

2004 No. 275

COMPANIES

**Companies (Acquisition of Own Shares) (Treasury Shares)
Regulations (Northern Ireland) 2004**

Made - - - - - *28th June 2004*

Coming into operation *2nd August 2004*

The Department of Enterprise, Trade and Investment, being a Department designated^(a) for the purposes of section 2(2) of the European Communities Act 1972^(b) in relation to measures relating to the acquisition by companies of their own shares, and to distributions to their shareholders, in exercise of the powers conferred on it by the said section 2(2) and of every other power enabling it in that behalf, hereby makes the following Regulations:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Companies (Acquisition of Own Shares) (Treasury Shares) Regulations (Northern Ireland) 2004 and shall come into operation on 2nd August 2004.

(2) In these Regulations, “the 1986 Order” means the Companies (Northern Ireland) Order 1986^(c).

(3) The Interpretation Act (Northern Ireland) 1954^(d) shall apply to these Regulations as it applies to an Act of the Assembly.

Amendment of Article 172

2.—(1) Article 172 of the 1986 Order (power of company to purchase own shares) is amended as follows.

(2) For paragraph (2) substitute –

“(2) Articles 169 and 170 apply to the purchase by a company under this Article of its own shares as they apply to the redemption of redeemable shares.

This is subject to paragraphs (2A) and (2B).

(2A) The terms and manner of a purchase under this Article need not be determined by the Articles as required by Article 170(3).

(2B) Where a company makes a purchase of qualifying shares out of distributable profits under this Article, Article 172A applies to the shares purchased and accordingly Article 170(4) does not apply to those shares.”.

(3) At the end of paragraph (3) insert “or shares held as treasury shares”.

(a) S.I. 1999/654
(b) 1972 c. 68 as amended by the European Economic Area Act 1993 (c. 51)
(c) S.I. 1986/1032 (N.I. 6)
(d) 1954 c. 33 (N.I.)

(4) After paragraph (3) insert the following paragraph –

“(4) For the purposes of this Chapter “qualifying shares” are shares which –

- (a) are included in the official list in accordance with the provisions of Part 6 of the Financial Services and Markets Act 2000^(a),
- (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 market established in an EEA State which is a regulated market for the purposes of Article 16 of Council Directive 93/22/EEC on investment services in the securities field^(b),

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

Insertion of Articles 172A to 172G

3. After Article 172 of the 1986 Order insert the following Articles –

“Treasury shares

172A.—(1) Where qualifying shares are purchased by a company out of distributable profits in accordance with Article 172, the company may –

- (a) hold the shares (or any of them), or
- (b) deal with any of them, at any time, in accordance with Article 172D.

(2) Where shares are held under paragraph (1)(a) then, for the purposes of Article 360, the company must be entered in the register as the member holding those shares.

(3) In this Order, 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 Article applies, and
- (b) have been held by the company continuously since they were so purchased.

Treasury shares: maximum holdings

172B.—(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 paragraph (1) or (2) is contravened by a company, the company must dispose of or cancel the excess shares, in accordance with Article 172D, 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.

Treasury shares: voting and other rights

172C.—(1) This Article 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.

(a) 2000 c. 8

(b) O.J. No. L141, 11.6.93, p. 27

(3) The rights to which paragraph (2) applies include any right to attend or vote at meetings (including meetings under Article 418).

(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 Article 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 Order as if they were purchased by the company at the time they were allotted, in circumstances in which Article 172A(1) applied.

Treasury shares: disposal and cancellation

172D.—(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 paragraph (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 Article 422 (right of offeror to buy out minority shareholders)(a) that a person desires to acquire any of the shares, the company must not, under paragraph (1), sell or transfer the shares to which the notice relates except to that person.

(4) If under paragraph (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 paragraph (1) without complying with Articles 145 and 146 (special resolution for reduction of share capital; application to court for order of confirmation).

Treasury shares: mandatory cancellation

172E.—(1) If shares held as treasury shares cease to be qualifying shares, the company must forthwith cancel the shares in accordance with Article 172D.

(2) For the purposes of paragraph (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 –

(a) Article 422 was substituted by Article 26 of the Companies (Northern Ireland) Order 1989 (S.I. 1989/2404 (N.I. 18))

- (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 Article “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.

Treasury shares: proceeds of sale

172F.—(1) Where shares held as treasury shares are sold, the proceeds of sale shall be dealt with in accordance with this Article.

(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 IX 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 IX 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 paragraph (4), be treated as being nil.

Treasury shares: penalty for contravention

172G. If a company contravenes any provision of Articles 172A to 172F every officer of it who is in default is liable to a fine.”.

Consequential amendments

4. The Schedule (which contains consequential amendments) has effect.

Sealed with the Official Seal of the Department of Enterprise, Trade and Investment on 28th June 2004.

(L.S.)

Michael Bohill

A senior officer of the Department of Enterprise, Trade and Investment

Amendment of Article 16 of the 1986 Order

1. In Article 16 of the 1986 Order (procedure for objecting to alteration of company's objects) after paragraph (7) insert –

“(7A) For the purposes of paragraph (2)(a), any of the company's issued share capital held as treasury shares must be disregarded.”.

Amendment of Article 34 of the 1986 Order

2. In Article 34 of the 1986 Order (minimum membership for carrying on business)(a), the existing provision becomes paragraph (1) of that Article, and at the end insert –

“(2) For the purposes of this Article references to a member of a company do not include the company itself where it is such a member only by virtue of its holding shares as treasury shares.”.

Amendment of Article 64 of the 1986 Order

3. In Article 64 of the 1986 Order (litigation objection to resolution under Article 63) after paragraph (2) insert –

“(2A) For the purposes of paragraph (2)(a), any of the company's issued share capital held as treasury shares must be disregarded.”.

Amendment and operation of Article 99 of the 1986 Order

4.—(1) In Article 99 of the 1986 Order (offers to shareholders to be on a pre-emptive basis) after paragraph (5) insert –

“(6) Where a company holds relevant shares as treasury shares –

(a) for the purposes of paragraphs (1) and (2), the company is not a “person who holds relevant shares”; and

(b) for the purposes of paragraph (1), the shares held as treasury shares do not form part of “the aggregate of relevant shares and relevant employee shares”.”.

(2) Where –

(a) a company holds relevant shares as treasury shares, and

(b) immediately before these Regulations came into operation, its memorandum or articles included a provision that met the requirements of paragraph (2) of Article 99 of the 1986 Order,

that provision shall have effect as if it had been modified so as to comply with the requirements of that paragraph as it has effect after these Regulations came into operation.

Amendment of Article 104 of the 1986 Order

5.—(1) Amend Article 104 of the 1986 Order (interpretation for Articles 99 to 106) as follows.

(2) After paragraph (3) insert –

“(3A) A reference to the allotment of equity securities or of equity securities consisting of relevant shares of a particular class also includes the sale of any relevant shares in the company or (as the case may be) relevant shares of a particular class if, immediately before the sale, the shares were held by the company as treasury shares.”.

(3) At the end of paragraph (5)(b) insert “or, in the case of shares held by the company as treasury shares, are to be transferred in pursuance of such a scheme”.

Amendment of Article 105 of the 1986 Order

6. In Article 105 of the 1986 Order (disapplication of pre-emption rights) after paragraph (2) insert –

“(2A) Paragraphs (1) and (2) apply in relation to a sale of shares which is an allotment of equity securities by virtue of Article 104(3A) as if –

(a) Article 34 was amended by paragraph 2 of the Schedule to S.R. 1992 No. 405

- (a) in paragraph (1) for “Where the directors of a company are generally authorised for the purposes of Article 90, they” there were substituted “The directors of a company” and the words “pursuant to that authority” were omitted, and
- (b) in paragraph (2), the words from “Where” to “otherwise), the” there were substituted “The” and, in sub-paragraph (a), the words “to be made pursuant to that authority” were omitted.”.

Amendment of Article 113 of the 1986 Order

7. In Article 113(4) of the 1986 Order (non-cash consideration to be valued before allotment) –
- (a) in the first sentence –
 - (i) after “question” insert “(“the relevant company””, and
 - (ii) for “that other company” substitute “the relevant company”, and
 - (b) for the second sentence substitute –
 - “In determining whether that is the case, the following shall be disregarded –
 - (a) shares held by or by a nominee of the company proposing to allot the shares in connection with the arrangement (“the allotting company”);
 - (b) shares held by or by a nominee of a company which is –
 - (i) the holding company or a subsidiary of the allotting company, or
 - (ii) a subsidiary of that holding company; and
 - (c) shares held as treasury shares by the relevant company.”.

Amendment of Article 135 of the 1986 Order

- 8.—(1) Amend Article 135 of the 1986 Order (variation of class rights) as follows.
- (2) In paragraph (2)(a) after the word “class” insert the words “(excluding any shares of that class held as treasury shares)”.
 - (3) In paragraph (5) after the word “company” insert the words “(excluding any member holding shares as treasury shares)”.
 - (4) In paragraph (6)(a) after the word “question” where it first appears insert the words “(excluding any shares of that class held as treasury shares)”.

Amendment of Article 137 of the 1986 Order

9. In Article 137 of the 1986 Order (shareholders’ right to object to variation) after paragraph (2) insert –
- “(2A) For the purposes of paragraph (2), any of the company’s issued share capital held as treasury shares must be disregarded.”.

Amendment of Article 141 of the 1986 Order

10. In Article 141 of the 1986 Order (merger relief)(a) at the end of paragraph (4) insert “(excluding any shares in that company held as treasury shares)”.

Amendment of Article 153 of the 1986 Order

11. In Article 153 of the 1986 Order (general rule against company acquiring own shares) –
- (a) in paragraph (2), after the second “and” insert “, subject to paragraph (2A),”, and
 - (b) after that paragraph insert –
 - “(2A) Where a company purchases qualifying shares out of distributable profits under Article 172, any contravention by the company of any provision of Article 172B(1) or (2) shall not render the acquisition void under paragraph (2).”.

Amendment of Article 179 of the 1986 Order

- 12.—(1) Amend Article 179 of the 1986 Order (disclosure by company of purchase of own shares)(b) as follows.

(a) Article 141 was amended by paragraph 6 of Part I of Schedule 9 to the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19))

(b) Article 179 was amended by Article 113 of, and Schedule 6 to, the Companies (No. 2) (Northern Ireland) Order 1990 (S.I. 1990/1504 (N.I. 10))

(2) After paragraph (1) insert the following paragraphs –

“(1A) But in the case of a company which has purchased its own shares in circumstances in which Article 172A applies, the requirement to deliver a return under paragraph (1) shall apply only where some or all of the shares have been cancelled forthwith after the date of their delivery in accordance with Article 172D(1) and in those circumstances the particulars required by that paragraph to be stated with respect to the shares purchased shall apply only to such of the shares as have been so cancelled.

(1B) Where a company has purchased its own shares in circumstances in which Article 172A applies, the company shall within the period of 28 days beginning with the date on which such shares are delivered to it (except where all of the shares have been cancelled forthwith after the date of their delivery in the circumstances referred to in paragraph (1A)) deliver to the registrar for registration a return in the prescribed form stating with respect to shares of each class purchased (other than any shares which have been cancelled in the circumstances referred to in paragraph (1A)) the number and nominal value of each of those shares which are held as treasury shares and the date on which they were delivered to the company.”.

(3) In paragraph (2) for “the return” substitute “any return under paragraph (1) or (1B)”.

(4) In paragraph (3) after “single return” insert “under either paragraph (1) or (1B)”.

Insertion of Article 179A of the 1986 Order

13. After Article 179 of the 1986 Order insert the following Article –

“Disclosure by company of cancellation or disposal of treasury shares

179A.—(1) Paragraph (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 Article 179(1B) in relation to the shares, and
- (b) the shares have –
 - (i) been cancelled in accordance with Article 172D(1), or
 - (ii) been sold or transferred for the purposes of or pursuant to an employees’ share scheme under Article 172D(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 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 Article, every officer of the company who is in default is liable to a fine and, for continued contravention, to a daily default fine.”.

Amendment of Article 180 of the 1986 Order

14. In Article 180(1) of the 1986 Order (the capital redemption reserve) before the words “shall be transferred” insert “, or in accordance with Article 172D(4) on cancellation of shares held as treasury shares,”.

Amendment of Article 206 of the 1986 Order

15. In Article 206(2) of the 1986 Order (obligation of disclosure: the cases in which it may arise and “the relevant time”) –

- (a) after “general meetings of the company” insert “(excluding any shares in the company held as treasury shares)”, and
- (b) in sub-paragraph (a) after “separately” insert “(excluding any shares of each class held as treasury shares)”.

Amendment of Article 222 of the 1986 Order

16. In Article 222 of the 1986 Order (company investigation on requisition by members) at the end of paragraph (1) insert “(excluding any shares in the company held as treasury shares)”.

Amendment of Article 331 of the 1986 Order

17. In Article 331 of the 1986 Order (prohibition on directors dealing in share options) after paragraph (5) insert –

“(6) This Article is not to be taken as penalising a director of a company who buys a right to call for delivery at a specified price within a specified time of a specified number of shares held as treasury shares by the company or by a relevant company which is that company’s subsidiary or holding company or a subsidiary of that company’s holding company.

(7) For the purposes of paragraph (6) –

- (a) “relevant company” means a company listed in Article 1 of Council Directive 77/91/EEC(a), and
- (b) shares of a relevant company (other than a company within the meaning of Article 3(1)) are held as treasury shares if –
 - (i) they fall within Article 172(4)(a) to (d) (qualifying shares), and
 - (ii) they are held by the relevant company in accordance with provisions of the law of a member State implementing Articles 19 to 22 of that Directive.”.

Amendment of Article 354 of the 1986 Order

18. In Article 354 of the 1986 Order (“connected persons”, etc) –

- (a) in paragraph (4)(a) after the second “capital” insert “(excluding any shares in the company held as treasury shares)”,
- (b) at the end of paragraph (4)(b) insert “(excluding any voting rights attached to any shares in the company held as treasury shares)”, and
- (c) in paragraph (5)(b) –
 - (i) after “that share capital” insert “(excluding any shares in the company held as treasury shares)”, and
 - (ii) after “voting power” insert “(excluding any voting rights attached to any shares in the company held as treasury shares)”.

Amendment of Article 360 of the 1986 Order

19. In Article 360 of the 1986 Order (obligation to keep and enter up register) after paragraph (3) insert –

“(3A) Where a company purchases one or more of its own shares in circumstances in which Article 172A applies –

- (a) the requirements of paragraphs (2) and (3) must be complied with unless the company cancels all of the shares forthwith after the purchase in accordance with Article 172D(1), but
- (b) any share which is so cancelled must be disregarded for the purposes of paragraph (3).”.

Amendment of Article 376 of the 1986 Order

20. In Article 376 of the 1986 Order (extraordinary general meeting on members’ requisition) after paragraph (2) insert –

“(2A) For the purposes of paragraph (2)(a) any of the company’s paid up capital held as treasury shares must be disregarded.”.

Amendment of Article 377 of the 1986 Order

21. In Article 377 of the 1986 Order (length of notice for calling meetings) in paragraph (4)(a) after “meeting” insert “(excluding any shares in the company held as treasury shares)”.

Amendment of Article 378 of the 1986 Order

22. In Article 378 of the 1986 Order (general provisions as to meetings and votes) in paragraph (3) after the first “capital” insert “(excluding any shares in the company held as treasury shares)”.

Amendment of Article 381 of the 1986 Order

23. In Article 381 of the 1986 Order (right to demand a poll) –

(a) O.J. No. L26/77 with amendments 291/79, 345/80, 302/85, 347/92

- (a) in paragraph (1)(b)(ii) after “meeting” insert “(excluding any voting rights attached to any shares in the company held as treasury shares)”, and
- (b) at the end of paragraph (1)(b)(iii) insert “(excluding any shares in the company conferring a right to vote at the meeting which are held as treasury shares)”.

Amendment of Article 384 of the 1986 Order

24. In Article 384 of the 1986 Order (circulation of members’ resolutions) in paragraph (2)(a) after “relates” insert “(excluding any voting rights attached to any shares in the company held as treasury shares)”.

Amendment of Article 386 of the 1986 Order

25. In Article 386 of the 1986 Order (extraordinary and special resolutions) in paragraph (3)(a) after “right” insert “(excluding any shares in the company held as treasury shares)”.

Amendment of Article 388 of the 1986 Order

26. In Article 388 of the 1986 Order (registration etc. of resolutions and agreements)(a) after paragraph (4) insert –

“(4A) For the purposes of this Article, references to a member of a company do not include the company itself where it is such a member by virtue only of its holding shares as treasury shares, and accordingly, in such circumstances, the company is not, for those purposes, to be treated as a member of any class of the company’s shareholders.”.

Amendment of Article 421 of the 1986 Order

27. For Article 421(2) of the 1986 Order (takeover offers)(b) substitute –

“(2) In paragraph (1) “shares” means shares (other than relevant treasury shares) which have been allotted on the date of the offer, but a takeover offer may include among the shares to which it relates –

- (a) all or any shares that are allotted after the date of the offer but before a specified date;
- (b) all or any relevant treasury shares that cease to be held as treasury shares before a specified date;
- (c) all or any other relevant treasury shares.

(2A) In this Article –

“relevant treasury shares” means shares which –

- (a) are held by the company as treasury shares on the date of the offer; or
- (b) become shares held by the company as treasury shares after that date but before a specified date;

“specified date” means a date specified in or determined in accordance with the terms of the offer.”.

Amendment of Article 423A of the 1986 Order

28.—(1) In Article 423A of the 1986 Order (right of minority shareholder to be bought out by offeror)(c) after paragraph (1) insert –

“(1A) For the purposes of paragraph (1), a takeover offer relates to all the shares in a company if it is an offer to acquire all the shares in the company within the meaning of Article 421.”.

(2) Insert after paragraph (2) –

“(2A) For the purposes of paragraphs (1) and (2), in calculating nine-tenths of the value of all the shares in the company, or all the shares of any class or classes of shares of the company, any shares held by the company as treasury shares shall be treated as having been acquired by the offeror.”.

Amendment of Article 424 of the 1986 Order

29. In Article 424 of the 1986 Order (investigation of a company on its own application or that of its members) at the end of paragraph (2)(a) insert “(excluding any shares held as treasury shares)”.

(a) Article 388 was amended by Part I of Schedule 10 to the Companies (Northern Ireland) Order 1990 (S.I. 1990/593 (N.I. 5)), Part II of Schedule 4 to the Companies (Northern Ireland) Order 1989, Part I of Schedule 9 to the Insolvency (Northern Ireland) Order 1989, S.I. 1995/3272 and S.I. 2001/3755

(b) Article 421 was substituted by Article 26 of the Companies (Northern Ireland) Order 1989

(c) Article 423A was inserted by Article 26 of the Companies (Northern Ireland) Order 1989

Amendment of paragraph 38, Schedule 4 to the 1986 Order

30. In paragraph 38 of Schedule 4 to the 1986 Order (form and content of company accounts)(a) –
- (a) omit “and” at the end of sub-paragraph (1)(a), and
 - (b) at the end of sub-paragraph (6)(b) insert –
“; and
 - (c) where shares are held as treasury shares, the number and aggregate nominal value of the treasury shares and, where shares of more than one class have been allotted, the number and aggregate nominal value of the shares of each class held as treasury shares.”.

Amendment of paragraph 10, Schedule 4A to the 1986 Order

31. In Schedule 4A to the 1986 Order (form and content of group accounts)(b) in paragraph 10(1)(a) after “acquired” insert “(excluding any shares in the undertaking held as treasury shares)”.

Amendment of paragraphs 10 and 12, Schedule 15B to the 1986 Order

32. In Schedule 15B to the 1986 Order (provisions subject to which Articles 418 to 420 have effect in their application to mergers and divisions of public companies)(c) –
- (a) in paragraph 10(2)(c) after “general meetings of the company” insert “(excluding any shares in the company held as treasury shares)”, and
 - (b) in paragraph 12(5)(c) after “general meetings of the company” insert “(excluding any shares in the company held as treasury shares)”.

Amendment of Schedule 23 to the 1986 Order

33. In Schedule 23 to the 1986 Order (punishment of offences under the 1986 Order) at the appropriate place in the Table insert –

“172G	Contravention of any provision of Articles 172A to 172F (dealings by company in treasury shares, etc.)	1. On indictment	A fine	
		2. Summary	The statutory maximum”	
“179A(4)	Default by company’s officer in delivering to registrar the return required by Article 179A (disclosure by company of cancellation or disposal of treasury shares)	1. On indictment	A fine	One-tenth of the statutory maximum.”.
		2. Summary	The statutory maximum	

Repeal of Article 68(4) of the Companies (No. 2) (Northern Ireland) Order 1990

34. Article 68(4) of the Companies (No. 2) (Northern Ireland) Order 1990(d), which substituted a new Article 172(2) of the 1986 Order as from a day to be appointed, is repealed.

(a) Schedule 4 was amended by Article 6(2) of, and Schedule 1 to, the Companies (Northern Ireland) Order 1990
(b) Schedule 4A was substituted by Article 7(2) of, and Schedule 2 to, the Companies (Northern Ireland) Order 1990 and amended by S.R. 1992 No. 436 and S.R. 1997 No. 314
(c) Schedule 15B was inserted by Regulation 3(c) of S.R. 1987 No. 442 and was renumbered 15B by Article 49(2) of the Companies (No. 2) (Northern Ireland) Order 1990
(d) S.I. 1990/1504 (N.I. 10)

EXPLANATORY NOTE

(This note is not part of the Regulations.)

These Regulations further implement the Council Directive 77/91/EEC (O.J. No. L26, 31.1.77, p. 1) as amended by 92/101/EEC (O.J. No. L347, 28.11.92, p. 64) on co-ordination of safeguards which, for the protection of members and others, are required by member states of companies in respect of the formation of public limited liability companies and the maintenance and alteration of their capital, with a view to making such safeguards equivalent. The Regulations amend the Companies (Northern Ireland) Order 1986 (S.I. 1986/1032 (N.I. 6)) (“the 1986 Order”) to permit certain companies to hold shares in treasury following a purchase of own shares as an alternative to cancelling such shares on purchase.

Regulation 2 defines qualifying shares which are the only shares that may be held as treasury shares.

Regulation 3 inserts new Articles 172A, 172B, 172C, 172D, 172E, 172F and 172G in the 1986 Order which set out the principal provisions relating to treasury shares. Article 172A provides that where qualifying shares are purchased out of distributable profits they may be held in treasury; and that the holding of treasury shares by nominees is not permitted. Article 172B provides that the maximum holding of treasury shares is 10% of the nominal value of any class of share. If that limit is exceeded, the company must dispose of or cancel the excess shares within 12 months. Article 172C provides that the rights attached to treasury shares, including voting rights and rights to receive dividends, are suspended and that the purported exercise of such rights is void. Article 172D provides that treasury shares may only be sold for cash; or transferred for the purposes of, or pursuant to, an employees’ share scheme; or cancelled. Article 172E provides that if a company’s treasury shares cease to be qualifying shares they must be cancelled forthwith. Article 172F sets out the rules that apply in respect of the proceeds of a sale of treasury shares. Article 172G provides that if a company contravenes any provision of Articles 172A to 172F every officer of it who is in default is liable to a fine.

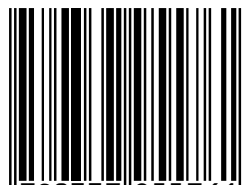
Regulation 4 provides that the Schedule to the Regulations has effect. The Schedule sets out consequential amendments to the 1986 Order. Paragraphs 4, 5 and 6 amend Articles 99, 104 and 105 respectively and provide that the pre-emption rights that apply to the allotment of new shares also apply to the sale of treasury shares but may also be similarly disappplied with the agreement of shareholders. Article 99(6) provides that when a company holding treasury shares allots new securities, all those securities must be offered to existing shareholders (other than the company itself) in proportion to their existing shareholding. Paragraphs 12 and 13 amend Article 179 and insert a new Article 179A respectively and set out the rules relating to the disclosure to the Registrar of Companies of purchases of treasury shares and their subsequent sale, transfer or cancellation. Article 331 is amended by paragraph 17 to allow a director to buy a right to call for the delivery of shares held as treasury shares.

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