
STATUTORY INSTRUMENTS

1986 No. 1032

The Companies (Northern Ireland) Order 1986 (revoked)

PART VI

SHARE CAPITAL, ITS INCREASE, MAINTENANCE AND REDUCTION

CHAPTER VII

REDEEMABLE SHARES; PURCHASE BY A COMPANY OF ITS OWN SHARES

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

F1 Order repealed (prosp.) by [Companies Act 2006 \(c. 46\)](#), ss. 1284(2), 1295, 1300(2), [Sch. 16](#) and the repeal being partly in force, as to which see individual Articles (with savings (with adaptations) by Companies Act 2006 (Commencement No. 6, Saving and Commencement Nos. 3 and 5 (Amendment)) Order 2008 (S.I. 2008/674), arts. 2(3), {4}, Sch. 2) and subject to amendments (6.4.2008) by [Companies Act 2006 \(Consequential Amendments etc\) Order 2008 \(S.I. 2008/948\)](#), arts. 2(2), 3(1)(b)(2), [Sch. 1 paras. 135, 147, 148](#) {Sch. 2 Note 1} (with arts. 6, 11, 12) and subject to amendments (6.4.2008) by [S.R. 2008/133](#), {regs. 2, 3}

Power of private companies to redeem or purchase own shares out of capital

181^{F1}.—(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 Article 170 (as the case may be) Article 172, of its own shares otherwise than out of its distributable profits or the proceeds of a fresh issue of shares.

(2) References in this Chapter to payment out of capital are (subject to paragraph (6)) to any payment so made, whether or not it would be regarded apart from this Article 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 paragraph is referred to in this Chapter as the permissible capital payment for the shares.

(4) Subject to paragraph (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.

Status: Point in time view as at 01/10/2007.

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(5) Subject to paragraph (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^{F2} 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 Article, the references in paragraphs (4) and (5) to the permissible capital payment are to be read as referring to the aggregate of that payment and those proceeds.

F1 mod. by [1989 NI 19](#)

F2 SR 1997/436

Availability of profits for the purposes of Article 181

182 ^{F3}.—(1) The reference in Article 181(3)(a) to available profits of the company is to the company's profits which are available for distribution (within the meaning of Part IX); but the question whether a company has any profits so available and the amount of any such profits are to be determined for the purposes of that Article in accordance with the following paragraphs, instead of Articles 278 to 283.

(2) Subject to paragraph (3), that question is to be determined by reference to^{F4} the following items as stated in the relevant accounts for determining the permissible capital payments for shares]

- (a) profits, losses, assets and liabilities;
- (b) ^{F4}the following provisions—]
 - ^{F4}(i) [^{F4}in the case of Companies Order individual accounts,] provisions of any of the kinds mentioned in paragraphs 87 and 88 of Schedule 4 (depreciation, diminution in value of assets, retentions to meet liabilities, etc.)^{F4}, and]
 - ^{F4}(ii) [^{F4}in the case of IAS individual accounts, provisions of any kind]; and
- (c) share capital and reserves (including undistributable reserves),

^{F4} . . .

(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 judgement to be made as to the amounts of any of the items mentioned in paragraph (2) (a) to (c).

(4) For the 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 paragraphs (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 paragraph (4) to distributions lawfully made by the company includes—

- (a) financial assistance lawfully given out of distributable profits in a case falling within Article 164 or 165,

- (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 Article 178(1) lawfully made by the company.
- (6) References in this Article 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 Article 183(3).

F3 mod. by 1989 NI 19
F4 SR 2004/496

Conditions for payment out of capital

183^{F5}—(1) Subject to any order of the court under Article 187, 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 this Article and Articles 184 and 185 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 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 the purposes of paragraph (3)(a), the directors shall take into account the same liabilities (including prospective and contingent liabilities) as would be relevant under^{F6} Article 102 of the Insolvency Order] (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 Articles 181 and 182; 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 paragraph (3) is unreasonable in all the circumstances.

(6) A director who makes a declaration under this Article without having reasonable grounds for the opinion expressed in the declaration is liable to imprisonment or a fine, or both.

F5 mod. by 1989 NI 19

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F6 1989 NI 19

Procedure for special resolution under Article 183

184 ^{F7}.—(1) The resolution required by Article 183 must be passed on, or within the week immediately following, the date on which the directors make the statutory declaration required by that Article; 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 the purposes of paragraph (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, 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 Article 183 are available for inspection by members of the company at the meeting at which the resolution is passed.

(5) For the purposes of this Article 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.

F7 mod. by 1989 NI 19

Publicity for proposed payment out of capital

185 ^{F8}.—(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 Belfast 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 Article 183;
- (c) stating that the statutory declaration of the directors and the auditors' report required by that Article 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 Article 186 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 paragraph (1) to be published in a newspaper circulating throughout Northern Ireland or give notice in writing to that effect to each of its creditors.

(3) References in this Article to the first notice date are to the day on which the company first publishes the notice required by paragraph (1) or first publishes or gives the notice required by paragraph (2) (whichever is the earlier).

(4) Not later than the first notice date the company must deliver to the registrar a copy of the statutory declaration of the directors and of the auditors' report required by Article 183.

(5) 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^{F9} . . . be open to the inspection of any member or creditor of the company without charge.
- (6) If an inspection required under paragraph (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.
- (7) In the case of refusal of an inspection required under paragraph (5) of a declaration or report, the court may by order compel an immediate inspection of that declaration or report.

F8 mod. by 1989 NI 19
F9 1990 NI 10

Objections by company's members or creditors

186^{F10}.—(1) Where a private company passes a special resolution approving for the 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; 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 paragraph (3) and any officer of it who is in default is liable to a fine and, for continued contravention, to a daily default fine.

F10 mod. by 1989 NI 19

Powers of court on application under Article 186

187^{F11}.—(1) On the hearing of an application under Article 186 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 paragraph (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 Article, if not made by resolution of the company, is of the same effect as if duly made by resolution; and this Order applies accordingly to the memorandum or articles as so altered.

F11 mod. by [1989 NI 19](#)

Status:

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