A, 500; B, 2,000; C, 5,000; D, 17,500; E, 25,000. Of these, B wants 500 of his 2,000 "firm," and C 4,500 "firm" out of his 5,000. Public subscriptions amount to 25,000 shares. Each underwriter would get relief to the extent of 50 per cent and we may set the position out thus—

| Shares underwritten       | 50,000 |
| Applications from public  | 25,000 |
| Underwriters’ firm applications | 5,000 | 30,000 |

Number of shares to be apportioned 20,000
We proceed to apportion as follows—

<table>
<thead>
<tr>
<th>Amount Under-written</th>
<th>Taken Firm</th>
<th>Liability</th>
<th>Proportion</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>A 500</td>
<td>—</td>
<td>500</td>
<td>5/450 = 1/9</td>
<td>= 222</td>
</tr>
<tr>
<td>B 2,000</td>
<td>500</td>
<td>1,500</td>
<td>15/450 = 1/3</td>
<td>= 667</td>
</tr>
<tr>
<td>C 5,000</td>
<td>4,500</td>
<td>500</td>
<td>5/450 = 1/9</td>
<td>= 222</td>
</tr>
<tr>
<td>D 17,500</td>
<td>—</td>
<td>17,500</td>
<td>175/450 = 7/6</td>
<td>= 7,778</td>
</tr>
<tr>
<td>E 25,000</td>
<td>—</td>
<td>25,000</td>
<td>25/45 = 1/18</td>
<td>= 11,111</td>
</tr>
<tr>
<td>50,000</td>
<td>5,000</td>
<td>45,000</td>
<td></td>
<td>= 20,000</td>
</tr>
</tbody>
</table>

It will be noticed that, in the case of C, the amount that he takes "firm" in excess of what he would have otherwise been called upon to take, goes to swell the relief given to the other underwriters.

If it becomes necessary to allot shares to underwriters, such shares must be paid for in exactly the same way as are those taken by members of the public.

The legal requirements are set out in Section 53 of the Act. The payment of the commission must be authorized by the Articles, it must not exceed 10 per cent or the amount mentioned in the Articles, whichever is the less, it must be disclosed in the prospectus or statement in lieu, and there must also be disclosure in the balance sheet and annual return.
REGISTER OF MEMBERS AND SHARE LEDGER

Name..................Dawes, Arthur...................... Date of Entry as a member............7th Jan., 19... ..........  
Address..................51 High Street, Bathston............ Date of Ceasing to be member ...........................................

<table>
<thead>
<tr>
<th>Dr.</th>
<th>CASH ACCOUNT</th>
<th>Cr.</th>
</tr>
</thead>
<tbody>
<tr>
<td>19.. Jan. 7</td>
<td>Application and Allotment</td>
<td>1</td>
</tr>
</tbody>
</table>

SHARES DISPOSED OF

<table>
<thead>
<tr>
<th>Date</th>
<th>Transfer No.</th>
<th>Number of Shares</th>
<th>Distinctive Numbers (if any).</th>
<th>Nominal Value.</th>
<th>Date</th>
<th>Allot. or Transfer No.</th>
<th>No. of Shares</th>
<th>Distinctive Numbers (if any).</th>
<th>Nominal Value.</th>
</tr>
</thead>
<tbody>
<tr>
<td>19.. Jan. 7</td>
<td>A1</td>
<td>100</td>
<td>From 1</td>
<td>To 100</td>
<td>£ 100 - -</td>
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<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

SHARES ACQUIRED
Ruling for Card Index for Share Register

**NAME**........... Smith, James........... 
**ADDRESS**........ 1 Elm Street, Livertown...........

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<thead>
<tr>
<th>Folio</th>
<th>Date</th>
<th>Bought</th>
<th>Sold</th>
<th>Balance</th>
<th>Folio</th>
<th>Date</th>
<th>Bought</th>
<th>Sold</th>
<th>Balance</th>
</tr>
</thead>
<tbody>
<tr>
<td>4/102</td>
<td>1/6/19</td>
<td>100</td>
<td>-</td>
<td>100</td>
<td>188</td>
<td>2/3/19</td>
<td>£200</td>
<td>-</td>
<td>£200</td>
</tr>
<tr>
<td></td>
<td>1/8/19</td>
<td>-</td>
<td>50</td>
<td>50</td>
<td></td>
<td>3/7/19</td>
<td>£200</td>
<td>-</td>
<td>£400</td>
</tr>
<tr>
<td></td>
<td>2/9/19</td>
<td>50</td>
<td>-</td>
<td>100</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**REMARKS**
Dividends to West Bank, Ltd., Markets Branch, Livertown.
Circular to Shareholders that Share Certificates are Ready for Delivery

THE EXEMPLARY COMPANY, LIMITED
99 Lune Street,
London, E.C.1

Dear Sir (Madam),

I beg to inform you that the share certificates for the recent issue of 200,000 Ordinary Shares will be ready for delivery in exchange for the Allotment Letters with bankers’ receipts for calls annexed thereto, on and after 25th inst., between the hours of 10 and 2 (Saturdays, 10 to 12), at the above address.

If you so desire, the share certificate will be sent to you by post, provided you complete and sign form A annexed hereto, and return it to me accompanied by the Allotment Letter, etc., or if you wish the certificate to be handed to some other person on your behalf, form B should be completed and signed, and handed together with the Allotment Letter and bankers’ receipts, to your nominee, who on lodging them with the Company, will receive the Share Certificate.

Yours faithfully,

For and on behalf of Exemplary Co., Ltd.,

H. WILLING, Assistant Secretary

FORM "A"

To the Secretary, Exemplary Co., Ltd.

Dear Sir,

Please forward the share certificate for the... Ordinary Shares registered in my/our name(s) to me/us by post, at my/our risk. I/we enclose the Letter of Allotment with Bankers’ Receipts attached.

Signature ... Address ...

Date ........ .......... ........

FORM "B"

To the Secretary, Exemplary Co., Ltd.

Dear Sir,

Please deliver the Share Certificate for the... Ordinary Shares registered in my/our name(s) to... of... who will hand you the Letter of Allotment and Bankers’ Receipts in exchange, and whose receipt for the share certificate shall be your sufficient discharge therefor.

Signature ... Address...

Date ........ .......... ........
Offer of new shares, to accompany circular of the Company.
Size 13 in. by 8½in., the receipt being exactly a quarter of the whole form.

**Imperial Trust, Limited.**

**AUTHORISED CAPITAL £ , DIVIDED INTO SHARES OF £
EACH, OF WHICH SHARES HAVE BEEN ISSUED AND ARE FULLY PAID UP.**

**FURTHER ISSUE OF SHARES OF & EACH**

At Par.
At a Premium of per Share.

983, Cornhill,

.................... 19.

To the SHAREHOLDER whose name and address are written in the bordered space on the reverse of this Letter.

Sir (or Madam),

With reference to our Circular of this date, your present holding and the extent of your right to participate in the above-mentioned issue are specified on the reverse of this Letter, opposite your name and address.

If you intend to take up the Shares to which you are entitled, will you please fill up and sign the Form of Acceptance and forward the entire sheet with the necessary remittance, to the Company’s Bankers, the Bank of London, Limited, 83, Lombard Street, London, E.C., to be received by them not later than

If you desire to transfer your rights, you must sign the “Form of Renunciation and Nomination,” as set out on the reverse of this Letter, and your Nominee(s), who must be of full age, must (instead of you) then fill up and sign the Acceptance Form and forward the entire sheet with the necessary remittance as directed in the preceding paragraph.

Should you elect to divide your rights, the entire Form must be deposited at the Company’s Office to be cancelled and exchanged for Split Forms.

If the Conditions as to Acceptance and Payment are not duly observed, your right to participate in the above-mentioned Issue will be absolutely forfeited (and the Directors will deal with the Shares for the benefit of the Company at their discretion).

Yours faithfully,

Secretary.

A Share Certificate in the name of the Acceptor will be ready on ___________; it will be exchanged on or after that date at the Company’s Office, 983, Cornhill, in exchange for this Receipt.

5—(B.6198)
IMPERIAL TRUST, LIMITED.

FORM OF RENUNCIATION AND NOMINATION, to be signed by the Shareholder only if the Rights are renounced.

To the Directors of the IMPERIAL TRUST, LIMITED.

I/we hereby renounce my/our right to the above-mentioned new Shares and nominate

Name (in full), Address and Description of Nominee. (If lady, state whether spinster, wife or widow.)

... ... ... ... ...

... ... ... ... ...

to have all the benefits of the offer contained in your Circular dated

(Signature of Shareholder)*

Date. ............... 19...

* Instructions as to Signatures of Joint Holders.

FORM OF ACCEPTANCE to be signed by the Shareholder or Nominee.

To the Directors of the IMPERIAL TRUST, LIMITED.

Having paid to your bankers the sum of £... ... ... ... ... being the First Instalment at the rate of £... ... ... ... ... per Share in respect of £... ... ... ... ... Shares referred to in the within letter, I/we the above-mentioned Shareholder(s)/Nominee(s) hereby accept your offer of the said Shares pursuant to the Memorandum and Articles of Association of the Company, and subject to the terms and conditions of your Circular of... ... ... ... ... and I/we authorize you to place my/our name(s) on the Register of Members in respect of the said Shares.

(Signature of Acceptors)*

Date. ............... 19...

* Instructions as to Signatures of Joint Acceptors.

Cheques should be made payable to BEARER and crossed NOT NEGOTIABLE.

If altered from “Order” to “Bearer” the alteration should be signed by the Drawer.

The Acceptors is particularly requested to write clearly, within the bordered space below, his or her name, and the full address to which the receipt should be sent. For Joint Accounts the first name should be written within, and the other or others below, the bordered space.

CASHIER.

---

IMPERIAL TRUST, LIMITED.

Further Issue of Shares of £... ... ... ... ... each at £...

Received for account of the Imperial Trust, Limited, from the person(s) whose name(s) is/are written in the margin, the undermentioned amount being the First Instalment at the rate of £... ... ... ... per Share, payable on Acceptance of Shares of above-mentioned issue.

For BANK OF LONDON, LIMITED.

Cashier.

---

For instructions as to exchange of this Receipt for Certificate see reverse.
Specimen Provisional (or Conditional) Allotment Letter

THE EXEMPLARY COMPANY, LIMITED

Issue of ..........shares of £......... .....each at......... . per share (at par)

ALLOTMENT LETTER

Name
Address
Dear Sir (Madam),

In accordance with the terms of the Company's circular dated...........day of... ... .......19......, you, as the registered holder on the... .......day of... ... ...........19......, of................

Ordinary Shares in this Company, are entitled to have allotted to you......... new Ordinary Shares at the price of ...........

per share, payable as follows—

..... ......s. per share on ......day of... ... .......19... .

...... ......s. per share on......day of... ... .......19......

Balance of ...... ......s. per share on........day of... ... .......19

The form of Acceptance marked " 1 " annexed hereto must be completed and signed by you, and lodged, together with this Allotment Letter and a remittance for £........ ..... , with the Company's bankers, West Bank, Ltd., 41 Bradd Street, Livertown, or any branch of the bank, on or before the said ...........day of........... ......,19......, otherwise your right to this allotment will lapse. The subsequent instalments, the amounts whereof are shown below, must also be paid to the said Bank, on or before their respective due dates, and this letter presented at the time of payment. After each payment is made the Allotment Letter will be returned to you duly receipted.

As stated in the circular, you may renounce this Allotment in favour of any other person, provided you complete and sign the form of Renunciation marked " 2 " annexed hereto, and the person in whose favour you renounce completes and signs the form of Acceptance, and lodges the forms, together with this Allotment Letter and a remittance for the amount stated above, with the Company's bankers on or before the said ...........day of... ... .......19....... If you wish to renounce a portion of the shares offered, divided Allotment Letters will be issued, provided application therefor is made on or before the...........day of... ... .......19......, and this Allotment Letter returned. This Allotment Letter will only be divided once. The charge for each divided Allotment Letter issued is 15.

Cheques should be drawn payable to "West Bank, Ltd. or Bearer," and crossed "Not Negotiable." Any alteration from "Order" to "Bearer" must be initialed by the drawer of the cheque.

BY ORDER OF THE BOARD,

...... ..... .......Secretary.
RECEIPT FOR ALLOTMENT MONEYS

Received £ ..... being the amount payable on acceptance of this allotment.

For West Bank, Ltd. Cashier.

Date. .................. .......... .

(2) Exemplary Co., Ltd. (2)
Received £ ......... being amount
of instalment due on ................
For West Bank, Ltd. ................
Date. ..................

(1) Exemplary Co., Ltd. (1)
Received £ ......... being amount
of instalment due on ................
For West Bank, Ltd. ................
Date. ..................

THE EXEMPLARY COMPANY, LIMITED

Name
No. ......... ..... 
Address

1. FORM OF ACCEPTANCE (to be signed by the shareholder(s) or person(s) in whose favour renunciation is made).

To the Directors, Exemplary Co., Ltd.

Having paid to your bankers the sum of £ ..... ,, being the first instalment at the rate of ......... s. per share on the............. shares to which I/we are entitled in accordance with the terms of the Company's circular letter dated ............. day of ............. 19. ........., I/we, the above-mentioned shareholder(s) nominee(s) hereby accept the allotment of the said shares, pursuant to the Memorandum and Articles of Association of the Company and subject to the terms and conditions of the said circular, and authorize you to place my/our name(s) on the Register of Members in respect of the said shares. Dated this ............. day of ............. 19. .........

| Name(s) in full of shareholder(s) | |
| or nominee(s) | |
| Signatures | |
| Addresses | |
| Descriptions | |

(A lady should state whether Married, Widow, or Spinster.)

2. FORM OF RENUNCIATION (to be signed by shareholder(s) only if right to allotment is renounced).

To the Directors, Exemplary Co., Ltd.

I/we hereby renounce my/our right to the above-mentioned allotment of shares and nominate the above-mentioned person(s)
to have all the benefits of the offer contained in your circular letter dated............ day of .................19........

<table>
<thead>
<tr>
<th>Name(s) in full</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Addresses</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Signature(s) of Shareholder(s)</th>
<th></th>
<th></th>
</tr>
</thead>
</table>

| Date |    |    |

Note. The names, addresses, and descriptions of the person or persons in whose favour renunciation is made must also be written in the spaces provided on the back of the Allotment Letter.
Allotment Letter with receipts for amount due on allotment and for payment in full. Size 18 in. by 8½ in., the dockets being exactly a fourth of the total length.

ALLOTMENT LETTER.

No.

IMPERIAL TRUST, LIMITED,
923, CORNHILL,
LONDON, E.C.,

. . . . . . . . , 19

ISSUE OF SHARES OF

SIR OR MADAM,

In response to your application, you have been allotted— Shares of £ each

Stock or Bonds

of the IMPERIAL TRUST, LIMITED.

The amount payable on Application and Allotment (viz., per Share per cent.) is £

You have already paid . . . . . .

Making amount due from you on Allotment . . . . . . £

Making amount due to you, for which a cheque is enclosed . . . . £

Payment of the amount due from you should be made on or before the date directed below.

(Further particulars as to Payment in Full, Instalments and other matters can be inserted here as required.)

By Order of the Board,

Secretary.

This Form, with remittance, must be forwarded entire to the Company's Bankers, the Bank of London, Limited, 88, Lombard Street, London, E.C., who will return it duly receipted. It should then be carefully preserved to be exchanged for the relative Certificate (or Scrip) in due course. Notice of such exchange will be given by the Company (by advertisement).

Cheques should be made payable to Bearer and crossed NOT NEGOTIABLE.

If altered from "Order" to "Bearer" the alteration should be signed by the Drawer.

Received for account of the IMPERIAL TRUST, LIMITED, payment in full on the above-mentioned Shares.

Stock.

For BANK OF LONDON, LIMITED

Cashier.

Date . . . . . . 19

PAYMENT IN FULL.

No.

IMPERIAL TRUST, LIMITED.

£.

Date

ALLOTMENT.

No.

IMPERIAL TRUST, LIMITED

Date . . . . . . . 19
CHAPTER VII

CALLS AND FORFEITURE

ARTICLES usually empower the directors to make calls of such an amount and at such times as they think advisable, although there are sometimes restrictions, for example, that no call shall exceed one-fourth of the nominal value of the shares, or be payable less than one month from the last call, and that members shall have fourteen days’ notice (Table A, Clause 15). Calls must be made strictly in accordance with the provisions of the articles, otherwise the call may be invalid. The resolution making the call must be passed at a properly constituted board meeting (although if the meeting was not properly constituted, the resolution could be confirmed at a subsequent meeting properly constituted), and the call resolution must state the date of payment of the call, otherwise it is invalid (Cawley & Co. (1889), Johnson v. Lyttle’s Iron Agency (1877)). A specimen resolution making a call is given on page 328. Articles sometimes provide that the call shall be deemed to be due and owing from the making of the resolution, although it is payable only on a future date, but in the absence of such a provision it seems that the call is due only when the members are notified of the resolution (Shaw v. Rowley (1847)).

Procedure on Making a Call

The secretary should draft, and have printed, sufficient call letters (specimen on page 123) for issuing on the call resolution being passed. The requirements of the articles as to length of notice of call, etc., should be complied with in drafting the call letter. Arrangements should be made with the company’s bankers to receive the call moneys, and to
credit them to a special call account instead of to the general account. Some companies adopt the practice of collecting the call moneys direct themselves, but as this would involve considerable work in the transfer department, and the expense of sending receipts by post to those members who do not attend personally to pay the call, and also because it is not so convenient for shareholders, it is not recommended.

When the resolution is passed, the call letters should be issued immediately to all registered members, and for this purpose all transfers in hand prior to the passing of the resolution should be registered, and, if for any reason registration must be delayed, the transferees should be notified that the call has been made. It was held in Cawley & Co. (1889), that where directors had power to refuse registration "if the member (transferor) was indebted to the company," the time for ascertaining whether such state of indebtedness exists was "when the transfer was properly presented for registration," and therefore if a call was made after a transfer had been presented, the transfer could not be refused. It is usual to refuse to register a transfer of partly paid shares after a call has been made, unless the call is first paid, and most probably the articles would empower the directors to refuse to register transfers of partly paid shares. It may be thought desirable to close the transfer books until after the last day appointed for payment of the call, and such a course would greatly facilitate the collection of the call.

A list of members should be prepared on the lines of the specimen shown later. Each member should be allotted a consecutive number which should appear on the call letter and the annexed receipt. The call letters should be made out from the share register, and the call list could be written up at the same time —one clerk calling out the details from the share
register and debiting each member with the amount due from him, another clerk writing out the call letters, and a third clerk writing up the call list. The amounts due from members, as shown by the call list, should then be totalled, and checked with the total due in respect of the call, to ensure that there are no

*Specimen Call List*

Second Call of 5/- per share on Ordinary Shares due on..... day of.......19...

<table>
<thead>
<tr>
<th>No.</th>
<th>Name</th>
<th>Address</th>
<th>No. of Shares</th>
<th>Sh R Folio</th>
<th>Amount Due</th>
<th>Date Paid</th>
<th>Amount Paid</th>
<th>Remarks</th>
</tr>
</thead>
<tbody>
<tr>
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</tr>
</tbody>
</table>

errors. The call letters are then issued in accordance with the regulations of the articles for the giving of notices to members, and a record of the posting preserved.

As the calls are paid to the bankers, the bankers receipt the call letter in the space provided, and detach from the foot of the call letter the perforated slip showing the details of the payment, and credit the call-account pass book accordingly. The slips are then forwarded to the company, and the secretary will mark off the call list, and post the payments to the share register, and check the call-account pass book. On the last day appointed for payment of calls, those members in arrear will be served with reminders (and informed that their shares are liable to forfeiture if the articles so provide).

Subsequently, the share certificates will be called in for endorsement to show that the call has been paid,
or alternatively, new certificates may be issued. A suitable form of endorsement is—

THE EXEMPLARY COMPANY, LIMITED

This is to certify that the ........Call of............... per share, due on the..... ..... day of...... ........making the shares fully paid (paid up to the extent of ...... per share) has been duly paid.

For and on behalf of The Exemplary Co., Ltd.,

... ... Secretary.

Date... .....19...

The endorsed certificates or new certificates will be issued to members only on their surrendering their call receipts, which when surrendered are cancelled and filed in numerical order.

Instalments Payable in Accordance with Prospectus

Unless the articles or prospectus so provide, instalments stated in the prospectus to become due and payable on fixed dates are not deemed to be calls so as to entitle the company to exercise any rights conferred by the articles against members in arrear with calls (Crosskey v. Bank of Wales (1863), and see Table A, clauses 19 and 39). It is not necessary to send notices to allottees reminding them of the due dates of the instalments, because they are bound by contract to pay the instalments on the dates specified, but reminders are usually sent. Sometimes the allotment letters are printed with forms of receipt annexed for collection of the instalments; alternatively, separate notices, each having a form of receipt annexed, are issued just prior to the due dates of each instalment, and this course is more convenient if there is a considerable volume of dealings with the shares immediately after allotment. There will be no necessity to prepare a list of members, and the instalment notices can be prepared direct from the share register, each account being at the same time debited with the amount due
in respect of the instalment. Transfers should not be passed after the due date of the instalment unless this has been paid. When share certificates are issued subsequently, the allotment letters and instalment receipts must be surrendered in exchange for the certificates.

The form of an "instalment reminder" will follow the same lines as the following specimen call letter, except that the first paragraph of the reminder will be worded—

In accordance with the terms of a Prospectus dated............. the..................... instalment of............ shillings per share on the Ordinary Shares of this Company becomes due for payment on the........... day of........... 19.... next, making the shares paid-up to the extent of .... per share (fully paid).

Specimen Call Letter

THE EXEMPLARY COMPANY, LIMITED

99 Lune Street,

.... 19.....

Name
Address

Dear Sir (Madam),

I have to inform you that the directors by a resolution of the Board dated........ day of........ 19..., have made a call of........ per share on the...... Shares of the Company, making these shares (fully paid) (paid up to the extent of .... per share).

The amount due from you in respect of the...... shares registered in your name is £......, which amount must be sent on or before............ next, together with this entire notice, to the Company's bankers, West Bank, Ltd., 41 Oldbury, E.C.3, or to any branch of the Bank, which will return the notice duly receipted.

This Call Letter, when duly receipted, should be carefully preserved, as it will have to be surrendered subsequently when the share certificates are issued, and a further communication in this connection will be sent to you in due course.

By Order of the Board,

G. Smart, Secretary.
Forfeiture of Shares

Shares can only be forfeited for non-payment of calls (Hopkinson v. Mortimer Harley & Co. (1917)), and the articles must authorize forfeiture, otherwise sanction of the Court is necessary (Clark v. Hart (1858)), or the articles must be altered to permit forfeiture. The requirements of the articles as to forfeiture must be strictly complied with, otherwise the forfeiture will be invalid (Johnson v. Lyttle's Iron Agency (1877)). If it is sought to forfeit shares for non-payment of an amount becoming payable on a fixed date in accordance with the terms of the prospectus, the articles must provide that the regulations as to forfeiture shall apply (Crosskey v. Bank of Wales (1863)).

The procedure on forfeiture depends on the articles, and the following is an outline of the procedure based on Table A, Clauses 33 et seq—

1. The Board pass a resolution that a notice be given to the shareholder in default, requiring payment of the call with interest on or before a certain date (being not less than 14 days from the date of service of the notice) and informing him that otherwise the shares will be forfeited. This notice should be served by registered letter post, and a duplicate of the notice retained endorsed with a memorandum of posting by the clerk who posts the letter, and the registration receipt should be annexed.

2. If the shareholder fails to comply with the notice, the shares may be forfeited, and if that course is decided on, the
directors pass a resolution forfeiting the shares. A specimen resolution is given in Chapter XV. The resolution must be validly passed at a properly constituted meeting. A copy of the resolution may be sent to the member, but Table A does not so require.

3. The Share Account of the defaulting member is then closed by a transfer of his holding to a "Forfeited Shares Account," and the appropriate entries made in the financial books (and transfer Posting Journal if the Share Registers are kept on the self-balancing principle).

A member whose shares are forfeited is liable to be put upon the "B" list of members if liquidation ensues within 12 months after forfeiture, but the company has no claim upon him for the calls in respect of which the forfeiture was made unless the articles so provide (Stocken's Case (1868)). If the articles do so provide, he may be sued as an ordinary debtor at any time, unless right of action becomes statute barred (Ladies' Dress Association v Pullbrook (1900)). Articles frequently provide that members in arrear with calls shall be precluded from attending and voting at meetings, and when notices are being issued or proxies scrutinized, this fact should be borne in mind. (See Table A, Clause 65.)

Reissue of Forfeited Shares

On forfeiture, shares become the property of the company, and can be sold for whatever they will fetch, provided that the company receives altogether from the ex-shareholder and the purchaser the same amount as is paid up in respect of other shares of the same class; for example, if a £1 share, 15s. paid up, is forfeited for non-payment of the final call of 5s. per share, the share may be issued to a purchaser on his paying at least the final call of 5s. per share, or whatever greater amount the company can obtain. In other words, forfeited shares may be sold at a discount not exceeding the amount paid up at the time of the sale (Morrison v. Trustees Corporation (1898)). If the amount received
from the ex-shareholder and the purchaser does not make the shares paid up to the same extent as other shares of the same class, the purchaser can be called upon to pay the unpaid balance even though the company purported to sell the shares as fully paid up (New Balkis v. Randt Gold Mining Co. (1904)), but if any calls are subsequently recovered from the ex-shareholder, the purchaser is entitled to be credited therewith (Randt Gold Mining Co. (1904)).

Forfeiture may be annulled, with the consent of the ex-shareholder, if the articles so permit.

The procedure on reissue of forfeited shares will, of course, depend on the articles. In the unlikely event of the articles omitting to prescribe procedure on reissue of forfeited shares, it is submitted that the procedure laid down by Table A (of which the following is an outline) could be safely followed without the necessity of adding appropriate clauses to the articles.

1. A director or the secretary makes a statutory declaration setting forth details of the shares, and the date on which they were forfeited, and declaring that the shares were duly forfeited on that date.

2. In order to vest the shares in the purchaser, the company may execute a transfer to him, which is duly registered, and a share certificate issued to the purchaser. An appropriate form of resolution on sale of forfeited shares is as follows—

"THAT the 100 Ordinary Shares of £1 each, 15s. per share paid up, numbered 1515 to 1614 (inclusive) having been duly forfeited by resolution of the Board dated 15th March, 19..., be reissued as fully paid to Mr. K. Keen, of Sutton, Surrey, at 10s. per share, representing the unpaid Final Call of 5s. per share and 5s. per share premium, AND THAT the Seal be affixed to the transfer of the said shares to the said K. Keen, AND THAT the said transfer be and is hereby passed for registration.

"AND THAT a certificate for the shares in the name of K. Keen be duly sealed and signed."

3. The shares are then transferred from the "Forfeited Shares Account" and registered in the name of the purchaser, and a share certificate issued to him. The appropriate entries should also be made in the financial books.
CHAPTER VIII

TRANSFER AND TRANSMISSION

The procedure on transfer and transmission of shares is intricate, and demands considerable care and skill on its execution—mistakes and inaccuracies may result in considerable loss to the company, its shareholders, and others concerned. All students, company secretaries, and registrars, should, therefore, give the closest attention to this subject.

Many companies find that the magnitude of the transfer work justifies the formation of a "Transfer Department," under the control of an officer styled the "Registrar," who is responsible as regards all matters concerning dealings with shares, stock, debentures, etc., issued by the company.

The legal principles involved, and the procedure and organization necessary, in connection with all the modes by which shares and other interests in registered companies may change hands, as also many incidental matters which fall within the sphere of the Transfer Department, are dealt with in detail in this and the succeeding chapter.

The Legal Effect of a Transfer

A transfer passes to the transferee all rights and liabilities regarding the shares, etc., transferred as from the date of the sale, but in the absence of agreement to the contrary, does not entitle him to the benefit of dividends, bonus allotments, pre-emption rights, etc., accruing before the sale. nor does it make him liable to pay calls owing.

Black v. Homersham (1879). Shares were sold on 1st August, completion of the sale was to take place on 29th August. The
company declared a dividend on 24th August. Held the dividend belonged to the transferee.

_Stewart v. Lupton_ (1874). A company made an offer of shares to existing shareholders. A shareholder had sold his holding, and the transfer had been lodged but not registered, with the consequence that the offer of new shares was made to the transferor, whereupon the transferee claimed that he was entitled to the right to subscribe for the new shares because the transfer took place before the date when the new shares were offered by the company, and the Court agreed with him.

These examples show the legal effect of a transfer as between the parties to it. The position is not the same from the point of view of the company. All transfers must be passed by the board of directors (or its agents in that behalf, for example, the transfers committee) before a transferee can be registered as a member, and the date when the transfer is so passed, and not the date of the transfer, should be entered in the register of members as the date on which the transferee became entitled to the shares. The share certificate should also bear this date. If a secretary or other officer of the company without authority enters a transferee as member, the entry is of no effect (_Chida Mines v. Anderson_ (1905)), and if directors pass a transfer in error and thereupon entries are made in the register of members, the entries so made are of no effect, and can be struck out (_Bank of Hindustan, etc., Anderson’s case_ (1869)). A director cannot, by wilfully refusing to attend board meetings, prevent the registration of a transfer. The Court will compel registration (_Copal Varnish Co._ (1917)). Therefore, until the transferee has been registered as a member, the registered holder is the only person who must be recognized by the company as being the owner of the shares. The fact that the company or its officers may know that the shares have been transferred is immaterial. Until the transferee is registered, dividends must be paid to the transferor (even though the shares were sold “cum
div."), rights to allotments of bonus shares or to subscribe for new issues vest in the transferor (even though the shares were sold "cum rights"), liability to pay calls rests upon the transferor—because in all these cases it is he and not the transferee who is the member of the company and who enjoys the rights and incurs the liabilities of membership. According to the terms of his contract with the transferor, the transferee may or may not be entitled to the dividends, etc., or be liable to pay any calls, but this is not the concern of the company—the company can only deal with its member, and must leave the parties to settle their respective rights and obligations between themselves.

It must, however, be remembered that the register of members is only prima facie evidence of membership, and, of course, if the transferee should have been registered as a member, but owing to some neglect or omission on the part of the company was not so registered, the position would be different, and he could call upon the company to recognize his rights.

Directors are by custom allowed a reasonable time within which to make inquiries before passing and registering transfers; therefore they must not unduly delay to register, or, where they have power, refuse to register a transfer, otherwise there may be a ground for an action for damages (Ottos Kopje Diamond Mines (1893)).

The Companies Act, 1948, provides—

Sect. 73. The shares or other interest of any member in a company shall be personal estate, transferable in manner provided by the articles of the company, and shall not be of the nature of real estate.

Sect. 74. Each share in a company having a share capital shall be distinguished by its appropriate number: Provided that, if at any time all the issued shares in a company, or all the issued shares therein of a particular class, are fully paid up and rank pari passu for all purposes, none of those shares need thereafter have a distinguishing number so long as it remains
fully paid up and ranks *pari passu* for all purposes with all shares of the same class for the time being issued and fully paid up.

Sect. 75. Notwithstanding anything in the articles of a company, it shall not be lawful for the company to register a transfer of shares in or debentures of the company unless a proper instrument of transfer has been delivered to the company:

Provided that nothing in this section shall prejudice any power of the company to register as shareholder or debenture holder any person to whom the right to any shares in or debentures of the company has been transmitted by operation of law.

Sect. 76. A transfer of the share or other interest of a deceased member of a company made by his personal representative shall, although the personal representative is not himself a member of the company, be as valid as if he had been such a member at the time of the execution of the instrument of transfer.

Sect. 77. On the application of the transferor of any share or interest in a company, the company shall enter in its register of members the name of the transferee in the same manner and subject to the same conditions as if the application for the entry were made by the transferee.

Sect. 78. (1) If a company refuses to register a transfer of any shares or debentures, the company shall, within two months after the date on which the transfer was lodged with the company, send to the transferee notice of the refusal.

(2) If default is made in complying with this section, the company and every officer of the company who is in default shall be liable to a default fine.

Sect. 80. (1) Every company shall, within two months after the allotment of any of its shares, debentures or debenture stock and within two months after the date on which a transfer of any such shares, debentures or debenture stock is lodged with the company, complete and have ready for delivery the certificates of all shares, the debentures and the certificates of all debenture stock allotted or transferred, unless the conditions of issue of the shares, debentures or debenture stock otherwise provide.

The expression "transfer" for the purpose of this subsection means a transfer duly stamped and otherwise valid, and does not include such a transfer as the company is for any reason entitled to refuse to register and does not register.

(2) If default is made in complying with this section, the company and every officer of the company who is in default shall be liable to a default fine.

(3) If any company on whom a notice has been served requiring the company to make good any default in complying
with the provisions of subsection (1) of this section fails to make good the default within ten days after the service of the notice, the court may, on the application of the person entitled to have the certificates or the debentures delivered to him, make an order directing the company and any officer of the company to make good the default within such time as may be specified in the order, and any such order may provide that all costs of and incidental to the application shall be borne by the company or by any officer of the company responsible for the default.

Sect 81. A certificate, under the common seal of the company, specifying any share held by any member, shall be prima facie evidence of the title of the member to the shares.

Transfers cannot be registered after commencement of liquidation except in the case of (a) voluntary liquidation, when they are transfers to or with the sanction of the liquidator (Sect. 282), (b) compulsory or supervised liquidation, unless the Court orders otherwise (Sect. 227).

Liability to be placed on the "B" list of members in the event of liquidation ceases twelve months after the date of passing of the transfer, and not after the date of the transfer.

The Form of Transfer

The articles provide all regulations concerning transfers. Sect. 73 of the Companies Act, 1948, provides that shares shall be transferable in the manner authorized by the articles.

A specimen of the common form of transfer is given on the next page. (For Forms 1, 1(a), 2 and 2(a) see pages 202, 203.)

Transfers need not be by deed unless articles so prescribe. If articles provide that transfers shall be in the "usual or common form," then transfers must be by deed, as the common form of transfer is one under seal. Table A, clause 23, permits an instrument under hand, but the Stock Exchange Quotation Regulations require the common form of transfer to be used.
COMMON FORM OF TRANSFER

| I | in consideration of the sum of | $ | [See Note at foot] |
|   | paid by |                      |
|   | hereinafter called the said Transferee |
|   | Do hereby bargain, sell, assign, and transfer to the said Transferee— |
|   | of and in the undertaking called the |
| To Hold unto the said Transferee Executors, Administrators, and Assigns subject to the several conditions on which held the same immediately before the execution hereof; and the said Transferee do hereby agree to accept and take the said subject to the conditions aforesaid. |
| As Witness our Hands and Seals, this day of in the year of Our Lord, One Thousand Nine Hundred and |

Signed Sealed and Delivered by the above-named
in the presence of
Signature* Address Occupation

Signed Sealed and Delivered by the above-named
in the presence of
Signature* Address Occupation

Signed Sealed and Delivered by the above-named
in the presence of
Signature* Address Occupation

Note.—The consideration money set forth in a transfer may differ from that which the first Seller will receive, owing to sub-sales by the original Buyer; the Stamp Act requires that in such cases the Consideration money paid by the sub-Purchaser shall be the one inserted in the Deed, as regulating the ad valorem Duty; the following is the Clause in question—

"Where a Person, having contracted for the purchase of any property, but not having obtained a Conveyance thereof, contracts to sell the same to any other Person, and the property is, in consequence, conveyed immediately to the sub-Purchaser, the Conveyance is to be charged with ad valorem Duty in respect of the Consideration moving from the sub-Purchaser."

[34 & 35 Vict., cap 39 (1861), Section 58, sub-Section 4.]

* When a Transfer is executed out of Great Britain, it is recommended that the Signatures be attested by H.M. Consul or Vice-Consul, a Clergyman, Magistrate, Notary Public, or by some other Person holding a public position—as most Companies refuse to recognize Signatures not so attested. When a Witness is a Female she must state whether she is a Spinster, Wife, or Widow; and if a Wife she must give her husband's Name, Address and Quality, Profession or Occupation. The Date must be inserted in Words, and not in Figures.

A Husband must not witness the signature of his Wife, or vice-versa.
Restrictions on Transfer

Unless the articles restrict the right of transfer, the right is an absolute right. Private companies are by law bound to restrict the free transfer of their shares, and their articles usually require that shares proposed to be transferred must be first offered to existing members at a certain price, or at a price to be ascertained in manner prescribed, for example, by the auditors.

Where a quotation on the Stock Exchange is sought, it is a condition precedent to the granting of a quotation that there shall be no restriction on the transfer of fully paid shares.

Where directors have the right to decline transfers, the right must be exercised *bona fide*, and by a valid resolution of the board. The fact that the directors between themselves cannot agree to pass the transfer is not sufficient grounds for refusing to register it (*re Hackney Pavilion* (1923)). The grounds of refusal need not be disclosed unless the articles so require.

If directors refuse to pass a transfer, the secretary should write to the transferee, informing him of the directors’ refusal (and if authorized by the board, stating the grounds of refusal), and returning the transfer and share certificate. If the certificate had, as is usual, been cancelled on presentation of the transfer, a new certificate in the name of the *transferor* would be required.

Stamp Duties on Transfers

Secretaries and others concerned with the registering of transfers may incur penalties under the Stamp Act, 1891, if they register transfers which are not correctly stamped (see Chapter I). A sound knowledge of the stamp duties payable on transfers is therefore indispensable. The stamp duty on a transfer on sale, or operating as a voluntary disposition *inter vivos*, is as follows.
Where the value of the securities transferred—
1. Does not exceed £25—for every £5 or part thereof, 2s.
2. Exceeds £25 but does not exceed £300—for every £25 or part thereof, 10s.
3. Exceeds £300—for every £50 or part thereof, £1.

Observe that the stamp duty is not upon the consideration stated in the transfer, but upon the market value of the securities transferred. In most cases, however, the consideration stated is the true value of the securities, but it may happen that a low fictitious consideration may be stated with the object of avoiding stamp duty. The officials at the Inland Revenue stamp offices assess the duty according to the consideration stated in the transfer, as it is obviously impossible for them to have at hand information as to the market value of all securities that are transferred; but a secretary should know the current value of the company’s shares, and should reject a transfer on sale the consideration for which is less than the real value of the shares transferred.

In the following cases the transfer is liable only to a nominal stamp duty of 10s., provided that the transfer bears a certificate signed by both parties, stating within which case the transfer falls. In these cases it is customary to insert a small fictitious consideration, 5s. or 10s., and accordingly the transfer is said to be for a nominal consideration.

(a) Transfers vesting the property in trustees on the appointment of a new trustee of a pre-existing trust, or on the retirement of a trustee.
(b) Transfers, where no beneficial interest in the property passes, (i) to a mere nominee of the transferor, (ii) from a mere nominee of the transferee, (iii) from one nominee to another nominee of the same beneficial owner.
(c) Transfers by way of security for a loan or re-transfer to the original transferor on repayment of a loan.
(d) Transfers to a residuary legatee of stock, etc., forming part of the residue divisible under a will.
(e) Transfers to a beneficiary under a will of a specific legacy of stock, etc. (Note.—Transfers by executors in discharge, or
partial discharge, of a pecuniary legacy are chargeable with ad valorem duty on the amount of the legacy so discharged.)

(f) Transfers of stock, etc., forming part of an intestate’s estate to the person entitled to it.

(g) Transfers to a beneficiary under a settlement on distribution of the trust funds of stock, etc., forming the share or part of the share of those funds to which the beneficiary is entitled in accordance with the terms of the settlement.

(h) Transfers on the occasion of a marriage to trustees of stocks, etc., to be held on the terms of a settlement made in consideration of marriage.

(i) Transfers by the liquidator of a company of stocks, etc., forming part of the assets of the company to the persons who were shareholders, in satisfaction of their rights on a winding-up.

(As regards cases (b) and (c) in addition to the certificate referred to, the facts of the transaction must be stated.)

It must be remembered that a sale or transfer of shares valued at more than £20, but not more than £25, would only require an ad valorem stamp duty of 10s., and therefore it does not follow that all transfers stamped 10s. are transfers for a nominal consideration. Furthermore, in the case of a transfer for a nominal consideration, if the ad valorem duty on the value of the shares, etc., is less than 10s., then the ad valorem duty would be impressed, and in such circumstances it is probable that the transfer would not be drawn for a nominal consideration, the full value of the shares being stated, and thus dispensing with the necessity for a certificate as to the nature of the transaction.

The following points should also be known—

1. Under Sect. 42 of the Finance Act, 1920, where any marketable security is transferred to a stock-jobber or his nominee in the ordinary course of his business, the maximum duty shall be 10s., provided that the transfer bears in addition an impressed supplementary stamp denoting that it has been stamped under the provisions of the section. If any part of the securities transferred remains unsold after the expiration
of two months from the date of the transfer, the stock-jobber must pay to the Commissioners of Inland Revenue, on the value thereof, the difference between the *ad valorem* duty and the nominal duty. It may be added that it is not the concern of the secretary to see that this duty is accounted for.

2. In the case of transfers for a nominal consideration to or from a bank, the facts of the transaction need not be disclosed for the purpose of ascertaining the correctness of the stamp duty, but the secretary should require a certificate by an accredited representative of the bank concerned, stating that the transfer is exempted from *ad valorem* duty, and that it is correctly stamped.

3. Transfers by a holder of shares, to himself and another jointly, e.g. by a husband to himself and his wife, are chargeable with *ad valorem* duty on one half the value of the shares.

It may be remarked here that it is the *buyer* of securities who pays the stamp duties and fees (Rules of London Stock Exchange).

Government stocks do not attract stamp duty. Hence would-be stockholders in the nationalized undertakings such as transport and electricity can acquire holdings in these and the other Government stocks without paying stamp duty of £2 per cent on the consideration. The yield on "gilt-edged" is small, but the absence of stamp duty is a relief to some persons who have hitherto invested mainly in industrial stocks and shares.

**Incorrectly or Insufficiently Stamped Transfers**

If any transfer does not appear to be correctly stamped, for example, if the market value of the securities exceeds the consideration stated in the transfer, or if only the nominal stamp duty is impressed when apparently *ad valorem* duty should have been
paid, the transfer should not be registered but should be returned to the transferee—

(a) to be adjudicated, i.e. to be submitted to the Inland Revenue for their opinion as to the amount of stamp duty payable. When an instrument is so adjudicated, it is impressed with an additional stamp bearing the words "Adjudged duly stamped." Transfers so stamped can be accepted without question.

Alternatively—

(b) for a marking officer's certificate to be obtained, and returned with the transfer. This is a less formal procedure than adjudication. The parties report the facts of the case on an official form (No. 19) supplied for the purpose, and request the marking officer at one of the Inland Revenue stamping offices to certify on the form his opinion as to the stamp duty payable, based on the facts disclosed in the report. This marking officer's certificate should be retained by the secretary as it is the authority for passing the transfer as correctly stamped, and if it subsequently transpired that the stamp duty was not correct, he would not be liable under the Stamp Act. "It should be understood that this certification by a marking officer is not equivalent to adjudication, and that it is possible that cases may arise in which the registering officer (of a company), in consequence of special information in his possession or for some other good reason, may feel it incumbent upon him to require that the transfer be formally presented for adjudication in accordance with the provisions of Sect. 12 of the Stamp Act, 1891" (extract from circular to company secretaries by the Inland Revenue, February, 1911).

It need hardly be added that where the consideration stated in a transfer is in excess of the market value of the securities, the transfer can be safely passed, as the revenue has obtained all, and more than, the duty to which it is entitled.
Transfers may be certified although unstamped, undated, or unsigned by the transferee, obviously, because the transaction has not been completed, but it is not wise to certify a transfer which does not state the transferee's name, as there is the possibility that it may be lost or stolen, and get into the hands of an unscrupulous person who could fill in his or another name as that of the transferee, sign, stamp, and lodge the transfer, and thus obtain a share certificate for the shares comprised therein. Such an event would not affect the position of the company where the transfer was only under hand, but if it was under seal the completing of the blank would be inoperative to vest any rights in the transferee inasmuch as there had never been any delivery to him by the transferor, and the transferee would not obtain any title, but he might obtain a share certificate before the fraud was discovered, and if he sold the shares to a person who bona fide relied on the share certificate, such third party could claim shares or damages against the company (see Forged Transfers, page 182).

In the case of a transfer of shares upon which there are calls in arrear, there is nothing to prevent the transfer being certified, but it is recommended that a note be endorsed on the transfer to the effect that calls are in arrear and must be paid before the transfer is registered.

The consideration, number, and distinctive numbers (if any) and class of shares (or amount of stock) must, however, be stated.

As to certification against balance tickets, transfer receipts, etc., see pages 156 and 157.

Transfers are frequently certified by the secretaries of the London and provincial Stock Exchanges. The London Stock Exchange will, however, only certify transfers of stock and of fully paid shares. The secretary of the Stock Exchange endorses details of his certifications on the share certificate (or stock certificate), and forwards
it to the company for cancellation, giving instructions as to the issuing of the balance ticket in respect of any unsold balance of the holding. This saves time for stockbrokers and relieves company secretaries of some of the labour involved in certifying transfers.

**Duties Attending Certification of Transfers**

1. Observe that the certificate lodged refers to the shares being transferred, that the transferor has signed, transferee’s name inserted, consideration, number and distinctive numbers (if any) and class of share (or amount and class of stock) are stated.

2. Certify the transfer. A suitable form of certificate is as follows—

   **Exemplary Company, Limited**

   Certificate No. for shares has been lodged with the company this day of 19...

   ...................... Secretary (or Registrar).

3. Cancel the share certificate, and endorse on the back, for purpose of record, the date, name of transferee(s), number and distinctive numbers (if any) of shares transferred, broker by whom lodged. Many companies have their share certificates ruled with a schedule to record these particulars and other details which are inserted when the transfer is subsequently registered. A specimen of such a ruling will be found on page 175. A rubber stamp bearing the word “CANCELLED” in large letters can be used for cancelling share certificates, indelible endorsing ink being used, or alternatively the certificates can be very effectively cancelled by a perforator, it being possible to cancel several certificates at once by this method. It is, in particular, the signatures that must be cancelled, this being done by making large holes in them. This obviously renders the certificates inoperative.

4. Return certified transfer to seller or his broker.

5. Issue balance ticket to the transferor, or to his
broker. If several transfers, accounting for the whole of the shares comprised in one certificate, are presented together for certification, there will be no necessity for a balance ticket. A specimen balance ticket is given on page 173. A book of balance tickets with counterfoils, numbered *seriatim*, is recommended, the counterfoils serving as a register of balance tickets issued. When a balance ticket is subsequently surrendered, on the sale of the shares or the issue of a share certificate therefor to the transferor, the surrendered balance ticket should be attached to the appropriate counterfoil, the remaining counterfoils thus providing a record of balance tickets outstanding. Alternatively a carbon duplicate may be used instead of a counterfoil, and this method has the merit that an exact copy of the balance ticket is retained.

When balance tickets are surrendered, it is advisable to note thereon whether they were surrendered against transfers, or for the issue of a share certificate to the transferor.

6. It is usual nowadays to send an advice of lodgment to the transferor (although the balance ticket, if any, frequently serves the same purpose), in the same way as when a transfer is presented for registration, to guard against forgery. The balance ticket is, of course, frequently sent to a lodging agent (the person, firm or bank, etc., presenting the transfer), and for this reason a special advice of lodgment to the transferor may be necessary.

7. The cancelled share certificates should be kept in alphabetical or numerical order pending the lodging of the transfers for registration, when they should be attached to the transfer or transfers to which they relate.

**Register of Certified Transfers**

Opinion is divided as to whether it is desirable to keep a register of transfers certified. In view of the
fact that a record of the certification is endorsed on the back of the surrendered share certificate, and in view of the additional work involved in writing up a register of transfers certified, it is submitted that it is unnecessary to keep such a register.

Procedure on Registration of Transfers

1. When the transfer is lodged, issue a receipt therefor (commonly called a "transfer receipt"). Before issuing this, the transfer should be inspected to see that it is apparently in order, and if defective, then if the transfer was lodged by hand, it can be handed back at once for the matter to be put right, thereby saving the time and trouble of communicating with the transferee or his broker later. The transfer fee should also be paid before issuing the transfer receipt. A specimen transfer receipt is given on page 174. A book of, say, 100 or 200 transfer receipts with counterfoils, numbered *seriatim*, is recommended. Alternatively, a carbon duplicate may be used instead of a counterfoil, and this method has the merit that an exact copy of the transfer receipt issued is retained, besides saving the time and trouble of writing the details on the counterfoil. The name of the person or firm lodging the transfer should be indicated on the transfer and the transfer receipt. Some large companies have a mechanized system. When a transfer is passed, a carbon "fanfold" set is typed, comprising (i) acknowledgment of the transfer to the lodging agent, (ii) notice to the transferor, a separate notice to each if more than one, (iii) debit slip, (iv) credit slip, (v) slip for permanent filing to record the dispatch of the certificate. If desired there may be (vi) a form of receipt for the certificate, to be returned to the company.

2. Number the transfer. All transfer deeds should be numbered consecutively. Automatic numerators are used for this purpose. When there are two or more
classes of shares, transfers for each class should be numbered separately and distinguished by a prefix letter, such as O for Ordinary shares, P for Preference shares, D for Deferred shares, etc. Occasionally it may

<table>
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<tr>
<th>Exemplary Company, Limited</th>
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<tr>
<td>Receipt No.</td>
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<td>Transfer No.</td>
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<tr>
<td>Lodged</td>
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<td>Transferor's Fol.</td>
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<td>Transferee's Fol.</td>
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<tr>
<td>Cert. Dispatched</td>
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<tr>
<td>Remarks</td>
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happen that a transfer is presented which relates to more than one class of share—such a transfer cannot be refused unless the articles require separate transfers. The procedure here is to create a dummy transfer in the office, taking care to refer to the original transfer by number. It is also possible to obtain a photostat copy, altering the name of the class of share. A copy of some sort has to be made in order that the filed transfers, which are usually bound in volumes, are complete.

3. For the purpose of recording the various stages and operations in course of registration, and details
for reference purposes, the practice is to endorse on
the transfer, by means of a rubber stamp, a form of
schedule somewhat like the specimen shown on the
previous page.

Alternatively, a register of transfers can be used
for recording these particulars, but some secretaries
and registrars consider that a register of transfers
has its own advantages, and use such a register either
alone or in addition to the schedule stamped on the
transfer. Whether to adopt either or both of these
methods rests with each individual secretary or regis-
trar, as he must frame his organization and methods
to meet his own requirements and ideas. A specimen
ruling of a transfer register is shown on page 172.
Separate registers should be used for each class of share,
although where the number of transfers registered is
not very large, one register can be used, distinguishing
between different classes of shares by coloured inks.

4. Record the receipt of the transfer fee. This is
dealt with in detail on page 177.

5. Scrutinize the transfer to observe—
   (a) That it is in the form prescribed by the Articles.
   (b) That the correct stamp duty is impressed—particularly
        scrutinize any transfers stamped with a nominal stamp duty.
   (c) That the relative share certificate(s) or balance ticket is
        surrendered. In the case of a certified transfer, ascertain that
        the share certificate or balance ticket is in hand.
   (d) That the company's name, and the number, distinctive
        numbers (if any), and class of shares (or amount and class of
        stock) are correctly stated.
   (e) That the name, address, and description and (if possible)
        the signature of the transferor agree with the company's records.
        Many companies keep a card index containing specimen signa-
        tures of members, and their attorneys, a card being sent to
        each new member whose specimen signature is required, which
        when returned is placed in the card index (see page 84).
        If no such record is available, the signature could be compared
        with that on the share application form, or on the transfer
        to the transferor, or on the dividend request if one exists.
        In the case of a transfer executed by an attorney, an authen-
        ticated specimen of the attorney's signature should be called
        for, unless it is already in the possession of the company.
(f) That the full name, address, and description of the transferee is stated. This information is necessary for correctly writing up the register of members and making the annual return. (The occupation is not now necessary.)

(g) That the transfer is properly executed, and attested by an independent disinterested witness, and dated. Attestation is not necessary unless required by the articles, but if the common form of transfer is used, attestation is necessary, as the form requires it. It is quite legal for a husband to witness the signature of his wife, and vice versa, although most companies require otherwise. If the name of the transferee has been erased and another name inserted, a written undertaking should be demanded that there has been no sub-sale, as otherwise the revenue authorities would lose the duty on the original sale, and the secretary might make himself liable under the Stamp Act; and further, if the transfer is by deed, an undertaking from the transferor that the deed has been properly delivered to the transferee should be obtained, as it may happen that the original transfer may have been lost and the finder conceived the idea of inserting a name other than that of the true transferee, with the consequence that the transfer would be inoperative. (See Forged Transfers, page 182.)

A transfer presented a long time after its date is quite valid, but it certainly gives ground for inquiry, and the secretary may feel it incumbent on him to inquire as to the reason for the delay.

If the transfer is executed under a power of attorney, unless the power of attorney has been previously registered, the secretary should request its production, and whether produced or not, he should require evidence that the power is still in force and unrevoked. (See page 181.)

Where the transfer is wanting in any of the above matters, or if reference to the transferor's account in the register of members shows that the shares are subject to any lien, unpaid calls, distringas notice, or if the shares are being dealt with by executors, trustees, or other personal representatives and the requisite formalities on transmission have not been complied with, or if the transfer is deficient in any other respect, it requires special attention. These points are dealt with hereafter.

6. Cancel the surrendered share certificate or balance ticket (this may have already been done in the case of certified transfers).
7. Send to the transferor(s) at his registered address (not that stated in the transfer) an advice that the transfer has been lodged. The object of this is to prevent shares being transferred fraudulently, and to give the true owner an opportunity to intervene if fraud is taking place. There is no obligation on the company to send such an advice to the transferor, nor is it incumbent on the transferor to reply, and even if fraud is taking place and he neglects to reply he is not thereby estopped from denying the validity of the transfer (Barton v. London & North Western Railway Co. (1890). Such advice of transfer should be sent in a plain envelope without any indication of the name of the company, as a precaution against interception of the advice if there is any collusion afoot. Frequently such advice letters are sent to the transferor on certification. A specimen of such an advice letter is given below.

THE EXEMPLARY COMPANY, LIMITED

99 Lune Street,
London, E.C.1

To ... ... ... ... ... ... ... ... ... ... ... 19...

Dear Sir (Madam),

I have to inform you that a transfer purporting to be signed by you in respect of shares in favour of has been lodged for registration.

Unless I hear from you to the contrary by return of post, I shall assume that the transfer is correct and in order, and it will be duly registered.

Yours faithfully,
For and on behalf of Exemplary Co., Ltd.

8. Write out the new certificate.

9. After the lapse of a sufficient time to enable the transferor to raise objections if the transfer is not in
order (say three days), bring the transfers before the board (or transfer committee) to be passed, and have new share certificates sealed and attested as required by the articles.

10. Post to the register of members details of the transferee's name and shareholding, and rectify the transferor's account to show the shares he has disposed of. These details should be posted direct from the transfer itself—if the posting is done from the register of transfers, there is the possibility that errors made in entering up the register of transfers will be repeated in the register of members.

11. Dispatch new certificate and request a receipt. This receipt usually consists of a perforated slip to be detached from the share certificate. By Sect. 80, share certificates must be ready within two months after presentation of the transfer for registration, unless conditions of issue of shares provide otherwise.

12. File the transfers in numerical order with all relevant documents, such as cancelled share certificate, surrendered transfer receipt or receipt for new share certificate, and any correspondence incidental to the transfer. Reference to any transfer can then be immediately ascertained by means of the transfer number, which will be shown in the register of members in both transferor's and transferee's accounts. It is sometimes suggested that cancelled share certificates should be attached to the counterfoils in the share certificate books, but this would necessitate the constant handling of all counterfoil share certificate books, and would waste time and space. Another method is to keep the cancelled certificates in alphabetical or numerical order, but the inconvenience of keeping a large number of cancelled certificates in hand and constantly adding cancelled certificates, and the possibility of placing a certificate in wrong order, indicates that this method is not very practicable. The method advised of keeping
the transfer and all relevant documents filed away together in numerical order has much to recommend it. Transfer deeds should be preserved in perpetuity, as they constitute the titles of the various members and are the authority for making the necessary changes in the register of members.

In the remaining part of this chapter, many matters incidental to the registration of transfers, and amplifying the foregoing outline of transfer procedure, are considered in detail.

**Bringing Transfers Before the Board or Transfer Committee**

All transfers must be in order before they are brought before the board or transfer committee, and a sufficient time, say three days, should have elapsed to enable the transferor to communicate with the company if he has any objection to the transfer being passed. The cancelled share certificates, and the necessary new certificates, should be attached to each transfer. At the meeting, the transfers will be read over, and the new and cancelled share certificates checked therewith, these duties being severally undertaken by those present. If all is found correct, a resolution, passing the transfers and authorizing the affixing of the seal to the new certificates, is passed. Each transfer is then initialed by the chairman in the appropriate space on the form stamped on the transfer, or if a register of transfers is used, this can be initialed by the chairman. Sometimes a list of transfers is prepared, this being signed by the chairman when the transfers are passed. The new certificates are then sealed and attested as required by the articles, the necessary entry being made in the seal book.

If directors have power to reject transfers, and wish to exercise their right, a resolution to that effect must be passed (*re Hackney Pavilion* (1923)).
By Sects. 78 and 80, transfers must be passed and registered (or rejected, as the case may be) within two months after lodgment, unless conditions of issue of shares provide otherwise.

When entering the transfers in the register of members, the date of the entry should be the date when the transfers are passed and not the date of the transfer.

Transfer to a Company

The transferee company should be called upon to produce its memorandum and articles to ensure that the company has power to invest its funds in shares of other companies. A power to "subscribe" for shares is not the equivalent of a power to "buy" shares. The articles will also show the manner in which the seal of the company is to be affixed to the transfer, and a copy of the resolution authorizing the sealing of the transfer should be demanded. If the transfer is executed by an agent for the transferee company, evidence of his appointment should be demanded, for example, a power of attorney; or if the transfer is not required to be under seal, and is executed by an agent, a copy of the resolution appointing the agent, duly certified by the secretary of the transferee company, should be required. An authenticated specimen of the agent’s signature should also be obtained.

Transfer by a Company

The seal should be affixed in manner required by the transferor company’s articles, if the transfer is under seal, and a copy of the resolution of the board authorizing the sealing of the transfer should be obtained. If the transfer is executed by an agent, evidence of his appointment, and an authenticated specimen of his signature, should be required, as outlined in the preceding paragraph.
Transfer to an Infant

A company can and should refuse a transfer of partly paid shares to an infant, because of the fact that an infant can, either prior to, or within a reasonable time of, attaining his majority, repudiate his contract, unless he has acquiesced in membership after attaining full age, and the company may thereby suffer. It is doubtful whether a transfer of fully paid shares could be so refused. If in ignorance of his infancy a company has registered a transfer of partly paid shares to an infant, the company may on discovering the fact obtain an Order of Court for rectification of the register of members by substituting the name of the transferor for that of the infant (Symon’s case (1872)), unless the company has acquiesced in the infant membership (re National Bank of Wales, Massey & Griffin’s case (1907)), for example, by calling the infant to meetings, paying him dividends, etc.

Transfer by an Infant

A transfer of shares held by an infant cannot be effectually made, save under an Order of Court, and this authority should be demanded before the registration of any transfer by a shareholder known to be an infant. Unless made by an Order of Court, a transfer of shares by an infant is voidable, and such a repudiation by an infant would probably have troublesome and unpleasant results.

Transfer to a Partnership Firm

The partners should be registered as joint holders, and not as a “firm,” because in England and Wales (but not in Scotland) a firm is not a “person” at law. It is true that under the rules of the Supreme Court, a partnership can be proceeded against under the firm name, but it is very desirable that a company should at once be in a position to ascertain the names of all
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its members, and this would not be possible if the firm had been registered and there have been changes in the constitution of the firm.

Transfers to the Public Trustee

It occasionally happens that the Public Trustee is appointed to act in some matter necessitating the transfer of shares to the Public Trustee. The shares will be registered in the official title "Public Trustee," and if it is necessary to distinguish different holdings this can be done by means of numbers, for example, "Public Trustee, Account No. 1." Doubts have been expressed as to whether the indication of the name of the persons for whom the Public Trustee acts is not really a contravention of the rule that no notice of a trust must be entered on the register of members (see page 189), and for this reason it is better to use numbers as suggested. It is specially provided by the Public Trustee Act, 1906, that the entry of the Public Trustee by that name in the books of a company shall not constitute notice of a trust. The same remarks will apply to the registration of any other trust company which is registered, for example, Midland Bank Executor and Trustee Company, Limited.

Transfer to or by an Illiterate

It must be observed that the attestation clause in the transfer asserts that the transfer was first read over and explained to the illiterate, and that he or she appeared perfectly to understand it, and made his or her "mark" in the presence of the attesting witness(es). Two responsible witnesses are desirable in these cases.

Transfers Executed Out of the United Kingdom

These should be attested by a Notary Public, H.M. Consul, clergyman, Justice of the Peace, Attorney-at-Law, or the signatures should be guaranteed by a person, firm, or banking company of good standing.
Transfers by or to Joint Holders

All should sign unless one has authority to sign on behalf of the other or others, in which case the authority should be produced and dealt with as a power of attorney (see page 178). The advice of lodgment of transfer should be sent to all joint holders in order to ensure that there is no fraudulent dealing by one or some of them. In the case of a transfer to joint holders, it should be signed by or on behalf of all of them. The subject of joint holders is discussed further at page 162.

Transfers Executed Under a Power of Attorney

The power of attorney should be produced and an authenticated specimen of the attorney's signature obtained, and evidence that the power is still in force and unrevoked should be called for. (See page 178.)

Transfers Where Calls are in Arrear

Although the transferee would be liable to pay calls (a transfer being subject to the equities), it is customary to refuse to register the transfer unless the calls are paid. If the transferee is registered without the calls being paid, he will be subject to any disqualifications consequent upon non-payment of the calls, e.g. restriction on right to attend or vote at meetings, etc.

Transfers Where a Notice in Lieu of Distingrinas has been Lodged

A short explanation of the purpose of a notice in lieu of Distingrinas (sometimes called a "Stop Notice" or "Stop Order") may first be advisable. As previously stated, a company cannot recognize any person other than the registered holder as being entitled to the shares registered in his name. If a person claims an interest in those shares, it is not sufficient for him to notify the company, as the company cannot accept
such a notice by virtue of Sect. 117. The only effective way for such person to protect his interests, is to apply by affidavit to the Court stating his claim, and if the Court is satisfied it will issue a notice in lieu of distingas, which accompanied by a copy of the affidavit is served on the company by the interested party. The company is bound to accept such a notice, and particulars thereof should be recorded in the shareholder's account and also in the register of deeds and documents. The effect of the notice is that the company must not register any transfer of the shares, or pay any dividends thereon, without giving the interested party eight days within which to take steps further to protect his interests. In order to place an absolute restraint on a proposed transfer or dividend payment, the interested party must, within those eight days, obtain either an injunction or a charging order. If he does not do so, then the company is relieved of any further obligation to him, and can safely register the transfer or pay the dividend as the case may be. Therefore, if a transfer is presented relating to shares in respect of which a notice in lieu of distingas has been lodged, notice (by registered post) should be sent immediately to the person in whose favour the distingas was lodged, informing him that the transfer will be registered, unless within eight days from the date of the notice he takes further steps to protect his interests.

Transfers Where the Company has a Lien

If the articles give the company a lien on shares, for moneys owing to the company by a member, then if a member is indebted to the company, the secretary should see that a note thereof is recorded in the shareholder's account, and when a transfer is presented for registration it may be withheld pending payment of the debt. Transfers are subject to the equities, i.e.
a transferee would take the shares subject to the lien, if he becomes registered. If, however, a member sells part only of his holding, the transferee can call upon the company first to appropriate the remaining shares vested in the transferor (Gray v. Stone and Funnell (1893)). The Stock Exchange rules provide that there must be no liens on fully paid shares. Articles should empower companies to enforce their lien by sale. A company cannot enforce its lien by forfeiture, as this would amount to foreclosure without an Order of Court. If the company has a lien without a power of sale, the company must obtain an Order of Court authorizing the sale. The reader is referred to regulations number 11–14 of the 1948 Table A for a model set of rules concerning liens and their enforcement. A company's lien is subject to the equitable interests of third parties if they have notified the company before the member became indebted to the company (Bradford Banking Co. v. Briggs (1886)). Any pledgee of shares is bound to know the contents of a company's articles, and accordingly the pledgee is subject to the company's lien if the debt owing to the company became due before the pledgee gave the company notice of his interest. The position as regards liens must not be confused with that regarding trusts. A company cannot be affected with a notice of trust concerning its shares (except by a notice in lieu of distringas), but the company can, in its capacity as a chargee of the shares, be affected with a notice that some other person also has a charge on those shares. The company can enforce its lien against the registered holder, even though he is merely a trustee (New London and Brazilian Bank v. Brocklebank (1882)), but not if the company knew that the holder was not a beneficial owner (Mackareth v. Wigan Coal and Iron Co. (1916)). As the effect of a transfer is to constitute the transferor a trustee for the transferee, it would appear, from the last mentioned
case, that after a transfer has been lodged for registration, no lien can attach to the shares for debts incurred by the transferor after that date, even though the company refuses to register the transfer. If the articles so provide, a lien may be enforced where the member is indebted jointly with non-members, and articles may even extend the lien to shares held jointly, for the purpose of securing debts due from the joint holders individually. If shares are in the names of trustees, the company cannot, however, claim a lien in respect of a debt due from the beneficiary, as the latter is not the registered holder (ex parte Mexican Santa Barbara Co. (1890)).

The death of a shareholder does not affect the company’s lien. In Allen v. Gold Reefs of West Africa (1900), it was held that a lien is effective even though it is only instituted after the death of a shareholder.

Transfers Against a Balance Ticket

If a shareholder having sold part of his holding wishes to sell the remainder, he executes the transfer and hands to the transferee the balance ticket issued when the original share certificate was surrendered for the purpose of certifying the transfers in respect of the shares previously sold. A balance ticket is sometimes accepted as a good delivery of shares. For this reason, if a balance ticket has been issued, no further certifications of unsold balances of shares should be given, unless the appropriate balance ticket is surrendered along with the request for certification, and if after the further certifications there still remains any unsold balance belonging to the transferor, a new balance ticket for that balance should be issued. All surrendered balance tickets should be immediately cancelled.

Transfers Against a Transfer Receipt

A transferee may wish to dispose of the whole or
part of the shares transferred to him before that transfer is registered and the share certificate is issued to him. The only evidence of title in his possession is the transfer receipt, issued when he lodged the transfer for registration. If he disposes of shares, as he cannot hand over any document of title, he sends the new transfer and the transfer receipt to the company, requesting that the transfer be certified to show that he is entitled to a certificate in respect of the shares, but which certificate has not been issued by the company. If the first transfer has been passed then the subsequent transfer may be certified, but if the first transfer has not been passed, a note should be endorsed as part of the certification to the effect that the transfer was certified conditionally on the original transfer being registered. In either case, if the original transferor has not had time to communicate with the company, if necessary, in reply to the advice of transfer, the certification of the second transfer should be withheld until the expiration of a reasonable time. When returning the certified transfer to the transferor, if it is a transfer of part only of his recently acquired holding, a letter should be sent acknowledging surrender of the transfer receipt and stating the numbers of the shares re-sold. The number of the original transfer should be endorsed on the second transfer, and the former held back until the latter is presented for registration. This will prevent complications arising, as it must be remembered that the original transfer is in whole or in part superseded, and it would be purposeless making a new share certificate in the original transferee’s name for the whole of the shares, and then having to cancel it and make out another certificate for the second transferee, or issuing two new certificates where only part of the shares were re-sold. Further, the opening and closing of unnecessary accounts in the register of members will be obviated, and as the two
transfers bear the same number, they will be kept together with all correspondence, etc., incidental thereto, thus enabling the actual transactions that took place to be easily ascertained in future.

Transfers Where the Shares are Registered in a Dominion Register

Shares registered in a Dominion register of members cannot be dealt with by the secretary in the United Kingdom (and vice versa). The shares must be first removed from the Dominion to the principal register, and unless this is done no transfers of the shares can be certified or registered in the United Kingdom. The procedure on removal of shares from one register to another is dealt with in Chapter XIX.

Transmission of Shares

By "Transmission" is meant the passing of the title and right to deal with shares from one person to another by some event such as death, or by operation of law, as in bankruptcy and lunacy, i.e. there comes about a change of ownership otherwise than by an ordinary transfer of ownership. Thus in the event of the death of a member, his executors or administrators would deal with his shares; in the event of bankruptcy, the Trustee in Bankruptcy would act, or, in the case of lunacy, a committee, receiver or Curator Bonis would be appointed to manage his affairs. The person or persons to whom the right to deal with the shares passes, are hereafter referred to collectively as the "legal personal representative" or the "representative" for the purpose of convenience, although the term "legal personal representative" is more correctly applicable to an executor or administrator.

On satisfactory evidence of title being produced, a company is bound to register a transfer by a legal personal representative (subject, of course, to any
articles authorizing restriction of transfers). (See Sect. 76.)

If the representative so desired, instead of making a transfer he could demand to be registered as a member in the place of the member he represents, but if the shares are only partly paid this might operate to the detriment of the company, since the representative (who would become personally liable in respect of the shares) may be only "a man of straw," in which case the company may prefer the holding to remain as before, thus retaining a right against the estate of the deceased or lunatic member for calls, etc. An article empowering directors to refuse to register an ordinary transfer may not enable them to refuse to register an undesirable representative as a member, and accordingly it is customary to find clauses in articles defining the attitude of the company in cases of transmission, and the following is a summary of the nature and effect of the different kinds of transmission clauses found in practice—

1. The representative has a right either to be registered as a member or to make a transfer, but in each case the directors have the right to decline registration co-extensive with right to decline ordinary transfers (Clause 30, Table A). If the person elects to be registered himself he must notify the company, but if he elects to have another person registered he must execute a transfer to that person (Clause 31). Even though not registered as a member, the representative has the right to dividends, etc., as though he was registered, but cannot exercise any rights conferred by membership in relation to meetings, i.e., he has no right to attend or vote at meetings (Clause 32).

2. The directors may at any time give notice requiring such person either to be registered himself or to transfer the shares, and if the notice is not complied with within ninety days the directors may withhold payment of all dividends, bonuses or other moneys payable until the requirements of the notice have been complied with (Clause 32).

The above is a brief analysis of Clauses 30–32 of Table A, but reference should be made to the full text.

As no notice of a trust can be entered on the register,
a representative cannot be registered as a representative, but only in his own individual capacity. If he does register as a member, he is personally liable in respect of the shares, although he would have a right of indemnity against the estate, but if the representative does not register as a member, the estate of the original member remains liable.

Formalities on Transmission

Where a transmission occurs, evidence should be produced certifying the title of the representative, and the evidence that should be forthcoming is indicated in the following paragraphs. For the purpose of recording this evidence, a book called the "Register of Probates, etc.," is usually kept. This is ruled to show the date, member's name, etc., how the transmission occurred, i.e. by death, bankruptcy, etc., and the date thereof, names and addresses of the representatives, and their status (executor, administrator, trustee, etc.), nature and date of documents produced (probate, letters of administration, etc.), names and addresses of persons lodging the documents, for example, the solicitor acting in the matter, reference number of member's account in register of members, and a remarks column. The production to a company of any document which is by law sufficient evidence of probate of the will, or letters of administration of the estate, or confirmation as executor, of a deceased person having been granted to some person shall be accepted by the company, notwithstanding anything in its articles, as sufficient evidence of the grant (Sect. 82). The following is a summary of the procedure in dealing with a transmission of shares—

1. Record necessary details in the register of probates, etc.
2. Enter particulars of the transmission in the member's account in the register of members. But the name of the representative must not be entered as though he had become a member, unless he had so requested (see page 165), although
it is quite permissible to note his name in the register for purpose of reference.

3. Endorse the document lodged to show that it has been produced to the company. This is usually done by means of a rubber stamp somewhat as follows—

THE EXEMPLARY CO., LTD., REGISTERED
Date............ Secy.

No............

4. Endorse the share certificate to show that a transmission of interest has taken place, for example, in case of death—

John Brown died on ............ 19 .
Probate (or Letters of Administration)
granted on ............ 19 to ............

................. of.............
For The EXEMPLARY CO., LTD.

Date............ Secy

Death of a Sole Member

If a member dies testate, i.e. leaving a valid will, his executor or executors will produce the "probate of will," which is a sealed copy of the will issued by the Probate Division of the High Court after certain formalities have been complied with and estate duties paid, and which is the authority of the executors to administer the estate. If the deceased member left a will but did not name any executor, or where the executors named refused to act or have predeceased the testator, the Court on application will appoint an administrator to administer the estate and grant "letters of administration cum testamento annexo" (with the will annexed). If a member dies intestate, i.e. without leaving a valid will, the Court on application and after payment of the estate duties, appoints one or more administrators, and grants to them "letters of administration," i.e. a sealed authority empowering them to administer the estate of the deceased intestate according to law. Grants of letters of administration may take various
forms; according to the nature of each case. The following are examples—

1. Letters of administration unqualified in any manner—the most common form.

2. Letters of administration *cum testamento annexo* (with the will annexed)—issued where a testator fails to appoint executors or where the executors appointed refuse to act or have predeceased the testator.

3. Letters of administration *de bonis non administratis*—sometimes written shortly: letters of administration *de bonis non*—meaning "of the goods not administered"—issued in certain cases where an executor or administrator dies without completing the administration. This matter is treated more fully on page 168.

4. Letters of administration *durante minore aetate* (during a minority)—issued during the minority of an infant who is sole executor of a will. Sect. 20 of the Administration of Estates Act, 1925, provides that an infant cannot act as executor.

5. Letters of administration *durante absentia*—issued during the absence abroad of a person entitled to administer an estate.

6. Letters of administration *pendente lite*—issued to a person to take control of the estate whilst any action is pending concerning the validity of a will or the appointment of an executor or administrator.

7. Letters of administration *ad litem* (for the purpose of an action)—issued so that the estate may be represented where there is an action concerning the estate in which the proper representative will not take part.

Where there is any difficulty in identifying the person named in a grant of probate or letters of administration, with the person named in the register of members, e.g. a person may be registered as "Nancy Barlow" and probate may refer to "Anne Barlow," a certificate of identity, or statutory declaration, may be thought desirable.

**Death of a Joint Holder**

Where a joint shareholder dies, the shares vest absolutely in the surviving holder(s), and the company cannot and must not recognize any other person (for example, the personal representatives of the deceased joint holder) as having any right to the shares.
On the death of a joint holder—

1. Survivor(s) should produce death certificate. If this does not clearly identify the deceased member, a certificate of identity may be required, as previously outlined.

2. Record the death in the register of members striking out the name of the deceased member.

3. Enter details in the register of probates, etc.

4. Endorse the share certificate to show that evidence of death has been produced, for example—

   John Brown died on ..................
   Death certificate produced on .......
   For The Exemplary Co., Ltd.
   .................. Secy.

Death of a Holder Domiciled Elsewhere than in England or Wales

Grants of representation issued in Scotland or Northern Ireland must be first re-sealed by the Principal Probate Registry at London, before the secretary can safely recognize them as entitling the representative to deal with the shares.

As regards grants issued in British Possessions overseas, the Colonial Probates Act, 1892, provides that grants made in British Possessions to which the Act has been extended by Order in Council, may be re-sealed in England. Orders in Council have been made extending the Act to many parts of the Empire, but no Orders in Council appear to have been made as regards Quebec Province and a few other parts of the Empire. Therefore, grants issued in British Possessions to which the Act has not been extended cannot be re-sealed, and the secretary can only recognize a fresh grant taken out in England. Grants issued in foreign countries cannot be accepted at all—the Principal Probate Registry will not re-seal them, and the procedure in case of death of a member of foreign domicile is for the foreign member’s personal representative or his attorney to apply for a grant of representation in England, and this grant is the only one which can be recognized by the secretary.

If shares belonging to a colonial or foreign member
are transferred without observing the above requirements, the company renders itself liable to a penalty, and to pay any estate duty payable in England in respect of the shares (Attorney-General v. New York Breweries (1899)).

Companies and Corporations as Executors

It is becoming a common practice for persons to appoint corporate bodies as executors, for example, Banks, Trustee companies, Insurance companies, the Public Trustee, etc. Prior to the passing of the Administration of Justice Act, 1920, probate would not be granted to a corporate body, and the procedure was for the corporate executor to nominate a person (known as a "syndic") to act in its behalf and take out probate. By the joint effect of Sect. 17 of the Administration of Justice Act, 1920, and Sect. 161 of the Supreme Court of Judicature Act, 1925, grants of probate can now be made to corporate executors (styled Trust Corporations), and grants to "syndics" are prohibited. But the corporate executor must come within the scope of the meaning of "Trust Corporation" as defined by law. Sect. 55 of the Administration of Estates Act, 1925, defines a Trust Corporation as—"The Public Trustee, or a corporation either appointed by the Court in any particular case to be a trustee, or entitled by rules made under sub-sect. 3 of Sect. 4 of the Public Trustee Act, 1906, to act as custodian trustee." Rules have been made under that authority, and by the Public Trustee (Custodian Trustee) Rules, 1926, any corporation constituted under the law of the United Kingdom or any part thereof and having a place of business there, and empowered by its constitution to undertake trust business, may act as a trustee provided that it is—

(a) A company incorporated by Special Act or Royal Charter, or
(b) A company registered (whether with or without limited liability) under the Companies Act, having a capital (in stock or shares) for the time being issued of not less than £250,000, of which not less than £100,000 shall have been paid up in cash, or

(c) A company registered without limited liability under the Companies Act whereof one of the members is a company within any of the classes hereinbefore defined.

**Small Estates**

If the net value of a deceased member's estate does not exceed £2,000 no death duties are payable. Where the estate is very small, it is possible that, on the ground of expense, no grant of probate or letters of administration will be applied for. If the estate, including the value of the deceased's shares, does not exceed £100, the secretary might, in view of the small amount involved, agree to dispense with production of a grant of representation. In such cases it is usual for the person entitled to the estate according to the will or according to law to deal with the estate, and if such person applied to the company to be registered as holder of the deceased's shares, the death certificate should be produced and a statutory declaration should be obtained to the effect that the applicant is entitled to administration of the estate, and that the gross value of the estate including the shares, etc., does not exceed £100. This statutory declaration should be retained by the company, as authority for registering the transmission. If there is any doubt regarding the title of the person applying to be registered in place of the deceased member, the company should insist on production of a grant of probate or letters of administration.

**Executors or Administrators Becoming Registered as Members**

Transmission clauses dealing with the subject of representatives becoming registered as members either outline the manner in which the registration is to be effected or leave it to the discretion of the directors
(see Table A, clause 30). Some articles provide that a letter of request—i.e. a letter signed by the representatives requesting that they be registered as members—is sufficient; other articles require that the representatives shall execute a transfer of the shares from themselves as representatives to themselves as members. Such a transfer, if it is made for a nominal consideration and bears a certificate signed by the parties outlining the reason for the transfer, would only require a stamp duty of 10s. (see page 134).

A "letter of request" usually takes the following form—

To THE EXEMPLARY CO., LTD.

I/WE the undersigned, being the executor(s)/administrator(s) of ............. deceased, hereby request you to register me/us as member(s) in respect of the shares standing in the name of the said deceased, subject to the conditions on which the said deceased held the same.

(And I/WE hereby agree to hold the said shares subject to the same terms and conditions upon which they were held by the said deceased).

DATED day of 19.

Witness. (Signatures of Representative(s)).

A letter of request in the above form requires to be stamped as follows: if under hand, 6d. (impressed or adhesive), if under seal, 10s. (impressed). The document is not liable to stamp duty if the clause in brackets is omitted.

A letter of request should be treated as though it was an ordinary transfer, being brought before the board for approval, and a new certificate made out in the name(s) of the representative(s).

Transfers by Executors or Administrators

The names of the executors or administrators should be stated in full, followed by a statement that they are "Executors (or Administrators) of ...........