



# Companies Act 2006

## 2006 CHAPTER 46

### PART 18

#### ACQUISITION BY LIMITED COMPANY OF ITS OWN SHARES

### CHAPTER 5

#### REDEMPTION OR PURCHASE BY PRIVATE COMPANY OUT OF CAPITAL

#### *Introductory*

#### **709 Power of private limited company to redeem or purchase own shares out of capital**

- (1) A private limited company may in accordance with this Chapter, but subject to any restriction or prohibition in the company's articles, make a payment in respect of the redemption or purchase of its own shares otherwise than out of distributable profits or the proceeds of a fresh issue of shares.
- (2) References below in this Chapter to payment out of capital are to any payment so made, whether or not it would be regarded apart from this section as a payment out of capital.

[<sup>F1</sup>(3) This Chapter is subject to section 692(1ZA) (purchase of own shares up to annual limit).]

#### **Textual Amendments**

- F1** S. 709(3) added (6.4.2015) by [The Companies Act 2006 \(Amendment of Part 18\) Regulations 2015 \(S.I. 2015/532\)](#), regs. 1(2), 5

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### *The permissible capital payment*

#### **710 The permissible capital payment**

- (1) The payment that may, in accordance with this Chapter, be made by a company out of capital in respect of the redemption or purchase of its own shares is such amount as, after applying for that purpose—
  - (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 required to meet the price of redemption or purchase.
- (2) That is referred to below in this Chapter as “the permissible capital payment” for the shares.

#### **711 Available profits**

- (1) For the purposes of this Chapter the available profits of the company, in relation to the redemption or purchase of any shares, are the profits of the company that are available for distribution (within the meaning of Part 23).
- (2) But the question whether a company has any profits so available, and the amount of any such profits, shall be determined in accordance with section 712 instead of in accordance with sections 836 to 842 in that Part.

#### **712 Determination of available profits**

- (1) The available profits of the company are determined as follows.
- (2) First, determine the profits of the company by reference to the following items as stated in the relevant accounts—
  - (a) profits, losses, assets and liabilities,
  - (b) provisions of the following kinds—
    - (i) where the relevant accounts are Companies Act accounts, provisions of a kind specified for the purposes of this subsection by regulations under section 396;
    - (ii) where the relevant accounts are IAS accounts, provisions of any kind;
  - (c) share capital and reserves (including undistributable reserves).
- (3) Second, reduce the amount so determined by the amount of—
  - (a) any distribution lawfully made by the company, and
  - (b) any other relevant payment lawfully made by the company out of distributable profits,
 after the date of the relevant accounts and before the end of the relevant period.
- (4) For this purpose “other relevant payment lawfully made” includes—
  - (a) financial assistance lawfully given out of distributable profits in accordance with Chapter 2,
  - (b) payments lawfully made out of distributable profits in respect of the purchase by the company of any shares in the company, and

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- (c) payments of any description specified in section 705 (payments other than purchase price to be made out of distributable profits) lawfully made by the company.
- (5) The resulting figure is the amount of available profits.
- (6) For the purposes of this section “the relevant accounts” are any accounts that—
  - (a) are prepared as at a date within the relevant period, and
  - (b) are such as to enable a reasonable judgment to be made as to the amounts of the items mentioned in subsection (2).
- (7) In this section “the relevant period” means the period of three months ending with the date on which [<sup>F2</sup>the solvency statement is made in accordance with section 720A or] the directors' statement is made in accordance with section 714.

#### Textual Amendments

- F2** Words in s. 712(7) inserted (30.4.2013) by [The Companies Act 2006 \(Amendment of Part 18\) Regulations 2013 \(S.I. 2013/999\)](#), [reg. 10](#)

### *Requirements for payment out of capital*

#### **713 Requirements for payment out of capital**

- (1) A payment out of capital by a private company for the redemption or purchase of its own shares is not lawful unless the requirements of the following sections are met—
  - section 714 (directors' statement and auditor's report);
  - section 716 (approval by special resolution);
  - section 719 (public notice of proposed payment);
  - section 720 (directors' statement and auditor's report to be available for inspection).
- (2) This is subject [<sup>F3</sup>to section 720A and] to any order of the court under section 721 (power of court to extend period for compliance on application by persons objecting to payment).

#### Textual Amendments

- F3** Words in s. 713(2) inserted (30.4.2013) by [The Companies Act 2006 \(Amendment of Part 18\) Regulations 2013 \(S.I. 2013/999\)](#), [reg. 11](#)

#### **714 Directors' statement and auditor's report**

- (1) The company's directors must make a statement in accordance with this section.
- (2) The statement must specify the amount of the permissible capital payment for the shares in question.
- (3) It must state that, having made full inquiry into the affairs and prospects of the company, the directors have formed the opinion—

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- (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—
  - (i) their intentions with respect to the management of the company's business during that year, and
  - (ii) the amount and character of the financial resources that will in their view be available to the company during that year,
 the company will be able to continue to carry on business as a going concern (and will accordingly be able to pay its debts as they fall due) throughout that year.
- (4) In forming their opinion for the purposes of subsection (3)(a), the directors must take into account all of the company's liabilities (including any contingent or prospective liabilities).
- (5) The directors' statement must be in the prescribed form and must contain such information with respect to the nature of the company's business as may be prescribed.
- (6) It must in addition have annexed to it a report addressed to the directors by the company's auditor stating that—
  - (a) he has inquired into the company's state of affairs,
  - (b) the amount specified in the statement as the permissible capital payment for the shares in question is in his view properly determined in accordance with sections 710 to 712, and
  - (c) he is not aware of anything to indicate that the opinion expressed by the directors in their statement as to any of the matters mentioned in subsection (3) above is unreasonable in all the circumstances.

#### Commencement Information

- II** S. 714 wholly in force at 1.10.2009; s. 714 not in force at Royal Assent, see s. 1300; s. 714 in force for specified purposes at 20.1.2007 by [S.I. 2006/3428](#), [art. 3\(3\)](#) (subject to [art. 5](#), [Sch. 1](#) and with [arts. 6, 8](#), [Sch. 5](#)); s. 714 otherwise in force at 1.10.2009 by [S.I. 2008/2860](#), [art. 3\(1\)](#) (with [arts. 5, 7, 8](#), [Sch. 2](#)) (as amended by [S.I. 2009/1802](#), [art. 18](#))

#### 715 Directors' statement: offence if no reasonable grounds for opinion

- (1) If the directors make a statement under section 714 without having reasonable grounds for the opinion expressed in it, an offence is committed by every director who is in default.
- (2) A person guilty of an offence under this section is liable—
  - (a) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine (or both);
  - (b) on summary conviction—
    - (i) in England and Wales, to imprisonment for a term not exceeding twelve months or a fine not exceeding the statutory maximum (or both);

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- (ii) in Scotland or Northern Ireland, to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum (or both).

#### **716 Payment to be approved by special resolution**

- (1) The payment out of capital must be approved by a special resolution of the company.
- (2) The resolution must be passed on, or within the week immediately following, the date on which the directors make the statement required by section 714.
- (3) A resolution under this section is subject to—
  - section 717 (exercise of voting rights), and
  - section 718 (disclosure of directors' statement and auditors' report).

#### **717 Resolution authorising payment: exercise of voting rights**

- (1) This section applies to a resolution under section 716 (authority for payment out of capital for redemption or purchase of own shares).
- (2) Where the resolution is proposed as a written resolution, a member who holds shares to which the resolution relates is not an eligible member.
- (3) Where the resolution is proposed at a meeting of the company, it is not effective if—
  - (a) 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
  - (b) the resolution would not have been passed if he had not done so.
- (4) 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) any member of the company may demand a poll on that question;
  - (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.

#### **718 Resolution authorising payment: disclosure of directors' statement and auditor's report**

- (1) This section applies to a resolution under section 716 (resolution authorising payment out of capital for redemption or purchase of own shares).
- (2) A copy of the directors' statement and auditor's report under section 714 must be made available to members—
  - (a) in the case of a written resolution, by being sent or submitted to every eligible member at or before the time at which the proposed resolution is sent or submitted to him;
  - (b) in the case of a resolution at a meeting, by being made available for inspection by members of the company at the meeting.
- (3) The resolution is ineffective if this requirement is not complied with.

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## **719 Public notice of proposed payment**

- (1) Within the week immediately following the date of the resolution under section 716 the company must cause to be published in the Gazette a notice—
  - (a) stating that the company has approved a payment out of capital for the purpose of acquiring its own shares by redemption or purchase or both (as the case may be),
  - (b) specifying—
    - (i) the amount of the permissible capital payment for the shares in question, and
    - (ii) the date of the resolution,
  - (c) stating where the directors' statement and auditor's report required by section 714 are available for inspection, and
  - (d) stating that any creditor of the company may at any time within the five weeks immediately following the date of the resolution apply to the court under section 721 for an order preventing the payment.
- (2) Within the week immediately following the date of the resolution the company must also either—
  - (a) cause a notice to the same effect as that required by subsection (1) to be published in an appropriate national newspaper, or
  - (b) give notice in writing to that effect to each of its creditors.
- (3) “An appropriate national newspaper” means a newspaper circulating throughout the part of the United Kingdom in which the company is registered.
- (4) Not later than the day on which the company—
  - (a) first publishes the notice required by subsection (1), or
  - (b) if earlier, first publishes or gives the notice required by subsection (2),
 the company must deliver to the registrar a copy of the directors' statement and auditor's report required by section 714.

## **720 Directors' statement and auditor's report to be available for inspection**

- (1) The directors' statement and auditor's report must be kept available for inspection throughout the period—
  - (a) beginning with the day on which the company—
    - (i) first publishes the notice required by section 719(1), or
    - (ii) if earlier, first publishes or gives the notice required by section 719(2),
 and
  - (b) ending five weeks after the date of the resolution for payment out of capital.
- (2) They must be kept available for inspection—
  - (a) at the company's registered office, or
  - (b) at a place specified in regulations under section 1136.
- (3) The company must give notice to the registrar—
  - (a) of the place at which the statement and report are kept available for inspection, and
  - (b) of any change in that place,
 unless they have at all times been kept at the company's registered office.

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- (4) They must be open to the inspection of any member or creditor of the company without charge.
- (5) If default is made for 14 days in complying with subsection (3), or an inspection under subsection (4) is refused, an offence is committed by—
  - (a) the company, and
  - (b) every officer of the company who is in default.
- (6) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.
- (7) In the case of a refusal of an inspection required by subsection (4), the court may by order compel an immediate inspection.

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

- C1** S. 720 modified (6.4.2016) by [The Companies \(Address of Registered Office\) Regulations 2016 \(S.I. 2016/423\)](#), regs. 1(1), **11(a)(ix)**

*[<sup>F4</sup>Requirements for payment out of capital: employees' share schemes*

**Textual Amendments**

- F4** Ss. 720A, 720B and cross-heading inserted (30.4.2013) by [The Companies Act 2006 \(Amendment of Part 18\) Regulations 2013 \(S.I. 2013/999\)](#), reg. 12

**720A Reduced requirements for payment out of capital for purchase of own shares for the purposes of or pursuant to an employees' share scheme**

- (1) Section 713(1) does not apply to the purchase out of capital by a private company of its own shares for the purposes of or pursuant to an employees' share scheme when approved by special resolution supported by a solvency statement.
- (2) For the purposes of this section a resolution is supported by a solvency statement if—
  - (a) the directors of the company make a solvency statement (see section 643) not more than 15 days before the date on which the resolution is passed, and
  - (b) the resolution and solvency statement are registered in accordance with section 720B.
- (3) Where the resolution is proposed as a written resolution, a copy of the solvency statement must be sent or submitted to every eligible member at or before the time at which the proposed resolution is sent or submitted to the member.
- (4) Where the resolution is proposed at a general meeting, a copy of the solvency statement must be made available for inspection by members of the company throughout that meeting.
- (5) The validity of a resolution is not affected by a failure to comply with subsection (3) or (4).

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- (6) Section 717 (resolution authorising payment: exercise of voting rights) applies to a resolution under this section as it applies to a resolution under section 716.

**720B Registration of resolution and supporting documents for purchase of own shares for the purposes of or pursuant to an employees' share scheme**

- (1) Within 15 days after the passing of the resolution for a payment out of capital by a private company for the purchase of its own shares for the purposes of or pursuant to an employees' share scheme the company must deliver to the registrar—
- (a) a copy of the solvency statement,
  - (b) a copy of the resolution, and
  - (c) a statement of capital.
- (2) The statement of capital must state with respect to the company's share capital as reduced by the resolution—
- (a) the total number of shares of the company,
  - (b) the aggregate nominal value of those shares,
  - (c) for each class of shares—
    - (i) prescribed particulars of the rights attached to the shares,
    - (ii) the total number of shares of that class, and
    - (iii) the aggregate nominal value of shares of that class, and
  - (d) the amount paid up and the amount (if any) unpaid on each share (whether on account of the nominal value of the share or by way of premium).
- (3) The registrar must register the documents delivered to him under subsection (1) on receipt.
- (4) The resolution does not take effect until those documents are registered.
- (5) The company must also deliver to the registrar, within 15 days after the resolution is passed, a statement by the directors confirming that the solvency statement was—
- (a) made not more than 15 days before the date on which the resolution was passed, and
  - (b) provided to members in accordance with section 720A(3) or (4).
- (6) The validity of a resolution is not affected by—
- (a) a failure to deliver the documents required to be delivered to the registrar under subsection (1) within the time specified in that subsection, or
  - (b) a failure to comply with subsection (5).
- (7) If the company delivers to the registrar a solvency statement that was not provided to members in accordance with section 720A(3) or (4), an offence is committed by every officer of the company who is in default.
- (8) If default is made in complying with this section, an offence is committed by—
- (a) the company, and
  - (b) every officer of the company who is in default.
- (9) A person guilty of an offence under subsection (7) or (8) is liable—
- (a) on conviction on indictment, to a fine;
  - (b) on summary conviction, to a fine not exceeding the statutory maximum.]



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### *Objection to payment by members or creditors*

#### **721 Application to court to cancel resolution**

- (1) Where a private company passes a special resolution approving a 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 apply to the court for the cancellation of the resolution.
- (2) The application—
  - (a) must be made within five weeks after the passing of the resolution, and
  - (b) 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) On an application under this section the court may if it thinks fit—
  - (a) adjourn the proceedings in order that an arrangement may be made to the satisfaction of the court—
    - (i) for the purchase of the interests of dissentient members, or
    - (ii) for the protection of dissentient creditors, and
  - (b) give such directions and make such orders as it thinks expedient for facilitating or carrying into effect any such arrangement.
- (4) Subject to that, the court must make an order either cancelling or confirming the resolution, and may do so on such terms and conditions as it thinks fit.
- (5) If the court confirms the resolution, it may by order alter or extend any date or period of time specified—
  - (a) in the resolution, or
  - (b) in any provision of this Chapter applying to the redemption or purchase to which the resolution relates.
- (6) The court's order may, if the court thinks fit—
  - (a) 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
  - (b) make any alteration in the company's articles that may be required in consequence of that provision.
- (7) The court's order may, if the court thinks fit, require the company not to make any, or any specified, amendments of its articles without the leave of the court.

#### **722 Notice to registrar of court application or order**

- (1) On making an application under section 721 (application to court to cancel resolution) the applicants, or the person making the application on their behalf, must immediately give notice to the registrar.

This is without prejudice to any provision of rules of court as to service of notice of the application.
- (2) On being served with notice of any such application, the company must immediately give notice to the registrar.

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- (3) Within 15 days of the making of the court's order on the application, or such longer period as the court may at any time direct, the company must deliver to the registrar a copy of the order.
- (4) If a company fails to comply with subsection (2) or (3) an offence is committed by—
  - (a) the company, and
  - (b) every officer of the company who is in default.
- (5) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.

*Supplementary provisions*

**723** [<sup>F5</sup>**Time when payment out of capital to be made or shares to be surrendered**]

- (1) The payment out of capital [<sup>F6</sup>, if made in accordance with a resolution under section 716] must be made—
  - (a) no earlier than five weeks after the date on which the resolution under section 716 is passed, and
  - (b) no more than seven weeks after that date.
- [<sup>F7</sup>(1A) Shares to be purchased in accordance with a resolution under section 720A must be surrendered—
  - (a) no earlier than five weeks after the date on which the resolution under section 720A is passed, and
  - (b) no later than seven weeks after that date.]
- (2) This is subject to any exercise of the court's powers under section 721(5) (power to alter or extend time where resolution confirmed after objection).

**Textual Amendments**

- F5** S. 723 heading substituted (6.4.2015) by [The Companies Act 2006 \(Amendment of Part 18\) Regulations 2015 \(S.I. 2015/532\)](#), regs. 1(2), **6(a)**
- F6** Words in s. 723(1) inserted (30.4.2013) by [The Companies Act 2006 \(Amendment of Part 18\) Regulations 2013 \(S.I. 2013/999\)](#), **reg. 13(2)**
- F7** S. 723(1A) substituted (6.4.2015) by [The Companies Act 2006 \(Amendment of Part 18\) Regulations 2015 \(S.I. 2015/532\)](#), regs. 1(2), **6(b)**

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