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# Companies Act 1985

## 1985 CHAPTER 6

### PART V **U.K.**

#### SHARE CAPITAL, ITS INCREASE, MAINTENANCE AND REDUCTION

### CHAPTER VII **E+W+S**

#### REDEEMABLE SHARES; PURCHASE BY A COMPANY OF ITS OWN SHARES

##### *Redemption and purchase generally*

#### **159 Power to issue redeemable shares. **E+W+S****

- (1) Subject to the provisions of this Chapter, a company limited by shares or limited by guarantee and having a share capital may, if authorised to do so by its articles, issue shares which are to be redeemed or are liable to be redeemed at the option of the company or the shareholder.
- (2) No redeemable shares may be issued at a time when there are no issued shares of the company which are not redeemable.
- (3) Redeemable shares may not be redeemed unless they are fully paid; and the terms of redemption must provide for payment on redemption.

#### **[<sup>F1</sup>159A Terms and manner of redemption. **E+W+S****

- (1) Redeemable shares may not be issued unless the following conditions are satisfied as regards the terms and manner of redemption.
- (2) The date on or by which, or dates between which, the shares are to be or may be redeemed must be specified in the company's articles or, if the articles so provide, fixed by the directors, and in the latter case the date or dates must be fixed before the shares are issued.

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- (3) Any other circumstances in which the shares are to be or may be redeemed must be specified in the company's articles.
- (4) The amount payable on redemption must be specified in, or determined in accordance with, the company's articles, and in the latter case the articles must not provide for the amount to be determined by reference to any person's discretion or opinion.
- (5) Any other terms and conditions of redemption shall be specified in the company's articles.
- (6) Nothing in this section shall be construed as requiring a company to provide in its articles for any matter for which provision is made by this Act.]

#### Textual Amendments

F1 S. 159A inserted (*prosp.*) by Companies Act 1989 (c. 40, SIF 27), ss. 133(2), 213(2), 215(2)

### 160 Financing etc. of redemption. **E+W+S**

- (1) Subject to the next subsection and to sections 171 (private companies redeeming or purchasing own shares out of capital) and 178(4) (terms of redemption or purchase enforceable in a winding up)—
  - (a) redeemable shares may only be redeemed out of distributable profits of the company or out of the proceeds of a fresh issue of shares made for the purposes of the redemption; and
  - (b) any premium payable on redemption must be paid out of distributable profits of the company.
- (2) 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; and in that case the amount of the company's share premium account shall be reduced by a sum corresponding (or by sums in the aggregate corresponding) to the amount of any payment made by virtue of this subsection out of the proceeds of the issue of the new shares.
- [<sup>F2</sup>(3) Subject to the following provisions of this Chapter, redemption of shares may be effected on such terms and in such manner as may be provided by the company's articles.]
- (4) Shares [<sup>F3</sup>redeemed under this section][<sup>F3</sup>redeemed under this Chapter] shall be treated as cancelled on redemption, and the amount of the company's issued share capital shall be diminished by the nominal value of those shares accordingly; but the redemption of shares by a company is not to be taken as reducing the amount of the company's authorised share capital.
- (5) Without prejudice to subsection (4), where a company is about to redeem shares, it has power to issue shares up to the nominal value of the shares to be redeemed as if those shares had never been issued.

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#### Textual Amendments

- F2** S. 160(3) repealed (*prosp.*) by Companies Act 1989 (c. 40, SIF 27), ss. 133(3)(a), 212, 213(2), 215(2), **Sch. 24**
- F3** Words “redeemed under this Chapter” substituted (*prosp.*) for “redeemed under this section” by Companies Act 1989 (c. 40, SIF 27), **ss. 133(3)(b)**, 213(2), 215(2)

**161** <sup>F4</sup> ..... **E+W+S**

#### Textual Amendments

- F4** S. 161 repealed by Finance Act 1988 (c. 39, SIF 63:1), s. 148, **Sch. 14 Pt. XI**

**162 Power of company to purchase own shares. E+W+S**

- (1) Subject to the following provisions of this Chapter, a company limited by shares or limited by guarantee and having a share capital may, if authorised to do so by its articles, purchase its own shares (including any redeemable shares).
- (2) Sections 159 to 161 apply to the purchase by a company under this section of its own shares as they apply to the redemption of redeemable shares, save that the terms and manner of purchase need not be determined by the articles as required by section 160(3).
- (3) A company may not under this section purchase its shares if as a result of the purchase there would no longer be any member of the company holding shares other than redeemable shares.

VALID FROM 01/12/2003

**162A Treasury shares E+W+S**

- (1) Where qualifying shares are purchased by a company out of distributable profits in accordance with section 162, 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 162D.
- (2) Where shares are held under subsection (1)(a) then, for the purposes of section 352, the company must be entered in the register as the member holding those shares.
- (3) In this Act, references to a company holding shares as treasury shares are references to the company holding shares which—
  - (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.

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VALID FROM 01/12/2003

### 162B Treasury shares: maximum holdings **E+W+S**

- (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 per cent. 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 per cent. of the nominal value of the issued share capital of the shares in that class at that time.
- (3) Where subsection (1) or (2) is contravened by a company, the company must dispose of or cancel the excess shares, in accordance with section 162D, before the end of the period of 12 months beginning with the day on which that contravention occurs.

For this purpose “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.

VALID FROM 01/12/2003

### 162C Treasury shares: voting and other rights **E+W+S**

- (1) This section applies to shares which are held by a company as treasury shares (“the 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.
- (3) The rights to which subsection (2) applies include any right to attend or vote at meetings (including meetings under section 425).
- (4) 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.
- (5) Nothing in this section is to be taken as preventing—
  - (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).
- (6) Any shares allotted as fully paid bonus shares in respect of the treasury shares shall be treated for the purposes of this Act as if they were purchased by the company at the time they were allotted, in circumstances in which section 162A(1) applied.

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VALID FROM 01/12/2003

## 162D Treasury shares: disposal and cancellation **E+W+S**

- (1) Where shares are held as treasury shares, a company may at any time—
  - (a) sell the shares (or any of them) for cash,
  - (b) transfer the shares (or any of them) for the purposes of or pursuant to an employees' share scheme, or
  - (c) cancel the shares (or any of them).
- (2) For the purposes of subsection (1)(a), “cash”, in relation to a sale of shares by a company, means—
  - (a) cash (including foreign currency) received by the company, or
  - (b) a cheque received by the company in good faith which 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.
- (3) But if the company receives a notice under section 429 (right of offeror to buy out minority shareholders) that a person desires to acquire any of the shares, the company must not, under subsection (1), sell or transfer the shares to which the notice relates except to that person.
- (4) If under subsection (1) the company cancels shares held as treasury shares, the company must diminish the amount of the issued share capital by the nominal value of the shares cancelled; but the cancellation is not to be taken as reducing the amount of the company's authorised share capital.
- (5) The directors may take such steps as are requisite to enable the company to cancel its shares under subsection (1) without complying with sections 135 and 136 (resolution to reduce issued share capital; application to court for approval).

VALID FROM 01/12/2003

## 162E Treasury shares: mandatory cancellation **E+W+S**

- (1) If shares held as treasury shares cease to be qualifying shares, the company must forthwith cancel the shares in accordance with section 162D.
- (2) For the purposes of subsection (1), 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—

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- (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.
- (3) For the purposes of this section “regulated market” means a market which is a regulated market for the purposes of Article 16 of Council Directive 93/22/EEC on investment services in the securities field.

VALID FROM 01/12/2003

**162F Treasury shares: proceeds of sale** E+W+S

- (1) Where shares held as treasury shares are sold, the proceeds of sale shall be dealt with in accordance with this section.
- (2) Where the proceeds of sale are equal to or less than the purchase price paid by the company for the shares, the proceeds shall be treated for the purposes of Part 8 as a realised profit of the company.
- (3) Where the proceeds of sale exceed the purchase price paid by the company for the shares—
  - (a) that part of the proceeds of sale that is equal to the purchase price paid shall be treated for the purposes of Part 8 as a realised profit of the company, and
  - (b) a sum equal to the excess shall be transferred to the company’s share premium account.
- (4) The purchase price paid by the company for the shares shall be determined by the application of a weighted average price method.
- (5) Where the shares were allotted to the company as fully paid bonus shares, the purchase price paid for them shall, for the purposes of subsection (4), be treated as being nil.

VALID FROM 01/12/2003

**162G Treasury shares: penalty for contravention** E+W+S

If a company contravenes any provision of sections 162A to 162F every officer of it who is in default is liable to a fine.

**163 Definitions of “off-market” and “market” purchase.** E+W+S

- (1) A purchase by a company of its own shares is “off-market” if the shares either—
  - (a) are purchased otherwise than on [<sup>F5</sup>a recognised investment exchange], or
  - (b) are purchased on [<sup>F5</sup>a recognised investment exchange] but are not subject to a marketing arrangement on [<sup>F6</sup>that investment exchange].

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- (2) For this purpose, a company's shares are subject to a marketing arrangement on a recognised stock exchange if either—
- they are listed [<sup>F7</sup>under Part IV of the Financial Services Act 1986]; or
  - the company has been afforded facilities for dealings in those shares to take place on [<sup>F7</sup>that investment exchange] without prior permission for individual transactions from the authority governing [<sup>F7</sup>that investment exchange] and without limit as to the time during which those facilities are to be available.
- (3) A purchase by a company of its own shares is a “market purchase” if it is a purchase made on a recognised stock exchange, other than a purchase which is an off-market purchase by virtue of subsection (1)(b).
- [<sup>F8</sup>(4) In this section “recognised investment exchange” means a recognised investment exchange other than an overseas investment exchange within the meaning of the Financial Services Act 1986.]

#### Textual Amendments

- F5** Words substituted by [Financial Services Act 1986 \(c. 60, SIF 69\), s. 212\(2\), Sch. 16 para. 17\(a\)](#)
- F6** Words substituted by [Financial Services Act 1986 \(c. 60, SIF 69\), s. 212\(2\), Sch. 16 para. 17\(b\)](#)
- F7** Words substituted by [Financial Services Act 1986 \(c. 60, SIF 69\), s. 212\(2\), Sch. 16 para. 17\(c\)](#)
- F8** [S. 163\(4\)](#) inserted by [Financial Services Act 1986 \(c. 60, SIF 69\), s. 212\(2\), Sch. 16 para. 17\(d\)](#)

#### 164 Authority for off-market purchase. **E+W+S**

- A company may only make an off-market purchase of its own shares in pursuance of a contract approved in advance in accordance with this section or under section 165 below.
- The terms of the proposed contract must be authorised by a special resolution of the company before the contract is entered into; and the following subsections apply with respect to that authority and to resolutions conferring it.
- Subject to the next subsection, the authority may be varied, revoked or from time to time renewed by special resolution of the company.
- In the case of a public company, the authority conferred by the resolution must specify a date on which the authority is to expire; and in a resolution conferring or renewing authority that date must not be later than 18 months after that on which the resolution is passed.
- A special resolution to confer, vary, revoke or renew authority is not effective if 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 the resolution would not have been passed if he had not done so.

For this purpose—

- 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;
- notwithstanding anything in the company's articles, any member of the company may demand a poll on that question; and



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- (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.
- (6) Such a resolution is not effective for the purposes of this section unless (if the proposed contract is in writing) a copy of the contract or (if not) a written memorandum of its terms is available for inspection by members of the company both—
  - (a) at the company's registered office for not less than 15 days ending with the date of the meeting at which the resolution is passed, and
  - (b) at the meeting itself.

A memorandum of contract terms so made available must include the names of any members holding shares to which the contract relates; and a copy of the contract so made available must have annexed to it a written memorandum specifying any such names which do not appear in the contract itself.

- (7) A company may agree to a variation of an existing contract so approved, but only if the variation is authorised by a special resolution of the company before it is agreed to; and subsections (3) to (6) above apply to the authority for a proposed variation as they apply to the authority for a proposed contract, save that a copy of the original contract or (as the case may require) a memorandum of its terms, together with any variations previously made, must also be available for inspection in accordance with subsection (6).

#### 165 Authority for contingent purchase contract. **E+W+S**

- (1) A contingent purchase contract is a contract entered into by a company and relating to any of its shares—
  - (a) which does not amount to a contract to purchase those shares, but
  - (b) under which the company may (subject to any conditions) become entitled or obliged to purchase those shares.
- (2) A company may only make a purchase of its own shares in pursuance of a contingent purchase contract if the contract is approved in advance by a special resolution of the company before the contract is entered into; and subsections (3) to (7) of section 164 apply to the contract and its terms.

#### 166 Authority for market purchase. **E+W+S**

- (1) A company shall not make a market purchase of its own shares unless the purchase has first been authorised by the company in general meeting.
- (2) That authority—
  - (a) may be general for that purpose, or limited to the purchase of shares of any 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,
  - (b) determine both the maximum and the minimum prices which may be paid for the shares, and
  - (c) specify a date on which it is to expire.



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- (4) The authority may be varied, revoked or from time to time renewed by the company in general meeting, but this is subject to subsection (3) above; and in a resolution to confer or renew authority, the date on which the authority is to expire must not be later than 18 months after that on which the resolution is passed.
- (5) A company may under this section make a purchase of its own shares after the expiry of the time limit imposed to comply with subsection (3)(c), if the contract of purchase was concluded before the authority expired and the terms of the authority permitted the company to make a contract of purchase which would or might be executed wholly or partly after its expiration.
- (6) A resolution to confer or vary authority under this section may determine either or both the maximum and minimum prices for purchase by—
  - (a) specifying a particular sum, or
  - (b) providing a basis or formula for calculating the amount of the price in question without reference to any person's discretion or opinion.
- (7) A resolution of a company conferring, varying, revoking or renewing authority under this section is subject to section 380 (resolution to be sent to registrar of companies within 15 days).

**167 Assignment or release of company's right to purchase own shares. E+W+S**

- (1) The rights of a company under a contract approved under section 164 or 165, or under a contract for a purchase authorised under section 166, are not capable of being assigned.
- (2) An agreement by a company to release its rights under a contract approved under section 164 or 165 is void unless the terms of the release agreement are approved in advance by a special resolution of the company before the agreement is entered into; and subsections (3) to (7) of section 164 apply to approval for a proposed release agreement as to authority for a proposed variation of an existing contract.

**168 Payments apart from purchase price to be made out of distributable profits. E+W+S**

- (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 contract approved under section 165, or
  - (b) the variation of a contract approved under section 164 or 165, 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 approved under section 164 or 165 or under a contract for a purchase authorised under section 166,must be made out of the company's distributable profits.
- (2) If the requirements of subsection (1) are not satisfied in relation to a contract—
  - (a) in a case within paragraph (a) of the subsection, no purchase by the company of its own shares in pursuance of that contract is lawful under this Chapter,
  - (b) in a case within paragraph (b), no such purchase following the variation is lawful under this Chapter, and
  - (c) in a case within paragraph (c), the purported release is void.

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## 169 Disclosure by company of purchase of own shares. **E+W+S**

- (1) Within the period of 28 days beginning with the date on which any shares purchased by a company under this Chapter are delivered to it, the company shall deliver to the registrar of companies for registration a return in the prescribed form stating with respect to shares of each class purchased the number and nominal value of those shares and the date on which they were delivered to the company.
- (2) In the case of a public company, the return shall 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.
- (3) Particulars of shares delivered to the company on different dates and under different contracts may be included in a single return to the registrar; and in such a case the amount required to be stated under subsection (2)(a) is the aggregate amount paid by the company for all the shares to which the return relates.
- (4) Where a company enters into a contract approved under section 164 or 165, or a contract for a purchase authorised under section 166, the company shall keep at its registered office—
  - (a) if the contract is in writing, a copy of it; and
  - (b) if not, a memorandum of its terms,
 from the conclusion of the contract until the end of the period of 10 years beginning with the date on which the purchase of all the shares in pursuance of the contract is completed or (as the case may be) the date on which the contract otherwise determines.
- (5) Every copy and memorandum so required to be kept shall <sup>F9</sup> . . . be open to inspection without charge—
  - (a) by any member of the company, and
  - (b) if it is a public company, by any other person.
- (6) If default is made in delivering to the registrar any return required by this section, every officer of the company who is in default is liable to a fine and, for continued contravention, to a daily default fine.
- (7) If default is made in complying with subsection (4), or if an inspection required under subsection (5) is refused, the company and every officer of it who is in default is liable to a fine and, for continued contravention, to a daily default fine.
- (8) In the case of a refusal of an inspection required under subsection (5) of a copy or memorandum, the court may by order compel an immediate inspection of it.
- (9) The obligation of a company under subsection (4) to keep a copy of any contract or (as the case may be) a memorandum of its terms applies to any variation of the contract so long as it applies to the contract.

### Textual Amendments

**F9** Words in s. 169(5) repealed (01.11.1991) by Companies Act 1989 (c. 40, SIF 27), ss. 143(2), 212, 213(2), Sch. 24; S.I. 1991/1996, art. 2(2)(b)(c).

### Modifications etc. (not altering text)

**C1** S. 169(5) explained (1.11.1991) by S.I. 1991/1998, reg. 3(1).

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**169A Disclosure by company of cancellation or disposal of treasury shares** **E+W**  
**+S**

- (1) Subsection (2) applies in relation to any shares held by a company as treasury shares if—
  - (a) the company is or was required to make a return under section 169(1B) in relation to the shares, and
  - (b) the shares have—
    - (i) been cancelled in accordance with section 162D(1), or
    - (ii) been sold or transferred for the purposes of or pursuant to an employees' share scheme under section 162D(1).
- (2) Within the period of 28 days beginning with the date on which such shares are cancelled or disposed of, the company shall deliver to the registrar of companies for registration a return in the prescribed form stating with respect to shares of each class cancelled or disposed of—
  - (a) the number and nominal value of those shares, and
  - (b) the date on which they were cancelled or disposed of.
- (3) Particulars of shares cancelled or disposed of on different dates may be included in a single return to the registrar.
- (4) If default is made in delivering to the registrar any return required by this section, every officer of the company who is in default is liable to a fine and, for continued contravention, to a daily default fine.

**170 The capital redemption reserve.** **E+W+S**

- (1) Where under this Chapter shares of a 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 section 160(4) on cancellation of the shares redeemed or purchased shall be transferred to a reserve, called "the capital redemption reserve".
- (2) Of the shares are redeemed or purchased wholly or partly out of the proceeds of a fresh issue and the aggregate amount of those proceeds is less than the aggregate nominal value of the shares redeemed or purchased, the amount of the difference shall be transferred to the capital redemption reserve.
- (3) But subsection (2) does not apply if the proceeds of the 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 section 171.
- (4) The provisions of this Act relating to the reduction of a company's share capital apply as if the capital redemption reserve were paid-up share capital of the company, except that the reserve may be applied by the company in paying up its unissued shares to be allotted to members of the company as fully paid bonus shares.

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*Redemption or purchase of own shares out of capital (private companies only)*

**171 Power of private companies to redeem or purchase own shares out of capital. E**  
+W+S

- (1) Subject to the following provisions of this Chapter, a private company limited by shares or limited by guarantee and having a share capital may, if so authorised by its articles, make a payment in respect of the redemption or purchase under section 160 or (as the case may be) section 162, of its own shares otherwise than out of its distributable profits or the proceeds of a fresh issue of shares.
- (2) References below in this Chapter to payment out of capital are (subject to subsection (6)) to any payment so made, whether or not it would be regarded apart from this section as a payment out of capital.
- (3) The payment which may (if authorised in accordance with the following provisions of this Chapter) be made by a company out of capital in respect of the redemption or purchase of its own shares is such an amount as, taken together with—
  - (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 equal to the price of redemption or purchase; and the payment permissible under this subsection is referred to below in this Chapter as the permissible capital payment for the shares.
- (4) Subject to subsection (6), if the permissible capital payment for shares redeemed or purchased is less than their nominal amount, the amount of the difference shall be transferred to the company's capital redemption reserve.
- (5) Subject to subsection (6), 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 reserve maintained by the company in accordance with paragraph 34 of Schedule 4 <sup>[F10]</sup> or paragraph 34 of Schedule 8] (revaluation reserve),
 may be reduced by a sum not exceeding (or by sums not in the aggregate exceeding) the amount by which the permissible capital payment exceeds the nominal amount of the shares.
- (6) Where the proceeds of a fresh issue are applied by a company in making any redemption or purchase of its own shares in addition to a payment out of capital under this section, the references in subsections (4) and (5) to the permissible capital payment are to be read as referring to the aggregate of that payment and those proceeds.

**Textual Amendments**

**F10** Words in s. 171(5)(b) inserted (1.3.1997) by S.I. 1997/220, reg. 7(1)

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## **172 Availability of profits for purposes of s. 171. E+W+S**

- (1) The reference in section 171(3)(a) to available profits of the company is to the company's profits which are available for distribution (within the meaning of Part VIII); but the question whether a company has any profits so available and the amount of any such profits are to be determined for purposes of that section in accordance with the following subsections, instead of sections 270 to 275 in that Part.
- (2) Subject to the next subsection, that question is to be determined by reference to—
  - (a) profits, losses, assets and liabilities,
  - (b) provisions of any of the kinds mentioned in paragraphs 88 and 89 of Schedule 4 (depreciation, diminution in value of assets, retentions to meet liabilities, etc.), and
  - (c) share capital and reserves (including undistributable reserves),as stated in the relevant accounts for determining the permissible capital payment for shares.
- (3) The relevant accounts for this purpose are such accounts, prepared as at any date within the period for determining the amount of the permissible capital payment, as are necessary to enable a reasonable judgment to be made as to the amounts of any of the items mentioned in subsection (2)(a) to (c) above.
- (4) For purposes of determining the amount of the permissible capital payment for shares, the amount of the company's available profits (if any) determined in accordance with subsections (2) and (3) is treated as reduced by the amount of any distributions lawfully made by the company after the date of the relevant accounts and before the end of the period for determining the amount of that payment.
- (5) The reference in subsection (4) to distributions lawfully made by the company includes—
  - (a) financial assistance lawfully given out of distributable profits in a case falling within section 154 or 155,
  - (b) any payment lawfully made by the company in respect of the purchase by it of any shares in the company (except a payment lawfully made otherwise than out of distributable profits), and
  - (c) a payment of any description specified in section 168(1) lawfully made by the company.
- (6) References in this section to the period for determining the amount of the permissible capital payment for shares are to the period of 3 months ending with the date on which the statutory declaration of the directors purporting to specify the amount of that payment is made in accordance with subsection (3) of the section next following.

## **173 Conditions for payment out of capital. E+W+S**

- (1) Subject to any order of the court under section 177, a payment out of capital by a private company for the redemption or purchase of its own shares is now lawful unless the requirements of this and the next two sections are satisfied.
- (2) The payment out of capital must be approved by a special resolution of the company.
- (3) The company's directors must make a statutory declaration specifying the amount of the permissible capital payment for the shares in question and stating that, having

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made full inquiry into the affairs and prospects of the company, they 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 their intentions with respect to the management of the company's business during that year and to the amount and character of the financial resources which 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 purposes of subsection (3)(a), the directors shall take into account the same liabilities (including prospective and contingent liabilities) as would be relevant under [F11section 122 of the Insolvency Act] (winding up by the court) to the question whether a company is unable to pay its debts.
- (5) The directors' statutory declaration must be in the prescribed form and contain such information with respect to the nature of the company's business as may be prescribed, and must in addition have annexed to it a report addressed to the directors by the company's auditors stating that—
- (a) they have inquired into the company's state of affairs; and
  - (b) the amount specified in the declaration as the permissible capital payment for the shares in question is in their view properly determined in accordance with sections 171 and 172; and
  - (c) they are not aware of anything to indicate that the opinion expressed by the directors in the declaration as to any of the matters mentioned in subsection (3) is unreasonable in all the circumstances.
- (6) A director who makes a declaration under this section without having reasonable grounds for the opinion expressed in the declaration is liable to imprisonment or a fine, or both.

#### Textual Amendments

F11 Words substituted by [Insolvency Act 1986 \(c. 45, SIF 66\)](#), s. 439(1), [Sch. 13 Pt. I](#)

### 174 Procedure for special resolution under s. 173. **E+W+S**

- (1) The resolution required by section 173 must be passed on, or within the week immediately following, the date on which the directors make the statutory declaration required by that section; and the payment out of capital must be made no earlier than 5 nor more than 7 weeks after the date of the resolution.
- (2) The resolution is ineffective if 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 the resolution would not have been passed if he had not done so.
- (3) For purposes of subsection (2), a member who holds such shares is to be regarded as exercising the voting rights carried by them in voting on the resolution 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; and



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notwithstanding anything in a company's articles, any member of the company may demand a poll on that question.

- (4) The resolution is ineffective unless the statutory declaration and auditors' report required by the section are available for inspection by members of the company at the meeting at which the resolution is passed.
- (5) For purposes of this section a vote and a demand for a poll by a person as proxy for a member are the same (respectively) as a vote and demand by the member.

## **175 Publicity for proposed payment out of capital. E+W+S**

- (1) Within the week immediately following the date of the resolution for payment out of capital 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 the amount of the permissible capital payment for the shares in question and the date of the resolution under section 173;
  - (c) stating that the statutory declaration of the directors and the auditors' report required by that section are available for inspection at the company's registered office; and
  - (d) stating that any creditor of the company may at any time within the 5 weeks immediately following the date of the resolution for payment out of capital apply to the court under section 176 for an order prohibiting the payment.
- (2) Within the week immediately following the date of the resolution the company must also either cause a notice to the same effect as that required by subsection (1) to be published in an appropriate national newspaper or give notice in writing to that effect to each of its creditors.
- (3) "An appropriate national newspaper" means a newspaper circulating throughout England and Wales (in the case of a company registered in England and Wales), and a newspaper circulating throughout Scotland (in the case of a company registered in Scotland).
- (4) References below in this section to the first notice date are to the day on which the company first publishes the notice required by subsection (1) or first publishes or gives the notice required by subsection (2) (whichever is the earlier).
- (5) Not later than the first notice date the company must deliver to the registrar of companies a copy of the statutory declaration of the directors and of the auditors' report required by section 173.
- (6) The statutory declaration and auditors' report—
  - (a) shall be kept at the company's registered office throughout the period beginning with the first notice date and ending 5 weeks after the date of the resolution for payment out of capital, and
  - (b) shall <sup>F12</sup> . . . be open to the inspection of any member or creditor of the company without charge.
- (7) If an inspection required under subsection (6) is refused, the company and every officer of it who is in default is liable to a fine and, for continued contravention, to a daily default fine.



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- (8) In the case of refusal of an inspection required under subsection (6) of a declaration or report, the court may by order compel an immediate inspection of that declaration or report.

#### Textual Amendments

**F12** Words in s. 175(6) repealed (01.11.1991) by Companies Act 1989 (c. 40, SIF 27), ss. 143(3), 212, 213(2), Sch. 24; S.I. 1991/1996, art. 2(2)(b)(c).

#### Modifications etc. (not altering text)

**C2** S. 175(6) explained (1.11.1991) by S.I. 1991/1998, reg. 3(1).

### 176 Objections by company's members or creditors. **E+W+S**

- (1) Where a private company passes a special resolution approving for purposes of this Chapter any 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 within 5 weeks of the date on which the resolution was passed apply to the court for cancellation of the resolution.
- (2) The application 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) If an application is made, the company shall—
- (a) forthwith give notice in the prescribed form of that fact to the registrar of companies; and
  - (b) within 15 days from the making of any order of the court on the hearing of the application, or such longer period as the court may by order direct, deliver an office copy of the order to the registrar.
- (4) A company which fails to comply with subsection (3), and any officer of it who is in default, is liable to a fine and for continued contravention, to a daily default fine.

### 177 Powers of court on application under s. 176. **E+W+S**

- (1) On the hearing of an application under section 176 the court may, if it thinks fit, adjourn the proceedings in order that an arrangement may be made to the court's satisfaction for the purchase of the interests of dissentient members or for the protection of dissentient creditors (as the case may be); and the court may give such directions and make such orders as it thinks expedient for facilitating or carrying into effect any such arrangement.
- (2) Without prejudice to its powers under subsection (1), the court shall make an order on such terms and conditions as it thinks fit either confirming or cancelling the resolution; and, if the court confirms the resolution, it may in particular by order alter or extend any date or period of time specified in the resolution or in any provision in this Chapter which applies to the redemption or purchase of shares to which the resolution refers.

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- (3) The court's order may, if the court thinks fit, 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 may make such alterations in the company's memorandum and articles as may be required in consequence of that provision.
- (4) If the court's order requires the company not to make any, or any specified, alteration in its memorandum or articles, the company has not then power without leave of the court to make any such alteration in breach of the requirement.
- (5) An alteration in the memorandum or articles made by virtue of an order under this section, if not made by resolution of the company, is of the same effect as if duly made by resolution; and this Act applies accordingly to the memorandum or articles as so altered.

### Supplementary

#### 178 Effect of company's failure to redeem or purchase. **E+W+S**

- (1) This section has effect where a company has, on or after 15th June 1982,—
  - (a) issued shares on terms that they are or are liable to be redeemed, or
  - (b) agreed to purchase any of its own 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.
- (3) Subsection (2) 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; but 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; and when shares are redeemed or purchased under this subsection, they are treated as cancelled.
- (5) However, 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 beginning with the date on which the redemption or purchase was to have taken place and 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 which 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),
  - (b) if other shares carry rights (whether as to capital or as to income) which are preferred to the rights as to capital attaching to the first-mentioned shares, any amount due in satisfaction of those preferred rights;

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but, 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.

(7) ..... F13

#### Textual Amendments

**F13** S. 178(7) repealed (E.W.S.) by [Insolvency Act 1985 \(c. 65, SIF 27\)](#), s. 235, [Sch. 10 Pt. II](#), and [Insolvency Act 1986 \(c.45, SIF 66\)](#), s. 437, [Sch. 11 para. 7](#)

### 179 Power for Secretary of State to modify this Chapter. **E+W+S**

- (1) The Secretary of State may by regulations made by statutory instrument modify the provisions of this Chapter with respect to any of the following matters—
  - (a) the authority required for a purchase by a company of its own shares,
  - (b) the authority required for the release by a company of its rights under a contract for the purchase of its own shares or a contract under which the company may (subject to any conditions) become entitled or obliged to purchase its own shares,
  - (c) the information to be included in a return delivered by a company to the registrar of companies in accordance with section 169(1),
  - (d) the matters to be dealt with in the statutory declaration of the directors under section 173 with a view to indicating their opinion of their company's ability to make a proposed payment out of capital with due regard to its financial situation and prospects, and
  - (e) the contents of the auditors' report required by that section to be annexed to that declaration.
- (2) The Secretary of State may also by regulations so made make such provision (including modification of the provisions of this Chapter) as appears to him to be appropriate—
  - (a) for wholly or partly relieving companies from the requirement of section 171(3)(a) that any available profits must be taken into account in determining the amount of the permissible capital payment for shares under that section, or
  - (b) for permitting a company's share premium account to be applied, to any extent appearing to the Secretary of State to be appropriate, in providing for the premiums payable on the redemption or purchase by the company of any of its own shares.
- (3) Regulations under this section—
  - (a) may make such further modification of any provisions of this Chapter as appears to the Secretary of State to be reasonably necessary in consequence of any provision made under such regulations by virtue of subsection (1) or (2),
  - (b) may make different provision for different cases or classes of case, and
  - (c) may contain such further consequential provisions, and such incidental and supplementary provisions, as the Secretary of State thinks fit.
- (4) No regulations shall be made under this section unless a draft of the instrument containing them has been laid before Parliament and approved by resolution of each House.

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**Modifications etc. (not altering text)**

**C3** S. 179 amended by [Insolvency Act 1986 \(c. 45, SIF 66\)](#), [ss. 76\(6\), 79\(3\), 124\(3\)](#)

**180 Transitional cases arising under this Chapter; and savings. E+W+S**

- (1) Any preference shares issued by a company before 15th June 1982 which could but for the repeal by the <sup>M1</sup>Companies Act 1981 of section 58 of the <sup>M2</sup>Companies Act 1948 (power to issue redeemable preference shares) have been redeemed under that section are subject to redemption in accordance with the provisions of this Chapter.
- (2) In a case to which sections 159 and 160 apply by virtue of this section, any premium payable on redemption may, notwithstanding the repeal by the 1981 Act of any provision of the 1948 Act, be paid out of the share premium account instead of out of profits, or partly out of that account and partly out of profits (but subject to the provisions of this Chapter so far as payment is out of profits).
- (3) Any capital redemption reserve fund established before 15th June 1982 by a company for the purposes of section 58 of the Act of 1948 is to be known as the company's capital redemption reserve and be treated as if it had been established for the purposes of section 170 of this Act; and accordingly, a reference in any enactment or in the articles of any company, or in any other instrument, to a company's capital redemption reserve fund is to be construed as a reference to the company's capital redemption reserve.

**Marginal Citations**

**M1** 1981 c. 62.

**M2** 1948 c. 38.

**181 Definitions for Chapter VII. E+W+S**

In this Chapter—

- (a) “distributable profits”, in relation to the making of any payment by a company, means those profits out of which it could lawfully make a distribution (within the meaning given by section 263(2)) equal in value to the payment, and
- (b) “permissible capital payment” means the payment permitted by section 171; and references to payment out of capital are to be construed in accordance with section 171.

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