



# Companies Act 2006

## 2006 CHAPTER 46

### PART 18

#### ACQUISITION BY LIMITED COMPANY OF ITS OWN SHARES

### CHAPTER 1

#### GENERAL PROVISIONS

VALID FROM 01/10/2009

#### *Introductory*

#### **658 General rule against limited company acquiring its own shares**

- (1) A limited company must not acquire its own shares, whether by purchase, subscription or otherwise, except in accordance with the provisions of this Part.
- (2) If a company purports to act in contravention of this section—
  - (a) an offence is committed by—
    - (i) the company, and
    - (ii) every officer of the company who is in default, and
  - (b) the purported acquisition is void.
- (3) A person guilty of an offence under this section is liable—
  - (a) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine (or both);
  - (b) on summary conviction—
    - (i) in England and Wales, to imprisonment for a term not exceeding twelve months or a fine not exceeding the statutory maximum (or both);

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**Changes to legislation:** There are currently no known outstanding effects for the Companies Act 2006, Chapter 1. (See end of Document for details)

- (ii) in Scotland or Northern Ireland, to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum (or both).

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

- C1** S. 658 excluded (E.W.S.) by The Open-Ended Investment Companies Regulations 2001 (S.I. 2001/1228), reg. 11B (as inserted (21.12.2011) by The Open-Ended Investment Companies (Amendment) Regulations 2011 (S.I. 2011/3049), regs. 1, 3(3) (with reg. 10(1)))

**659 Exceptions to general rule**

- (1) A limited company may acquire any of its own fully paid shares otherwise than for valuable consideration.
- (2) Section 658 does not prohibit—
- (a) the acquisition of shares in a reduction of capital duly made;
  - (b) the purchase of shares in pursuance of an order of the court under—
    - (i) section 98 (application to court to cancel resolution for re-registration as a private company),
    - (ii) section 721(6) (powers of court on objection to redemption or purchase of shares out of capital),
    - (iii) section 759 (remedial order in case of breach of prohibition of public offers by private company), or
    - (iv) Part 30 (protection of members against unfair prejudice);
  - (c) the forfeiture of shares, or the acceptance of shares surrendered in lieu, in pursuance of the company's articles, for failure to pay any sum payable in respect of the shares.

VALID FROM 01/10/2009

*Shares held by company's nominee*

**660 Treatment of shares held by nominee**

- (1) This section applies where shares in a limited company—
- (a) are taken by a subscriber to the memorandum as nominee of the company,
  - (b) are issued to a nominee of the company, or
  - (c) are acquired by a nominee of the company, partly paid up, from a third person.
- (2) 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.
- (3) This section does not apply—
- (a) to shares acquired otherwise than by subscription by a nominee of a public company, where—

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- (i) 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
  - (ii) the company has a beneficial interest in the shares;
- (b) to shares acquired by a nominee of the company when the company has no beneficial interest in the shares.

#### **661 Liability of others where nominee fails to make payment in respect of shares**

- (1) This section applies where shares in a limited company—
- (a) are taken by a subscriber to the memorandum as nominee of the company,
  - (b) are issued to a nominee of the company, or
  - (c) are acquired by a nominee of the company, partly paid up, from a third person.
- (2) If the nominee, having been called on to pay any amount for the purposes of paying up, or paying any premium on, the shares, fails to pay that amount within 21 days from being called on to do so, then—
- (a) in the case of shares that he agreed to take as subscriber to the memorandum, the other subscribers to the memorandum, and
  - (b) in any other case, the directors of the company when the shares were issued to or acquired by him,
- are jointly and severally liable with him to pay that amount.
- (3) If in proceedings for the recovery of an amount under subsection (2) it appears to the court that the subscriber or director—
- (a) has acted honestly and reasonably, and
  - (b) having regard to all the circumstances of the case, ought fairly to be relieved from liability,
- the court may relieve him, either wholly or in part, from his liability on such terms as the court thinks fit.
- (4) If a subscriber to a company's memorandum or a director of a company has reason to apprehend that a claim will or might be made for the recovery of any such amount from him—
- (a) he may apply to the court for relief, and
  - (b) the court has the same power to relieve him as it would have had in proceedings for recovery of that amount.
- (5) This section does not apply to shares acquired by a nominee of the company when the company has no beneficial interest in the shares.

*Shares held by or for public company*

VALID FROM 01/10/2009

#### **662 Duty to cancel shares in public company held by or for the company**

- (1) This section applies in the case of a public company—

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- (a) where shares in the company are forfeited, or surrendered to the company in lieu of forfeiture, in pursuance of the articles, for failure to pay any sum payable in respect of the shares;
  - (b) where shares in the company are surrendered to the company in pursuance of section 102C(1)(b) of the Building Societies Act 1986 (c. 53);
  - (c) where shares in the company are acquired by it (otherwise than in accordance with this Part or Part 30 (protection of members against unfair prejudice)) and the company has a beneficial interest in the shares;
  - (d) where a nominee of the company acquires shares in the company from a third party without financial assistance being given directly or indirectly by the company and the company has a beneficial interest in the shares; or
  - (e) 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) Unless the shares or any interest of the company in them are previously disposed of, the company must—
- (a) cancel the shares and diminish the amount of the company's share capital by the nominal value of the shares cancelled, and
  - (b) where the effect is 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) It must do so no later than—
- (a) in a case within subsection (1)(a) or (b), three years from the date of the forfeiture or surrender;
  - (b) in a case within subsection (1)(c) or (d), three years from the date of the acquisition;
  - (c) in a case within subsection (1)(e), one year from the date of the acquisition.
- (4) The directors of the company may take any steps necessary to enable the company to comply with this section, and may do so without complying with the provisions of Chapter 10 of Part 17 (reduction of capital).
- See also section 664 (re-registration as private company in consequence of cancellation).
- (5) Neither the company nor, in a case within subsection (1)(d) or (e), the nominee or other shareholder may exercise any voting rights in respect of the shares.
- (6) Any purported exercise of those rights is void.

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

- C2** Ss. 662-669 modified (1.10.2009) by [The Companies Act 2006 \(Consequential Amendments, Transitional Provisions and Savings\) Order 2009 \(S.I. 2009/1941\)](#), art. 12(1), **Sch. 3 para. 7(1)** (with art. 10)
- C3** Ss. 662-669 modified (12.5.2011) by [The Companies Act 2006 \(Consequential Amendments and Transitional Provisions\) Order 2011 \(S.I. 2011/1265\)](#), art. 5(1), **Sch. 1 para. 7(1)**

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## 663 Notice of cancellation of shares

- (1) Where a company cancels shares in order to comply with section 662, it must within one month after the shares are cancelled give notice to the registrar, specifying the shares cancelled.
- (2) The notice must be accompanied by a statement of capital.
- (3) The statement of capital must state with respect to the company's share capital immediately following the cancellation—
  - (a) the total number of shares of the company,
  - (b) the aggregate nominal value of those shares,
  - (c) for each class of shares—
    - (i) prescribed particulars of the rights attached to the shares,
    - (ii) the total number of shares of that class, and
    - (iii) the aggregate nominal value of shares of that class, and
  - (d) the amount paid up and the amount (if any) unpaid on each share (whether on account of the nominal value of the share or by way of premium).
- (4) If default is made in complying with this section, an offence is committed by—
  - (a) the company, and
  - (b) every officer of the company who is in default.
- (5) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.

### Modifications etc. (not altering text)

- C4** Ss. 662-669 modified (1.10.2009) by [The Companies Act 2006 \(Consequential Amendments, Transitional Provisions and Savings\) Order 2009 \(S.I. 2009/1941\)](#), art. 12(1), **Sch. 3 para. 7(1)** (with art. 10)
- C5** Ss. 662-669 modified (12.5.2011) by [The Companies Act 2006 \(Consequential Amendments and Transitional Provisions\) Order 2011 \(S.I. 2011/1265\)](#), art. 5(1), **Sch. 1 para. 7(1)**

### Commencement Information

- I1** S. 663 wholly in force at 1.10.2009; s. 663 not in force at Royal Assent, see s. 1300; s. 663 in force for specified purposes at 20.1.2007 by [S.I. 2006/3428](#), **art. 3(3)** (subject to [art. 5](#), [Sch. 1](#) and with [arts. 6](#), [8](#), [Sch. 5](#)); s. 663 otherwise in force at 1.10.2009 by [S.I. 2008/2860](#), **art. 3(1)** (with [arts. 5](#), [7](#), [8](#), [Sch. 2](#)) (as amended by [S.I. 2009/1802](#), [art. 18](#))

VALID FROM 01/10/2009

## 664 Re-registration as private company in consequence of cancellation

- (1) Where a company is obliged to re-register as a private company to comply with section 662, the directors may resolve that the company should be so re-registered.  
  
Chapter 3 of Part 3 (resolutions affecting a company's constitution) applies to any such resolution.

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- (2) The resolution may make such changes—
  - (a) in the company's name, and
  - (b) in the company's articles,
 as are necessary in connection with its becoming a private company.
- (3) The application for re-registration must contain a statement of the company's proposed name on re-registration.
- (4) The application must be accompanied by—
  - (a) a copy of the resolution (unless a copy has already been forwarded under Chapter 3 of Part 3),
  - (b) a copy of the company's articles as amended by the resolution, and
  - (c) a statement of compliance.
- (5) The statement of compliance required is a statement that the requirements of this section as to re-registration as a private company have been complied with.
- (6) The registrar may accept the statement of compliance as sufficient evidence that the company is entitled to be re-registered as a private company.

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

- C6** Ss. 662-669 modified (1.10.2009) by [The Companies Act 2006 \(Consequential Amendments, Transitional Provisions and Savings\) Order 2009 \(S.I. 2009/1941\)](#), art. 12(1), **Sch. 3 para. 7(1)** (with art. 10)
- C7** Ss. 662-669 modified (12.5.2011) by [The Companies Act 2006 \(Consequential Amendments and Transitional Provisions\) Order 2011 \(S.I. 2011/1265\)](#), art. 5(1), **Sch. 1 para. 7(1)**

VALID FROM 01/10/2009

**665 Issue of certificate of incorporation on re-registration**

- (1) If on an application under section 664 the registrar is satisfied that the company is entitled to be re-registered as a private company, the company shall be re-registered accordingly.
- (2) The registrar must issue a certificate of incorporation altered to meet the circumstances of the case.
- (3) The certificate must state that it is issued on re-registration and the date on which it is issued.
- (4) On the issue of the certificate—
  - (a) the company by virtue of the issue of the certificate becomes a private company, and
  - (b) the changes in the company's name and articles take effect.
- (5) The certificate is conclusive evidence that the requirements of this Act as to re-registration have been complied with.

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

- C8** Ss. 662-669 modified (1.10.2009) by [The Companies Act 2006 \(Consequential Amendments, Transitional Provisions and Savings\) Order 2009 \(S.I. 2009/1941\)](#), art. 12(1), **Sch. 3 para. 7(1)** (with art. 10)
- C9** Ss. 662-669 modified (12.5.2011) by [The Companies Act 2006 \(Consequential Amendments and Transitional Provisions\) Order 2011 \(S.I. 2011/1265\)](#), art. 5(1), **Sch. 1 para. 7(1)**

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**666 Effect of failure to re-register**

- (1) If a public company that is required by section 662 to apply to be re-registered as a private company fails to do so before the end of the period specified in subsection (3) of that section, Chapter 1 of Part 20 (prohibition of public offers by private company) applies to it as if it were a private company.
- (2) Subject to that, the company continues to be treated as a public company until it is so re-registered.

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

- C10** Ss. 662-669 modified (1.10.2009) by [The Companies Act 2006 \(Consequential Amendments, Transitional Provisions and Savings\) Order 2009 \(S.I. 2009/1941\)](#), art. 12(1), **Sch. 3 para. 7(1)** (with art. 10)
- C11** Ss. 662-669 modified (12.5.2011) by [The Companies Act 2006 \(Consequential Amendments and Transitional Provisions\) Order 2011 \(S.I. 2011/1265\)](#), art. 5(1), **Sch. 1 para. 7(1)**

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**667 Offence in case of failure to cancel shares or re-register**

- (1) This section applies where a company, when required to do by section 662—
  - (a) fails to cancel any shares, or
  - (b) fails to make an application for re-registration as a private company, within the time specified in subsection (3) of that section.
- (2) An offence is committed by—
  - (a) the company, and
  - (b) every officer of the company who is in default.
- (3) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.

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

- C12** Ss. 662-669 modified (1.10.2009) by The Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009 (S.I. 2009/1941), art. 12(1), **Sch. 3 para. 7(1)** (with art. 10)
- C13** Ss. 662-669 modified (12.5.2011) by The Companies Act 2006 (Consequential Amendments and Transitional Provisions) Order 2011 (S.I. 2011/1265), art. 5(1), **Sch. 1 para. 7(1)**

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**668 Application of provisions to company re-registering as public company**

- (1) This section applies 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,
  - (b) are acquired by the company (otherwise than by any of the methods permitted by this Part or Part 30 (protection of members against unfair prejudice)), the company having a beneficial interest in the shares,
  - (c) are acquired by a nominee of the company from a third party without financial assistance being given directly or indirectly by the company, the company having a beneficial interest in the shares, or
  - (d) are acquired by a person with financial assistance given to him, directly or indirectly, by the company for the purpose of or in connection with the acquisition, the company having a beneficial interest in the shares,
- the company is re-registered as a public company.
- (2) In that case the provisions of sections 662 to 667 apply to the company as if it had been a public company at the time of the forfeiture, surrender or acquisition, subject to the following modification.
- (3) The modification is that the period specified in section 662(3)(a), (b) or (c) (period for complying with obligations under that section) runs from the date of the re-registration of the company as a public company.

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

- C14** Ss. 662-669 modified (1.10.2009) by The Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009 (S.I. 2009/1941), art. 12(1), **Sch. 3 para. 7(1)** (with art. 10)
- C15** S. 668 applied (1.10.2009) by The Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009 (S.I. 2009/1941), art. 12(1), **Sch. 3 para. 7(2)** (with art. 10)
- C16** S. 668 applied (12.5.2011) by The Companies Act 2006 (Consequential Amendments and Transitional Provisions) Order 2011 (S.I. 2011/1265), art. 5(1), **Sch. 1 para. 7(2)**
- C17** Ss. 662-669 modified (12.5.2011) by The Companies Act 2006 (Consequential Amendments and Transitional Provisions) Order 2011 (S.I. 2011/1265), art. 5(1), **Sch. 1 para. 7(1)**



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## 669 Transfer to reserve on acquisition of shares by public company or nominee

- (1) Where—
- (a) a public company, or a nominee of a public company, acquires shares in the company, and
  - (b) those shares are shown in a balance sheet of the company as an asset, an amount equal to the value of the shares must be transferred out of profits available for dividend to a reserve fund and is not then available for distribution.
- (2) Subsection (1) applies to an interest in shares as it applies to shares.

As it so applies the reference to the value of the shares shall be read as a reference to the value to the company of its interest in the shares.

### Modifications etc. (not altering text)

- C18** Ss. 662-669 modified (1.10.2009) by The Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009 (S.I. 2009/1941), art. 12(1), **Sch. 3 para. 7(1)** (with art. 10)
- C19** Ss. 662-669 modified (12.5.2011) by The Companies Act 2006 (Consequential Amendments and Transitional Provisions) Order 2011 (S.I. 2011/1265), art. 5(1), **Sch. 1 para. 7(1)**

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### *Charges of public company on own shares*

## 670 Public companies: general rule against lien or charge on own shares

- (1) A lien or other charge of a public company on its own shares (whether taken expressly or otherwise) is void, except as permitted by this section.
- (2) In the case of any description of company, a charge is permitted if the shares are not fully paid up and the charge is for an amount payable in respect of the shares.
- (3) In the case of a company whose ordinary business—
- (a) includes the lending of money, or
  - (b) consists of the provision of credit or the bailment (in Scotland, hiring) of goods under a hire-purchase agreement, or both,
- a charge 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 that business.
- (4) In the case of a company that has been re-registered as a public company, a charge is permitted if it was in existence immediately before the application for re-registration.

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*Supplementary provisions*

**671 Interests to be disregarded in determining whether company has beneficial interest**

In determining for the purposes of this Chapter whether a company has a beneficial interest in shares, there shall be disregarded any such interest as is mentioned in—  
 section 672 (residual interest under pension scheme or employees' share scheme),  
 section 673 (employer's charges and other rights of recovery), or  
 section 674 (rights as personal representative or trustee).

**672 Residual interest under pension scheme or employees' share scheme**

- (1) Where the shares are held on trust for the purposes of a pension scheme or employees' share scheme, there shall be disregarded any residual interest of the company that has not vested in possession.
- (2) A “residual interest” means a right of the company to receive any of the trust property in the event of—
  - (a) all the liabilities arising under the scheme having been satisfied or provided for, or
  - (b) the company ceasing to participate in the scheme, or
  - (c) the trust property at any time exceeding what is necessary for satisfying the liabilities arising or expected to arise under the scheme.
- (3) In subsection (2)—
  - (a) the reference to a right includes a right dependent on the exercise of a discretion vested by the scheme in the trustee or another person, and
  - (b) the reference to liabilities arising under a scheme includes liabilities that have resulted, or may result, from the exercise of any such discretion.
- (4) For the purposes of this section a residual interest vests in possession—
  - (a) in a case within subsection (2)(a), on the occurrence of the event mentioned there (whether or not the amount of the property receivable pursuant to the right is ascertained);
  - (b) in a case within subsection (2)(b) or (c), when the company becomes entitled to require the trustee to transfer to it any of the property receivable pursuant to that right.
- (5) Where by virtue of this section shares are exempt from section 660 or 661 (shares held by company's nominee) at the time they are taken, issued or acquired but the residual interest in question vests in possession before they are disposed of or fully paid up, those sections apply to the shares as if they had been taken, issued or acquired on the date on which that interest vests in possession.
- (6) Where by virtue of this section shares are exempt from sections 662 to 668 (shares held by or for public company) at the time they are acquired but the residual interest in question vests in possession before they are disposed of, those sections apply to

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the shares as if they had been acquired on the date on which the interest vests in possession.

### **673 Employer's charges and other rights of recovery**

- (1) Where the shares are held on trust for the purposes of a pension scheme there shall be disregarded—
- (a) any charge or lien on, or set-off against, any benefit or other right or interest under the scheme for the purpose of enabling the employer or former employer of a member of the scheme to obtain the discharge of a monetary obligation due to him from the member;
  - (b) any right to receive from the trustee of the scheme, or as trustee of the scheme to retain, an amount that can be recovered or retained—
    - (i) under section 61 of the Pension Schemes Act 1993 (c. 48), or otherwise, as reimbursement or partial reimbursement for any contributions equivalent premium paid in connection with the scheme under Part 3 of that Act, or
    - (ii) under section 57 of the Pension Schemes (Northern Ireland) Act 1993 (c. 49), or otherwise, as reimbursement or partial reimbursement for any contributions equivalent premium paid in connection with the scheme under Part 3 of that Act.
- (2) Where the shares are held on trust for the purposes of an employees' share scheme, there shall be disregarded any charge or lien on, or set-off against, any benefit or other right or interest under the scheme for the purpose of enabling the employer or former employer of a member of the scheme to obtain the discharge of a monetary obligation due to him from the member.

### **674 Rights as personal representative or trustee**

Where the company is a personal representative or trustee, there shall be disregarded any rights that the company has in that capacity including, in particular—

- (a) any right to recover its expenses or be remunerated out of the estate or trust property, and
- (b) any right to be indemnified out of that property for any liability incurred by reason of any act or omission of the company in the performance of its duties as personal representative or trustee.

### **675 Meaning of “pension scheme”**

- (1) In this Chapter “pension scheme” means a scheme for the provision of benefits consisting of or including relevant benefits for or in respect of employees or former employees.
- (2) In subsection (1) “relevant benefits” means any pension, lump sum, gratuity or other like benefit given or to be given on retirement or on death or in anticipation of retirement or, in connection with past service, after retirement or death.

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#### **676 Application of provisions to directors**

For the purposes of this Chapter references to “employer” and “employee”, in the context of a pension scheme or employees' share scheme, shall be read as if a director of a company were employed by it.

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