

Introduction to Company Law (Part 2) Dr. Krista Ellul 3rd November 2022

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Date:

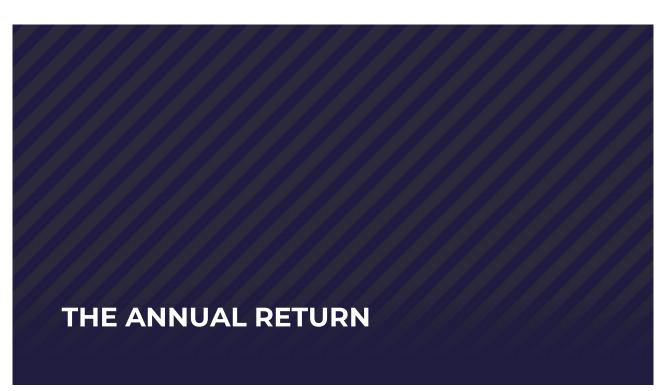


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- The Annual Return
- Beneficial Ownership Register and Forms
- The Malta Business Registry website
- The Memorandum and Articles of Association ("MAA")
- An introduction to various company forms
- Allotments for non-cash consideration





The Annual Return

Upon each anniversary of the registration of a Company – a form must be submitted in a **set format** showing the matters specified therein and **made up to the date of such anniversary**.

The annual return shall be signed by one director or the company secretary (or any other person duly authorised through the company's MAA or by the board of directors or shareholders) and submitted to the Registry together with the payment of the annual return fee, within **42 days** from when it falls due (being the anniversary of the company registration).

If not submitted, a penalty will be incurred by the officers of the company, and a daily penalty during period in which the default continues.

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The Annual Return

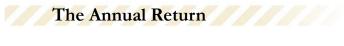






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Currency	s	lodiny	
EURO		¢	
(a) Newigal Share Cavital			
Nominal Share Capital €1,200 divided into:			
(insert number and class			
1,200 ORDINARY	shares of 6 1 eac	h	
(b) Isnusl Share Capital	Namber	Chas	
Number of shares of each class taken up to the date of this return (which number must agree with the total shown on the list as held by existing members).	1,500	ORDINARY	share
Number of shares of each class issued as	issued as paid up to th	e extent of € 0.2	
partly paid up and entent to which each such share is so paid up.	per sheet on 1,200 O	RDINARY	share
Total number of shares of each class forfolied.			
Total amount paid, if any, on shares			
forficited.			



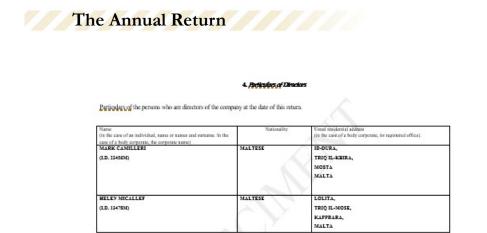


Folio in register ledger containing particulars	Named Addresses (in the case of a body corporate, its registered office)	Account of Shan		Remarks
		Number of alassa held, by estiming members at also of some $\sqrt[6]{9}$	Envirolance of shares transferred or transmitted center works since the date of the last return, or, is the case of the first return, of the registration of the company by (a) persons who are still members and (b) persons who have caused to be members "*	
· · · · ·	~		Number Date of	
			registration # af transfer	

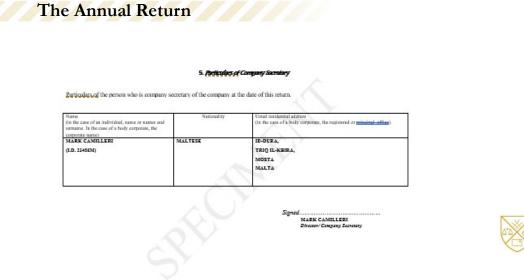


	MARK CAMILLERI (I.D. 11456M) ID-DURA,	1,200	ORDINARY SHARES OF 61 EACH (20% PAID-UP)	0	
	TRIQ IL-KEIRA, MOSTA MALTA				
	TOTAL NUMBER OF SHARES HELD BY EXISTING MEMBERS:	1,200	~~~		
to here associated in The data of registre me of the transformer	divided into different closes closes unlesses then it for cals-divided any stack the sensors of study held by such womber shall be shown, trins of reach transfer or transmission ansate service that the given as it and our appoint that of the transference, for the many of the margine of the wood "conserver" shall reach the heir or legense, is the sense of	colling the sampler of 4 many be inserted in the	Area taxafered or reservited ana-		









The Annual Return

Annual Return fees differ in accordance with the amount of authorised share capital of the company and depend on whether the annual return is submitted manually or online.

Set in accordance with Legal Notice 354 of 2008 Companies Act (Fees) Regulations, 2008.



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The Annual Return

Authorised Share Capital	Manual Submission	Online Submission
EURO	EURO	EURO
Up to 1,500	100	85
Between 1,501-5,000	140	120
Between 5,001-10,000	160	135
Between 10,001-50,000	350	300
Between 50,001-100,000	400	340
Between 100,001-250,000	600	510
Between 250,001-500,000	800	680
Between 500,001-1,000,000	900	765
Between 1,000,001- 2,500,000	1,200	1,020
More than 2,500,001	1,400	1,200





Register of Beneficial Owners Regulations

- Companies Act (Register of Beneficial Owner) Regulations came into force in December 2017. Several amendments have been made to such regulations since.
- Companies are now required to identify and maintain a register of their ultimate beneficial owners as well as to provide information on their beneficial owners to the Registry which will be keeping its own beneficial owners register.



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The term "beneficial owners" shall refer to any **natural persons** having ownership or control of the company through:

- i. the direct or indirect ownership of **25% plus one** or more of the shares in the Company or more than 25% of the voting rights of the Company; or
- ii. having other ownership interests (including through control with other means such as exercise of a dominant influence or the power to appoint and remove the majority of the board of directors) of more than twenty-five 25% in the Company.

Should no individuals satisfy the above criteria, then one is to disclose the senior managing official/s of the company.



Annual Beneficial Ownership Obligations

- Upon each anniversary from a company's date of registration, a company shall file a return. This has the objective of:
 - disclosing any change in details on beneficial owners, or
 - otherwise to confirm that no change in details took place.
- The return may be signed by at least one director or the company secretary and shall be delivered to the Registry within forty-two (42) days from the anniversary date.
- The failure to adhere with the afore-mentioned obligations renders a company liable to a penalty of €5,000 as well as a daily penalty of €100 until the infringement is rectified.



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Beneficial Ownership Forms

Apart from annually notifications, beneficial ownership forms are to be submitted to the Registry in the following instances:

- BO1 Form •
- always submit upon incorporation of a company
- can only be signed by one of the new proposed directors of the new company.

which happens before the anniversary of the company in 2018/2019.

- To divulge either BO or SMO (if the latter, attach a letter signed by director explaining why SMO was identified).
- BO2 Form •
- to be submitted when a share transfer/issue/change in share capital/ change in voting rights happens after the anniversary of the company in 2018/2019.
- BO3 Form (only for companies who failed to submit it replaced by annual confirmation) to be submitted upon the anniversary of the company (therefore with annual return) AND for any share transfer /isSteTAXATION which happens before the anniversary of the company in 2018/2019



Beneficial Ownership Forms

• BO Change in SMO

- to be submitted upon change in senior managing officials within 14 days from the effective date of change.
- To submit this BO together with Form K when company has a SMO and the change in director was a SMO.

• BO Change in Details SMO

- upon any change in details of senior managing official.



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• Powers of the Registrar.

The Registrar is empowered to:

- Refuse to register any document of a company if the beneficial ownership information:
 - has not been submitted,
 - is not accurate; or
 - up to date.
- Restrict new company incorporations wherein the proposed directors are involved in other companies that failed to submit information on their beneficial owners;
- take the necessary steps and ask for any information he deems necessary to ascertain the veracity of the beneficial ownership information, prior to registering a company.
- carry out on-site inspections with the aim of verifying that the information submitted to the Registry in relation to beneficial ownership was accurate. If the Registrar forms the opinion that the beneficial ownership information needs to be revised, every officer of the compensation shall be liable to a penalty not exceeding €100,000.

THE MALTA BUSINESS REGISTRY WEBSITE



The Malta Business Registry Website

The core responsibilities of the Malta Business Registry arise out of the Companies Act, 1995. These are:

- •Registration of new commercial partnerships
- •Registration of documents related to commercial partnerships
- •Keeping the company and partnership register
- •Collection of registration and other fees
- •Publication of notices
- •Issue of certified documentation
- •Issue of good-standing and other certificates
- •Reservation of company names
- •Imposition and collection of penalties
- •Investigation of companies



The Malta Business Registry Website

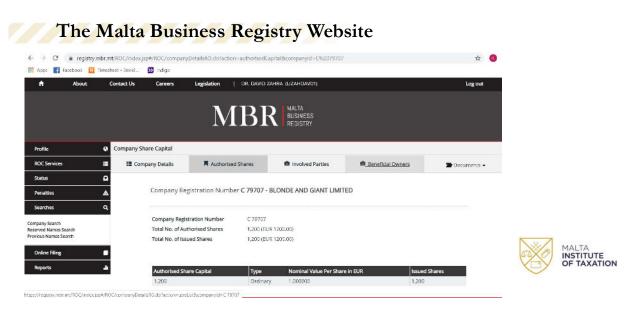
In order to be able to access the information available on the Malta Business Registry website one must register as a new user and create an account.

You do not need to have an account to be able to have access to the different registry forms, publications and other general information (such as circulars issued by the Malta Business Registry).













→ C in registry.mbr.mt/ROE/	/index.jsp3/ROC/companyDetailsRO	do?action=involvementList&companyId=C%20797	17	ú
Apps 📑 Eccelocis 🔟 Timeshoel – D	ovid Ď lodigu			
		Legal Representatives	2)	
	Involved Party	Address	Nationality	
	GIUSEPPE COLEIRO ID Card: 103387M	FLAL8, CRYSLAL COURT MSIDA CIRCUS MSIDA MSD 1173 MALTA	MALTESE	>
	MARK GALEA ID Card: 344485M	52, ID-DURA, TRIQIL KOKIG, KAPPARA SAN GWANN MALTA	MALTESE	>
		Judicial Representatives		
	Involved Party	Address	Nationality	
	GIUSEPPE COLEIRO ID Card: 103387M	FLAT 8, CRYSTAL COURT MSIDA CIRCUS MSIDA MSD 1173 MALTA	MALTESE	>
	MARK GALEA ID Card: 344486M	52, ID-DUBA TRIQ IL-KOKKA, KAPPARA SAN GWANN MALTA	MALTESE	>









THE MEMORANDUM AND ARTICLES OF ASSOCIATION



In order to form a company a **Memorandum and Articles of Association** of the Company must be lodged with the Malta Business Registry, together with other relevant documentation such as certified copies of identification documents and references (when required), BO Form, Form K1, registered office consent letter, and evidence of the paid up share capital in the form of a bank deposit slip.

A **fee for registration** must also be paid (which fee depends on the amount of authorised share capital).





A public company must also annex to its MAA:

- The total amount or an estimate of costs payable by the company or chargeable to it by reason of its formation up to the time it is authorised to commence business.
- A description of any special advantages granted prior to the time the company is authorized to commence business to anyone who has taken part in the formation of the company or in the transactions leading to such authorization.



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The **MAA** contains the **essential and basic conditions** upon which a company is allowed to be registered, it is the document which informs third parties dealing with the company what are it's objects, sphere of activity and capital.

The **Articles of Association ("AOA")** are the regulations for the **management of the affairs of a company and conduct of its business**.

The **Memorandum** proclaims to the world the **external aspects** of the constitution of the company, the **AOA** are concerned with matters of **internal organisation**, which are primarily of interest to its own members and officers.





Whereas the **memorandum** is **essential** to bring the company into existence, it is **not necessary** for the **AOA** to be filed with the Malta Business Registry.

Both the memorandum and AOA, when registered, are deemed **public documents** and are open to inspection by anybody who wishes to view them.



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The Malta Business Registry will issue a **certificate of registration** once all requirements at law have been fulfilled and all documents have been delivered.

The company will come into existence as at the date of such certificate which is final and conclusive proof of the effective **birth date** of the company.





The following contents must be included in a Memorandum of a company:

- Whether the company is a public or a private company;
- The name and residence and identification number of each of the subscribers;
- The name of the company;
- Email address
- The objects of the company;
- The authorised share capital; •
- The issued share capital;
- Number of directors and their name, residence, and identification number;
- The manner in which the representation of the company is to be exercised and the name of the first person or persons vested with such representation;
- The name and residence of the first company secretary;
- Period (if any) fixed for the duration of the company.

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A company shall not be registered by a **name** which:

- Is the **same or similar** (and in the opinion of the Registrar it could create confusion) to that of another company; or
- Is in the opinion of the Registrar offensive or otherwise undesirable (having • regard to the names of partners, the business, the protection of names of individuals who are not connected with the company);
- Has been reserved for registration by another company. •



MAITA

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A company shall not be registered by a **name** which:

- The name of a **public company** should end with the words '**public limited company**' or '**plc**'.
- The name of a **private company** should end with the words '**private limited company**'/'limited'/'ltd'.
- Investment companies with variable share capital SICAV (together with plc or ltd)
- Investment companies with fixed share capital INVCO (together with plc or Itd).

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Registered office:

- The registered office stated the country in which the company is domiciled.
- It is where the company's statutory registers are to be kept and also where legal notice shall be served on the company.





Authorised Share Capital:

- The authorised share capital is the total amount of capital which the company is authorised to issue by its memorandum.
- The minimum amount of authorised share capital **1,164.69euro** in the case of private companies, and **46,587.47euro** in the case of public companies.



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Issued Share Capital:

- The issued share capital is that which is actually being allotted and paid.
- The share capital must be subscribed to **be at least two persons** (except in the case of single member companies).
- The issued share capital shall be at least 20% paid up in the case of private companies, and at least 25% paid up in the case of public companies.





- The **objects clause** states the activities which the company is permitted to undertake.
- Any attempt by the company to enter into contracts outside the scope of the objects clause is deemed *ultra vires*.
- A company's objects clause may not simply state that the company may conduct any lawful purpose or trade in general.



- Upon incorporation, the promoter can either submit a copy of their AOA or elect to adopt the **First Schedule to the Companies Act** being a specimen version of a Limited Liability Companies AOA.
- Matters covered in the AOAs usually regulate matters such as appointment of directors, directors' powers, board meeting conduct, calling and conduct of general meetings, payment of dividends, class rights of shares, issue of new shares, transfer of shares, alterations to capital structure.



MAA

Any **alterations to the MAA** of the company must be made by means of an **extraordinary resolution**.

However there are **exceptions to this general rule** – including changes to the registered office and company secretary (which can take place by directors resolution), and changes to directors and representation of the company and the issue and allotment of shares (which can take place by ordinary resolution).

-Every time the MAA are amended, the company's directors or secretary must within **14 days** deliver to the Registry a copy of the extraordinary resolutions together with the updated MAA. In the other cases (change in director, company secretary, issue and allotment of shares) – notice is brought to the Registry through the applicable **notification forms**.



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Ordinary Resolution

Shall be passed by a member or members having the right to attend and vote holding in the aggregate shares entitling the holder or holders thereof to **more than fifty per cent** of the voting rights attached to shares represented and entitled to vote at the meeting, or such other higher percentage as the MAA may prescribe.

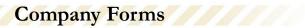
Extraordinary Resolution

<u>First requirement:</u> The resolution has been taken at a general meeting of which notice specifying the intention to propose the text of the resolution as an extraordinary resolution and the principal purpose thereof has been duly given; and

Second requirement: it has been passed by a member or members having the right to attend and vote at the meeting holding in the aggregate not less than 75% in nominal value of the shares represented and entitled to vote at the meeting and at least 51% or such other higher percentage as the MAA may prescribe, in nominal value of all the shares entitled to vote at the meeting. (Both % tests in the case of public companies, but solely the second in the case of private companies).



AN INTRODUCTION TO VARIOUS COMPANY FORMS



Transfer of Shares

- In private companies the right to transfer shares is **limited**.
- AOA usually provide for the **mode by which shares can be transferred**, if not one would refer to the First Schedule of the CA.
- The transfer of shares is restricted in virtue of the **power which is vested in the directors** of the company which may in their absolute discretion and without giving a reason decline to register any transfer of shares.





Transfer of Shares

- Restrictions may also arise out of the MAA which provide for **shareholder qualifications** (i.e. only a certain category of persons can become members of the company).
- The most common way in which the transfer of shares is restricted is through **preemption rights**. Procedure in place whereby the person who wishes to transfer his shares has to firstly offer such shares to the other members of the company.









COMPANIES ACT	r, 1995
Notification of changes among director the representation of	
Pursuant to Section	n 146 (1)
Same of Company Treebouse Limited	
Delivered by Company Secretary	
To the Repútivar of Companies:	
Freehouse Limited hereby gives notice in accordance w hat:	ith Section 146 (1) of the Companies Act, 1995
oo Qaqqaila(hakler of identity card number 16343434) of osignad as director and legal and judicial representative o	
conard Vella (holder of identity card number 3834600 seigned as director and legal and judicial representative o	 of 3, Tokul-Inhomonous Attack, Maila ha of the company
ffective Bate of Change 11th August 2017	
	Signature Edward Bernury Division
Dated this 11* day of August of the year 2017.	
This form-seast he completed in typed form.	16

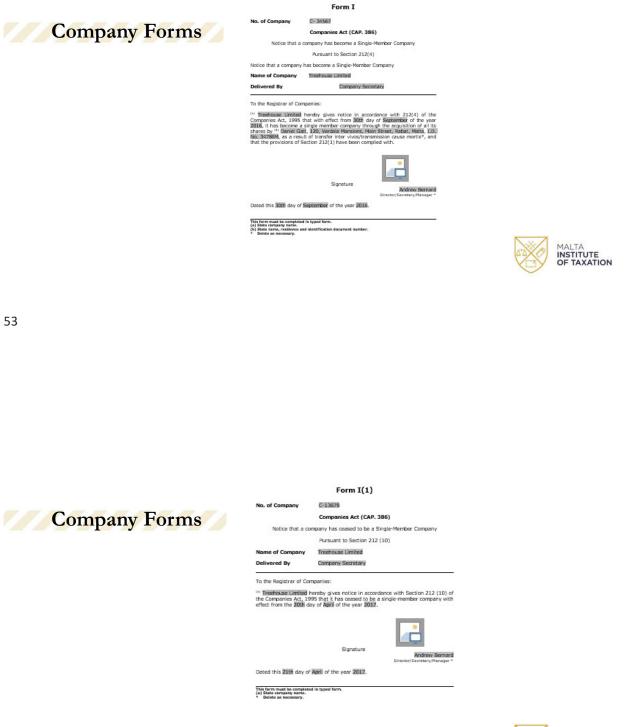




	Form Q
No. of Company C 52346	
	COMPANIES ACT (CAP. 386)
Notificatio	n of change in registered office of a company
	Pursuant to Article 79 (2)
Name of Company Treebo	ouse Limited
Delivered by Company Se	scretary
To the Registrar of Compo	anies:
Treehouse Limited hereby	y gives notice in accordance with Article 79(2) of the the company has changed its registered office to 345,
Treehouse Limited hereby Companies Act, 1995 that	y gives notice in accordance with Article 79(2) of the the company has changed its registered office to 345, ra, VLT 1218, Malta.
Treehouze Limited hereby Companies Act, 1995 that (Christopher Street, Vallett	y gives notice in accordance with Article 79(2) of the the company has changed its registered office to 345, ra, VLT 1218, Malta.
Treehouze Limited hereby Companies Act, 1995 that (Christopher Street, Vallett	y gives notice in accordance with Article 79(2) of the the company has changed its registered office to 345, ra, VLT 1218, Malta.
Treehouze Limited hereby Companies Act, 1995 that (Christopher Street, Vallett	y gives notice in accordance with Article ?9(2) of the the company has changed its negistered office to 345, ra, VLT 2218, Matta. 8 th May 2017 Name and signature.









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Issue of Shares

- Decided upon by an ordinary resolution (if there is enough authorised share capital for such issue to take place, and if not beforehand through an extraordinary resolution the authorised share capital would need to be increased to allow for such issue to take place).
- Issue of Shares can be either for cash or non-cash consideration.



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	Return of allotments of shares H
	Parsuant to Section 105 (1) (a) (b)
Name of Company: Trashours Lin Delivered by: Company Scenetary	sited

To the Rep

No. of Commany: C-23467

on 4* Sentember 2017 or	
+ frage	41

Farm H

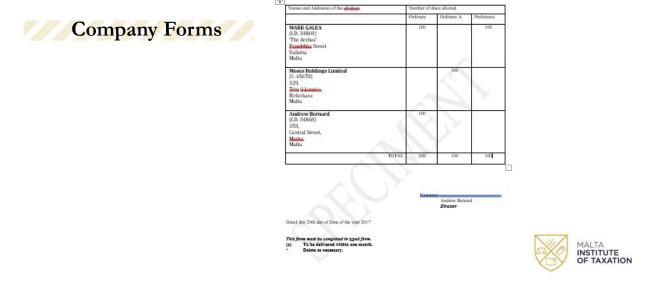
COMPANIES ACT, 1995

Description of shares (ordinary/preference/others)	Ordinary	Clidinity A	Preference shares
Number of shares allotted	100	100	100
Nominal value of each share and	61	E1	61
Premium (if any) on each share	N/A	£1	N/A
Total amount paid on each share gradering adminal value/premium	EII.20	62	e1
Amount due and payable (if any) an account of nominal value/nominal	N/A	NUA	N'a

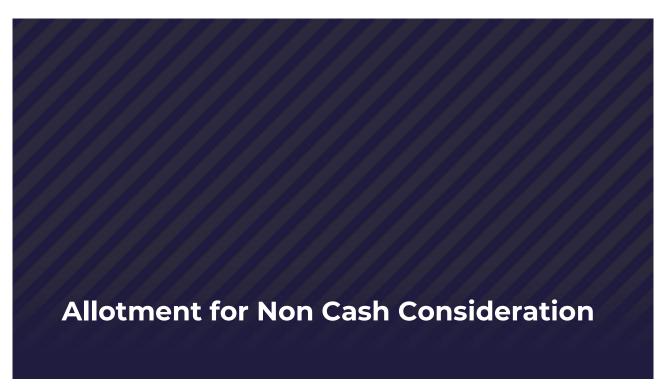
Description of shares (ordinary/preference/others)	Ordinary
Number of sharas allotted	100
Nominal value of each share and	E1
Premium (if any) on each share	NA
Extent to which each share is to be breated as paid or an account of nominal value/memium	£1.00
Consideration for which the shares have been allotted	Capitalization of Shureholder Long

Sominal value of each share and	61	
hernium (if any) on each share	NA	
Internt to which each share is to be treated as paid	£1.00	22
rige account of nominal value brenders		
Consideration for which the shares have been allotted	Capitalization of Shurcholder Loans	





C. This section must be completed in all cases





- May only consist of **assets capable of economic assessment**, and future personal services and in general any undertakings to perform work or supply services may not be given by way of consideration.
- The full consideration must be transferred within **5 years** from the date of decision to issue the shares.



Non-Cash Consideration

- A **report** on any consideration other than in cash must be drawn up before the shares are issued to the investor.
- The report must be drawn up by **one or more experts** who are independent to the company and approved the Registrar, normally the auditors of the company.
- The experts report shall include:
 - A description of each of the assets comprising the consideration
 - The methods of valuation which have been used
 - State whether the values arrived at by the application of these methods correspond at least to the number and nominal value (and to the preminant applicable)

Non-Cash Consideration

- The report must be delivered to the Registrar for registration **before the company is registered or before the shares are issued** and if not the Registrar can refuse to register the company or issue the shares and if so the issue shall be considered null and void.
- Following the report the resolution approving the increase and the Form H are to be submitted.

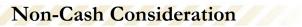


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Non-Cash Consideration

A company is prohibited from acquiring within two years of its authorisation to commence business, any asset belonging to a person who subscribed to the company's memorandum or who is a member of the company for a consideration, which is equivalent to at least $1/10^{\text{th}}$ of the issued share capital of the company unless the following conditions are satisfied:

- Asset and consideration have been valued by an expert; (during the 6months preceding the agreement); and
- Agreement must have been approved by an ordinary resolution (before such meeting report and proposed agreement to have been sent to members entitled the receive notice and Registrar).



The above conditions would **not** apply if:

- Acquiring the sort of assets is part of the company's ordinary business
- Acquisitions made at instance/under supervision of court
- Stock exchange acquisitions



