



# 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

#### *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—

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- (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) Where by virtue of section 66 of the Bankruptcy Act 1914 (payment of interest on debts) as applied by section 612 (application of bankruptcy rules to insolvent companies in England and Wales) a creditor of a company is entitled to payment of any interest only after payment of all other debts of the company, the company's debts and liabilities for purposes of subsection (6) of this section include the liability to pay that interest.

## **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—
- (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

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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.

### **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 Companies Act 1981 of section 58 of the 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 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.

### **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.