



# Companies Act 2006

## 2006 CHAPTER 46

### PART 18

#### ACQUISITION BY LIMITED COMPANY OF ITS OWN SHARES

### CHAPTER 1

#### GENERAL PROVISIONS

#### *Introductory*

#### **658 General rule against limited company acquiring its own shares**

- (1) A limited company must not acquire its own shares, whether by purchase, subscription or otherwise, except in accordance with the provisions of this Part.
- (2) If a company purports to act in contravention of this section—
  - (a) an offence is committed by—
    - (i) the company, and
    - (ii) every officer of the company who is in default, and
  - (b) the purported acquisition is void.
- (3) 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).

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## **659 Exceptions to general rule**

- (1) A limited company may acquire any of its own fully paid shares otherwise than for valuable consideration.
- (2) Section 658 does not prohibit—
  - (a) the acquisition of shares in a reduction of capital duly made;
  - (b) the purchase of shares in pursuance of an order of the court under—
    - (i) section 98 (application to court to cancel resolution for re-registration as a private company),
    - (ii) section 721(6) (powers of court on objection to redemption or purchase of shares out of capital),
    - (iii) section 759 (remedial order in case of breach of prohibition of public offers by private company), or
    - (iv) Part 30 (protection of members against unfair prejudice);
  - (c) the forfeiture of shares, or the acceptance of shares surrendered in lieu, in pursuance of the company's articles, for failure to pay any sum payable in respect of the shares.

### *Shares held by company's nominee*

## **660 Treatment of shares held by nominee**

- (1) This section applies where shares in a limited company—
  - (a) are taken by a subscriber to the memorandum as nominee of the company,
  - (b) are issued to a nominee of the company, or
  - (c) are acquired by a nominee of the company, partly paid up, from a third person.
- (2) For all purposes—
  - (a) the shares are to be treated as held by the nominee on his own account, and
  - (b) the company is to be regarded as having no beneficial interest in them.
- (3) This section does not apply—
  - (a) to shares acquired otherwise than by subscription by a nominee of a public company, where—
    - (i) a person acquires shares in the company with financial assistance given to him, directly or indirectly, by the company for the purpose of or in connection with the acquisition, and
    - (ii) the company has a beneficial interest in the shares;
  - (b) to shares acquired by a nominee of the company when the company has no beneficial interest in the shares.

## **661 Liability of others where nominee fails to make payment in respect of shares**

- (1) This section applies where shares in a limited company—
  - (a) are taken by a subscriber to the memorandum as nominee of the company,
  - (b) are issued to a nominee of the company, or
  - (c) are acquired by a nominee of the company, partly paid up, from a third person.

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- (2) If the nominee, having been called on to pay any amount for the purposes of paying up, or paying any premium on, the shares, fails to pay that amount within 21 days from being called on to do so, then—
- (a) in the case of shares that he agreed to take as subscriber to the memorandum, the other subscribers to the memorandum, and
  - (b) in any other case, the directors of the company when the shares were issued to or acquired by him,
- are jointly and severally liable with him to pay that amount.
- (3) If in proceedings for the recovery of an amount under subsection (2) it appears to the court that the subscriber or director—
- (a) has acted honestly and reasonably, and
  - (b) having regard to all the circumstances of the case, ought fairly to be relieved from liability,
- the court may relieve him, either wholly or in part, from his liability on such terms as the court thinks fit.
- (4) If a subscriber to a company's memorandum or a director of a company has reason to apprehend that a claim will or might be made for the recovery of any such amount from him—
- (a) he may apply to the court for relief, and
  - (b) the court has the same power to relieve him as it would have had in proceedings for recovery of that amount.
- (5) This section does not apply to shares acquired by a nominee of the company when the company has no beneficial interest in the shares.

*Shares held by or for public company*

**662 Duty to cancel shares in public company held by or for the company**

- (1) This section applies in the case of a public company—
- (a) where shares in the company are forfeited, or surrendered to the company in lieu of forfeiture, in pursuance of the articles, for failure to pay any sum payable in respect of the shares;
  - (b) where shares in the company are surrendered to the company in pursuance of section 102C(1)(b) of the Building Societies Act 1986 (c. 53);
  - (c) where shares in the company are acquired by it (otherwise than in accordance with this Part or Part 30 (protection of members against unfair prejudice)) and the company has a beneficial interest in the shares;
  - (d) where a nominee of the company acquires shares in the company from a third party without financial assistance being given directly or indirectly by the company and the company has a beneficial interest in the shares; or
  - (e) where a person acquires shares in the company, with financial assistance given to him, directly or indirectly, by the company for the purpose of or in connection with the acquisition, and the company has a beneficial interest in the shares.
- (2) Unless the shares or any interest of the company in them are previously disposed of, the company must—

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- (a) cancel the shares and diminish the amount of the company's share capital by the nominal value of the shares cancelled, and
  - (b) where the effect is that the nominal value of the company's allotted share capital is brought below the authorised minimum, apply for re-registration as a private company, stating the effect of the cancellation.
- (3) It must do so no later than—
- (a) in a case within subsection (1)(a) or (b), three years from the date of the forfeiture or surrender;
  - (b) in a case within subsection (1)(c) or (d), three years from the date of the acquisition;
  - (c) in a case within subsection (1)(e), one year from the date of the acquisition.
- (4) The directors of the company may take any steps necessary to enable the company to comply with this section, and may do so without complying with the provisions of Chapter 10 of Part 17 (reduction of capital).
- See also section 664 (re-registration as private company in consequence of cancellation).
- (5) Neither the company nor, in a case within subsection (1)(d) or (e), the nominee or other shareholder may exercise any voting rights in respect of the shares.
- (6) Any purported exercise of those rights is void.

## **663 Notice of cancellation of shares**

- (1) Where a company cancels shares in order to comply with section 662, it must within one month after the shares are cancelled give notice to the registrar, specifying the shares cancelled.
- (2) The notice must be accompanied by a statement of capital.
- (3) The statement of capital must state with respect to the company's share capital immediately following the cancellation—
  - (a) the total number of shares of the company,
  - (b) the aggregate nominal value of those shares,
  - (c) for each class of shares—
    - (i) prescribed particulars of the rights attached to the shares,
    - (ii) the total number of shares of that class, and
    - (iii) the aggregate nominal value of shares of that class, and
  - (d) the amount paid up and the amount (if any) unpaid on each share (whether on account of the nominal value of the share or by way of premium).
- (4) If default is made in complying with this section, an offence is committed by—
  - (a) the company, and
  - (b) every officer of the company who is in default.
- (5) 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.

## **664 Re-registration as private company in consequence of cancellation**

- (1) Where a company is obliged to re-register as a private company to comply with section 662, the directors may resolve that the company should be so re-registered.

Chapter 3 of Part 3 (resolutions affecting a company's constitution) applies to any such resolution.

- (2) The resolution may make such changes—
- (a) in the company's name, and
  - (b) in the company's articles,
- as are necessary in connection with its becoming a private company.
- (3) The application for re-registration must contain a statement of the company's proposed name on re-registration.
- (4) The application must be accompanied by—
- (a) a copy of the resolution (unless a copy has already been forwarded under Chapter 3 of Part 3),
  - (b) a copy of the company's articles as amended by the resolution, and
  - (c) a statement of compliance.
- (5) The statement of compliance required is a statement that the requirements of this section as to re-registration as a private company have been complied with.
- (6) The registrar may accept the statement of compliance as sufficient evidence that the company is entitled to be re-registered as a private company.

## **665 Issue of certificate of incorporation on re-registration**

- (1) If on an application under section 664 the registrar is satisfied that the company is entitled to be re-registered as a private company, the company shall be re-registered accordingly.
- (2) The registrar must issue a certificate of incorporation altered to meet the circumstances of the case.
- (3) The certificate must state that it is issued on re-registration and the date on which it is issued.
- (4) On the issue of the certificate—
- (a) the company by virtue of the issue of the certificate becomes a private company, and
  - (b) the changes in the company's name and articles take effect.
- (5) The certificate is conclusive evidence that the requirements of this Act as to re-registration have been complied with.

## **666 Effect of failure to re-register**

- (1) If a public company that is required by section 662 to apply to be re-registered as a private company fails to do so before the end of the period specified in subsection (3) of that section, Chapter 1 of Part 20 (prohibition of public offers by private company) applies to it as if it were a private company.

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- (2) Subject to that, the company continues to be treated as a public company until it is so re-registered.

**667 Offence in case of failure to cancel shares or re-register**

- (1) This section applies where a company, when required to do by section 662—
- (a) fails to cancel any shares, or
  - (b) fails to make an application for re-registration as a private company, within the time specified in subsection (3) of that section.
- (2) An offence is committed by—
- (a) the company, and
  - (b) every officer of the company who is in default.
- (3) 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.

**668 Application of provisions to company re-registering as public company**

- (1) This section applies where, after shares in a private company—
- (a) are forfeited in pursuance of the company's articles or are surrendered to the company in lieu of forfeiture,
  - (b) are acquired by the company (otherwise than by any of the methods permitted by this Part or Part 30 (protection of members against unfair prejudice)), the company having a beneficial interest in the shares,
  - (c) are acquired by a nominee of the company from a third party without financial assistance being given directly or indirectly by the company, the company having a beneficial interest in the shares, or
  - (d) are acquired by a person with financial assistance given to him, directly or indirectly, by the company for the purpose of or in connection with the acquisition, the company having a beneficial interest in the shares,
- the company is re-registered as a public company.
- (2) In that case the provisions of sections 662 to 667 apply to the company as if it had been a public company at the time of the forfeiture, surrender or acquisition, subject to the following modification.
- (3) The modification is that the period specified in section 662(3)(a), (b) or (c) (period for complying with obligations under that section) runs from the date of the re-registration of the company as a public company.

**669 Transfer to reserve on acquisition of shares by public company or nominee**

- (1) Where—
- (a) a public company, or a nominee of a public company, acquires shares in the company, and
  - (b) those shares are shown in a balance sheet of the company as an asset,
- an amount equal to the value of the shares must be transferred out of profits available for dividend to a reserve fund and is not then available for distribution.

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- (2) Subsection (1) applies to an interest in shares as it applies to shares.

As it so applies the reference to the value of the shares shall be read as a reference to the value to the company of its interest in the shares.

### *Charges of public company on own shares*

#### **670 Public companies: general rule against lien or charge on own shares**

- (1) A lien or other charge of a public company on its own shares (whether taken expressly or otherwise) is void, except as permitted by this section.
- (2) In the case of any description of company, a charge is permitted if the shares are not fully paid up and the charge is for an amount payable in respect of the shares.
- (3) In the case of a company whose ordinary business—
- (a) includes the lending of money, or
  - (b) consists of the provision of credit or the bailment (in Scotland, hiring) of goods under a hire-purchase agreement, or both,
- a charge is permitted (whether the shares are fully paid or not) if it arises in connection with a transaction entered into by the company in the ordinary course of that business.
- (4) In the case of a company that has been re-registered as a public company, a charge is permitted if it was in existence immediately before the application for re-registration.

### *Supplementary provisions*

#### **671 Interests to be disregarded in determining whether company has beneficial interest**

In determining for the purposes of this Chapter whether a company has a beneficial interest in shares, there shall be disregarded any such interest as is mentioned in—

- section 672 (residual interest under pension scheme or employees' share scheme),
- section 673 (employer's charges and other rights of recovery), or
- section 674 (rights as personal representative or trustee).

#### **672 Residual interest under pension scheme or employees' share scheme**

- (1) Where the shares are held on trust for the purposes of a pension scheme or employees' share scheme, there shall be disregarded any residual interest of the company that has not vested in possession.
- (2) A “residual interest” means a right of the company to receive any of the trust property in the event of—
- (a) all the liabilities arising under the scheme having been satisfied or provided for, or
  - (b) the company ceasing to participate in the scheme, or
  - (c) the trust property at any time exceeding what is necessary for satisfying the liabilities arising or expected to arise under the scheme.
- (3) In subsection (2)—

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- (a) the reference to a right includes a right dependent on the exercise of a discretion vested by the scheme in the trustee or another person, and
  - (b) the reference to liabilities arising under a scheme includes liabilities that have resulted, or may result, from the exercise of any such discretion.
- (4) For the purposes of this section a residual interest vests in possession—
- (a) in a case within subsection (2)(a), on the occurrence of the event mentioned there (whether or not the amount of the property receivable pursuant to the right is ascertained);
  - (b) in a case within subsection (2)(b) or (c), when the company becomes entitled to require the trustee to transfer to it any of the property receivable pursuant to that right.
- (5) Where by virtue of this section shares are exempt from section 660 or 661 (shares held by company's nominee) at the time they are taken, issued or acquired but the residual interest in question vests in possession before they are disposed of or fully paid up, those sections apply to the shares as if they had been taken, issued or acquired on the date on which that interest vests in possession.
- (6) Where by virtue of this section shares are exempt from sections 662 to 668 (shares held by or for public company) at the time they are acquired but the residual interest in question vests in possession before they are disposed of, those sections apply to the shares as if they had been acquired on the date on which the interest vests in possession.

### **673 Employer's charges and other rights of recovery**

- (1) Where the shares are held on trust for the purposes of a pension scheme there shall be disregarded—
- (a) any charge or lien on, or set-off against, any benefit or other right or interest under the scheme for the purpose of enabling the employer or former employer of a member of the scheme to obtain the discharge of a monetary obligation due to him from the member;
  - (b) any right to receive from the trustee of the scheme, or as trustee of the scheme to retain, an amount that can be recovered or retained—
    - (i) under section 61 of the Pension Schemes Act 1993 (c. 48), or otherwise, as reimbursement or partial reimbursement for any contributions equivalent premium paid in connection with the scheme under Part 3 of that Act, or
    - (ii) under section 57 of the Pension Schemes (Northern Ireland) Act 1993 (c. 49), or otherwise, as reimbursement or partial reimbursement for any contributions equivalent premium paid in connection with the scheme under Part 3 of that Act.
- (2) Where the shares are held on trust for the purposes of an employees' share scheme, there shall be disregarded any charge or lien on, or set-off against, any benefit or other right or interest under the scheme for the purpose of enabling the employer or former employer of a member of the scheme to obtain the discharge of a monetary obligation due to him from the member.



#### **674 Rights as personal representative or trustee**

Where the company is a personal representative or trustee, there shall be disregarded any rights that the company has in that capacity including, in particular—

- (a) any right to recover its expenses or be remunerated out of the estate or trust property, and
- (b) any right to be indemnified out of that property for any liability incurred by reason of any act or omission of the company in the performance of its duties as personal representative or trustee.

#### **675 Meaning of “pension scheme”**

- (1) In this Chapter “pension scheme” means a scheme for the provision of benefits consisting of or including relevant benefits for or in respect of employees or former employees.
- (2) In subsection (1) “relevant benefits” means any pension, lump sum, gratuity or other like benefit given or to be given on retirement or on death or in anticipation of retirement or, in connection with past service, after retirement or death.

#### **676 Application of provisions to directors**

For the purposes of this Chapter references to “employer” and “employee”, in the context of a pension scheme or employees' share scheme, shall be read as if a director of a company were employed by it.

## **CHAPTER 2**

### **FINANCIAL ASSISTANCE FOR PURCHASE OF OWN SHARES**

#### *Introductory*

#### **677 Meaning of “financial assistance”**

- (1) In this Chapter “financial assistance” means—
  - (a) financial assistance given by way of gift,
  - (b) financial assistance given—
    - (i) by way of guarantee, security or indemnity (other than an indemnity in respect of the indemnifier's own neglect or default), or
    - (ii) by way of release or waiver,
  - (c) financial assistance given—
    - (i) by way of a loan or any other agreement under which any of the obligations of the person giving the assistance are to be fulfilled at a time when in accordance with the agreement any obligation of another party to the agreement remains unfulfilled, or
    - (ii) by way of the novation of, or the assignment (in Scotland, assignation) of rights arising under, a loan or such other agreement, or
  - (d) any other financial assistance given by a company where—
    - (i) the net assets of the company are reduced to a material extent by the giving of the assistance, or

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- (ii) the company has no net assets.
- (2) “Net assets” here means the aggregate amount of the company’s assets less the aggregate amount of its liabilities.
- (3) For this purpose a company’s liabilities include—
  - (a) where the company draws up Companies Act individual accounts, any provision of a kind specified for the purposes of this subsection by regulations under section 396, and
  - (b) where the company draws up IAS individual accounts, any provision made in those accounts.

*Circumstances in which financial assistance prohibited*

**678 Assistance for acquisition of shares in public company**

- (1) Where a person is acquiring or proposing to acquire shares in a public company, it is not lawful for that company, or a company that is a subsidiary of that company, to give financial assistance directly or indirectly for the purpose of the acquisition before or at the same time as the acquisition takes place.
- (2) Subsection (1) does not prohibit a company from giving financial assistance for the acquisition of shares in it or its holding company if—
  - (a) the company’s principal purpose in giving the assistance is not to give it for the purpose of any such acquisition, or
  - (b) the giving of the assistance for that purpose is only an incidental part of some larger purpose of the company,
 and the assistance is given in good faith in the interests of the company.
- (3) Where—
  - (a) a person has acquired shares in a company, and
  - (b) a liability has been incurred (by that or another person) for the purpose of the acquisition,
 it is not lawful for that company, or a company that is a subsidiary of that company, to give financial assistance directly or indirectly for the purpose of reducing or discharging the liability if, at the time the assistance is given, the company in which the shares were acquired is a public company.
- (4) Subsection (3) does not prohibit a company from giving financial assistance if—
  - (a) the company’s principal purpose in giving the assistance is not to reduce or discharge any liability incurred by a person for the purpose of the acquisition of shares in the company or its holding company, or
  - (b) the reduction or discharge of any such liability is only an incidental part of some larger purpose of the company,
 and the assistance is given in good faith in the interests of the company.
- (5) This section has effect subject to sections 681 and 682 (unconditional and conditional exceptions to prohibition).

**679 Assistance by public company for acquisition of shares in its private holding company**

- (1) Where a person is acquiring or proposing to acquire shares in a private company, it is not lawful for a public company that is a subsidiary of that company to give financial assistance directly or indirectly for the purpose of the acquisition before or at the same time as the acquisition takes place.
- (2) Subsection (1) does not prohibit a company from giving financial assistance for the acquisition of shares in its holding company if—
  - (a) the company's principal purpose in giving the assistance is not to give it for the purpose of any such acquisition, or
  - (b) the giving of the assistance for that purpose is only an incidental part of some larger purpose of the company,and the assistance is given in good faith in the interests of the company.
- (3) Where—
  - (a) a person has acquired shares in a private company, and
  - (b) a liability has been incurred (by that or another person) for the purpose of the acquisition,it is not lawful for a public company that is a subsidiary of that company to give financial assistance directly or indirectly for the purpose of reducing or discharging the liability.
- (4) Subsection (3) does not prohibit a company from giving financial assistance if—
  - (a) the company's principal purpose in giving the assistance is not to reduce or discharge any liability incurred by a person for the purpose of the acquisition of shares in its holding company, or
  - (b) the reduction or discharge of any such liability is only an incidental part of some larger purpose of the company,and the assistance is given in good faith in the interests of the company.
- (5) This section has effect subject to sections 681 and 682 (unconditional and conditional exceptions to prohibition).

**680 Prohibited financial assistance an offence**

- (1) If a company contravenes section 678(1) or (3) or section 679(1) or (3) (prohibited financial assistance) an offence is committed by—
  - (a) the company, and
  - (b) every officer of the company 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 to 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 to a fine not exceeding the statutory maximum (or both).

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### *Exceptions from prohibition*

#### **681 Unconditional exceptions**

- (1) Neither section 678 nor section 679 prohibits a transaction to which this section applies.
- (2) Those transactions are—
  - (a) a distribution of the company's assets by way of—
    - (i) dividend lawfully made, or
    - (ii) distribution in the course of a company's winding up;
  - (b) an allotment of bonus shares;
  - (c) a reduction of capital under Chapter 10 of Part 17;
  - (d) a redemption of shares under Chapter 3 or a purchase of shares under Chapter 4 of this Part;
  - (e) anything done in pursuance of an order of the court under Part 26 (order sanctioning compromise or arrangement with members or creditors);
  - (f) anything done under an arrangement made in pursuance of section 110 of the Insolvency Act 1986 (c. 45) or Article 96 of the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)) (liquidator in winding up accepting shares as consideration for sale of company's property);
  - (g) anything done under an arrangement made between a company and its creditors that is binding on the creditors by virtue of Part 1 of the Insolvency Act 1986 or Part 2 of the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)).

#### **682 Conditional exceptions**

- (1) Neither section 678 nor section 679 prohibits a transaction to which this section applies—
  - (a) if the company giving the assistance is a private company, or
  - (b) if the company giving the assistance is a public company and—
    - (i) the company has net assets that are not reduced by the giving of the assistance, or
    - (ii) to the extent that those assets are so reduced, the assistance is provided out of distributable profits.
- (2) The transactions to which this section applies are—
  - (a) where the lending of money is part of the ordinary business of the company, the lending of money in the ordinary course of the company's business;
  - (b) the provision by the company, in good faith in the interests of the company or its holding company, of financial assistance for the purposes of an employees' share scheme;
  - (c) the provision of financial assistance by the company for the purposes of or in connection with anything done by the company (or another company in the same group) for the purpose of enabling or facilitating transactions in shares in the first-mentioned company or its holding company between, and involving the acquisition of beneficial ownership of those shares by—
    - (i) bona fide employees or former employees of that company (or another company in the same group), or

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- (ii) spouses or civil partners, widows, widowers or surviving civil partners, or minor children or step-children of any such employees or former employees;
  - (d) the making by the company of loans to persons (other than directors) employed in good faith by the company with a view to enabling those persons to acquire fully paid shares in the company or its holding company to be held by them by way of beneficial ownership.
- (3) The references in this section to “net assets” are to the amount by which the aggregate of the company’s assets exceeds the aggregate of its liabilities.
- (4) For this purpose—
- (a) the amount of both assets and liabilities shall be taken to be as stated in the company’s accounting records immediately before the financial assistance is given, and
  - (b) “liabilities” includes any amount retained as reasonably necessary for the purpose of providing for a liability the nature of which is clearly defined and that is either likely to be incurred or certain to be incurred but uncertain as to amount or as to the date on which it will arise.
- (5) For the purposes of subsection (2)(c) a company is in the same group as another company if it is a holding company or subsidiary of that company or a subsidiary of a holding company of that company.

### *Supplementary*

## **683 Definitions for this Chapter**

- (1) In this Chapter—
- “distributable profits”, in relation to the giving of any financial assistance—
    - (a) means those profits out of which the company could lawfully make a distribution equal in value to that assistance, and
    - (b) includes, in a case where the financial assistance consists of or includes, or is treated as arising in consequence of, the sale, transfer or other disposition of a non-cash asset, any profit that, if the company were to make a distribution of that character would be available for that purpose (see section 846); and
  - “distribution” has the same meaning as in Part 23 (distributions) (see section 829).
- (2) In this Chapter—
- (a) a reference to a person incurring a liability includes his changing his financial position by making an agreement or arrangement (whether enforceable or unenforceable, and whether made on his own account or with any other person) or by any other means, and
  - (b) a reference to a company giving financial assistance for the purposes of reducing or discharging a liability incurred by a person for the purpose of the acquisition of shares includes its giving such assistance for the purpose of wholly or partly restoring his financial position to what it was before the acquisition took place.

## CHAPTER 3

### REDEEMABLE SHARES

#### **684 Power of limited company to issue redeemable shares**

- (1) A limited company having a share capital may issue shares that are to be redeemed or are liable to be redeemed at the option of the company or the shareholder (“redeemable shares”), subject to the following provisions.
- (2) The articles of a private limited company may exclude or restrict the issue of redeemable shares.
- (3) A public limited company may only issue redeemable shares if it is authorised to do so by its articles.
- (4) No redeemable shares may be issued at a time when there are no issued shares of the company that are not redeemable.

#### **685 Terms and manner of redemption**

- (1) The directors of a limited company may determine the terms, conditions and manner of redemption of shares if they are authorised to do so—
  - (a) by the company’s articles, or
  - (b) by a resolution of the company.
- (2) A resolution under subsection (1)(b) may be an ordinary resolution, even though it amends the company’s articles.
- (3) Where the directors are authorised under subsection (1) to determine the terms, conditions and manner of redemption of shares—
  - (a) they must do so before the shares are allotted, and
  - (b) any obligation of the company to state in a statement of capital the rights attached to the shares extends to the terms, conditions and manner of redemption.
- (4) Where the directors are not so authorised, the terms, conditions and manner of redemption of any redeemable shares must be stated in the company’s articles.

#### **686 Payment for redeemable shares**

- (1) Redeemable shares in a limited company may not be redeemed unless they are fully paid.
- (2) The terms of redemption of shares in a limited company may provide that the amount payable on redemption may, by agreement between the company and the holder of the shares, be paid on a date later than the redemption date.
- (3) Unless redeemed in accordance with a provision authorised by subsection (2), the shares must be paid for on redemption.

## **687 Financing of redemption**

- (1) A private limited company may redeem redeemable shares out of capital in accordance with Chapter 5.
- (2) Subject to that, redeemable shares in a limited company may only be redeemed out of—
  - (a) distributable profits of the company, or
  - (b) the proceeds of a fresh issue of shares made for the purposes of the redemption.
- (3) Any premium payable on redemption of shares in a limited company must be paid out of distributable profits of the company, subject to the following provision.
- (4) If the redeemable shares were issued at a premium, any premium payable on their redemption may be paid out of the proceeds of a fresh issue of shares made for the purposes of the redemption, up to an amount equal to—
  - (a) the aggregate of the premiums received by the company on the issue of the shares redeemed, or
  - (b) the current amount of the company's share premium account (including any sum transferred to that account in respect of premiums on the new shares),whichever is the less.
- (5) The amount of the company's share premium account is reduced by a sum corresponding (or by sums in the aggregate corresponding) to the amount of any payment made under subsection (4).
- (6) This section is subject to section 735(4) (terms of redemption enforceable in a winding up).

## **688 Redeemed shares treated as cancelled**

Where shares in a limited company are redeemed—

- (a) the shares are treated as cancelled, and
- (b) the amount of the company's issued share capital is diminished accordingly by the nominal value of the shares redeemed.

## **689 Notice to registrar of redemption**

- (1) If a limited company redeems any redeemable shares it must within one month after doing so give notice to the registrar, specifying the shares redeemed.
- (2) The notice must be accompanied by a statement of capital.
- (3) The statement of capital must state with respect to the company's share capital immediately following the redemption—
  - (a) the total number of shares of the company,
  - (b) the aggregate nominal value of those shares,
  - (c) for each class of shares—
    - (i) prescribed particulars of the rights attached to the shares,
    - (ii) the total number of shares of that class, and
    - (iii) the aggregate nominal value of shares of that class, and

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- (d) the amount paid up and the amount (if any) unpaid on each share (whether on account of the nominal value of the share or by way of premium).
- (4) If default is made in complying with this section, an offence is committed by—
  - (a) the company, and
  - (b) every officer of the company who is in default.
- (5) 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.

## CHAPTER 4

### PURCHASE OF OWN SHARES

#### *General provisions*

#### **690 Power of limited company to purchase own shares**

- (1) A limited company having a share capital may purchase its own shares (including any redeemable shares), subject to—
  - (a) the following provisions of this Chapter, and
  - (b) any restriction or prohibition in the company's articles.
- (2) A limited company may not purchase its own shares if as a result of the purchase there would no longer be any issued shares of the company other than redeemable shares or shares held as treasury shares.

#### **691 Payment for purchase of own shares**

- (1) A limited company may not purchase its own shares unless they are fully paid.
- (2) Where a limited company purchases its own shares, the shares must be paid for on purchase.

#### **692 Financing of purchase of own shares**

- (1) A private limited company may purchase its own shares out of capital in accordance with Chapter 5.
- (2) Subject to that—
  - (a) a limited company may only purchase its own shares out of—
    - (i) distributable profits of the company, or
    - (ii) the proceeds of a fresh issue of shares made for the purpose of financing the purchase, and
  - (b) any premium payable on the purchase by a limited company of its own shares must be paid out of distributable profits of the company, subject to subsection (3).



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- (3) If the shares to be purchased were issued at a premium, any premium payable on their purchase by the company may be paid out of the proceeds of a fresh issue of shares made for the purpose of financing the purchase, up to an amount equal to—
  - (a) the aggregate of the premiums received by the company on the issue of the shares purchased, or
  - (b) the current amount of the company's share premium account (including any sum transferred to that account in respect of premiums on the new shares),whichever is the less.
- (4) The amount of the company's share premium account is reduced by a sum corresponding (or by sums in the aggregate corresponding) to the amount of any payment made under subsection (3).
- (5) This section has effect subject to section 735(4) (terms of purchase enforceable in a winding up).

*Authority for purchase of own shares*

**693 Authority for purchase of own shares**

- (1) A limited company may only purchase its own shares—
  - (a) by an off-market purchase, in pursuance of a contract approved in advance in accordance with section 694;
  - (b) by a market purchase, authorised in accordance with section 701.
- (2) A purchase is “off-market” if the shares either—
  - (a) are purchased otherwise than on a recognised investment exchange, or
  - (b) are purchased on a recognised investment exchange but are not subject to a marketing arrangement on the exchange.
- (3) For this purpose a company's shares are subject to a marketing arrangement on a recognised investment exchange if—
  - (a) they are listed under Part 6 of the Financial Services and Markets Act 2000 (c. 8), or
  - (b) the company has been afforded facilities for dealings in the shares to take place on the exchange—
    - (i) without prior permission for individual transactions from the authority governing that investment exchange, and
    - (ii) without limit as to the time during which those facilities are to be available.
- (4) A purchase is a “market purchase” if it is made on a recognised investment exchange and is not an off-market purchase by virtue of subsection (2)(b).
- (5) In this section “recognised investment exchange” means a recognised investment exchange (within the meaning of Part 18 of the Financial Services and Markets Act 2000) other than an overseas exchange (within the meaning of that Part).

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### *Authority for off-market purchase*

#### **694 Authority for off-market purchase**

- (1) A company may only make an off-market purchase of its own shares in pursuance of a contract approved prior to the purchase in accordance with this section.
- (2) Either—
  - (a) the terms of the contract must be authorised by a special resolution of the company before the contract is entered into, or
  - (b) the contract must provide that no shares may be purchased in pursuance of the contract until its terms have been authorised by a special resolution of the company.
- (3) The contract may be a contract, entered into by the company and relating to shares in the company, that does not amount to a contract to purchase the shares but under which the company may (subject to any conditions) become entitled or obliged to purchase the shares.
- (4) The authority conferred by a resolution under this section may be varied, revoked or from time to time renewed by a special resolution of the company.
- (5) In the case of a public company a resolution conferring, varying or renewing authority must specify a date on which the authority is to expire, which must not be later than 18 months after the date on which the resolution is passed.
- (6) A resolution conferring, varying, revoking or renewing authority under this section is subject to—
  - section 695 (exercise of voting rights), and
  - section 696 (disclosure of details of contract).

#### **695 Resolution authorising off-market purchase: exercise of voting rights**

- (1) This section applies to a resolution to confer, vary, revoke or renew authority for the purposes of section 694 (authority for off-market 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.

## **696 Resolution authorising off-market purchase: disclosure of details of contract**

- (1) This section applies in relation to a resolution to confer, vary, revoke or renew authority for the purposes of section 694 (authority for off-market purchase of own shares).
- (2) A copy of the contract (if it is in writing) or a memorandum setting out its terms (if it is not) 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 both—
    - (i) at the company's registered office for not less than 15 days ending with the date of the meeting, and
    - (ii) at the meeting itself.
- (3) A memorandum of contract terms so made available must include the names of the members holding shares to which the contract relates.
- (4) A copy of the contract so made available must have annexed to it a written memorandum specifying such of those names as do not appear in the contract itself.
- (5) The resolution is not validly passed if the requirements of this section are not complied with

## **697 Variation of contract for off-market purchase**

- (1) A company may only agree to a variation of a contract authorised under section 694 (authority for off-market purchase) if the variation is approved in advance in accordance with this section.
- (2) The terms of the variation must be authorised by a special resolution of the company before it is agreed to.
- (3) That authority may be varied, revoked or from time to time renewed by a special resolution of the company.
- (4) In the case of a public company a resolution conferring, varying or renewing authority must specify a date on which the authority is to expire, which must not be later than 18 months after the date on which the resolution is passed.
- (5) A resolution conferring, varying, revoking or renewing authority under this section is subject to—
  - section 698 (exercise of voting rights), and
  - section 699 (disclosure of details of variation).

## **698 Resolution authorising variation: exercise of voting rights**

- (1) This section applies to a resolution to confer, vary, revoke or renew authority for the purposes of section 697 (variation of contract for off-market 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—

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- (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.

#### **699 Resolution authorising variation: disclosure of details of variation**

- (1) This section applies in relation to a resolution under section 697 (variation of contract for off-market purchase of own shares).
- (2) A copy of the proposed variation (if it is in writing) or a written memorandum giving details of the proposed variation (if it is not) 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 both—
    - (i) at the company's registered office for not less than 15 days ending with the date of the meeting, and
    - (ii) at the meeting itself.
- (3) There must also be made available as mentioned in subsection (2) a copy of the original contract or, as the case may be, a memorandum of its terms, together with any variations previously made.
- (4) A memorandum of the proposed variation so made available must include the names of the members holding shares to which the variation relates.
- (5) A copy of the proposed variation so made available must have annexed to it a written memorandum specifying such of those names as do not appear in the variation itself.
- (6) The resolution is not validly passed if the requirements of this section are not complied with.

#### **700 Release of company's rights under contract for off-market purchase**

- (1) An agreement by a company to release its rights under a contract approved under section 694 (authorisation of off-market purchase) is void unless the terms of the release agreement are approved in advance in accordance with this section.
- (2) The terms of the proposed agreement must be authorised by a special resolution of the company before the agreement is entered into.
- (3) That authority may be varied, revoked or from time to time renewed by a special resolution of the company.

- (4) In the case of a public company a resolution conferring, varying or renewing authority must specify a date on which the authority is to expire, which must not be later than 18 months after the date on which the resolution is passed.
- (5) The provisions of—
  - section 698 (exercise of voting rights), and
  - section 699 (disclosure of details of variation),apply to a resolution authorising a proposed release agreement as they apply to a resolution authorising a proposed variation.

### *Authority for market purchase*

## **701 Authority for market purchase**

- (1) A company may only make a market purchase of its own shares if the purchase has first been authorised by a resolution of the company.
- (2) That authority—
  - (a) may be general or limited to the purchase of shares of a particular class or description, and
  - (b) may be unconditional or subject to conditions.
- (3) The authority must—
  - (a) specify the maximum number of shares authorised to be acquired, and
  - (b) determine both the maximum and minimum prices that may be paid for the shares.
- (4) The authority may be varied, revoked or from time to time renewed by a resolution of the company.
- (5) A resolution conferring, varying or renewing authority must specify a date on which it is to expire, which must not be later than 18 months after the date on which the resolution is passed.
- (6) A company may make a purchase of its own shares after the expiry of the time limit specified if—
  - (a) the contract of purchase was concluded before the authority expired, and
  - (b) the terms of the authority permitted the company to make a contract of purchase that would or might be executed wholly or partly after its expiration.
- (7) A resolution to confer or vary authority under this section may determine either or both the maximum and minimum price for purchase by—
  - (a) specifying a particular sum, or
  - (b) providing a basis or formula for calculating the amount of the price (but without reference to any person's discretion or opinion).
- (8) Chapter 3 of Part 3 (resolutions affecting a company's constitution) applies to a resolution under this section.

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### *Supplementary provisions*

## **702 Copy of contract or memorandum to be available for inspection**

- (1) This section applies where a company has entered into—
  - (a) a contract approved under section 694 (authorisation of contract for off-market purchase), or
  - (b) a contract for a purchase authorised under section 701 (authorisation of market purchase).
- (2) The company must keep available for inspection—
  - (a) a copy of the contract, or
  - (b) if the contract is not in writing, a written memorandum setting out its terms.
- (3) The copy or memorandum must be kept available for inspection from the conclusion of the contract until the end of the period of ten years beginning with—
  - (a) the date on which the purchase of all the shares in pursuance of the contract is completed, or
  - (b) the date on which the contract otherwise determines.
- (4) The copy or memorandum must be kept available for inspection—
  - (a) at the company's registered office, or
  - (b) at a place specified in regulations under section 1136.
- (5) The company must give notice to the registrar—
  - (a) of the place at which the copy or memorandum is kept available for inspection, and
  - (b) of any change in that place,
 unless it has at all times been kept at the company's registered office.
- (6) Every copy or memorandum required to be kept under this section must be kept open to inspection without charge—
  - (a) by any member of the company, and
  - (b) in the case of a public company, by any other person.
- (7) The provisions of this section apply to a variation of a contract as they apply to the original contract.

## **703 Enforcement of right to inspect copy or memorandum**

- (1) If default is made in complying with section 702(2), (3) or (4) or default is made for 14 days in complying with section 702(5), or an inspection required under section 702(6) is refused, an offence is committed by—
  - (a) the company, and
  - (b) every officer of the company who is in default.
- (2) 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.
- (3) In the case of refusal of an inspection required under section 702(6) the court may by order compel an immediate inspection.

#### **704 No assignment of company's right to purchase own shares**

The rights of a company under a contract authorised under—

- (a) section 694 (authority for off-market purchase), or
- (b) section 701 (authority for market purchase)

are not capable of being assigned.

#### **705 Payments apart from purchase price to be made out of distributable profits**

(1) A payment made by a company in consideration of—

- (a) acquiring any right with respect to the purchase of its own shares in pursuance of a contingent purchase contract approved under section 694 (authorisation of off-market purchase),
- (b) the variation of any contract approved under that section, or
- (c) the release of any of the company's obligations with respect to the purchase of any of its own shares under a contract—
  - (i) approved under section 694, or
  - (ii) authorised under section 701 (authorisation of market purchase),

must be made out of the company's distributable profits.

(2) If this requirement is not met in relation to a contract, then—

- (a) in a case within subsection (1)(a), no purchase by the company of its own shares in pursuance of that contract may be made under this Chapter;
- (b) in a case within subsection (1)(b), no such purchase following the variation may be made under this Chapter;
- (c) in a case within subsection (1)(c), the purported release is void.

#### **706 Treatment of shares purchased**

Where a limited company makes a purchase of its own shares in accordance with this Chapter, then—

- (a) if section 724 (treasury shares) applies, the shares may be held and dealt with in accordance with Chapter 6;
- (b) if that section does not apply—
  - (i) the shares are treated as cancelled, and
  - (ii) the amount of the company's issued share capital is diminished accordingly by the nominal value of the shares cancelled.

#### **707 Return to registrar of purchase of own shares**

(1) Where a company purchases shares under this Chapter, it must deliver a return to the registrar within the period of 28 days beginning with the date on which the shares are delivered to it.

(2) The return must distinguish—

- (a) shares in relation to which section 724 (treasury shares) applies and shares in relation to which that section does not apply, and
- (b) shares in relation to which that section applies—
  - (i) that are cancelled forthwith (under section 729 (cancellation of treasury shares)), and

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- (ii) that are not so cancelled.
- (3) The return must state, with respect to shares of each class purchased—
  - (a) the number and nominal value of the shares, and
  - (b) the date on which they were delivered to the company.
- (4) In the case of a public company the return must also state—
  - (a) the aggregate amount paid by the company for the shares, and
  - (b) the maximum and minimum prices paid in respect of shares of each class purchased.
- (5) Particulars of shares delivered to the company on different dates and under different contracts may be included in a single return.
 

In such a case the amount required to be stated under subsection (4)(a) is the aggregate amount paid by the company for all the shares to which the return relates.
- (6) If default is made in complying with this section an offence is committed by every officer of the company who is in default.
- (7) A person guilty of an offence under this section is liable—
  - (a) on conviction on indictment, to a fine;
  - (b) on summary conviction to a fine not exceeding the statutory maximum and, for continued contravention, a daily default fine not exceeding one-tenth of the statutory maximum.

## **708 Notice to registrar of cancellation of shares**

- (1) If on the purchase by a company of any of its own shares in accordance with this Part—
  - (a) section 724 (treasury shares) does not apply (so that the shares are treated as cancelled), or
  - (b) that section applies but the shares are cancelled forthwith (under section 729 (cancellation of treasury shares)),

the company must give notice of cancellation to the registrar, within the period of 28 days beginning with the date on which the shares are delivered to it, specifying the shares cancelled.
- (2) The notice must be accompanied by a statement of capital.
- (3) The statement of capital must state with respect to the company's share capital immediately following the cancellation—
  - (a) the total number of shares of the company,
  - (b) the aggregate nominal value of those shares,
  - (c) for each class of shares—
    - (i) prescribed particulars of the rights attached to the shares,
    - (ii) the total number of shares of that class, and
    - (iii) the aggregate nominal value of shares of that class, and
  - (d) the amount paid up and the amount (if any) unpaid on each share (whether on account of the nominal value of the share or by way of premium).
- (4) If default is made in complying with this section, an offence is committed by—
  - (a) the company, and



- (b) every officer of the company who is in default.
- (5) 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.

## CHAPTER 5

### REDEMPTION OR PURCHASE BY PRIVATE COMPANY OUT OF CAPITAL

#### *Introductory*

#### **709 Power of private limited company to redeem or purchase own shares out of capital**

- (1) A private limited company may in accordance with this Chapter, but subject to any restriction or prohibition in the company's articles, make a payment in respect of the redemption or purchase of its own shares otherwise than out of distributable profits or the proceeds of a fresh issue of shares.
- (2) References below in this Chapter to payment out of capital are to any payment so made, whether or not it would be regarded apart from this section as a payment out of capital.

#### *The permissible capital payment*

#### **710 The permissible capital payment**

- (1) The payment that may, in accordance with this Chapter, be made by a company out of capital in respect of the redemption or purchase of its own shares is such amount as, after applying for that purpose—
  - (a) any available profits of the company, and
  - (b) the proceeds of any fresh issue of shares made for the purposes of the redemption or purchase,is required to meet the price of redemption or purchase.
- (2) That is referred to below in this Chapter as “the permissible capital payment” for the shares.

#### **711 Available profits**

- (1) For the purposes of this Chapter the available profits of the company, in relation to the redemption or purchase of any shares, are the profits of the company that are available for distribution (within the meaning of Part 23).
- (2) But the question whether a company has any profits so available, and the amount of any such profits, shall be determined in accordance with section 712 instead of in accordance with sections 836 to 842 in that Part.

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## **712 Determination of available profits**

- (1) The available profits of the company are determined as follows.
- (2) First, determine the profits of the company by reference to the following items as stated in the relevant accounts—
  - (a) profits, losses, assets and liabilities,
  - (b) provisions of the following kinds—
    - (i) where the relevant accounts are Companies Act accounts, provisions of a kind specified for the purposes of this subsection by regulations under section 396;
    - (ii) where the relevant accounts are IAS accounts, provisions of any kind;
  - (c) share capital and reserves (including undistributable reserves).
- (3) Second, reduce the amount so determined by the amount of—
  - (a) any distribution lawfully made by the company, and
  - (b) any other relevant payment lawfully made by the company out of distributable profits,
 after the date of the relevant accounts and before the end of the relevant period.
- (4) For this purpose “other relevant payment lawfully made” includes—
  - (a) financial assistance lawfully given out of distributable profits in accordance with Chapter 2,
  - (b) payments lawfully made out of distributable profits in respect of the purchase by the company of any shares in the company, and
  - (c) payments of any description specified in section 705 (payments other than purchase price to be made out of distributable profits) lawfully made by the company.
- (5) The resulting figure is the amount of available profits.
- (6) For the purposes of this section “the relevant accounts” are any accounts that—
  - (a) are prepared as at a date within the relevant period, and
  - (b) are such as to enable a reasonable judgment to be made as to the amounts of the items mentioned in subsection (2).
- (7) In this section “the relevant period” means the period of three months ending with the date on which the directors' statement is made in accordance with section 714.

### *Requirements for payment out of capital*

## **713 Requirements for payment out of capital**

- (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—
- (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—

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- (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.
- (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—
  - (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.

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- (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.

*Objection to payment by members or creditors*

## **721 Application to court to cancel resolution**

- (1) Where a private company passes a special resolution approving a payment out of capital for the redemption or purchase of any of its shares—
  - (a) any member of the company (other than one who consented to or voted in favour of the resolution), and
  - (b) any creditor of the company,
 may apply to the court for the cancellation of the resolution.
- (2) The application—
  - (a) must be made within five weeks after the passing of the resolution, and
  - (b) may be made on behalf of the persons entitled to make it by such one or more of their number as they may appoint in writing for the purpose.
- (3) On an application under this section the court may if it thinks fit—
  - (a) adjourn the proceedings in order that an arrangement may be made to the satisfaction of the court—
    - (i) for the purchase of the interests of dissentient members, or
    - (ii) for the protection of dissentient creditors, and
  - (b) give such directions and make such orders as it thinks expedient for facilitating or carrying into effect any such arrangement.
- (4) Subject to that, the court must make an order either cancelling or confirming the resolution, and may do so on such terms and conditions as it thinks fit.
- (5) If the court confirms the resolution, it may by order alter or extend any date or period of time specified—
  - (a) in the resolution, or

- (b) in any provision of this Chapter applying to the redemption or purchase to which the resolution relates.
- (6) The court's order may, if the court thinks fit—
  - (a) provide for the purchase by the company of the shares of any of its members and for the reduction accordingly of the company's capital, and
  - (b) make any alteration in the company's articles that may be required in consequence of that provision.
- (7) The court's order may, if the court thinks fit, require the company not to make any, or any specified, amendments of its articles without the leave of the court.

## **722 Notice to registrar of court application or order**

- (1) On making an application under section 721 (application to court to cancel resolution) the applicants, or the person making the application on their behalf, must immediately give notice to the registrar.

This is without prejudice to any provision of rules of court as to service of notice of the application.
- (2) On being served with notice of any such application, the company must immediately give notice to the registrar.
- (3) Within 15 days of the making of the court's order on the application, or such longer period as the court may at any time direct, the company must deliver to the registrar a copy of the order.
- (4) If a company fails to comply with subsection (2) or (3) an offence is committed by—
  - (a) the company, and
  - (b) every officer of the company who is in default.
- (5) 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.

### *Supplementary provisions*

## **723 When payment out of capital to be made**

- (1) The payment out of capital must be made—
  - (a) no earlier than five weeks after the date on which the resolution under section 716 is passed, and
  - (b) no more than seven weeks after that date.
- (2) This is subject to any exercise of the court's powers under section 721(5) (power to alter or extend time where resolution confirmed after objection).

## CHAPTER 6

### TREASURY SHARES

#### **724 Treasury shares**

- (1) This section applies where—
- (a) a limited company makes a purchase of its own shares in accordance with Chapter 4,
  - (b) the purchase is made out of distributable profits, and
  - (c) the shares are qualifying shares.
- (2) For this purpose “qualifying shares” means shares that—
- (a) are included in the official list in accordance with the provisions of Part 6 of the Financial Services and Markets Act 2000 (c. 8),
  - (b) are traded on the market known as the Alternative Investment Market established under the rules of London Stock Exchange plc,
  - (c) are officially listed in an EEA State, or
  - (d) are traded on a regulated market.

In paragraph (a) “the official list” has the meaning given in section 103(1) of the Financial Services and Markets Act 2000.

- (3) Where this section applies the company may—
- (a) hold the shares (or any of them), or
  - (b) deal with any of them, at any time, in accordance with section 727 or 729.
- (4) Where shares are held by the company, the company must be entered in its register of members as the member holding the shares.
- (5) In the Companies Acts references to a company holding shares as treasury shares are to the company holding shares that—
- (a) were (or are treated as having been) purchased by it in circumstances in which this section applies, and
  - (b) have been held by the company continuously since they were so purchased (or treated as purchased).

#### **725 Treasury shares: maximum holdings**

- (1) Where a company has shares of only one class, the aggregate nominal value of shares held as treasury shares must not at any time exceed 10% of the nominal value of the issued share capital of the company at that time.
- (2) Where the share capital of a company is divided into shares of different classes, the aggregate nominal value of the shares of any class held as treasury shares must not at any time exceed 10% of the nominal value of the issued share capital of the shares of that class at that time.
- (3) If subsection (1) or (2) is contravened by a company, the company must dispose of or cancel the excess shares, in accordance with section 727 or 729, before the end of the period of twelve months beginning with the date on which that contravention occurs.



The “excess shares” means such number of the shares held by the company as treasury shares at the time in question as resulted in the limit being exceeded.

- (4) Where a company purchases qualifying shares out of distributable profits in accordance with section 724, a contravention by the company of subsection (1) or (2) above does not render the acquisition void under section 658 (general rule against limited company acquiring its own shares).

## **726 Treasury shares: exercise of rights**

- (1) This section applies where shares are held by a company as treasury shares.
- (2) The company must not exercise any right in respect of the treasury shares, and any purported exercise of such a right is void.

This applies, in particular, to any right to attend or vote at meetings.

- (3) No dividend may be paid, and no other distribution (whether in cash or otherwise) of the company’s assets (including any distribution of assets to members on a winding up) may be made to the company, in respect of the treasury shares.
- (4) Nothing in this section prevents—
- (a) an allotment of shares as fully paid bonus shares in respect of the treasury shares, or
  - (b) the payment of any amount payable on the redemption of the treasury shares (if they are redeemable shares).
- (5) Shares allotted as fully paid bonus shares in respect of the treasury shares are treated as if purchased by the company, at the time they were allotted, in circumstances in which section 724(1) (treasury shares) applied.

## **727 Treasury shares: disposal**

- (1) Where shares are held as treasury shares, the company may at any time—
- (a) sell the shares (or any of them) for a cash consideration, or
  - (b) transfer the shares (or any of them) for the purposes of or pursuant to an employees’ share scheme.
- (2) In subsection (1)(a) “cash consideration” means—
- (a) cash received by the company, or
  - (b) a cheque received by the company in good faith that the directors have no reason for suspecting will not be paid, or
  - (c) a release of a liability of the company for a liquidated sum, or
  - (d) an undertaking to pay cash to the company on or before a date not more than 90 days after the date on which the company agrees to sell the shares, or
  - (e) payment by any other means giving rise to a present or future entitlement (of the company or a person acting on the company’s behalf) to a payment, or credit equivalent to payment, in cash.

For this purpose “cash” includes foreign currency.

- (3) The Secretary of State may by order provide that particular means of payment specified in the order are to be regarded as falling within subsection (2)(e).

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- (4) If the company receives a notice under section 979 (takeover offers: right of offeror to buy out minority shareholders) that a person desires to acquire shares held by the company as treasury shares, the company must not sell or transfer the shares to which the notice relates except to that person.
- (5) An order under this section is subject to negative resolution procedure.

## **728 Treasury shares: notice of disposal**

- (1) Where shares held by a company as treasury shares—
  - (a) are sold, or
  - (b) are transferred for the purposes of an employees' share scheme,the company must deliver a return to the registrar not later than 28 days after the shares are disposed of.
- (2) The return must state with respect to shares of each class disposed of—
  - (a) the number and nominal value of the shares, and
  - (b) the date on which they were disposed of.
- (3) Particulars of shares disposed of on different dates may be included in a single return.
- (4) If default is made in complying with this section an offence is committed by every officer of the company who is in default.
- (5) A person guilty of an offence under this section is liable—
  - (a) on conviction on indictment, to a fine;
  - (b) on summary conviction, to a fine not exceeding the statutory maximum and, for continued contravention, a daily default fine not exceeding one-tenth of the statutory maximum.

## **729 Treasury shares: cancellation**

- (1) Where shares are held as treasury shares, the company may at any time cancel the shares (or any of them).
- (2) If shares held as treasury shares cease to be qualifying shares, the company must forthwith cancel the shares.
- (3) For this purpose shares are not to be regarded as ceasing to be qualifying shares by virtue only of—
  - (a) the suspension of their listing in accordance with the applicable rules in the EEA State in which the shares are officially listed, or
  - (b) the suspension of their trading in accordance with—
    - (i) in the case of shares traded on the market known as the Alternative Investment Market, the rules of London Stock Exchange plc, and
    - (ii) in any other case, the rules of the regulated market on which they are traded.
- (4) If company cancels shares held as treasury shares, the amount of the company's share capital is reduced accordingly by the nominal amount of the shares cancelled.

- (5) The directors may take any steps required to enable the company to cancel its shares under this section without complying with the provisions of Chapter 10 of Part 17 (reduction of share capital).

### **730 Treasury shares: notice of cancellation**

- (1) Where shares held by a company as treasury shares are cancelled, the company must deliver a return to the registrar not later than 28 days after the shares are cancelled.

This does not apply to shares that are cancelled forthwith on their acquisition by the company (see section 708).

- (2) The return must state with respect to shares of each class cancelled—
- (a) the number and nominal value of the shares, and
  - (b) the date on which they were cancelled.
- (3) Particulars of shares cancelled on different dates may be included in a single return.
- (4) The notice must be accompanied by a statement of capital.
- (5) The statement of capital must state with respect to the company's share capital immediately following the cancellation—
- (a) the total number of shares of the company,
  - (b) the aggregate nominal value of those shares,
  - (c) for each class of shares—
    - (i) prescribed particulars of the rights attached to the shares,
    - (ii) the total number of shares of that class, and
    - (iii) the aggregate nominal value of shares of that class, and
  - (d) the amount paid up and the amount (if any) unpaid on each share (whether on account of the nominal value of the share or by way of premium).
- (6) If default is made in complying with this section, an offence is committed by—
- (a) the company, and
  - (b) every officer of the company who is in default.
- (7) 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.

### **731 Treasury shares: treatment of proceeds of sale**

- (1) Where shares held as treasury shares are sold, the proceeds of sale must be dealt with in accordance with this section.
- (2) If the proceeds of sale are equal to or less than the purchase price paid by the company for the shares, the proceeds are treated for the purposes of Part 23 (distributions) as a realised profit of the company.
- (3) If the proceeds of sale exceed the purchase price paid by the company—
- (a) an amount equal to the purchase price paid is treated as a realised profit of the company for the purposes of that Part, and
  - (b) the excess must be transferred to the company's share premium account.

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- (4) For the purposes of this section—
- (a) the purchase price paid by the company must be determined by the application of a weighted average price method, and
  - (b) if the shares were allotted to the company as fully paid bonus shares, the purchase price paid for them is treated as nil.

## **732 Treasury shares: offences**

- (1) If a company contravenes any of the provisions of this Chapter (except section 730 (notice of cancellation)), an offence is committed by—
- (a) the company, and
  - (b) every officer of the company who is in default.
- (2) A person guilty of an offence under this section is liable—
- (a) on conviction on indictment, to a fine;
  - (b) on summary conviction to a fine not exceeding the statutory maximum.

## **CHAPTER 7**

### **SUPPLEMENTARY PROVISIONS**

## **733 The capital redemption reserve**

- (1) In the following circumstances a company must transfer amounts to a reserve, called the “capital redemption reserve”.
- (2) Where under this Part shares of a limited company are redeemed or purchased wholly out of the company’s profits, the amount by which the company’s issued share capital is diminished in accordance with—
- (a) section 688(b) (on the cancellation of shares redeemed), or
  - (b) section 706(b)(ii) (on the cancellation of shares purchased),
- must be transferred to the capital redemption reserve.
- (3) If—
- (a) the shares are redeemed or purchased wholly or partly out of the proceeds of a fresh issue, and
  - (b) the aggregate amount of the proceeds is less than the aggregate nominal value of the shares redeemed or purchased,
- the amount of the difference must be transferred to the capital redemption reserve.

This does not apply in the case of a private company if, in addition to the proceeds of the fresh issue, the company applies a payment out of capital under Chapter 5 in making the redemption or purchase.

- (4) The amount by which a company’s share capital is diminished in accordance with section 729(4) (on the cancellation of shares held as treasury shares) must be transferred to the capital redemption reserve.
- (5) The company may use the capital redemption reserve to pay up new shares to be allotted to members as fully paid bonus shares.

- (6) Subject to that, the provisions of the Companies Acts relating to the reduction of a company's share capital apply as if the capital redemption reserve were part of its paid up share capital.

#### **734 Accounting consequences of payment out of capital**

- (1) This section applies where a payment out of capital is made in accordance with Chapter 5 (redemption or purchase of own shares by private company out of capital).
- (2) If the permissible capital payment is less than the nominal amount of the shares redeemed or purchased, the amount of the difference must be transferred to the company's capital redemption reserve.
- (3) If the permissible capital payment is greater than the nominal amount of the shares redeemed or purchased—
- (a) the amount of any capital redemption reserve, share premium account or fully paid share capital of the company, and
  - (b) any amount representing unrealised profits of the company for the time being standing to the credit of any revaluation reserve maintained by the company, may be reduced by a sum not exceeding (or by sums not in total exceeding) the amount by which the permissible capital payment exceeds the nominal amount of the shares.
- (4) Where the proceeds of a fresh issue are applied by the company in making a redemption or purchase of its own shares in addition to a payment out of capital under this Chapter, the references in subsections (2) and (3) to the permissible capital payment are to be read as referring to the aggregate of that payment and those proceeds.

#### **735 Effect of company's failure to redeem or purchase**

- (1) This section applies where a company—
- (a) issues shares on terms that they are or are liable to be redeemed, or
  - (b) agrees to purchase any of its shares.
- (2) The company is not liable in damages in respect of any failure on its part to redeem or purchase any of the shares.
- This is without prejudice to any right of the holder of the shares other than his right to sue the company for damages in respect of its failure.
- (3) The court shall not grant an order for specific performance of the terms of redemption or purchase if the company shows that it is unable to meet the costs of redeeming or purchasing the shares in question out of distributable profits.
- (4) If the company is wound up and at the commencement of the winding up any of the shares have not been redeemed or purchased, the terms of redemption or purchase may be enforced against the company.

When shares are redeemed or purchased under this subsection, they are treated as cancelled.

- (5) Subsection (4) does not apply if—
- (a) the terms provided for the redemption or purchase to take place at a date later than that of the commencement of the winding up, or
  - (b) during the period—

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- (i) beginning with the date on which the redemption or purchase was to have taken place, and
  - (ii) ending with the commencement of the winding up,
- the company could not at any time have lawfully made a distribution equal in value to the price at which the shares were to have been redeemed or purchased.
- (6) There shall be paid in priority to any amount that the company is liable under subsection (4) to pay in respect of any shares—
  - (a) all other debts and liabilities of the company (other than any due to members in their character as such), and
  - (b) if other shares carry rights (whether as to capital or as to income) that are preferred to the rights as to capital attaching to the first-mentioned shares, any amount due in satisfaction of those preferred rights.

Subject to that, any such amount shall be paid in priority to any amounts due to members in satisfaction of their rights (whether as to capital or income) as members.

### **736 Meaning of “distributable profits”**

In this Part (except in Chapter 2 (financial assistance): see section 683) “distributable profits”, in relation to the making of any payment by a company, means profits out of which the company could lawfully make a distribution (within the meaning given by section 830) equal in value to the payment.

### **737 General power to make further provision by regulations**

- (1) The Secretary of State may by regulations modify the provisions of this Part.
- (2) The regulations may—
  - (a) amend or repeal any of the provisions of this Part, or
  - (b) make such other provision as appears to the Secretary of State appropriate in place of any of the provisions of this Part.
- (3) Regulations under this section may make consequential amendments or repeals in other provisions of this Act, or in other enactments.
- (4) Regulations under this section are subject to affirmative resolution procedure.