



# Companies Act 1985

## 1985 CHAPTER 6

### PART V

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

#### CHAPTER I

##### GENERAL PROVISIONS ABOUT SHARE CAPITAL

#### **117 Public company share capital requirements.**

- (1) A company registered as a public company on its original incorporation shall not do business or exercise any borrowing powers unless the registrar of companies has issued it with a certificate under this section or the company is re-registered as a private company.
- (2) The registrar shall issue a company with such a certificate if, on an application made to him by the company in the prescribed form, he is satisfied that the nominal value of the company's allotted share capital is not less than the authorised minimum, and there is delivered to him a statutory declaration complying with the following subsection.
- (3) The statutory declaration must be in the prescribed form and be signed by a director or secretary of the company; and it must—
  - (a) state that the nominal value of the company's allotted share capital is not less than the authorised minimum;
  - (b) specify the amount paid up, at the time of the application, on the allotted share capital of the company;
  - (c) specify the amount, or estimated amount, of the company's preliminary expenses and the persons by whom any of those expenses have been paid or are payable; and
  - (d) specify any amount or benefit paid or given, or intended to be paid or given, to any promoter of the company, and the consideration for the payment or benefit.

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- (4) For the purposes of subsection (2), a share allotted in pursuance of an employees' share scheme may not be taken into account in determining the nominal value of the company's allotted share capital unless it is paid up at least as to one-quarter of the nominal value of the share and the whole of any premium on the share.
- (5) The registrar may accept a statutory declaration delivered to him under this section as sufficient evidence of the matters stated in it.
- (6) A certificate under this section in respect of a company is conclusive evidence that the company is entitled to do business and exercise any borrowing powers.
- (7) If a company does business or exercises borrowing powers in contravention of this section, the company and any officer of it who is in default is liable to a fine.
- (8) Nothing in this section affects the validity of any transaction entered into by a company; but, if a company enters into a transaction in contravention of this section and fails to comply with its obligations in that connection within 21 days from being called upon to do so, the directors of the company are jointly and severally liable to indemnify the other party to the transaction in respect of any loss or damage suffered by him by reason of the company's failure to comply with those obligations.

#### **118 The authorised minimum.**

- (1) In this Act, "the authorised minimum" means £50,000, or such other sum as the Secretary of State may by order made by statutory instrument specify instead.
- (2) An order under this section which increases the authorised minimum may—
  - (a) require any public company having an allotted share capital of which the nominal value is less than the amount specified in the order as the authorised minimum to increase that value to not less than that amount or make application to be re-registered as a private company;
  - (b) make, in connection with any such requirement, provision for any of the matters for which provision is made by this Act relating to a company's registration, re-registration or change of name, to payment for any share comprised in a company's capital and to offers of shares in or debentures of a company to the public, including provision as to the consequences (whether in criminal law or otherwise) of a failure to comply with any requirement of the order; and
  - (c) contain such supplemental and transitional provisions as the Secretary of State thinks appropriate, make different provision for different cases and, in particular, provide for any provision of the order to come into operation on different days for different purposes.
- (3) An order shall not be made under this section unless a draft of it has been laid before Parliament and approved by resolution of each House.

#### **119 Provision for different amounts to be paid on shares.**

A company, if so authorised by its articles, may do any one or more of the following things—

- (a) make arrangements on the issue of shares for a difference between the shareholders in the amounts and times of payment of calls on their shares;

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- (b) accept from any member the whole or a part of the amount remaining unpaid on any shares held by him, although no part of that amount has been called up;
- (c) pay dividend in proportion to the amount paid up on each share where a larger amount is paid up on some shares than on others.

## **120 Reserve liability of limited company.**

A limited company may by special resolution determine that any portion of its share capital which has not been already called up shall not be capable of being called up except in the event and for the purposes of the company being wound up; and that portion of its share capital is then not capable of being called up except in that event and for those purposes.

## **121 Alteration of share capital (limited companies).**

- (1) A company limited by shares or a company limited by guarantee and having a share capital, if so authorised by its articles, may alter the conditions of its memorandum in any of the following ways.
- (2) The company may—
  - (a) increase its share capital by new shares of such amount as it thinks expedient;
  - (b) consolidate and divide all or any of its share capital into shares of larger amount than its existing shares;
  - (c) convert all or any of its paid-up shares into stock, and re-convert that stock into paid-up shares of any denomination;
  - (d) sub-divide its shares, or any of them, into shares of smaller amount than is fixed by the memorandum (but subject to the following subsection);
  - (e) cancel shares which, at the date of the passing of the resolution to cancel them, have not been taken or agreed to be taken by any person, and diminish the amount of the company's share capital by the amount of the shares so cancelled.
- (3) In any sub-division under subsection (2)(d) the proportion between the amount paid and the amount, if any, unpaid on each reduced share must be the same as it was in the case of the share from which the reduced share is derived.
- (4) The powers conferred by this section must be exercised by the company in general meeting.
- (5) A cancellation of shares under this section does not for purposes of this Act constitute a reduction of share capital.

## **122 Notice to registrar of alteration.**

- (1) If a company having a share capital has—
  - (a) consolidated and divided its share capital into shares of larger amount than its existing shares; or
  - (b) converted any shares into stock; or
  - (c) re-converted stock into shares; or
  - (d) sub-divided its shares or any of them; or
  - (e) redeemed any redeemable shares; or

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(f) cancelled any shares (otherwise than in connection with a reduction of share capital under section 135),

it shall within one month after so doing give notice in the prescribed form to the registrar of companies, specifying (as the case may be) the shares consolidated, divided, converted, subdivided, redeemed or cancelled, or the stock re-converted.

(2) If default is made in complying with this section, 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.

### **123 Notice to registrar of increased share capital.**

(1) If a company having a share capital (whether or not its shares have been converted into stock) increases its share capital beyond the registered capital, it shall within 15 days after the passing of the resolution authorising the increase, give to the registrar of companies notice of the increase, and the registrar shall record the increase.

(2) The notice must include such particulars as may be prescribed with respect to the classes of shares affected and the conditions subject to which the new shares have been or are to be issued.

(3) There shall be forwarded to the registrar together with the notice a printed copy of the resolution authorising the increase, or a copy of the resolution in some other form approved by the registrar.

(4) If default is made in complying with this section, 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.

### **124 Reserve capital of unlimited company.**

An unlimited company having a share capital may by its resolution for re-registration as a public company under section 43, or as a limited company under section 51—

(a) increase the nominal amount of its share capital by increasing the nominal amount of each of its shares (but subject to the condition that no part of the increased capital is to be capable of being called up except in the event and for the purpose of the company being wound up), and

(b) alternatively or in addition, provide that a specified portion of its uncalled share capital is not to be capable of being called up except in that event and for that purpose.

## **CHAPTER II**

### **CLASS RIGHTS**

### **125 Variation of class rights.**

(1) This section is concerned with the variation of the rights attached to any class of shares in a company whose share capital is divided into shares of different classes.

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- (2) Where the rights are attached to a class of shares otherwise than by the company's memorandum, and the company's articles do not contain provision with respect to the variation of the rights, those rights may be varied if, but only if—
- (a) the holders of three-quarters in nominal value of the issued shares of that class consent in writing to the variation; or
  - (b) an extraordinary resolution passed at a separate general meeting of the holders of that class sanctions the variation;
- and any requirement (howsoever imposed) in relation to the variation of those rights is complied with to the extent that it is not comprised in paragraphs (a) and (b) above.
- (3) Where—
- (a) the rights are attached to a class of shares by the memorandum or otherwise;
  - (b) the memorandum or articles contain provision for the variation of those rights; and
  - (c) the variation of those rights is connected with the giving, variation, revocation or renewal of an authority for allotment under section 80 or with a reduction of the company's share capital under section 135;
- those rights shall not be varied unless—
- (i) the condition mentioned in subsection (2)(a) or (b) above is satisfied; and
  - (ii) any requirement of the memorandum or articles in relation to the variation of rights of that class is complied with to the extent that it is not comprised in that condition.
- (4) If the rights are attached to a class of shares in the company by the memorandum or otherwise and—
- (a) where they are so attached by the memorandum, the articles contain provision with respect to their variation which had been included in the articles at the time of the company's original incorporation; or
  - (b) where they are so attached otherwise, the articles contain such provision (whenever first so included),
- and in either case the variation is not connected as mentioned in subsection (3)(c), those rights may only be varied in accordance with that provision of the articles.
- (5) If the rights are attached to a class of shares by the memorandum, and the memorandum and articles do not contain provision with respect to the variation of those rights, those rights may be varied if all the members of the company agree to the variation.
- (6) The provisions of section 369 (length of notice for calling company meetings), section 370 (general provisions as to meetings and votes), and sections 376 and 377 (circulation of members' resolutions) and the provisions of the articles relating to general meetings shall, so far as applicable, apply in relation to any meeting of shareholders required by this section or otherwise to take place in connection with the variation of the rights attached to a class of shares, and shall so apply with the necessary modifications and subject to the following provisions, namely—
- (a) the necessary quorum at any such meeting other than an adjourned meeting shall be two persons holding or representing by proxy at least one-third in nominal value of the issued shares of the class in question and at an adjourned meeting one person holding shares of the class in question or his proxy;
  - (b) any holder of shares of the class in question present in person or by proxy may demand a poll.

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- (7) Any alteration of a provision contained in a company's articles for the variation of the rights attached to a class of shares, or the insertion of any such provision into the articles, is itself to be treated as a variation of those rights.
- (8) In this section and (except where the context otherwise requires) in any provision for the variation of the rights attached to a class of shares contained in a company's memorandum or articles, references to the variation of those rights are to be read as including references to their abrogation.

## **126 Saving for court's powers under other provisions.**

Nothing in subsections (2) to (5) of section 125 derogates from the powers of the court under the following sections of this Act, namely—

- sections 4 to 6 (company resolution to alter objects),
- section 54 (litigated objection to public company becoming private by re-registration),
- section 425 (court control of company compromising with members and creditors),
- section 427 (company reconstruction or amalgamation),
- sections 459 to 461 (protection of minorities).

## **127 Shareholders' right to object to variation.**

- (1) This section applies if, in the case of a company whose share capital is divided into different classes of shares—
  - (a) provision is made by the memorandum or articles for authorising the variation of the rights attached to any class of shares in the company, subject to—
    - (i) the consent of any specified proportion of the holders of the issued shares of that class, or
    - (ii) the sanction of a resolution passed at a separate meeting of the holders of those shares,
 and in pursuance of that provision the rights attached to any such class of shares are at any time varied; or
  - (b) the rights attached to any class of shares in the company are varied under section 125(2).
- (2) The holders of not less in the aggregate than 15 per cent. of the issued shares of the class in question (being persons who did not consent to or vote in favour of the resolution for the variation), may apply to the court to have the variation cancelled; and if such an application is made, the variation has no effect unless and until it is confirmed by the court.
- (3) Application to the court must be made within 21 days after the date on which the consent was given or the resolution was passed (as the case may be), and may be made on behalf of the shareholders entitled to make the application by such one or more of their number as they may appoint in writing for the purpose.
- (4) The court, after hearing the applicant and any other persons who apply to the court to be heard and appear to the court to be interested in the application, may, if satisfied having regard to all the circumstances of the case, that the variation would unfairly prejudice

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the shareholders of the class represented by the applicant, disallow the variation and shall, if not so satisfied, confirm it.

The decision of the court on any such application is final.

- (5) The company shall within 15 days after the making of an order by the court on such an application forward a copy of the order to the registrar of companies; and, if default is made in complying with this provision, 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.
- (6) “Variation”, in this section, includes abrogation; and “varied” is to be construed accordingly.

### **128 Registration of particulars of special rights.**

- (1) If a company allots shares with rights which are not stated in its memorandum or articles, or in any resolution or agreement which is required by section 380 to be sent to the registrar of companies, the Company shall deliver to the registrar of companies within one month from allotting the shares, a statement in the prescribed form containing particulars of those rights.
- (2) This does not apply if the shares are in all respects uniform with shares previously allotted; and shares are not for this purpose to be treated as different from shares previously allotted by reason only that the former do not carry the same rights to dividends as the latter during the 12 months immediately following the former’s allotment.
- (3) Where the rights attached to any shares of a company are varied otherwise than by an amendment of the company’s memorandum or articles or by a resolution or agreement subject to section 380, the company shall within one month from the date on which the variation is made deliver to the registrar of companies a statement in the prescribed form containing particulars of the variation.
- (4) Where a company (otherwise than by any such amendment, resolution or agreement as is mentioned above) assigns a name or other designation, or a new name or other designation, to any class of its shares, it shall within one month from doing so deliver to the registrar of companies a notice in the prescribed form giving particulars of the name or designation so assigned.
- (5) If a company fails to comply with this section, 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.

### **129 Registration of newly created class rights.**

- (1) If a company not having a share capital creates a class of members with rights which are not stated in its memorandum or articles or in a resolution or agreement to which section 380 applies, the company shall deliver to the registrar of companies within one month from the date on which the new class is created a statement in the prescribed form containing particulars of the rights attached to that class.
- (2) If the rights of any class of members of the company are varied otherwise than by an amendment of the memorandum or articles or by a resolution or agreement subject to section 380, the company shall within one month from the date on which the variation is made deliver to the registrar a statement in the prescribed form containing particulars of the variation.

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- (3) If a company (otherwise than by such an amendment, resolution or agreement as is mentioned above) assigns a name or other designation, or a new name or other designation, to any class of its members, it shall within one month from doing so deliver to the registrar a notice in the prescribed form giving particulars of the name or designation so assigned.
- (4) If a company fails to comply with this section, 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.

## CHAPTER III

### SHARE PREMIUMS

#### 130 Application of share premiums.

- (1) If a company issues shares at a premium, whether for cash or otherwise, a sum equal to the aggregate amount or value of the premiums on those shares shall be transferred to an account called “the share premium account”.
- (2) The share premium account may be applied by the company in paying up unissued shares to be allotted to members as fully paid bonus shares, or is writing off—
  - (a) the company’s preliminary expenses; or
  - (b) the expenses of, or the commission paid or discount allowed on, any issue of shares or debentures of the company,
 or in providing for the premium payable on redemption of debentures of the company.
- (3) Subject to this, the provisions of this Act relating to the reduction of a company’s share capital apply as if the share premium account were part of its paid up share capital.
- (4) Sections 131 and 132 below give relief from the requirements of this section, and in those sections references to the issuing company are to the company issuing shares as above mentioned.

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

**C1** S. 130 applied (1.5.1995) by 1988 c. 1, **Sch. 28A**, para. 5(2)(a)(as inserted by 1995 c. 4, s. 135, Sch. 26 para. 3 (with Sch. 8 para. 55(2), 57(1)))

#### 131 Merger relief.

- (1) With the exception made by [<sup>F1</sup>section 132(8)] (group reconstruction) this section applies where the issuing company has secured at least a 90 per cent. equity holding in another company in pursuance of an arrangement providing for the allotment of equity shares in the issuing company on terms that the consideration for the shares allotted is to be provided—
  - (a) by the issue or transfer to the issuing company of equity shares in the other company, or
  - (b) by the cancellation of any such shares not held by the issuing company.



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- (2) If the equity shares in the issuing company allotted in pursuance of the arrangement in consideration for the acquisition or cancellation of equity shares in the other company are issued at a premium, section 130 does not apply to the premiums on those shares.
- (3) Where the arrangement also provides for the allotment of any shares in the issuing company on terms that the consideration for those shares is to be provided by the issue or transfer to the issuing company of non-equity shares in the other company or by the cancellation of any such shares in that company not held by the issuing company, relief under subsection (2) extends to any shares in the issuing company allotted on those terms in pursuance of the arrangement.
- (4) Subject to the next subsection, the issuing company is to be regarded for purposes of this section as having secured at least a 90 per cent. equity holding in another company in pursuance of such an arrangement as is mentioned in subsection (1) if in consequence of an acquisition or cancellation of equity shares in that company (in pursuance of that arrangement) it holds equity shares in that company (whether all or any of those shares were acquired in pursuance of that arrangement, or not) of an aggregate nominal value equal to 90 per cent. or more of the nominal value of that company's equity share capital.
- (5) Where the equity share capital of the other company is divided into different classes of shares, this section does not apply unless the requirements of subsection (1) are satisfied in relation to each of those classes of shares taken separately.
- (6) Shares held by a company which is the issuing company's holding company or subsidiary, or a subsidiary of the issuing company's holding company, or by its or their nominees, are to be regarded for purposes of this section as held by the issuing company.
- (7) In relation to a company and its shares and capital, the following definitions apply for purposes of this section—
  - (a) "equity shares" means shares comprised in the company's equity share capital; and
  - (b) "non-equity shares" means shares (of any class) not so comprised;and "arrangement" means any agreement, scheme or arrangement (including an arrangement sanctioned under section 425 (company compromise with members and creditors) or [<sup>F2</sup>section 110 of the Insolvency Act] (liquidator accepting shares etc. as consideration for sale of company property)).
- (8) The relief allowed by this section does not apply if the issue of shares took place before 4th February 1981.

#### Textual Amendments

- F1** S. 131(1): "section 132(8)" substituted (retrospectively) for "section 132(4)" by [Companies Act 1989](#) (c. 40, SIF 27), ss. 145, 213(2), [Sch. 19 para. 1](#)
- F2** Words substituted by [Insolvency Act 1986](#) (c. 45, SIF 66), s. 439(1), [Sch. 13 Pt. I](#)

## 132 Relief in respect of group reconstructions.

- (1) This section applies where the issuing company—

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- (a) is a wholly-owned subsidiary of another company (“the holding company”), and
  - (b) allots shares to the holding company or to another wholly-owned subsidiary of the holding company in consideration for the transfer to the issuing company of assets other than cash, being assets of any company (“the transferor company”) which is a member of the group of companies which comprises the holding company and all its wholly-owned subsidiaries.
- (2) Where the shares in the issuing company allotted in consideration for the transfer are issued at a premium, the issuing company is not required by section 130 to transfer any amount in excess of the minimum premium value to the share premium account.
- (3) In subsection (2), “the minimum premium value” means the amount (if any) by which the base value of the consideration for the shares allotted exceeds the aggregate nominal value of those shares.
- (4) For the purposes of subsection (3), the base value of the consideration for the shares allotted is the amount by which the base value of the assets transferred exceeds the base value of any liabilities of the transferor company assumed by the issuing company as part of the consideration for the assets transferred.
- (5) For the purposes of subsection (4)—
- (a) the base value of the assets transferred is to be taken as—
    - (i) the cost of those assets to the transferor company, or
    - (ii) the amount at which those assets are stated in the transferor company’s accounting records immediately before the transfer,
whichever is the less; and
  - (b) the base value of the liabilities assumed is to be taken as the amount at which they are stated in the transferor company’s accounting records immediately before the transfer.
- (6) The relief allowed by this section does not apply (subject to the next subsection) if the issue of shares took place before the date of the coming into force of the <sup>M1</sup>Companies (Share Premium Account) Regulations 1984 (which were made on 21st December 1984).
- (7) To the extent that the relief allowed by this section would have been allowed by section 38 of the <sup>M2</sup>Companies Act 1981 as originally enacted (the text of which section is set out in Schedule 25 to this Act), the relief applies where the issue of shares took place before the date of the coming into force of those Regulations, but not if the issue took place before 4th February 1981.
- (8) Section 131 does not apply in a case falling within this section.

**Marginal Citations**

**M1** S.I. 1984/2007.

**M2** 1981 c. 62.

**133 Provisions supplementing ss. 131, 132.**

- (1) An amount corresponding to one representing the premiums or part of the premiums on shares issued by a company which by virtue of section 131 or 132 of this Act, or

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section 12 of the Consequential Provisions Act, is not included in the company's share premium account may also be disregarded in determining the amount at which any shares or other consideration provided for the shares issued is to be included in the company's balance sheet.

- (2) References in this Chapter (however expressed) to—
  - (a) the acquisition by a company of shares in another company; and
  - (b) the issue or allotment of shares to, or the transfer of shares to or by, a company, include (respectively) the acquisition of any of those shares by, and the issue or allotment or (as the case may be) the transfer of any of those shares to or by, nominees of that company; and the reference in section 132 to the company transferring the shares is to be construed accordingly.
- (3) References in this Chapter to the transfer of shares in a company include the transfer of a right to be included in the company's register of members in respect of those shares.
- (4) In sections 131 to 133 “company”, except in references to the issuing company, includes any body corporate.

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

- C2** S. 133(2)(3) applied by [Companies Consolidation \(Consequential Provisions\) Act 1985 \(c. 9, SIF 27\)](#), s. 12(5)

**134 Provision for extending or restricting relief from s. 130.**

- (1) The Secretary of State may by regulations in a statutory instrument make such provision as appears to him to be appropriate—
  - (a) for relieving companies from the requirements of section 130 in relation to premiums other than cash premiums, or
  - (b) for restricting or otherwise modifying any relief from those requirements provided by this Chapter.
- (2) Regulations under this section may make different provision for different cases or classes of case and may contain such incidental and supplementary provisions as the Secretary of State thinks fit.
- (3) No such regulations shall be made unless a draft of the instrument containing them has been laid before Parliament and approved by a resolution of each House.

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

- C3** S. 134 modified by [Companies Consolidation \(Consequential Provisions\) Act 1985 \(c. 9, SIF 27\)](#), s. 12(6)

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## CHAPTER IV

### REDUCTION OF SHARE CAPITAL

#### **135 Special resolution for reduction of share capital.**

- (1) Subject to confirmation by the court, a company limited by shares or a company limited by guarantee and having a share capital may, if so authorised by its articles, by special resolution reduce its share capital in any way.
- (2) In particular, and without prejudice to subsection (1), the company may—
  - (a) extinguish or reduce the liability on any of its shares in respect of share capital not paid up; or
  - (b) either with or without extinguishing or reducing liability on any of its shares, cancel any paid-up share capital which is lost or unrepresented by available assets; or
  - (c) either with or without extinguishing or reducing liability on any of its shares, pay off any paid-up share capital which is in excess of the company's wants; and the company may, if and so far as is necessary, alter its memorandum by reducing the amount of its share capital and of its shares accordingly.
- (3) A special resolution under this section is in this Act referred to as “a resolution for reducing share capital”.

#### **136 Application to court for order of confirmation.**

- (1) Where a company has passed a resolution for reducing share capital, it may apply to the court for an order confirming the reduction.
- (2) If the proposed reduction of share capital involves either—
  - (a) diminution of liability in respect of unpaid share capital; or
  - (b) the payment to a shareholder of any paid-up share capital,and in any other case if the court so directs, the next three subsections have effect, but subject throughout to subsection (6).
- (3) Every creditor of the company who at the date fixed by the court is entitled to any debt or claim which, if that date were the commencement of the winding up of the company, would be admissible in proof against the company is entitled to object to the reduction of capital.
- (4) The court shall settle a list of creditors entitled to object, and for that purpose—
  - (a) shall ascertain, as far as possible without requiring an application from any creditor, the names of those creditors and the nature and amount of their debts or claims; and
  - (b) may publish notices fixing a day or days within which creditors not entered on the list are to claim to be so entered or are to be excluded from the right of objecting to the reduction of capital.
- (5) If a creditor entered on the list whose debt or claim is not discharged or has not determined does not consent to the reduction, the court may, if it thinks fit, dispense with the consent of that creditor, on the company securing payment of his debt or claim by appropriating (as the court may direct) the following amount—

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- (a) if the company admits the full amount of the debt or claim or, though not admitting it, is willing to provide for it, then the full amount of the debt or claim;
  - (b) if the company does not admit, and is not willing to provide for, the full amount of the debt or claim, or if the amount is contingent or not ascertained, then an amount fixed by the court after the like enquiry and adjudication as if the company were being wound up by the court.
- (6) If a proposed reduction of share capital involves either the diminution of any liability in respect of unpaid share capital or the payment to any shareholder of any paid-up share capital, the court may, if having regard to any special circumstances of the case it thinks proper to do so, direct that subsections (3) to (5) of this section shall not apply as regards any class or any classes of creditors.

### **137 Court order confirming reduction.**

- (1) The court, if satisfied with respect to every creditor of the company who under section 136 is entitled to object to the reduction of capital that either—
- (a) his consent to the reduction has been obtained; or
  - (b) his debt or claim has been discharged or has determined, or has been secured,
- may make an order confirming the reduction on such terms and conditions as it thinks fit.
- (2) Where the court so orders, it may also—
- (a) if for any special reason it thinks proper to do so, make an order directing that the company shall, during such period (commencing on or at any time after the date of the order) as is specified in the order, add to its name as its last words the words “and reduced”; and
  - (b) make an order requiring the company to publish (as the court directs) the reasons for reduction of capital or such other information in regard to it as the court thinks expedient with a view to giving proper information to the public and (if the court thinks fit) the causes which led to the reduction.
- (3) Where a company is ordered to add to its name the words “and reduced”, those words are, until the expiration of the period specified in the order, deemed to be part of the company’s name.

### **138 Registration of order and minute of reduction.**

- (1) The registrar of companies, on production to him of an order of the court confirming the reduction of a company’s share capital, and the delivery to him of a copy of the order and of a minute (approved by the court) showing, with respect to the company’s share capital as altered by the order—
- (a) the amount of the share capital;
  - (b) the number of shares into which it is to be divided, and the amount of each share; and
  - (c) the amount (if any) at the date of the registration deemed to be paid up on each share,
- shall register the order and minute (but subject to section 139).
- (2) On the registration of the order and minute, and not before, the resolution for reducing share capital as confirmed by the order so registered takes effect.

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- (3) Notice of the registration shall be published in such manner as the court may direct.
- (4) The registrar shall certify the registration of the order and minute; and the certificate—
  - (a) may be either signed by the registrar, or authenticated by his official seal;
  - (b) is conclusive evidence that all the requirements of this Act with respect to the reduction of share capital have been complied with, and that the company's share capital is as stated in the minute.
- (5) The minute when registered is deemed to be substituted for the corresponding part of the company's memorandum, and is valid and alterable as if it had been originally contained therein.
- (6) The substitution of such a minute for part of the company's memorandum is deemed an alteration of the memorandum for purposes of section 20.

### **139 Public company reducing capital below authorised minimum.**

- (1) This section applies where the court makes an order confirming a reduction of a public company's capital which has the effect of bringing the nominal value of its allotted share capital below the authorised minimum.
- (2) The registrar of companies shall not register the order under section 138 unless the court otherwise directs, or the company is first re-registered as a private company.
- (3) The court may authorise the company to be so re-registered without its having passed the special resolution required by section 53; and where that authority is given, the court shall specify in the order the alterations in the company's memorandum and articles to be made in connection with that re-registration.
- (4) The company may then be re-registered as a private company, if an application in the prescribed form and signed by a director or secretary of the company is delivered to the registrar, together with a printed copy of the memorandum and articles as altered by the court's order.
- (5) On receipt of such an application, the registrar shall retain it and the other documents delivered with it and issue the company with a certificate of incorporation appropriate to a company that is not a public company; and—
  - (a) the company by virtue of the issue of the certificate becomes a private company, and the alterations in the memorandum and articles set out in the court's order take effect; and
  - (b) the certificate is conclusive evidence that the requirements of this section in respect of re-registration and of matters precedent and incidental thereto have been complied with, and that the company is a private company.

### **140 Liability of members on reduced shares.**

- (1) Where a company's share capital is reduced, a member of the company (past or present) is not liable in respect of any share to any call or contribution exceeding in amount the difference (if any) between the amount of the share as fixed by the minute and the amount paid on the share or the reduced amount (if any), which is deemed to have been paid on it, as the case may be.
- (2) But the following two subsections apply if—

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- (a) a creditor, entitled in respect of a debt or claim to object to the reduction of share capital, by reason of his ignorance of the proceedings for reduction of share capital, or of their nature and effect with respect to his claim, is not entered on the list of creditors; and
  - (b) after the reduction of capital, the company is unable (within the meaning of <sup>F3</sup>section 123 of the Insolvency Act) to pay the amount of his debt or claim.
- (3) Every person who was a member of the company at the date of the registration of the order for reduction and minute is then liable to contribute for the payment of the debt or claim in question an amount not exceeding that which he would have been liable to contribute if the company had commenced to be wound up on the day before that date.
- (4) If the company is wound up, the court, on the application of the creditor in question and proof of ignorance referred to in subsection (2)(a), may (if it thinks fit) settle accordingly a list of persons so liable to contribute, and make and enforce calls and orders on the contributories settled on the list, as if they were ordinary contributories in a winding up.
- (5) Nothing in this section affects the rights of the contributories among themselves.

#### Textual Amendments

**F3** Words substituted by [Insolvency Act 1986 \(c. 45, SIF 66\)](#), s. 439(1), [Sch. 13 Pt. I](#)

### 141 Penalty for concealing name of creditor, etc.

If an officer of the company—

- (a) wilfully conceals the name of a creditor entitled to object to the reduction of capital; or
- (b) wilfully misrepresents the nature or amount of the debt or claim of any creditor; or
- (c) aids, abets or is privy to any such concealment or misrepresentation as is mentioned above,

he is guilty of an offence and liable to a fine.

## CHAPTER V

### MAINTENANCE OF CAPITAL

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

**C4** [Pt. V, Ch. V \(ss. 142–150\)](#) extended by [Companies Consolidation \(Consequential Provisions\) Act 1985 \(c. 9, SIF 27\)](#), s. 6(3)

### 142 Duty of directors on serious loss of capital.

- (1) Where the net assets of a public company are half or less of its called-up share capital, the directors shall, not later than 28 days from the earliest day on which that fact is known to a director of the company, duly convene an extraordinary general meeting of the company for a date not later than 56 days from that day for the purpose

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of considering whether any, and if so what, steps should be taken to deal with the situation.

- (2) If there is a failure to convene an extraordinary general meeting as required by subsection (1), each of the directors of the company who—
  - (a) knowingly and wilfully authorises or permits the failure, or
  - (b) after the expiry of the period during which that meeting should have been convened, knowingly and wilfully authorises or permits the failure to continue,

is liable to a fine.
- (3) Nothing in this section authorises the consideration, at a meeting convened in pursuance of subsection (1), of any matter which could not have been considered at that meeting apart from this section.

#### **143 General rule against company acquiring own shares.**

- (1) Subject to the following provisions, a company limited by shares or limited by guarantee and having a share capital shall not acquire its own shares, whether by purchase, subscription or otherwise.
- (2) If a company purports to act in contravention of this section, the company is liable to a fine, and every officer of the company who is in default is liable to imprisonment or a fine, or both; and the purported acquisition is void.
- (3) A company limited by shares may acquire any of its own fully paid shares otherwise than for valuable consideration; and subsection (1) does not apply in relation to—
  - (a) the redemption or purchase of shares in accordance with Chapter VII of this Part,
  - (b) the acquisition of shares in a reduction of capital duly made,
  - (c) the purchase of shares in pursuance of an order of the court under section 5 (alteration of objects), section 54 (litigated objection to resolution for company to be re-registered as private) or Part XVII (relief to members unfairly prejudiced), or
  - (d) the forfeiture of shares, or the acceptance of shares surrendered in lieu, in pursuance of the articles, for failure to pay any sum payable in respect of the shares.

#### **144 Aquisition of shares by company's nominee.**

- (1) Subject to section 145, where shares are issued to a nominee of a company mentioned in section 143(1), or are acquired by a nominee of such a company from a third person as partly paid up, then, for all purposes—
  - (a) the shares are to be treated as held by the nominee on his own account; and
  - (b) the company is to be regarded as having no beneficial interest in them.
- (2) Subject to that section, if a person is called on to pay any amount for the purpose of paying up, or paying any premium on, any shares in such a company which were issued to him, or which he otherwise acquired, as the company's nominee and he fails to pay that amount within 21 days from being called on to do so, then—



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- (a) if the shares were issued to him as subscriber to the memorandum by virtue of an undertaking of his in the memorandum, the other subscribers to the memorandum, or
  - (b) if the shares were otherwise issued to or acquired by him, the directors of the company at the time of the issue or acquisition,
- are jointly and severally liable with him to pay that amount.
- (3) If in proceedings for the recovery of any such amount from any such subscriber or director under this section it appears to the court—
- (a) that he is or may be liable to pay that amount, but
  - (b) that he has acted honestly and reasonably and, having regard to all the circumstances of the case, he ought fairly to be excused from liability,
- the court may relieve him, either wholly or partly, from his liability on such terms as the court thinks fit.
- (4) Where any such subscriber or director has reason to apprehend that a claim will or might be made for the recovery of any such amount from him, he may apply to the court for relief; and the court has the same power to relieve him as it would have had in proceedings for the recovery of that amount.

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

- C5** S. 144(1) excluded by [Companies Act 1989 \(c. 40, SIF 27\)](#), ss. 144(4), 213(2), [Sch. 18 para. 35](#) (subject to the transitional and savings provisions mentioned in [S.I. 1990/1392, art. 6](#))

**145 Exceptions from s. 144.**

- (1) Section 144(1) does not apply to shares acquired otherwise than by subscription by a nominee of a public company, where a person acquires shares in the company with financial assistance given to him directly or indirectly by the company for the purpose of or in connection with the acquisition, and the company has a beneficial interest in the shares.
- (2) Section 144(1) and (2) do not apply—
- (a) to shares acquired by a nominee of a company when the company has no beneficial interest in those shares, or
  - (b) to shares issued in consequence of an application made before 22nd December 1980, or transferred in pursuance of an agreement to acquire them made before that date.
- (3) Schedule 2 to this Act has effect for the interpretation of references in this section to a company having, or not having, a beneficial interest in shares.

**146 Treatment of shares held by or for public company.**

- (1) Except as provided by section 148, the following applies to a public company—
- (a) where shares in the company are forfeited, or surrendered to the company in lieu, in pursuance of the articles, for failure to pay any sum payable in respect of the shares;
  - [<sup>F4</sup>(aa) where shares in the company are surrendered to the company in pursuance of section 102C(1)(b) of the Building Societies Act 1986;]

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- (b) where shares in the company are acquired by it (otherwise than by any of the methods mentioned in section 143(3)(a) to (d)) and the company has a beneficial interest in the shares;
- (c) where the nominee of the company acquires shares in the company from a third person without financial assistance being given directly or indirectly by the company and the company has a beneficial interest in the shares; or
- (d) where a person acquires shares in the company with financial assistance given to him directly or indirectly by the company for the purpose of or in connection with the acquisition, and the company has a beneficial interest in the shares.

Schedule 2 to this Act has effect for the interpretation of references in this subsection to the company having a beneficial interest in shares.

- (2) Unless the shares or any interest of the company in them are previously disposed of, the company must, not later than the end of the relevant period from their forfeiture or surrender or, in a case within subsection (1)(b), (c) or (d), their acquisition—
  - (a) cancel them and diminish the amount of the share capital by the nominal value of the shares cancelled, and
  - (b) where the effect of cancelling the shares will be that the nominal value of the company’s allotted share capital is brought below the authorised minimum, apply for re-registration as a private company, stating the effect of the cancellation.
- (3) For this purpose “the relevant period” is—
  - (a) 3 years in the case of shares forfeited or surrendered to the company in lieu of forfeiture, or acquired as mentioned in subsection (1)(b) or (c);
  - (b) one year in the case of shares acquired as mentioned in subsection (1)(d).
- (4) The company and, in a case within subsection (1)(c) or (d), the company’s nominee or (as the case may be) the other shareholder must not exercise any voting rights in respect of the shares; and any purported exercise of those rights is void.

#### Textual Amendments

**F4** S. 146(1)(aa) inserted (21.3.1997) by 1986 c. 53, s. 102C(5) (as inserted (21.3.1997) by 1997 c. 41, s. 1(1) (with s. 2(2))

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

**C6** Ss. 146–149 amended by Companies Consolidation (Consequential Provisions) Act 1985 (c. 9, SIF 27), s. 6(2)

### 147 Matters arising out of compliance with s. 146(2).

- (1) The directors may take such steps as are requisite to enable the company to carry out its obligations under section 146(2) without complying with sections 135 and 136 (resolution to reduce share capital; application to court for approval).
- (2) The steps taken may include the passing of a resolution to alter the company’s memorandum so that it no longer states that the company is to be a public company; and the resolution may make such other alterations in the memorandum as are requisite in the circumstances.

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Such a resolution is subject to section 380 (copy to be forwarded to registrar within 15 days).

- (3) The application for re-registration required by section 146(2)(b) must be in the prescribed form and be signed by a director or secretary of the company, and must be delivered to the registrar of companies together with a printed copy of the memorandum and articles of the company as altered by the resolution.
- (4) If the registrar is satisfied that the company may be re-registered under section 146, he shall retain the application and other documents delivered with it and issue the company with a certificate of incorporation appropriate to a company that is not a public company; and—
  - (a) the company by virtue of the issue of the certificate becomes a private company, and the alterations in the memorandum and articles set out in the resolution take effect accordingly, and
  - (b) the certificate is conclusive evidence that the requirements of sections 146 to 148 in respect of re-registration and of matters precedent and incidental to it have been complied with, and that the company is a private company.

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

**C7** Ss. 146–149 amended by Companies Consolidation (Consequential Provisions) Act 1985 (c. 9, SIF 27), s. 6(2)

**148 Further provisions supplementing ss. 146, 147.**

- (1) Where, after shares in a private company—
  - (a) are forfeited in pursuance of the company’s articles or are surrendered to the company in lieu of forfeiture, or
  - (b) are acquired by the company (otherwise than by such surrender or forfeiture, and otherwise than by any of the methods mentioned in section 143(3)), the company having a beneficial interest in the shares, or
  - (c) are acquired by the nominee of a company in the circumstances mentioned in section 146(1)(c), or
  - (d) are acquired by any person in the circumstances mentioned in section 146(1)(d),the company is re-registered as a public company, sections 146 and 147, and also section 149, apply to the company as if it had been a public company at the time of the forfeiture, surrender or acquisition, but with the modification required by the following subsection.
- (2) That modification is to treat any reference to the relevant period from the forfeiture, surrender or acquisition as referring to the relevant period from the re-registration of the company as a public company.
- (3) Schedule 2 to this Act has effect for the interpretation of the reference in subsection (1)(b) to the company having a beneficial interest in shares.
- (4) Where a public company or a nominee of a public company acquires shares in the company or an interest in such shares, and those shares are (or that interest is) shown in a balance sheet of the company as an asset, an amount equal to the value of the shares or (as the case may be) the value to the company of its interest in them shall

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be transferred out of profits available for dividend to a reserve fund and are not then available for distribution.

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

**C8** Ss. 146–149 amended by [Companies Consolidation \(Consequential Provisions\) Act 1985 \(c. 9, SIF 27\), s. 6\(2\)](#)

**149 Sanctions for non-compliance.**

- (1) If a public company required by section 146(2) to apply to be re-registered as a private company fails to do so before the end of the relevant period referred to in that subsection, section 81 (restriction on public offers) applies to it as if it were a private company such as is mentioned in that section; but, subject to this, the company continues to be treated for the purpose of this Act as a public company until it is so re-registered.
- (2) If a company when required to do so by section 146(2) (including that subsection as applied by section 148(1)) fails to cancel any shares in accordance with paragraph (a) of that subsection or to make an application for re-registration in accordance with paragraph (b) of it, 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.

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

**C9** Ss. 146–149 amended by [Companies Consolidation \(Consequential Provisions\) Act 1985 \(c. 9, SIF 27\), s. 6\(2\)](#)

**150 Charges of public companies on own shares.**

- (1) A lien or other charge of a public company on its own shares (whether taken expressly or otherwise), except a charge permitted by any of the following subsections, is void.

This is subject to section 6 of the Consequential Provisions Act (saving for charges of old public companies on their own shares).

- (2) In the case of any description of company, a charge on its own shares is permitted if the shares are not fully paid and the charge is for any amount payable in respect of the shares.
- (3) In the case of a company whose ordinary business—
  - (a) includes the lending of money, or
  - (b) consists of the provision of credit or the bailment (in Scotland, hiring) of goods under a hire purchase agreement, or both,
a charge of the company on its own shares is permitted (whether the shares are fully paid or not) if it arises in connection with a transaction entered into by the company in the ordinary course of its business.
- (4) In the case of a company which is re-registered or is registered under section 680 as a public company, a charge on its own shares is permitted if the charge was in existence immediately before the company's application for re-registration or (as the case may be) registration.

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This subsection does not apply in the case of such a company as is referred to in section 6(3) of the Consequential Provisions Act (old public company remaining such after 22nd March 1982, not having applied to be re-registered as public company).

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

**C10** S. 150 excluded by [Companies Consolidation \(Consequential Provisions\) Act 1985 \(c. 9, SIF 27\)](#), s. 6(3)

## CHAPTER VI

### FINANCIAL ASSISTANCE BY A COMPANY FOR ACQUISITION OF ITS OWN SHARES

#### *Provisions applying to both public and private companies*

#### **151 Financial assistance generally prohibited.**

- (1) Subject to the following provisions of this Chapter, where a person is acquiring or is proposing to acquire shares in a company, it is not lawful for the company or any of its subsidiaries to give financial assistance directly or indirectly for the purpose of that acquisition before or at the same time as the acquisition takes place.
- (2) Subject to those provisions, where a person has acquired shares in a company and any liability has been incurred (by that or any other person), for the purpose of that acquisition, it is not lawful for the company or any of its subsidiaries to give financial assistance directly or indirectly for the purpose of reducing or discharging the liability so incurred.
- (3) If a company acts in contravention of this section, it is liable to a fine, and every officer of it who is in default is liable to imprisonment or a fine, or both.

#### **152 Definitions for this Chapter.**

- (1) In this Chapter—
  - (a) “financial assistance” means—
    - (i) financial assistance by way of gift,
    - (ii) financial assistance given by way of guarantee, security or indemnity, other than an indemnity in respect of the indemnifier’s own neglect or default, or by way of release or waiver,
    - (iii) financial assistance given by way of a loan or any other agreement under which any of the obligations of the person giving the assistance are to be fulfilled at a time when in accordance with the agreement any obligation of another party to the agreement remains unfulfilled, or by way of the novation of, or the assignment of rights arising under, a loan or such other agreement, or
    - (iv) any other financial assistance given by a company the net assets of which are thereby reduced to a material extent or which has no net assets;
  - (b) “distributable profits”, in relation to the giving of any financial assistance—

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- (i) means those profits out of which the company could lawfully make a distribution equal in value to that assistance, and
  - (ii) includes, in a case where the financial assistance is or includes a non-cash asset, any profit which, if the company were to make a distribution of that asset, would under section 276 (distributions in kind) be available for that purpose,
- and
- (c) “distribution” has the meaning given by section 263(2).
- (2) In subsection (1)(a)(iv), “net assets” means the aggregate of the company’s assets, less the aggregate of its liabilities (“liabilities” to include any provision for liabilities or charges within paragraph 89 of Schedule 4).
- (3) In this Chapter—
- (a) a reference to a person incurring a liability includes his changing his financial position by making an agreement or arrangement (whether enforceable or unenforceable, and whether made on his own account or with any other person) or by any other means, and
  - (b) a reference to a company giving financial assistance for the purpose of reducing or discharging a liability incurred by a person for the purpose of the acquisition of shares includes its giving such assistance for the purpose of wholly or partly restoring his financial position to what it was before the acquisition took place.

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

**C11** S. 152(2) applied (E.W.) (16.1.1990 as mentioned in S.I. 1989/2445, art. 4 and so far as not already in force 7.10.1993) by Local Government and Housing Act 1989 (c. 42, SIF 81:1), s. 69(4)(a); S.I. 1989/2445, art. 4; S.I. 1993/2410, art.3

**153 Transactions not prohibited by s. 151.**

- (1) Section 151(1) does not prohibit a company from giving financial assistance for the purpose of an acquisition of shares in it or its holding company if—
- (a) the company’s principal purpose in giving that assistance is not to give it for the purpose of any such acquisition, or the giving of the assistance for that purpose is but an incidental part of some larger purpose of the company, and
  - (b) the assistance is given in good faith in the interests of the company.
- (2) Section 151(2) does not prohibit a company from giving financial assistance if—
- (a) the company’s principal purpose in giving the assistance is not to reduce or discharge any liability incurred by a person for the purpose of the acquisition of shares in the company or its holding company, or the reduction or discharge of any such liability is but an incidental part of some larger purpose of the company, and
  - (b) the assistance is given in good faith in the interests of the company.
- (3) Section 151 does not prohibit—
- (a) a distribution of a company’s assets by way of dividend lawfully made or a distribution made in the course of the company’s winding up,
  - (b) the allotment of bonus shares,

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- (c) a reduction of capital confirmed by order of the court under section 137,
  - (d) a redemption or purchase of shares made in accordance with Chapter VII of this Part,
  - (e) anything done in pursuance of an order of the court under section 425 (compromises and arrangements with creditors and members),
  - (f) anything done under an arrangement made in pursuance of [<sup>F5</sup>section 110 of the Insolvency Act] (acceptance of shares by liquidator in winding up as consideration for sale of property), or
  - (g) anything done under an arrangement made between a company and its creditors which is binding on the creditors by virtue of [<sup>F6</sup>Part I of the Insolvency Act].
- (4) Section 151 does not prohibit—
- (a) where the lending of money is part of the ordinary business of the company, the lending of money by the company in the ordinary course of its business,
  - [<sup>F7</sup>(b) the provision by a company, in good faith in the interests of the company, of financial assistance for the purposes of an employees' share scheme,]
  - [<sup>F8</sup>(bb) without prejudice to paragraph (b), the provision of financial assistance by a company or any of its subsidiaries for the purposes of or in connection with anything done by the company (or [<sup>F9</sup>a company in the same group]) for the purpose of enabling or facilitating transactions in shares in the first-mentioned company between, and involving the acquisition of beneficial ownership of those shares by, any of the following persons—
    - (i) the bona fide employees or former employees of that company or of another company in the same group; or
    - (ii) the wives, husbands, widows, widowers, children or step-children under the age of eighteen of any such employees or former employees.]
  - (c) the making by a company of loans to persons (other than directors) employed in good faith by the company with a view to enabling those persons to acquire fully paid shares in the company or its holding company to be held by them by way of beneficial ownership.
- [<sup>F10</sup>(5) For the purposes of subsection (4)(bb) a company is in the same group as another company if it is a holding company or subsidiary of that company, or a subsidiary of a holding company of that company.]

#### Textual Amendments

- F5** Words substituted by [Insolvency Act 1986 \(c. 45, SIF 66\), s. 439\(1\), Sch. 13 Pt. I](#)
- F6** Words substituted by virtue of [Insolvency Act 1986 \(c. 45, SIF 66\), s. 439\(1\), Sch. 13 Pt I](#)
- F7** [S. 153\(4\)\(b\)](#) substituted by [Companies Act 1989 \(c. 40, SIF 27\), ss. 132, 213\(2\)](#)
- F8** [S. 153\(4\)\(bb\)](#) inserted by [Financial Services Act 1986 \(c. 60, SIF 69\), s. 196\(2\)](#)
- F9** Words substituted by [Companies Act 1989 \(c. 40, SIF 27\), ss. 144\(4\), 213\(2\), Sch. 18 para. 33\(2\)](#)
- F10** [S. 153\(5\)](#) inserted by [Financial Services Act 1986 \(c. 60, SIF 69\), s. 196\(3\)](#) and substituted by [Companies Act 1989 \(c. 40, SIF 27\), ss. 144\(4\), 213\(2\), Sch. 18 para. 33\(3\)](#)

#### 154 Special restriction for public companies.

- (1) In the case of a public company, section 153(4) authorises the giving of financial assistance only if the company has net assets which are not thereby reduced or, to

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the extent that those assets are thereby reduced, if the assistance is provided out of distributable profits.

- (2) For this purpose the following definitions apply—
- (a) “net assets” means the amount by which the aggregate of the company’s assets exceeds the aggregate of its liabilities (taking the amount of both assets and liabilities to be as stated in the company’s accounting records immediately before the financial assistance is given);
  - (b) “liabilities” includes any amount retained as reasonably necessary for the purpose of providing for any liability or loss which is either likely to be incurred, or certain to be incurred but uncertain as to amount or as to the date on which it will arise.

*Private companies*

**155 Relaxation of s. 151 for private companies.**

- (1) Section 151 does not prohibit a private company from giving financial assistance in a case where the acquisition of shares in question is or was an acquisition of shares in the company or, if it is a subsidiary of another private company, in that other company if the following provisions of this section, and sections 156 to 158, are complied with as respects the giving of that assistance.
- (2) The financial assistance may only be given if the company has net assets which are not thereby reduced or, to the extent that they are reduced, if the assistance is provided out of distributable profits.  
  
Section 154(2) applies for the interpretation of this subsection.
- (3) This section does not permit financial assistance to be given by a subsidiary, in a case where the acquisition of shares in question is or was an acquisition of shares in its holding company, if it is also a subsidiary of a public company which is itself a subsidiary of that holding company.
- (4) Unless the company proposing to give the financial assistance is a wholly-owned subsidiary, the giving of assistance under this section must be approved by special resolution of the company in general meeting.
- (5) Where the financial assistance is to be given by the company in a case where the acquisition of shares in question is or was an acquisition of shares in its holding company, that holding company and any other company which is both the company’s holding company and a subsidiary of that other holding company (except, in any case, a company which is a wholly-owned subsidiary) shall also approve by special resolution in general meeting the giving of the financial assistance.
- (6) The directors of the company proposing to give the financial assistance and, where the shares acquired or to be acquired are shares in its holding company, the directors of that company and of any other company which is both the company’s holding company and a subsidiary of that other holding company shall before the financial assistance is given make a statutory declaration in the prescribed form complying with the section next following.



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**Changes to legislation:** There are currently no known outstanding effects for the Companies Act 1985, Part V. (See end of Document for details)

## 156 Statutory declaration under s. 155.

- (1) A statutory declaration made by a company's directors under section 155(6) shall contain such particulars of the financial assistance to be given, and of the business of the company of which they are directors, as may be prescribed, and shall identify the person to whom the assistance is to be given.
- (2) The declaration shall state that the directors have formed the opinion, as regards the company's initial situation immediately following the date on which the assistance is proposed to be given, that there will be no ground on which it could then be found to be unable to pay its debts; and either—
  - (a) if it is intended to commence the winding up of the company within 12 months of that date, that the company will be able to pay its debts in full within 12 months of the commencement of the winding up, or
  - (b) in any other case, that the company will be able to pay its debts as they fall due during the year immediately following that date.
- (3) In forming their opinion for purposes of subsection (2), the directors shall take into account the same liabilities (including contingent and prospective liabilities) as would be relevant under [F11 section 122 of the Insolvency Act] (winding up by the court) to the question whether the company is unable to pay its debts.
- (4) The directors' statutory declaration shall have annexed to it a report addressed to them by their company's auditors stating that—
  - (a) they have enquired into the state of affairs of the company, and
  - (b) 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 (2) of this section is unreasonable in all the circumstances.
- (5) The statutory declaration and auditors' report shall be delivered to the registrar of companies—
  - (a) together with a copy of any special resolution passed by the company under section 155 and delivered to the registrar in compliance with section 380, or
  - (b) where no such resolution is required to be passed, within 15 days after the making of the declaration.
- (6) If a company fails to comply with subsection (5), 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) A director of a company who makes a statutory declaration under section 155 without having reasonable grounds for the opinion expressed in it 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](#)

## 157 Special resolution under s. 155.

- (1) A special resolution required by section 155 to be passed by a company approving the giving of financial assistance must be passed on the date on which the directors of that

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company make the statutory declaration required by that section in connection with the giving of that assistance, or within the week immediately following that date.

- (2) Where such a resolution has been passed, an application may be made to the court for the cancellation of the resolution—
  - (a) by the holders of not less in the aggregate than 10 per cent. in nominal value of the company's issued share capital or any class of it, or
  - (b) if the company is not limited by shares, by not less than 10 per cent. of the company's members;

but the application shall not be made by a person who has consented to or voted in favour of the resolution.
- (3) Subsections (3) to (10) of section 54 (litigation to cancel resolution under section 53) apply to applications under this section as to applications under section 54.
- (4) A special resolution passed by a company is not effective for purposes of section 155—
  - (a) unless the declaration made in compliance with subsection (6) of that section by the directors of the company, together with the auditors' report annexed to it, is available for inspection by members of the company at the meeting at which the resolution is passed,
  - (b) if it is cancelled by the court on an application under this section.

#### **158 Time for giving financial assistance under s. 155.**

- (1) This section applies as to the time before and after which financial assistance may not be given by a company in pursuance of section 155.
- (2) Where a special resolution is required by that section to be passed approving the giving of the assistance, the assistance shall not be given before the expiry of the period of 4 weeks beginning with—
  - (a) the date on which the special resolution is passed, or
  - (b) where more than one such resolution is passed, the date on which the last of them is passed,

unless, as respects that resolution (or, if more than one, each of them), every member of the company which passed the resolution who is entitled to vote at general meetings of the company voted in favour of the resolution.
- (3) If application for the cancellation of any such resolution is made under section 157, the financial assistance shall not be given before the final determination of the application unless the court otherwise orders.
- (4) The assistance shall not be given after the expiry of the period of 8 weeks beginning with—
  - (a) the date on which the directors of the company proposing to give the assistance made their statutory declaration under section 155, or
  - (b) where that company is a subsidiary and both its directors and the directors of any of its holding companies made such a declaration, the date on which the earliest of the declarations is made,

unless the court, on an application under section 157, otherwise orders.

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## CHAPTER VII

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

#### *Redemption and purchase generally*

#### **159 Power to issue redeemable shares.**

- (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>F12</sup>159A Terms and manner of redemption.**

- (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.
- (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**

**F12** S. 159A inserted (*prosp.*) by Companies Act 1989 (c. 40, SIF 27), ss. 133(2), 213(2), 215(2)

#### **160 Financing etc. of redemption.**

- (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)—

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- (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>F13</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>F14</sup>redeemed under this section][<sup>F14</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.

#### Textual Amendments

**F13** S. 160(3) repealed (*prosp.*) by Companies Act 1989 (c. 40, SIF 27), ss. 133(3)(a), 212, 213(2), 215(2), Sch. 24

**F14** 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>F15</sup> .....

#### Textual Amendments

**F15** 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.**

- (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).

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- (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**

- (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.

VALID FROM 01/12/2003

### **162B Treasury shares: maximum holdings**

- (1) Where a company has shares of only one class, the aggregate nominal value of shares held as treasury shares must not at any time exceed 10 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.

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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**

- (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.

VALID FROM 01/12/2003

### **162D Treasury shares: disposal and cancellation**

- (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

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- (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**

- (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—
    - (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**

- (1) Where shares held as treasury shares are sold, the proceeds of sale shall be dealt with in accordance with this section.

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- (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**

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.**

- (1) A purchase by a company of its own shares is “off-market” if the shares either—
  - (a) are purchased otherwise than on [<sup>F16</sup>a recognised investment exchange], or
  - (b) are purchased on [<sup>F16</sup>a recognised investment exchange] but are not subject to a marketing arrangement on [<sup>F17</sup>that investment exchange].
- (2) For this purpose, a company's shares are subject to a marketing arrangement on a recognised stock exchange if either—
  - (a) they are listed [<sup>F18</sup>under Part IV of the Financial Services Act 1986]; or
  - (b) the company has been afforded facilities for dealings in those shares to take place on [<sup>F18</sup>that investment exchange] without prior permission for individual transactions from the authority governing [<sup>F18</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>F19</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.]



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#### Textual Amendments

- F16** Words substituted by [Financial Services Act 1986 \(c. 60, SIF 69\), s. 212\(2\), Sch. 16 para. 17\(a\)](#)
- F17** Words substituted by [Financial Services Act 1986 \(c. 60, SIF 69\), s. 212\(2\), Sch. 16 para. 17\(b\)](#)
- F18** Words substituted by [Financial Services Act 1986 \(c. 60, SIF 69\), s. 212\(2\), Sch. 16 para. 17\(c\)](#)
- F19** [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.

- (1) 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.
- (2) 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.
- (3) Subject to the next subsection, the authority may be varied, revoked or from time to time renewed by special resolution of the company.
- (4) 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.
- (5) 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) a member who holds shares to which the resolution relates is regarded as exercising the voting rights carried by those shares not only if he votes in respect of them on a poll on the question whether the resolution shall be passed, but also if he votes on the resolution otherwise than on a poll;
  - (b) notwithstanding anything in the company's articles, any member of the company may demand a poll on that question; and
  - (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.

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- (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.**

- (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.**

- (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.
- (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

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- (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.**

- (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.**

- (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.

#### **169 Disclosure by company of purchase of own shares.**

- (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

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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>F20</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

**F20** 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)

**C12** [S. 169\(5\)](#) explained (1.11.1991) by [S.I. 1991/1998](#), [reg. 3\(1\)](#).

VALID FROM 01/12/2003

### 169A Disclosure by company of cancellation or disposal of treasury shares

- (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

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- (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.**

- (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.

*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.**

- (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.

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- (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>F21</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**

**F21** Words in s. 171(5)(b) inserted (1.3.1997) by S.I. 1997/220, reg. 7(1)

### **172 Availability of profits for purposes of s. 171.**

- (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.

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- (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.**

- (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 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 [F22 section 122 of the Insolvency Act] (winding up by the court) to the question whether a company is unable to pay its debts.

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- (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**

**F22** 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.**

- (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 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.**

- (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);



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- (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>F23</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.
- (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

**F23** 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)

**C13** S. 175(6) explained (1.11.1991) by S.I. 1991/1998, reg. 3(1).

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## **176 Objections by company's members or creditors.**

- (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.**

- (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.
- (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.

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### Supplementary

#### 178 Effect of company’s failure to redeem or purchase.

- (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;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) . . . . . F24

#### Textual Amendments

**F24** 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.

- (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—

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- (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.

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

**C14** 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.**

- (1) Any preference shares issued by a company before 15th June 1982 which could but for the repeal by the <sup>M3</sup>Companies Act 1981 of section 58 of the <sup>M4</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

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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

**M3** 1981 c. 62.

**M4** 1948 c. 38.

## 181 Definitions for Chapter VII.

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.

## CHAPTER VIII

### MISCELLANEOUS PROVISIONS ABOUT SHARES AND DEBENTURES

#### *Share and debenture certificates, transfers and warrants*

## 182 Nature, transfer and numbering of shares.

- (1) The shares or other interest of any member in a company—
- (a) are personal estate or, in Scotland, moveable property and are not in the nature of real estate or heritage,
- (b) are transferable in manner provided by the company's articles, but subject to the <sup>M5</sup>Stock Transfer Act 1963 (which enables securities of certain descriptions to be transferred by a simple process) [<sup>F25</sup>and to regulations made under section 207 of the Companies Act 1989 (which enable title to securities to be evidenced and transferred without a written instrument)].
- (2) Each share in a company having a share capital shall be distinguished by its appropriate number; except that, if at any time all the issued shares in a company, or all the issued shares in it of a particular class, are fully paid up and rank *pari passu* for all purposes, none of those shares need thereafter have a distinguishing number so long as it remains fully paid up and ranks *pari passu* for all purposes with all shares of the same class for the time being issued and fully paid up.

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#### Textual Amendments

**F25** Words in s. 182(1)(b) inserted (19.12.1995) by S.I. 1995/3272, **reg. 40(1)**

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

**C15** S. 182(1)(b) excluded (12.2.1992) by S.I. 1992/225, **reg. 18(2)(a)**.

#### Marginal Citations

**M5** 1963 c. 18.

### 183 Transfer and registration.

- (1) It is not lawful for a company to register a transfer of shares in or debentures of the company unless a proper instrument of transfer has been delivered to it, or the transfer is an exempt transfer within the <sup>M6</sup>Stock Transfer Act 1982 [<sup>F26</sup>or is in accordance with regulations made under section 207 of the Companies Act 1989].

This applies notwithstanding anything in the company's articles.

- (2) Subsection (1) does not prejudice any power of the company to register as shareholder or debenture holder a person to whom the right to any shares in or debentures of the company has been transmitted by operation of law.
- (3) A transfer of the share or other interest of a deceased member of a company made by his personal representative, although the personal representative is not himself a member of the company, is as valid as if he had been such a member at the time of the execution of the instrument of transfer.
- (4) On the application of the transferor of any share or interest in a company, the company shall enter in its register of members the name of the transferee in the same manner and subject to the same conditions as if the application for the entry were made by the transferee.
- (5) If a company refuses to register a transfer of shares or debentures, the company shall, within 2 months after the date on which the transfer was lodged with it, send to the transferee notice of the refusal.
- (6) If default is made in complying with subsection (5), 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.

#### Textual Amendments

**F26** Words in s. 183(1) inserted (19.12.1995) by S.I. 1995/3272, **reg. 40(2)(a)** (which insertion fell (26.11.2001) by reason of revocation of S.I. 1995/3272 by S.I. 2001/3755, **reg. 52(3)**)

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

**C16** S. 183 excluded (12.2.1992) by S.I. 1992/225, **reg. 18(2)(a)**.

**C17** S. 183(4) restricted (19.12.1995) by S.I. 1995/3272, **reg. 40(2)(b)** (which amendment fell (26.11.2001) by reason of repeal of S.I. 1995/3272 by S.I. 2001/3755, **reg. 52(3)**)

**C18** S. 183(5) applied (with modifications) (19.12.1995) by S.I. 1995/3272, **reg. 23(8)**

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*Status:* Point in time view as at 13/09/1999. This version of this part contains provisions that are not valid for this point in time.  
*Changes to legislation:* There are currently no known outstanding effects for the Companies Act 1985, Part V. (See end of Document for details)

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### Marginal Citations

M6 1982 c. 41.

## 184 Certification of transfers.

- (1) The certification by a company of any instrument of transfer of any shares in, or debentures of, the company is to be taken as a representation by the company to any person acting on the faith of the certification that there have been produced to the company such documents as on their face show a prima facie title to the shares or debentures in the transferor named in the instrument.

However, the certification is not to be taken as a representation that the transferor has any title to the shares or debentures.

- (2) Where a person acts on the faith of a false certification by a company made negligently, the company is under the same liability to him as if the certification had been made fraudulently.
- (3) For purposes of this section—
- (a) an instrument of transfer is deemed certificated if it bears the words “certificate lodged” (or words to the like effect);
  - (b) the certification of an instrument of transfer is deemed made by a company if—
    - (i) the person issuing the instrument is a person authorised to issue certificated instruments of transfer on the company’s behalf, and
    - (ii) the certification is signed by a person authorised to certificate transfers on the company’s behalf or by an officer or servant either of the company or of a body corporate so authorised;
  - (c) a certification is deemed signed by a person if—
    - (i) it purports to be authenticated by his signature or initials (whether handwritten or not), and
    - (ii) it is not shown that the signature or initials was or were placed there neither by himself nor by a person authorised to use the signature or initials for the purpose of certificating transfers on the company’s behalf.

## 185 Duty of company as to issue of certificates.

- (1) Subject to the following provisions, every company shall—
- (a) within 2 months after the allotment of any of its shares, debentures or debenture stock, and
  - (b) within 2 months after the date on which a transfer of any such shares, debentures or debenture stock is lodged with the company,
- complete and have ready for delivery the certificates of all shares, the debentures and the certificates of all debenture stock allotted or transferred (unless the conditions of issue of the shares, debentures or debenture stock otherwise provide).
- (2) For this purpose, “transfer” means a transfer duly stamped and otherwise valid, or an exempt transfer within the <sup>M7</sup>Stock Transfer Act 1982, and does not include such a transfer as the company is for any reason entitled to refuse to register and does not register.

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- (3) Subsection (1) does not apply in the case of a transfer to any person where, by virtue of regulations under section 3 of <sup>M8</sup>the Stock Transfer Act 1982, he is not entitled to a certificate or other document of or evidencing title in respect of the securities transferred; but if in such a case the transferee—
- (a) subsequently becomes entitled to such a certificate or other document by virtue of any provision of those regulations, and
  - (b) gives notice in writing of that fact to the company,
- this section has effect as if the reference in subsection (1)(b) to the date of the lodging of the transfer were a reference to the date of the notice.
- (4) A company of which shares or debentures are allotted or debenture stock is allotted to [<sup>F27</sup>a recognised clearing house or a nominee of a recognised clearing house or of a recognised investment exchange], or with which a transfer is lodged for transferring any shares, debentures or debenture stock of the company to [<sup>F28</sup>such a clearing house or nominee], is not required, in consequence of the allotment or the lodging of the transfer, to comply with subsection (1) [<sup>F29</sup>; but no person shall be a nominee for the purposes of this section unless he is a person designated for the purposes of this section in the rules of the recognised investment exchange in question].
- <sup>F30</sup>“Recognised clearing house” means a recognised clearing house within the meaning of the Financial Services Act 1986 acting in relation to a recognised investment exchange and “recognised investment exchange” has the same meaning as in that Act.]
- (5) If default is made in complying with subsection (1), 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.
- (6) If a company on which a notice has been served requiring it to make good any default in complying with subsection (1) fails to make good the default within 10 days after service of the notice, the court may, on the application of the person entitled to have the certificates or the debentures delivered to him, exercise the power of the following subsection.
- (7) The court may make an order directing the company and any officer of it to make good the default within such time as may be specified in the order; and the order may provide that all costs of and incidental to the application shall be borne by the company or by an officer of it responsible for the default.

#### Textual Amendments

- F27** Words substituted by [Financial Services Act 1986 \(c. 60, SIF 69\), s. 194\(5\)\(a\)](#)
- F28** Words substituted by [Financial Services Act 1986 \(c. 60, SIF 69\), s. 194\(5\)\(b\)](#)
- F29** Words inserted by [Financial Services Act 1986 \(c. 60, SIF 69\), s. 194\(5\)\(c\)](#)
- F30** Paragraph substituted by [Financial Services Act 1986 \(c. 60, SIF 69\), s. 194\(5\)\(d\)](#)

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

- C19** [S. 185](#) excluded (12.2.1992) by [S.I. 1992/225, reg. 48\(1\)](#).
- C20** [S. 185\(1\)\(b\)](#) applied (with modifications) (26.11.2001) by [S.I. 2001/3755, reg. 32\(8\)\(10\)](#) (with [regs. 39, 45](#))
- [S. 185\(1\)\(b\)](#) applied (with modifications) (26.11.2001) by [S.I. 2001/3755, reg. 42\(5\)\(6\)](#) (with [regs. 39, 45](#))
- C21** [S. 185\(1\)\(b\)](#) applied (with modifications) (19.12.1995) by [S.I. 1995/3272, reg. 26\(3\)](#)



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*Changes to legislation:* There are currently no known outstanding effects for the Companies Act 1985, Part V. (See end of Document for details)

**C22** S. 185(4) applied with modifications by S.I. 1985/680, arts. 4–6, **Sch.**

#### Marginal Citations

**M7** 1982 c. 41.

**M8** 1982 c. 41.

### [<sup>F31</sup>186 Certificate to be evidence of title.

[ A certificate under the common seal of the company . . . <sup>F33</sup> specifying any shares held <sup>F32</sup>(1)] by a member is—

- (a) in England and Wales, prima facie evidence, and
- (b) in Scotland, sufficient evidence unless the contrary is shown, of his title to the shares.]

[(2) Without prejudice to subsection (1), as respects Scotland a certificate specifying any shares held by a member and subscribed by the company in accordance with the Requirements of Writing (Scotland) Act 1995 is, unless the contrary is shown, sufficient evidence of his title to the shares.]

#### Textual Amendments

**F31** S. 186 substituted by Companies Act 1989 (c. 40, SIF 27), ss. 130(7), 213(2), **Sch. 17 para. 5**

**F32** S. 186(1) re numbered (S.) (1.8.1995) by 1995 c. 7, ss. 14(1), 15(2), **Sch. 4 para. 55** (with ss. 9(3)(5) (7), 13, 14(3))

**F33** Words repealed by Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40, SIF 27), s. 74(1)(2), **Sch. 8 para. 33(4), Sch. 9**

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

**C23** S. 186 excluded (26.11.2001) by S.I. 2001/3755, **reg. 38(3)(a)** (with regs. 39, 45)

**C24** S. 186 applied with modifications by S.I. 1985/680, regs. 4–6, **Sch.**  
S. 186 excluded (12.2.1992) by S.I. 1992/225, **reg. 48(2).**

### 187 Evidence of grant of probate or confirmation as executor.

The production to a company of any document which is by law sufficient evidence of probate of the will, or letters of administration of the estate, or confirmation as executor, of a deceased person having been granted to some person shall be accepted by the company as sufficient evidence of the grant.

This has effect notwithstanding anything in the company’s articles.

### [<sup>F34</sup>188 Issue and effect of share warrant to bearer.

- (1) A company limited by shares may, if so authorised by its articles, issue with respect to any fully paid shares a warrant (“a share warrant”) stating that the bearer of the warrant is entitled to the shares specified in it.
- (2) A share warrant issued under the company’s common seal [<sup>F35</sup>(or, in the case of a company registered in Scotland, subscribed in accordance with the Requirements of Writing (Scotland) Act 1995)] . . . <sup>F36</sup>entitles the bearer to the shares specified in it; and the shares may be transferred by delivery of the warrant.

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- (3) A company which issues a share warrant may, if so authorised by its articles, provide (by coupons or otherwise) for the payment of the future dividends on the shares included in the warrant.]

#### Textual Amendments

- F34** S. 188 substituted by [Companies Act 1989 \(c. 40, SIF 27\)](#), ss. 130(7), 213(2), **Sch. 17 para. 6**
- F35** Words in s. 188(2) inserted (S.) (1.8.1995) by 1995 c. 7, ss. 14(1), 15(2), **Sch. 4 para. 56** (with ss. 9(3)(5)(7), 13, 14(3))
- F36** Words repealed by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1990 \(c. 40, SIF 27\)](#), s. 74(1)(2), **Sch. 8 para. 33(5), Sch. 9**

### 189 Offences in connection with share warrants (Scotland).

- (1) If in Scotland a person—
- (a) with intent to defraud, forges or alters, or offers, utters, disposes of, or puts off, knowing the same to be forged or altered, any share warrant or coupon, or any document purporting to be a share warrant or coupon, issued in pursuance of this Act; or
  - (b) by means of any such forged or altered share warrant, coupon, or document, purporting as aforesaid, demands or endeavours to obtain or receive any share or interest in any company under this Act, or to receive any dividend or money payable in respect thereof, knowing the warrant, coupon, or document to be forged or altered;

he is on conviction thereof liable to imprisonment or a fine, or both.

- (2) If in Scotland a person without lawful authority or excuse (proof whereof lies on him)

- (a) engraves or makes on any plate, wood, stone, or other material, any share warrant or coupon purporting to be—
  - (i) a share warrant or coupon issued or made by any particular company in pursuance of this Act; or
  - (ii) a blank share warrant or coupon so issued or made; or
  - (iii) a part of such a share warrant or coupon; or
- (b) uses any such plate, wood, stone, or other material, for the making or printing of any such share warrant or coupon, or of any such blank share warrant or coupon, or any part thereof respectively; or
- (c) knowingly has in his custody or possession any such plate, wood, stone, or other material;

he is on conviction thereof liable to imprisonment or a fine, or both.

#### *Debentures*

### 190 Register of debenture holders.

- (1) A company registered in England and Wales shall not keep in Scotland any register of holders of debentures of the company or any duplicate of any such register or part of any such register which is kept outside Great Britain.

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- (2) A company registered in Scotland shall not keep in England and Wales any such register or duplicate as above-mentioned.
- (3) Neither a register of holders of debentures of a company nor a duplicate of any such register or part of any such register which is kept outside Great Britain shall be kept in England and Wales (in the case of a company registered in England and Wales) or in Scotland (in the case of a company registered in Scotland) elsewhere than—
  - (a) at the company's registered office; or
  - (b) at any office of the company at which the work of making it up is done; or
  - (c) if the company arranges with some other person for the making up of the register or duplicate to be undertaken on its behalf by that other person, at the office of that other person at which the work is done.
- (4) Where a company keeps (in England and Wales or in Scotland, as the case may be) both such a register and such a duplicate, it shall keep them at the same place.
- (5) Every company which keeps any such register or duplicate in England and Wales or Scotland shall send to the registrar of companies notice (in the prescribed form) of the place where the register or duplicate is kept and of any change in that place.
- (6) But a company is not bound to send notice under subsection (5) where the register or duplicate has, at all times since it came into existence, been kept at the company's registered office.

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

**C25** S. 190 excluded by S.I. 1985/724, art. 4(4)

**C26** S. 190 excluded (26.11.2001) by S.I. 2001/3755, reg. 23(4), Sch. 4 para. 14(2) (with regs. 39, 45)

**191 Right to inspect register.**

- (1) Every register of holders of debentures of a company shall, except when duly closed<sup>F37</sup> . . . , be open to the inspection—
  - (a) of the registered holder of any such debentures or any holder of shares in the company without fee; and
  - (b) of any other person on payment of [<sup>F38</sup>such fee as may be prescribed].
- (2) Any such registered holder of debentures or holder of shares, or any other person, may require a copy of the register of the holders of debentures of the company or any part of it, on payment of [<sup>F39</sup>such fee as may be prescribed].
- (3) A copy of any trust deed for securing an issue of debentures shall be forwarded to every holder of any such debentures at his request on payment [<sup>F40</sup>of such fee as may be prescribed]—<sup>F41</sup>
  - (a) .....
  - (b) .....
- (4) If inspection is refused, or a copy is refused or not forwarded, 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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- (5) Where a company is in default as above-mentioned, the court may by order compel an immediate inspection of the register or direct that the copies required be sent to the person requiring them.
- (6) For purposes of this section, a register is deemed to be duly closed if closed in accordance with provisions contained in the articles or in the debentures or, in the case of debenture stock, in the stock certificates, or in the trust deed or other document securing the debentures or debenture stock, during such period or periods, not exceeding in the whole 30 days in any year, as may be therein specified.
- (7) Liability incurred by a company from the making or deletion of an entry in its register of debenture holders, or from a failure to make or delete any such entry, is not enforceable more than 20 years after the date on which the entry was made or deleted or, in the case of any such failure, the failure first occurred.

This is without prejudice to any lesser period of limitation.

#### Textual Amendments

- F37** Words in s. 191(1) repealed (01.11.1991) by Companies Act 1989 (c. 40, SIF 27), ss. 143(4)(a), 212, 213(2), **Sch. 24**; S.I. 1991/1996, **art. 2(2)(b)(c)**.
- F38** Words in s. 191(1)(b) substituted (01.11.1991) by Companies Act 1989 (c. 40, SIF 27), **ss. 143(4)(a), 213(2)**; S.I. 1991/1996, **art. 2(2)(b)**.
- F39** Words in s. 191(2) substituted (01.11.1991) by Companies Act 1989 (c. 40, SIF 27), **ss. 143(4)(b), 213(2)**; S.I. 1991/1996, **art. 2(2)(b)**.
- F40** Words in s. 191(3) inserted (01.11.1991) by Companies Act 1989 (c. 40, SIF 27), **ss. 143(4)(c), 213(2)**; S.I. 1991/1996, **art. 2(2)(b)**.
- F41** S. 191(3)(a)(b) repealed (01.11.1991) by Companies Act 1989 (c. 40, SIF 27), ss. 143(4)(c), 212, 213(2), **Sch. 24**; S.I. 1991/1996, **art. 2(2)(b)(c)**.

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

- C27** S. 191 excluded (26.11.2001) by S.I. 2001/3755, reg. 23(4), **Sch. 4 para. 14(2)** (with regs. 39, 45)
- C28** S. 191 modified (12.2.1992) by S.I. 1992/225, reg. 16, **Sch. 2 para. 2**.
- C29** S. 191(1) explained (1.11.1991) by S.I. 1991/1998, **reg. 3(1)**.  
 S. 191(1) amended (1.11.1991) by S.I. 1991/1998, **reg. 4(2)(b)**.
- C30** S. 191(1)(2)(4)(5) applied (26.11.2001) by S.I. 2001/3755, reg. 23(4), **Sch. 4 para. 15(5)** (with regs. 39, 45)
- C31** S. 191(2) amended (1.11.1991) by S.I. 1991/1998, **reg. 4(3)(b)**.
- C32** S. 191(4) extended (12.2.1992) by S.I. 1992/225, **reg. 91(2)**.

## 192 Liability of trustees of debentures.

- (1) Subject to this section, any provision contained—
  - (a) in a trust deed for securing an issue of debentures, or
  - (b) in any contract with the holders of debentures secured by a trust deed,
 is void in so far as it would have the effect of exempting a trustee of the deed from, or indemnifying him against, liability for breach of trust where he fails to show the degree of care and diligence required of him as trustee, having regard to the provisions of the trust deed conferring on him any powers, authorities or discretions.
- (2) Subsection (1) does not invalidate—

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- (a) a release otherwise validly given in respect of anything done or omitted to be done by a trustee before the giving of the release; or
  - (b) any provision enabling such a release to be given—
    - (i) on the agreement thereto of a majority of not less than three-fourths in value of the debenture holders present and voting in person or, where proxies are permitted, by proxy at a meeting summoned for the purpose, and
    - (ii) either with respect to specific acts or omissions or on the trustee dying or ceasing to act.
- (3) Subsection (1) does not operate—
- (a) to invalidate any provision in force on 1st July 1948 so long as any person then entitled to the benefit of that provision or afterwards given the benefit of that provision under the following subsection remains a trustee of the deed in question; or
  - (b) to deprive any person of any exemption or right to be indemnified in respect of anything done or omitted to be done by him while any such provision was in force.
- (4) While any trustee of a trust deed remains entitled to the benefit of a provision saved by subsection (3), the benefit of that provision may be given either—
- (a) to all trustees of the deed, present and future; or
  - (b) to any named trustees or proposed trustees of it,
- by a resolution passed by a majority of not less than three-fourths in value of the debenture holders present in person or, where proxies are permitted, by proxy at a meeting summoned for the purpose in accordance with the provisions of the deed or, if the deed makes no provision for summoning meetings, a meeting summoned for the purpose in any manner approved by the court.

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

**C33** S. 192 excluded (26.11.2001) by S.I. 2001/3755, reg. 40(2) (with regs. 39, 45)

**193 Perpetual debentures.**

A condition contained in debentures, or in a deed for securing debentures, is not invalid by reason only that the debentures are thereby made irredeemable or redeemable only on the happening of a contingency (however remote), or on the expiration of a period (however long), any rule of equity to the contrary notwithstanding.

This applies to debentures whenever issued, and to deeds whenever executed.

**194 Power to re-issue redeemed debentures.**

- (1) Where (at any time) a company has redeemed debentures previously issued, then—
- (a) unless provision to the contrary, whether express or implied, is contained in the articles or in any contract entered into by the company; or
  - (b) unless the company has, by passing a resolution to that effect or by some other act, manifested its intention that the debentures shall be cancelled,

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the company has, and is deemed always to have had, power to re-issue the debentures, either by re-issuing the same debentures or by issuing other debentures in their place.

- (2) On a re-issue of redeemed debentures, the person entitled to the debentures has, and is deemed always to have had, the same priorities as if the debentures had never been redeemed.
- (3) Where a company has (at any time) deposited any of its debentures to secure advances from time to time on current account or otherwise, the debentures are not deemed to have been redeemed by reason only of the company's account having ceased to be in debit while the debentures remained so deposited.
- (4) The re-issue of a debenture or the issue of another debenture in its place under the power which by this section is given to or deemed to be possessed by a company is to be treated as the issue of a new debenture for purposes of stamp duty; but it is not to be so treated for the purposes of any provision limiting the amount or number of debentures to be issued.

This applies whenever the issue or re-issue was made.

- (5) A person lending money on the security of a debenture re-issued under this section which appears to be duly stamped may give the debenture in evidence in any proceedings for enforcing his security without payment of the stamp duty or any penalty in respect of it, unless he had notice (or, but for his negligence, might have discovered) that the debenture was not duly stamped; but in that case the company is liable to pay the proper stamp duty and penalty.

## **195 Contract to subscribe for debentures.**

A contract with a company to take up and pay for debentures of the company may be enforced by an order for specific performance.

## **[<sup>F42</sup>196 Payment of debts out of assets subject to floating charge (England and Wales).**

- (1) The following applies in the case of a company registered in England and Wales, where debentures of the company are secured by a charge which, as created, was a floating charge.
- (2) If possession is taken, by or on behalf of the holders of any of the debentures, of any property comprised in or subject to the charge, and the company is not at that time in course of being wound up, the company's preferential debts shall be paid out of assets coming to the hands of the person taking possession in priority to any claims for principal or interest in respect of the debentures.
- (3) "Preferential debts" means the categories of debts listed in Schedule 6 to the Insolvency Act; and for the purposes of that Schedule "the relevant date" is the date of possession being taken as above mentioned.
- (4) Payments made under this section shall be recouped, as far as may be, out of the assets of the company available for payment of general creditors.]

### **Textual Amendments**

**F42** S. 196 substituted by [Insolvency Act 1986 \(c. 45, SIF 66\)](#), s. 439(1), [Sch. 13 Pt. I](#)

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**Status:** Point in time view as at 13/09/1999. This version of this part contains provisions that are not valid for this point in time.

**Changes to legislation:** There are currently no known outstanding effects for the Companies Act 1985, Part V. (See end of Document for details)

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

- C34** S. 196 applied (11.12.1999) by S.I. 1999/2979, **reg. 14(5)(a)(ii)**
- C35** S. 196 excluded (26.12.2003) by The Financial Collateral Arrangements (No.2) Regulations 2003 (S.I. 2003/3226), **reg. 10(6)**
- C36** S. 196 excluded (6.3.2008) by The Regulated Covered Bonds Regulations 2008 (S.I. 2008/346), regs. 1(1), 46, **Sch. para. 1**
- C37** S. 196(3) applied (7.2.1994) by 1993 c. 48, ss. 128, 193(2), **Sch. 4 para. 4(1)(a)**; S.I. 1994/86, **art 2**

**197 Debentures to bearer (Scotland).**

Notwithstanding anything in the statute of the Scots Parliament of 1696, chapter 25, debentures to bearer issued in Scotland are valid and binding according to their terms.

**Status:**

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**Changes to legislation:**

There are currently no known outstanding effects for the Companies Act 1985, Part V.