



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.

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

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- (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.
- (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 redeemed under this section 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.

161 Stamp duty on redemption of shares

- (1) For the purposes of section 47 of the Finance Act 1973, the issue of shares by a company in place of shares redeemed under section 160 constitutes a chargeable transaction if, and only if, the actual value of the shares so issued exceeds the value of the shares redeemed at the date of their redemption.
- (2) Where the issue of the shares does constitute a chargeable transaction for those purposes, the amount on which stamp duty on the relevant document relating to that transaction is chargeable under section 47(5) of the Finance Act 1973 is the difference between—
- (a) the amount on which that duty would be so chargeable if the shares had not been issued in place of shares redeemed under section 160 ; and
 - (b) the value of the shares redeemed at the date of their redemption.
- (3) Subject to the following subsection, for the purposes of subsections (1) and (2) shares issued by a company—
- (a) up to the nominal amount of any shares which the company has redeemed under section 160 ; or
 - (b) in pursuance of section 160(5) before the redemption of shares which the company is about to redeem under that section,
- are to be regarded as issued in place of the shares redeemed or (as the case may be) about to be redeemed.

- (4) Shares issued in pursuance of section 160(5) are not to be regarded for purposes of subsections (1) and (2) of this section as issued in place of the shares about to be redeemed, unless those shares are redeemed within one month after the issue of the new shares.

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.

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 a recognised stock exchange, or
 - (b) are purchased on a recognised stock exchange but are not subject to a marketing arrangement on that stock 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 on that stock exchange; or
 - (b) the company has been afforded facilities for dealings in those shares to take place on that stock exchange without prior permission for individual transactions from the authority governing that stock 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).

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.

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- (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.

- (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
 - (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

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(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 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, during business hours (subject to such reasonable restrictions as the company may in general meeting impose, provided that not less than 2 hours in each day are allowed for inspection) 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.

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) If 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.