



# Companies Act 1985

## 1985 CHAPTER 6

### PART V

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

#### 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>F1</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.

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

#### Textual Amendments

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

### 160 Financing etc. of redemption.

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

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#### Textual Amendments

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

**161** <sup>F4</sup> .....

#### Textual Amendments

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

### **162 Power of company to purchase own shares.**

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

VALID FROM 01/12/2003

#### **162A Treasury shares**

- (1) Where qualifying shares are purchased by a company out of distributable profits in accordance with section 162, the company may—
  - (a) hold the shares (or any of them), or
  - (b) deal with any of them, at any time, in accordance with section 162D.
- (2) Where shares are held under subsection (1)(a) then, for the purposes of section 352, the company must be entered in the register as the member holding those shares.
- (3) In this Act, references to a company holding shares as treasury shares are references to the company holding shares which—
  - (a) were (or are treated as having been) purchased by it in circumstances in which this section applies, and
  - (b) have been held by the company continuously since they were so purchased.

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VALID FROM 01/12/2003

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

- (1) Where a company has shares of only one class, the aggregate nominal value of shares held as treasury shares must not at any time exceed 10 per cent. of the nominal value of the issued share capital of the company at that time.
- (2) Where the share capital of a company is divided into shares of different classes, the aggregate nominal value of the shares of any class held as treasury shares must not at any time exceed 10 per cent. of the nominal value of the issued share capital of the shares in that class at that time.
- (3) Where subsection (1) or (2) is contravened by a company, the company must dispose of or cancel the excess shares, in accordance with section 162D, before the end of the period of 12 months beginning with the day on which that contravention occurs.

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

VALID FROM 01/12/2003

### **162C Treasury shares: voting and other rights**

- (1) This section applies to shares which are held by a company as treasury shares (“the treasury shares”).
- (2) The company must not exercise any right in respect of the treasury shares, and any purported exercise of such a right is void.
- (3) The rights to which subsection (2) applies include any right to attend or vote at meetings (including meetings under section 425).
- (4) No dividend may be paid, and no other distribution (whether in cash or otherwise) of the company’s assets (including any distribution of assets to members on a winding up) may be made, to the company in respect of the treasury shares.
- (5) Nothing in this section is to be taken as preventing—
  - (a) an allotment of shares as fully paid bonus shares in respect of the treasury shares, or
  - (b) the payment of any amount payable on the redemption of the treasury shares (if they are redeemable shares).
- (6) Any shares allotted as fully paid bonus shares in respect of the treasury shares shall be treated for the purposes of this Act as if they were purchased by the company at the time they were allotted, in circumstances in which section 162A(1) applied.

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VALID FROM 01/12/2003

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

- (1) Where shares are held as treasury shares, a company may at any time—
  - (a) sell the shares (or any of them) for cash,
  - (b) transfer the shares (or any of them) for the purposes of or pursuant to an employees' share scheme, or
  - (c) cancel the shares (or any of them).
- (2) For the purposes of subsection (1)(a), “cash”, in relation to a sale of shares by a company, means—
  - (a) cash (including foreign currency) received by the company, or
  - (b) a cheque received by the company in good faith which the directors have no reason for suspecting will not be paid, or
  - (c) a release of a liability of the company for a liquidated sum, or
  - (d) an undertaking to pay cash to the company on or before a date not more than 90 days after the date on which the company agrees to sell the shares.
- (3) But if the company receives a notice under section 429 (right of offeror to buy out minority shareholders) that a person desires to acquire any of the shares, the company must not, under subsection (1), sell or transfer the shares to which the notice relates except to that person.
- (4) If under subsection (1) the company cancels shares held as treasury shares, the company must diminish the amount of the issued share capital by the nominal value of the shares cancelled; but the cancellation is not to be taken as reducing the amount of the company's authorised share capital.
- (5) The directors may take such steps as are requisite to enable the company to cancel its shares under subsection (1) without complying with sections 135 and 136 (resolution to reduce issued share capital; application to court for approval).

VALID FROM 01/12/2003

### **162E Treasury shares: mandatory cancellation**

- (1) If shares held as treasury shares cease to be qualifying shares, the company must forthwith cancel the shares in accordance with section 162D.
- (2) For the purposes of subsection (1), shares are not to be regarded as ceasing to be qualifying shares by virtue only of—
  - (a) the suspension of their listing in accordance with the applicable rules in the EEA State in which the shares are officially listed, or
  - (b) the suspension of their trading in accordance with—

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- (i) in the case of shares traded on the market known as the Alternative Investment Market, the rules of London Stock Exchange plc, and
  - (ii) in any other case, the rules of the regulated market on which they are traded.
- (3) For the purposes of this section “regulated market” means a market which is a regulated market for the purposes of Article 16 of Council Directive [93/22/EEC](#) on investment services in the securities field.

VALID FROM 01/12/2003

### **162F Treasury shares: proceeds of sale**

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

VALID FROM 01/12/2003

### **162G Treasury shares: penalty for contravention**

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>F5</sup>a recognised investment exchange], or
  - (b) are purchased on [<sup>F5</sup>a recognised investment exchange] but are not subject to a marketing arrangement on [<sup>F6</sup>that investment exchange].

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

#### Textual Amendments

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

## 164 Authority for off-market purchase.

- (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

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

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

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

#### **165 Authority for contingent purchase contract.**

- (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.



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

#### **167 Assignment or release of company's right to purchase own shares.**

- (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.

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## **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 amount required to be stated under subsection (2)(a) is the aggregate amount paid by the company for all the shares to which the return relates.
- (4) Where a company enters into a contract approved under section 164 or 165, or a contract for a purchase authorised under section 166, the company shall keep at its registered office—
  - (a) if the contract is in writing, a copy of it; and
  - (b) if not, a memorandum of its terms,
 from the conclusion of the contract until the end of the period of 10 years beginning with the date on which the purchase of all the shares in pursuance of the contract is completed or (as the case may be) the date on which the contract otherwise determines.
- (5) Every copy and memorandum so required to be kept shall <sup>F9</sup> . . . be open to inspection without charge—
  - (a) by any member of the company, and
  - (b) if it is a public company, by any other person.
- (6) If default is made in delivering to the registrar any return required by this section, every officer of the company who is in default is liable to a fine and, for continued contravention, to a daily default fine.
- (7) If default is made in complying with subsection (4), or if an inspection required under subsection (5) is refused, the company and every officer of it who is in default is liable to a fine and, for continued contravention, to a daily default fine.
- (8) In the case of a refusal of an inspection required under subsection (5) of a copy or memorandum, the court may by order compel an immediate inspection of it.
- (9) The obligation of a company under subsection (4) to keep a copy of any contract or (as the case may be) a memorandum of its terms applies to any variation of the contract so long as it applies to the contract.

### **Textual Amendments**

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

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

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

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

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

### **170 The capital redemption reserve.**

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

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