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STATUTORY INSTRUMENTS

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**2009 No. 2022**

**COMPANIES**

**The Companies (Share Capital and Acquisition  
by Company of its Own Shares) Regulations 2009**

*Made* - - - - *21st July 2009*  
*Coming into force* - - *1st October 2009*

The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 562(6)(a), 657, 737 and 1292(1)(c) of the Companies Act 2006<sup>(1)</sup>.

In accordance with sections 562(7), 657(4), 737(4) and 1290 of that Act, a draft of these Regulations has been laid before Parliament and approved by a resolution of each House of Parliament.

**Citation and commencement**

1.—(1) These Regulations may be cited as the Companies (Share Capital and Acquisition by Company of its Own Shares) Regulations 2009.

(2) They come into force on 1st October 2009.

**Rights issues**

2. In section 562(5) of the Companies Act 2006 (communication of pre-emption offers to shareholders: minimum period during which offer may be accepted) for “21 days” substitute “14 days”.

**Reduction of capital: creditor protection**

3. In section 646(1) of the Companies Act 2006 (application to court for order confirming reduction of share capital: creditors entitled to object)—

(a) after “who” insert “— (a)”, and

(b) after “admissible in proof against the company” insert—

“, and

(b) can show that there is a real likelihood that the reduction would result in the company being unable to discharge his debt or claim when it fell due.”.

#### **Acquisition by company of its own shares**

4.—(1) In each of sections 694(5), 697(4) and 700(4) of the Companies Act 2006 (authority for off-market purchase, variation of contract for off-market purchase and release of off-market purchase rights: public companies) for “18 months” substitute “five years”.

(2) In section 701(5) of the Companies Act 2006 (authority for market purchase) for “18 months” substitute “five years”.

#### **Treasury shares**

5.—(1) Section 725 of the Companies Act 2006 (treasury shares: maximum holdings) is repealed.

(2) Any outstanding obligation to dispose of or cancel excess shares arising under section 725(3) of that Act (duty to dispose of excess shares) shall cease to exist on 1<sup>st</sup> October 2009, whether or not the period mentioned in that provision has expired, but this is subject to paragraph (3).

(3) This amendment does not affect any liability under section 732 of that Act (treasury shares: offences) in respect of a failure to comply with section 725(3) where the period mentioned in that provision expired before 1<sup>st</sup> October 2009.

21st July 2009

*Ian Lucas*  
Minister for Business and Regulatory Reform,  
Department for Business, Innovation and Skills

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

Regulation 2 of these Regulations amends section 562 of the Companies Act 2006 so that the minimum period for which rights issues must be kept open for acceptance is reduced from 21 days to 14 days.

Regulation 3 implements in respect of the Companies Act 2006 the amendment made to Article 32(1) of Council Directive 77/91/EEC (OJ L 26, 31.1.1977, p. 1) by Directive 2006/68/EC of the European Parliament and of the Council (OJ L 264, 25.9.2006, p. 32) (that Directive was implemented in respect of the Companies Act 1985 by the Companies (Reduction of Capital) (Creditor Protection) Regulations 2008 (S.I. 2008/719)). The latter Directive amended the former as regards the formation of public companies and the maintenance and alteration of their capital. Regulation 3 also makes corresponding amendments to the law as it relates to private companies.

Regulation 3 amends section 646 of the Companies Act 2006. Under section 645 a company may reduce its share capital by special resolution subject to confirmation by the court. Section 646 provides a procedure for identifying and producing a list of creditors entitled to object to a proposed capital reduction. Under section 648, before the court may confirm a reduction it must be satisfied that the consent of the listed creditors has been obtained or their claims have been discharged or have determined or have been secured by the company. Regulation 3 amends section 646 to exclude from the list of creditors those who cannot show that there is a real likelihood that the proposed capital reduction would result in the company being unable to discharge their debts or claims when they fell due.

Regulation 4(1) increases from 18 months to five years the amount of time for which a public company may be authorised by special resolution of its members to make off-market purchases of its own shares, vary a contract for off-market purchase of its own shares or release its rights under a contract for off-market purchase of its own shares. Regulation 4(2) increases from 18 months to five years the amount of time for which a public or private company may be authorised by ordinary resolution of its members to make market purchases of its own shares.

Regulation 5 removes from companies the restriction that the maximum amount of their own shares which they may hold as treasury shares is limited to 10% of the nominal value of their issued share capital (or of the class of issued share capital in question). This regulation is subject to transitional provisions.

A transposition note has been prepared which sets out how Directive 2006/68/EC is to be transposed into United Kingdom law. Impact assessments of the effect that this instrument will have on the costs of business and the voluntary sector have been produced and are annexed to the Explanatory Memorandum which is available alongside the instrument on the OPSI website. The transposition note and the impact assessments are both available from the Department for Business, Innovation and Skills, Corporate Law and Governance Directorate 1 Victoria St, London SW1H 0ET or at <http://www.bis.gov.uk>.