



# Companies Act 1985

## 1985 CHAPTER 6

### PART V

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

### CHAPTER V

#### MAINTENANCE OF CAPITAL

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

**C1** 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 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.

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- (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 [<sup>F1</sup>, subject to subsection (2A),] the purported acquisition is void.
- [<sup>F2</sup>(2A) Where a company purchases qualifying shares out of distributable profits under section 162, any contravention by the company of any provision of section 162B(1) or (2) shall not render the acquisition void under subsection (2) above.]
- (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 [<sup>F3</sup>section 996 of the Companies Act 2006] (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.

#### **Textual Amendments**

- F1** Words in s. 143(2) inserted (1.12.2003) by The Companies (Acquisition of Own Shares)(Treasury Shares) Regulations 2003 (S.I. 2003/1116), reg. 4, {Sch. para. 11(a)}
- F2** S. 143(2A) inserted (1.12.2003) by The Companies (Acquisition of Own Shares)(Treasury Shares) Regulations 2003 (S.I. 2003/1116), reg. 4, {Sch. para. 11(b)}
- F3** Words in s. 143(3)(c) substituted (6.4.2008) by The Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2008/948), arts. 2(2), 3(1), **Sch. 1 para. 67** (with arts. 6, 11, 12)

#### **144 Acquisition 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

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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—

- (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)**

- C2** 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;

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- [<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;]
- (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)

**C3** 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

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in the circumstances.<sup>F5</sup>Chapter 3 of Part 3 of the Companies Act 2006 (resolutions affecting a company's constitution) applies to such a resolution.]

- (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.

#### Textual Amendments

**F5** Words in s. 147(2) substituted (1.10.2007) by [The Companies Act 2006 \(Commencement No. 3, Consequential Amendments, Transitional Provisions and Savings\) Order 2007 \(S.I. 2007/2194\)](#), art. 10(1), [Sch. 4 para. 1\(6\)](#) (with art. 12)

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

**C4** [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.

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

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

- C5** 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, [<sup>F6</sup>Chapter 1 of Part 20 of the Companies Act 2006] (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.

**Textual Amendments**

- F6** Words in s. 149(1) substituted (6.4.2008) by [The Companies Act 2006 \(Consequential Amendments etc\) Order 2008 \(S.I. 2008/948\)](#), arts. 2(2), 3(1), **Sch. 1 para. 68** (with arts. 6, 11, 12)

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

- C6** 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

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- (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.

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)**

- C7 S. 150 excluded by Companies Consolidation (Consequential Provisions) Act 1985 (c. 9, SIF 27), s. 6(3)

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