

# Using share premium 3/46/21



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A share premium represents an amount that is paid in addition to the nominal value of a share but is not credited to share capital. The face value rarely represents the true value, so a share premium helps the company set a fair payment for its shares and reflect their true value in various share dealings.

## In what cases may a share premium be set?

A share premium is mostly used in transactions involving contributions to companies.

**Section 155(2) of the Commerce Act** states that a company's share capital increase rules may require a shareholder to pay a share premium in addition to its face value. Although the Commerce Act refers to a share premium only in the case of a share capital increase, this may be required in other cases too.

For example, a share premium may also be set when a company is formed. This is possible by virtue of what **section 143 of the Commerce Act** provides for the content of a company's memorandum of association. In addition to mandatory clauses a memorandum of association must contain under section 143(1)(12) of the Commerce Act, it may include any other clauses the founders consider essential and which do not break the law. Since the Commerce Act does not prohibit the setting of a share premium when a company is formed, this is permitted.

It is worth noting that a share premium may also be used when a contribution in kind is made to a company's share capital on incorporation or for the purpose of increasing it. Contributions to share capital often include high-value assets such as real estate, debt being converted into equity, and shares in other companies. The value of a contribution in kind must be stated in its valuation, a document that is mandatory for such a contribution. Although an amount lower than the valuation may be contributed to share capital, this approach is not always appropriate in practice, because if only part of the value of an asset is contributed to share capital, the company will not own the complete asset. For example, this would apply to cases where real estate is contributed.

In certain cases a company that seeks additional financing does not want to give the investor control over the company. A share premium may help the company balance its shareholding structure and control.

Thus, setting a share premium in various cases can raise funds for the company without substantially altering the share capital or its apportionment between the shareholders.

## Things to consider in setting a share premium

A share premium is an effective tool for raising funds while keeping the share capital in proportion. However, there are a couple of aspects to consider when it comes to setting a share premium.

Firstly, the shareholder is unable to recover the share premium through amounts paid out to him, because the Commerce Act restricts cases where the shareholder may receive a payout. Accordingly, while the share premium stays on the company's books, any payout associated with this item can be made only if

the company goes into liquidation and the shareholder receives surplus assets. Likewise, no share premium payout can be made if share capital is reduced.

Secondly, we need to examine and consider conditions relating to how a share premium should be booked. The State Revenue Service has issued an advance ruling on the correct way of presenting a share premium on the balance sheet.

Finally, please note that this article does not list all cases and aspects of a share premium. If you have any questions about ways of using a share premium, our teams of lawyers at [ZAB PricewaterhouseCoopers Legal SIA](#) will be happy to answer your questions and provide any legal assistance you might need.