



Companies Act 2006

2006 CHAPTER 46

PART 18

ACQUISITION BY LIMITED COMPANY OF ITS OWN SHARES

CHAPTER 5

REDEMPTION OR PURCHASE BY PRIVATE COMPANY OUT OF CAPITAL

Requirements for payment out of capital

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- (1) A payment out of capital by a private company for the redemption or purchase of its own shares is not lawful unless the requirements of the following sections are met—
section 714 (directors' statement and auditor's report);
section 716 (approval by special resolution);
section 719 (public notice of proposed payment);
section 720 (directors' statement and auditor's report to be available for inspection).
- (2) This is subject to any order of the court under section 721 (power of court to extend period for compliance on application by persons objecting to payment).

714 Directors' statement and auditor's report

- (1) The company's directors must make a statement in accordance with this section.
- (2) The statement must specify the amount of the permissible capital payment for the shares in question.
- (3) It must state that, having made full inquiry into the affairs and prospects of the company, the directors have formed the opinion—

Status: This is the original version (as it was originally enacted).

- (a) as regards its initial situation immediately following the date on which the payment out of capital is proposed to be made, that there will be no grounds on which the company could then be found unable to pay its debts, and
- (b) as regards its prospects for the year immediately following that date, that having regard to—
 - (i) their intentions with respect to the management of the company's business during that year, and
 - (ii) the amount and character of the financial resources that will in their view be available to the company during that year,
 the company will be able to continue to carry on business as a going concern (and will accordingly be able to pay its debts as they fall due) throughout that year.
- (4) In forming their opinion for the purposes of subsection (3)(a), the directors must take into account all of the company's liabilities (including any contingent or prospective liabilities).
- (5) The directors' statement must be in the prescribed form and must contain such information with respect to the nature of the company's business as may be prescribed.
- (6) It must in addition have annexed to it a report addressed to the directors by the company's auditor stating that—
 - (a) he has inquired into the company's state of affairs,
 - (b) the amount specified in the statement as the permissible capital payment for the shares in question is in his view properly determined in accordance with sections 710 to 712, and
 - (c) he is not aware of anything to indicate that the opinion expressed by the directors in their statement as to any of the matters mentioned in subsection (3) above is unreasonable in all the circumstances.

715 Directors' statement: offence if no reasonable grounds for opinion

- (1) If the directors make a statement under section 714 without having reasonable grounds for the opinion expressed in it, an offence is committed by every director who is in default.
- (2) A person guilty of an offence under this section is liable—
 - (a) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine (or both);
 - (b) on summary conviction—
 - (i) in England and Wales, to imprisonment for a term not exceeding twelve months or a fine not exceeding the statutory maximum (or both);
 - (ii) in Scotland or Northern Ireland, to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum (or both).

716 Payment to be approved by special resolution

- (1) The payment out of capital must be approved by a special resolution of the company.

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- (2) The resolution must be passed on, or within the week immediately following, the date on which the directors make the statement required by section 714.
- (3) A resolution under this section is subject to—
 - section 717 (exercise of voting rights), and
 - section 718 (disclosure of directors' statement and auditors' report).

717 Resolution authorising payment: exercise of voting rights

- (1) This section applies to a resolution under section 716 (authority for payment out of capital for redemption or purchase of own shares).
- (2) Where the resolution is proposed as a written resolution, a member who holds shares to which the resolution relates is not an eligible member.
- (3) Where the resolution is proposed at a meeting of the company, it is not effective if—
 - (a) any member of the company holding shares to which the resolution relates exercises the voting rights carried by any of those shares in voting on the resolution, and
 - (b) the resolution would not have been passed if he had not done so.
- (4) For this purpose—
 - (a) a member who holds shares to which the resolution relates is regarded as exercising the voting rights carried by those shares not only if he votes in respect of them on a poll on the question whether the resolution shall be passed, but also if he votes on the resolution otherwise than on a poll;
 - (b) any member of the company may demand a poll on that question;
 - (c) a vote and a demand for a poll by a person as proxy for a member are the same respectively as a vote and a demand by the member.

718 Resolution authorising payment: disclosure of directors' statement and auditor's report

- (1) This section applies to a resolution under section 716 (resolution authorising payment out of capital for redemption or purchase of own shares).
- (2) A copy of the directors' statement and auditor's report under section 714 must be made available to members—
 - (a) in the case of a written resolution, by being sent or submitted to every eligible member at or before the time at which the proposed resolution is sent or submitted to him;
 - (b) in the case of a resolution at a meeting, by being made available for inspection by members of the company at the meeting.
- (3) The resolution is ineffective if this requirement is not complied with.

719 Public notice of proposed payment

- (1) Within the week immediately following the date of the resolution under section 716 the company must cause to be published in the Gazette a notice—

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- (a) stating that the company has approved a payment out of capital for the purpose of acquiring its own shares by redemption or purchase or both (as the case may be),
 - (b) specifying—
 - (i) the amount of the permissible capital payment for the shares in question, and
 - (ii) the date of the resolution,
 - (c) stating where the directors' statement and auditor's report required by section 714 are available for inspection, and
 - (d) stating that any creditor of the company may at any time within the five weeks immediately following the date of the resolution apply to the court under section 721 for an order preventing the payment.
- (2) Within the week immediately following the date of the resolution the company must also either—
- (a) cause a notice to the same effect as that required by subsection (1) to be published in an appropriate national newspaper, or
 - (b) give notice in writing to that effect to each of its creditors.
- (3) “An appropriate national newspaper” means a newspaper circulating throughout the part of the United Kingdom in which the company is registered.
- (4) Not later than the day on which the company—
- (a) first publishes the notice required by subsection (1), or
 - (b) if earlier, first publishes or gives the notice required by subsection (2),
- the company must deliver to the registrar a copy of the directors' statement and auditor's report required by section 714.

720 Directors' statement and auditor's report to be available for inspection

- (1) The directors' statement and auditor's report must be kept available for inspection throughout the period—
- (a) beginning with the day on which the company—
 - (i) first publishes the notice required by section 719(1), or
 - (ii) if earlier, first publishes or gives the notice required by section 719(2),
 and
 - (b) ending five weeks after the date of the resolution for payment out of capital.
- (2) They must be kept available for inspection—
- (a) at the company's registered office, or
 - (b) at a place specified in regulations under section 1136.
- (3) The company must give notice to the registrar—
- (a) of the place at which the statement and report are kept available for inspection, and
 - (b) of any change in that place,
- unless they have at all times been kept at the company's registered office.
- (4) They must be open to the inspection of any member or creditor of the company without charge.

- (5) If default is made for 14 days in complying with subsection (3), or an inspection under subsection (4) is refused, an offence is committed by—
 - (a) the company, and
 - (b) every officer of the company who is in default.
- (6) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.
- (7) In the case of a refusal of an inspection required by subsection (4), the court may by order compel an immediate inspection.