

COMPANIES ACT 2006

EXPLANATORY NOTES

COMMENTARY

Part 18: Acquisition by Limited Company of Its Own Shares

Chapter 4: Purchase of Own Shares

1004. Section 162 of the 1985 Act enables a company limited by shares or limited by guarantee and having a share capital to purchase its own shares, provided it is authorised to do so by the articles. It is common for the members to give authority for such a purchase of own shares through the articles, see, for example, regulation 35 of the Companies Act 1985, Table A.

Section 690: Power of limited company to purchase own shares

1005. This section replaces section 162(1) of the 1985 Act and restates section 162(3) of that Act.
1006. In line with the recommendations of the CLR (Completing the Structure, paragraph 2.15), section 690 removes the requirement for prior authorisation in a company's articles for a purchase of own shares (including any redeemable shares) by the company but makes it clear that, if they wish, the members may restrict or prohibit a purchase of own shares by including a provision to this effect in the company's articles.

Section 692: Financing of purchase of own shares

1007. This section restates, the provisions of section 160(1) and (2) and 162(2) of the 1985 Act on a redemption of own shares which are applicable to a purchase of own shares, and makes such adaptations to those provisions as are necessary to ensure that the restated provisions work in this context.

Section 694: Authority for off-market purchase

1008. This section replaces sections 164(2) and 165(2) of the 1985 Act and restates sections 164(1), (3) and (4) and 165(1) of that Act.
1009. Under the 1985 Act a company may only enter into a contract for an off-market purchase of shares if the shareholders approve the contract by special resolution before the contract is entered into. An off-market purchase of shares is a purchase that is not conducted through a recognised investment exchange (for example, the London Stock Market).
1010. **Section 694** enables a company to enter into a contract for an off-market purchase of its own shares conditional on the contract being approved by the shareholders. This will save companies valuable time as it will be possible for the directors to negotiate and agree the terms of a contract for an off-market purchase of shares ahead of seeking shareholder approval. If, however, the shareholders do not subsequently pass a special

resolution approving the contract, the company may not purchase the shares in question and the contract will lapse.

Section 702: Copy of contract or memorandum to be available for inspection

1011. This section replaces section 169(4) and (9) of the 1985 Act. Under the 1985 Act, where a company enters into a contract for a purchase of own shares it must make available for inspection a copy of the relevant contract or a memorandum of its terms at the company's registered office for a period of 10 years. *Subsection (4)* alters the current requirements by providing that the contract may, alternatively, be kept available for inspection at a place specified in regulations made under section 1136. If the company is a private company, the contract must be available for inspection by any of its members; otherwise it must be open to inspection by anyone. If default is made an offence is committed by the company and every officer in default.
1012. *Subsection (5)* is a new provision which requires companies to give notice to the registrar of the place where the contract is kept available for inspection. This is consequential on the choice conferred on companies under subsection (4) as to where such documents are kept.

Section 703: Enforcement of right to inspect copy or memorandum

1013. This section replaces section 169(7) of the 1985 Act and Schedule 24 to that Act. It retains the existing offences for failing to keep available/allow inspection of the contract/memorandum as required under section 702, but with the addition of a new offence for failure to notify the registrar of the place where such documentation is kept. It also restates section 169(8) of the 1985 Act.

Section 707: Return to registrar of purchase of own shares

1014. This section replaces section 169(1), (1A) and (1B) and restates section 169(2), (3) and (6) of the 1985 Act and Schedule 24 to that Act. It requires a company to make a return to the registrar within 28 days of a purchase of own shares stating, amongst other things, the number and nominal value of the shares purchased. The return must indicate whether the shares are of a type which could be held in treasury (see section 724), and, if so, whether the shares were cancelled forthwith or whether they are being held in treasury.

Section 708: Notice to registrar of cancellation of shares

1015. This section replaces sections 169(1), (1A) and (1B) and restates 169(6) of the 1985 Act and Schedule 24 to that Act. It updates the notice requirements so as to require that where shares are cancelled forthwith following a purchase (either in circumstances where the shares are treated as automatically cancelled or where treasury shares are cancelled) the company has to notify the registrar of such cancellation and provide the registrar with a statement of capital (see note on section 619).
1016. As now, where a company fails to comply with the procedural requirements as to notice, the company, and every officer of the company who is in default, commits an offence (see *subsection (4)*).