

*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 5: Redemption Or Purchase by Private Company Out of Capital

Section 714: Directors' statement and auditor's report

1019. This section replaces section 173(3) to (5) of the 1985 Act.
1020. Currently, before a private company may make a payment out of capital in respect of a purchase of own shares, the directors must have made a full enquiry into the affairs and prospects of the company and are required, under section 173, to make a statutory declaration confirming that: as regards the company's situation immediately after the date on which the payment out of capital is made, there will be no grounds on which the company could then be found unable to pay its debts; and as regards the company's prospects for the year immediately following that date, the company will be able to continue to carry on business as a going concern and be able to pay its debts as they fall due in the year immediately following the date on which the payment out of capital is made. In forming their opinion on the company's solvency and prospects, the directors must take into account the same liabilities (including contingent and prospective liabilities) as would be relevant under section 122 of the Insolvency Act 1986 (winding up by the court) to the question whether a company is unable to pay its debts.
1021. Consistent with the approach taken in respect of reductions of capital using the new solvency statement procedure (see sections 642 and 643 and in particular subsection (2) of section 643), this section requires a private company limited by shares that wishes to use this statutory scheme for a purchase or redemption of shares to take account of all contingent and prospective liabilities, not just those that are relevant for the purposes of section 122 of the Insolvency Act 1986 (see *subsection (4)*).
1022. Again, to achieve consistency with the approach taken elsewhere in the Act, the current requirement for a statutory declaration is replaced with a requirement for a simple statement. In contrast to a statutory declaration, the directors' statement does not need to be sworn before a solicitor or Commissioner of Oaths.