STATUTORY INSTRUMENTS

2003 No. 1116

The Companies (Acquisition of Own Shares)(Treasury Shares) Regulations 2003

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Companies (Acquisition of Own Shares) (Treasury Shares) Regulations 2003 and shall come into force on 1st December 2003.

(2) In these Regulations, "the 1985 Act" means the Companies Act 1985(**1**).

Amendment of section 162

2.—(1) Amend section 162 of the 1985 Act (power of company to purchase own shares)(**2**) as follows.

(2) For subsection (2) substitute—

"(2) Sections 159 and 160 apply to the purchase by a company under this section of its own shares as they apply to the redemption of redeemable shares.

This is subject to subsections (2A) and (2B).

(2A) The terms and manner of a purchase under this section need not be determined by the articles as required by section 160(3).

(2B) Where a company makes a purchase of qualifying shares out of distributable profits under this section, section 162A applies to the shares purchased; and accordingly section 160(4) does not apply to those shares.".

(3) At the end of subsection (3) insert "or shares held as treasury shares".

(4) After subsection (3) insert the following subsection—

"(4) For the purposes of this Chapter "qualifying shares" are shares which—

(a) are included in the official list in accordance with the provisions of Part 6 of the Financial Services and Markets Act 2000(**3**),

(b) are traded on the market known as the Alternative Investment Market established under the rules of London Stock Exchange plc,

(c) are officially listed in an EEA State, or

(d) are traded on a market established in an EEA State which is a regulated market for the purposes of Article 16 of Council Directive 93/22/EEC on investment services in the securities field(**4**)

and in paragraph (a) "the official list" has the meaning given in section 103(1) of the Financial Services and Markets Act 2000.".

(**1**) 1985 c. 6.
(**2**) Section 162 was amended from a day to be appointed by section 133(4) of the Companies Act 1989 (c. 40).
(**3**) 2000 c. 8.
(**4**) OJ 141, 11 June 1993, p.27.

Insertion of sections 162A, 162B, 162C, 162D, 162E, 162F and 162G

3. After section 162 of the 1985 Act insert the following sections—

"**Treasury shares**

162A.—(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.

Treasury shares: maximum holdings

162B.—(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.

Treasury shares: voting and other rights

162C.—(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.

Treasury shares: disposal and cancellation

162D.—(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).

Treasury shares: mandatory cancellation

162E.—(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—

(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.

Treasury shares: proceeds of sale

162F.—(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.

Treasury shares: penalty for contravention

162G. If a company contravenes any provision of sections 162A to 162F every officer of it who is in default is liable to a fine.".

Consequential amendments

4. The Schedule to these Regulations (which contains consequential amendments) has effect.

Melanie Johnson,
Parliamentary Under Secretary of
State for Competition, Consumers and
Markets,Department of Trade and Industry

14th April 2003