

*These notes refer to the Companies Act 2006 (c.46)
which received Royal Assent on 8 November 2006*

COMPANIES ACT 2006

EXPLANATORY NOTES

COMMENTARY

Part 18: Acquisition by Limited Company of Its Own Shares

Chapter 3: Redeemable Shares

995. Under section 159 of the 1985 Act a company that is limited by shares, or limited by guarantee and having a share capital, may, if authorised to do so by its articles, issue shares which may be redeemed at a future point in time at the option of the company or the shareholder. The provisions of section 159 are carried forward in the following sections but there are changes to the ways in which companies may issue redeemable shares and redeem such shares (see below).

Section 684: Power of limited company to issue redeemable shares

996. This section replaces section 159(1) of the 1985 Act and restates section 159(2) of that Act.

997. For private companies only, it removes the requirement for prior authorisation in the company's articles for a proposed allotment of redeemable shares. If they wish, the members may, however, restrict or prohibit the authority given to a company by this section, by including a provision to this effect in the company's articles (see *subsection (2)*).

Section 685: Terms and manner of redemption

998. This replaces section 160(3) of the 1985 Act (which provides that the terms and manner of redemption must be set out in the company's articles) and existing section 159A (also entitled "terms and manner of redemption"), which was inserted into the 1985 Act by section 133 of the Companies Act 1989 and remains uncommenced.

999. As recommended by the CLR (Final Report, paragraph 4.5), this section enables the directors of both private and public companies alike to determine the terms, conditions and manner of a redemption of redeemable shares. The power conferred on the directors by this section requires prior authorisation by the company's members, either by resolution of the company or through the articles (see *subsection (1)*). As recommended by the CLR (Final Report, paragraph 7.30) the terms and conditions of redemption will have to be stated in the statement of capital required to be filed under section 555. If the directors are not authorised to set the terms of the redemption, then they must be set out in the company's articles (see *subsection (4)*).

1000. Where the directors exercise this power they must do so before the shares in question are allotted (see *subsection (3)*).

Section 686: Payment for redeemable shares

1001. This section replaces section 159(3) of the 1985 Act (which requires that where a company issues redeemable shares, the terms of redemption must provide for payment on redemption). It removes the current requirement, in section 159(3), that the terms of redemption must provide for payment on redemption. This means that the terms of redemption may provide for the company and the holder of the shares to agree that payment may be made on a date later than the redemption date.

Section 688: Redeemed shares treated as cancelled

1002. This section restates section 160(4) of the 1985 Act but with the exception of the reference to the impact of the redemption on the authorised share capital of the company – the concept of which is not replicated under the Act.

Section 689: Notice to registrar of redemption

1003. This section restates section 122(1)(e) and 122(2) of the 1985 Act and Schedule 24 to that Act but there is a new requirement for a statement of capital where a company gives notice to the registrar of a redemption of redeemable shares (see *subsections (2) and (3)* and the note on section 619).