

COMPANIES ACT 1992

(Chapter 4)

Arrangement of Sections

PART 1

SHARE CAPITAL

Company mergers and reconstructions - share premium account

1. Preliminary provisions.
2. Merger relief.
3. Relief from section 46 in respect of group reconstructions.
4. Provisions supplementary to sections 2 and 3.
5. Power to make provision extending or restricting relief from section 46.

Financial assistance for acquisition of shares

6. Certain assistance for acquisition of shares prohibited.
7. Relaxation of section 6 restrictions for private companies.
8. Provisions supplementary to section 7.

Power of company to issue redeemable shares

9. Power of company to issue redeemable shares.

Purchase by a company of its own shares

10. Power to purchase own shares.
11. Authority for off-market purchase.
12. Contingent purchase contracts.
13. Authority for market purchase.
14. Assignment or release of company's right to purchase own shares.
15. Payments apart from purchase price to be made out of distributable profits.
16. Disclosure of particulars of purchases and authorised contracts.

Maintenance of capital on redemption or purchase of own shares otherwise than out of capital

17. The capital redemption reserve fund.

Redemption or purchase of own shares out of capital

18. Power of private companies to redeem or purchase own shares out of capital.
19. Requirements for redemption or purchase out of capital: special resolution approving payment.
20. Publicity for proposed payment out of capital.
21. Objections by members or creditors.
22. Liability of past shareholders and directors.

Miscellaneous and supplemental

23. Effect of company's failure to redeem or purchase own shares.
24. Power to alter certain provisions with respect to redemption or purchase by a company of its own shares.
25. Interpretation of Part 1.

PART 2

MISCELLANEOUS AND SUPPLEMENTAL

26. Disqualification of unfit persons.
27. Section 26: supplementary provisions.
28. Transfer of securities.

29.	Names of public companies.
30.	Alternative designations.
31.	Amendments and repeal.
32.
33.	Amendment of accounting requirements etc.
34.	Amendments.
35.	Repeals.
36.	Short title and commencement.
Schedule 1	Amendments relating to the Companies Registry.
Schedule 2	Amendments relating to the administration of companies.
Schedule 3	Amendments relating to written resolutions of private companies.
Schedule 4	Amendments relating to exemptions for private companies.
Schedule 5	Amendments relating to charitable companies.
Schedule 6	Miscellaneous amendments.
Schedule 7	Repeals.

Received Royal Assent: 16 June 1992

Passed: 16 June 1992

GENERAL NOTE: The maximum fines in this Act are as increased by the Criminal Justice (Penalties, Etc.) Act 1993 s 1.

AN ACT

to make provision for merger relief, merger accounting; financial assistance by a company for the acquisition of its own shares; the purchase by a company of its own shares; to make further amendments to the Companies Acts 1931 to 1986; and for connected purposes.

PART 1

SHARE CAPITAL

Company mergers and reconstructions - share premium account

1 Preliminary provisions

(1) Sections 2 and 3 give relief from the requirements of section 46 of the Companies Act 1931 (in this Act referred to as 'the 1931 Act') (premiums on issue of shares to be transferred to a share premium account) in the circumstances mentioned in this section.

(2) The relief given by sections 2 and 3 applies where a company issues shares after the commencement of this section in circumstances to which either of those sections applies.

(3) References in sections 2 and 3 to the issuing company are references to the company issuing the shares as mentioned in subsection (2).

2 Merger relief

(1) Subject to section 3(5), this section applies where the issuing company has secured at least a 90 per cent. equity holding in another company under any arrangement providing for the allotment of equity shares in the issuing company on terms that the consideration for the shares allotted is to be provided by the issue or transfer to the issuing company of equity shares in that other company or by the cancellation of any such shares not held by the issuing company.

(2) Where the equity shares in the issuing company allotted under the arrangement in consideration for the acquisition or cancellation of equity shares in the other company are issued at a premium, section 46 of the 1931 Act shall not apply to the premiums on those shares.

(3) Where the arrangement also provides for the allotment of any shares in the issuing company on terms that the consideration for those shares is to be provided by the issue or transfer to the issuing company of non-equity shares in the other company or by the cancellation of any such shares in that company not held by the issuing company, the relief from section 46 provided by subsection (2) shall extend to any shares in the issuing company allotted on those terms under the arrangement.

(4) Subject to subsection (5), the issuing company shall be regarded for the purposes of this section as having secured at least a 90 per cent. equity holding in another company under any such arrangement as is mentioned in subsection (1) if in consequence of any acquisition or cancellation of equity shares in that company under that arrangement it holds equity shares in that company (whether all or any of those shares were acquired under that arrangement or not) of an aggregate nominal value equal to 90 per cent. or more of the nominal value of that company's equity share capital.

(5) Where the equity share capital of the other company in question is divided into different classes of shares this section shall not apply unless the requirements of subsection (1) are satisfied in relation to each of those classes taken separately.

(6) Shares held by a company which is the issuing company's holding company or subsidiary or a subsidiary of the issuing company's holding company, or by its or their nominees, shall be regarded for the purposes of this section as held by the issuing company.

(7) In this section 'equity share capital' has the meaning given by section 1(5) of the Companies Act 1974; and, in relation to any company, 'equity shares' means shares comprised in that company's equity share capital and 'non-equity shares' means shares in that company of any class not so comprised.

3 Relief from section 46 in respect of group reconstructions

(1) This section applies where the issuing company-

- (a) is a wholly-owned subsidiary of another company ('the holding company'); and
- (b) allots shares to the holding company or to another wholly-owned subsidiary of the holding company in consideration for the transfer to it of shares in another subsidiary (whether wholly owned or not) of the holding company.

(2) Where the shares in the issuing company allotted in consideration for the transfer are issued at a premium, the issuing company shall not be required by section 46 of the 1931 Act to transfer any amount in excess of the minimum premium value to the share premium account.

(3) In subsection (2) 'the minimum premium value' means the amount (if any) by which the base value of the shares transferred exceeds the aggregate nominal value of the shares allotted in consideration for the transfer.

(4) For the purposes of subsection (3), the base value of the shares transferred shall be taken as-

- (a) the cost of those shares to the company transferring them; or
- (b) the amount at which those shares are stated in that company's accounting records immediately before the transfer;

whichever is the less.

(5) Section 2 shall not apply in any case to which this section applies.

4 Provisions supplementary to sections 2 and 3

(1) An amount corresponding to any amount representing the premiums or part of the premiums on shares issued by a company which by virtue of either of sections 2 and 3 is not included in the company's share premium account may also be disregarded in determining the amount at which any shares or other consideration provided for the shares issued is to be included in the company's balance sheet.

(2) In paragraph 15(6) of Schedule 1 to the Companies Act 1982 (in this Act referred to as 'the 1982 Act'), for the words '(for that or any other purpose)' (which purport to extend its effect beyond the purpose of restricting the disclosure of a subsidiary's profits or losses required by paragraph 15(4)(b) and (c) of that Schedule) there shall be substituted the words '(for the purposes of paragraphs 15(4)(b) and (c))'; but this provision is without prejudice to any other restriction with respect to the manner in which a holding company may treat pre-acquisition profits or losses of a subsidiary in its accounts.

(3) References in sections 2 and 3 and in this section (however expressed) to-

- (a) the acquisition by any company of shares in another company; and
- (b) the issue or allotment of shares to or the transfer of shares to or by any company;

include references respectively to the acquisition of any of those shares by and to the issue or allotment or (as the case may require) the transfer of any of those shares to or by nominees of that company; and the reference in section 3(4)(a) to the company transferring the shares there mentioned shall be construed accordingly.

(4) References in sections 2 and 3 and in this section to the transfer of shares in a company include references to the transfer of a right to be included in the company's register of members in respect of those shares.

(5) In section 2 'arrangement' means any agreement, scheme or arrangement (including an arrangement sanctioned in accordance with section 152 or 222 of the 1931 Act).

(6) In sections 2 and 3 and in this section 'company', except in references to the issuing company, includes any body corporate.

5 Power to make provision extending or restricting relief from section 46

(1) The Treasury may by regulations make such provision as appears to it to be appropriate-

- (a) for relieving companies from the requirements of section 46 of the 1931 Act in relation to premiums other than cash premiums; or
- (b) for restricting or otherwise modifying any relief from those requirements provided by sections 1 to 4.

(2) Regulations under this section may contain such incidental and supplementary provisions as the Treasury thinks fit.

(3) Regulations under this section shall not come into operation unless they are approved by Tynwald.

Financial assistance for acquisition of shares

6 Certain assistance for acquisition of shares prohibited

(1) Subject to the following provisions of this section and sections 7 and 8, where a person is acquiring or is proposing to acquire any shares in a company it shall not be lawful for the company or any of its subsidiaries to give financial assistance directly or indirectly for the purpose of that acquisition before or at the same time as the acquisition takes place.

(2) Subject to the following provisions of this section and sections 7 and 8, where a person has acquired any shares in a company and any liability has been incurred (by that or any other person) for the purpose of that acquisition it shall not be lawful for the company or any of its subsidiaries to give any financial assistance directly or indirectly for the purpose of reducing or discharging the liability so incurred.

(3) Subsection (1) shall not prohibit a company from giving any financial assistance for the purpose of any acquisition of shares in the company or its holding company if-

- (a) the company's principal purpose in giving that assistance is not to give it for the purpose of any such acquisition or the giving of the assistance for that purpose is but an incidental part of some larger purpose of the company; and
- (b) the assistance is given in good faith in the interests of the company.

(4) Subsection (2) shall not prohibit a company from giving any financial assistance if-

- (a) the company's principal purpose in giving the assistance is not to reduce or discharge any liability incurred by a person for the purpose of the acquisition of any shares in the company or its holding company or the reduction or discharge of any such liability is but an incidental part of some larger purpose of the company; and
- (b) the assistance is given in good faith in the interests of the company.

(5) Subsections (1) and (2) shall not prohibit-

- (a) any distribution of a company's assets by way of dividend lawfully made or any distribution made in the course of the winding up of the company;
- (b) the allotment of any bonus shares;
- (c) anything done under an order of the court made under section 152 of the 1931 Act (compromises and arrangements with creditors and members);
- (d) anything done under an arrangement made between a company and its creditors which is binding on the creditors by virtue of section 239 of the 1931 Act;
- (e) anything done under an arrangement made in pursuance of section 222 of the 1931 Act (power of liquidator to accept shares, etc. as consideration for sale of property of company);
- (f) any reduction of capital confirmed by order of the court under section 58 of the 1931 Act;
- (g) a redemption or purchase of any shares made in accordance with sections 9 to 25 of this Act or section 46A of the 1931 Act.

(6) Subsections (1) and (2) shall not prohibit-

- (a) where the lending of money is part of the ordinary business of the company, the lending of money by the company in the ordinary course of its business;
- (b) the provision by a company of money for the acquisition of fully paid shares in the company or its holding company in accordance with a scheme for encouraging or facilitating the holding of shares or debentures in the company by or for the benefit of-
 - (i) the *bona fide* employees or former employees of the company, the company's subsidiary or holding company or a subsidiary of the company's holding company; or
 - (ii) the wives, husbands, widows, widowers or children or step-children under the age of 18 of such employees or former employees;
- (c) the making by a company of loans to persons, other than directors, employed in good faith by the company with a view to enabling those persons to acquire fully paid shares in the company or its holding company to be held by themselves by way of beneficial ownership.

(7) Subsection (6) shall authorise a public company to give financial assistance to any person only if the company has net assets which are not thereby reduced or, to the extent that those assets are thereby reduced, if the financial assistance is provided out of distributable profits.

(8) In this section 'financial assistance' means-

- (a) financial assistance given by way of gift;
- (b) financial assistance given by way of guarantee, security or indemnity, other than an indemnity in respect of the indemnifier's own neglect or default, or by way of release or waiver;
- (c) financial assistance given by way of a loan or any other agreement under which any of the obligations of the person giving the assistance are to be fulfilled at a time when in accordance with the agreement any obligation of any other party to the agreement remains unfulfilled or by way of the novation of or the assignment of any rights arising under any loan or such other agreement; or
- (d) any other financial assistance given by a company the net assets of which are thereby reduced to a material extent or which has no net assets.

In this subsection 'net assets' means the aggregate of the assets of a company less the aggregate of its liabilities (for this purpose, 'liabilities' includes any provision (within the meaning of paragraph 27(l)(a) of Schedule 1 to the 1982 Act) except to the extent that the provision is taken into account in calculating the value of any asset of the company).

(9) Any reference in this section to a person incurring any liability shall be read as including a reference to his changing his financial position by making any agreement or arrangement (whether enforceable or unenforceable and whether made on his own account or with any other person) or by any other means.

(10) Any reference in this section to a company giving financial assistance for the purpose of reducing or discharging any liability incurred by any person for the purpose of the acquisition of any shares shall be read as including a reference to the company giving financial assistance for the purpose of wholly or partly restoring his financial position to what it was before the acquisition took place.

(11) For the purposes of subsection (7) only-

- (a) 'net assets', in relation to the giving of financial assistance by any company, means the amount by which the aggregate amount of the company's assets exceeds the aggregate amount of its liabilities taking the amount of both assets and liabilities to be as stated in the company's accounting records immediately before the financial assistance is given; and
- (b) 'liabilities' includes any amount retained as reasonably necessary for the purpose of providing for any liability or loss which is either likely to be incurred, or certain to be incurred but uncertain as to amount or as to the date on which it will arise.

(12) If a company acts in contravention of this section the company and any officer who is in default shall be liable-

- (a) on conviction on information, to a term of imprisonment not exceeding 2 years or a fine or both;
- (b) on summary conviction, to a term of imprisonment not exceeding 6 months or a fine not exceeding £5,000 or both.

(13) Section 45 of the 1931 Act, which is superseded by this section, shall cease to have effect.

(14) The Treasury may by order make provision for the relaxation of, or the exemption from, the restrictions and prohibitions imposed by this section in such circumstances or in relation to such companies as may be specified.

[Subs (14) added by International Business Act 1994 s 16.]

(15) An order under subsection (14) shall not come into operation unless it is approved by Tynwald.

[Subs (15) added by International Business Act 1994 s 16.]

7 Relaxation of section 6 restrictions for private companies

(1) Section 6(l) and (2) shall not prohibit a private company from giving financial assistance in any case where the acquisition of shares in question is or was an acquisition of shares in the company or, if it is a subsidiary of another private company, in that other company if the following provisions of this section and section 8 are complied with as respects the giving of that assistance.

(2) Subsection (1) shall authorise a company to give financial assistance to any person only if the company has net assets which are not thereby reduced, or to the extent that those assets are thereby reduced, if the financial assistance is provided out of distributable profits.

(3) Subsection (1) shall not permit financial assistance to be given by a subsidiary in any case where the acquisition of shares in question is or was an acquisition of shares in its holding company if it is also a subsidiary of a public company which is itself a subsidiary of that holding company.

(4) Unless the company proposing to give the financial assistance is a wholly owned subsidiary, the giving of the financial assistance must be approved by special resolution of the company in general meeting.

(5) Where the financial assistance is to be given by the company in any case where the acquisition of shares in question is or was an acquisition of shares in its holding company, that holding company and any other company which is both the company's holding company and a subsidiary of that other holding company (except, in any case, any company which is a wholly owned subsidiary) shall also approve by special resolution in general meeting the giving of the financial assistance.

(6) The directors of the company proposing to give the financial assistance and, where the shares to be acquired are shares in its holding company, the directors of that company and of any other company which is both the company's holding company and a subsidiary of that other holding company shall before the financial assistance is given make a statutory declaration in the prescribed form complying with subsection (7).

- (7) A statutory declaration made by the directors of any company under subsection (6) shall-
- (a) contain such particulars of the assistance to be given and of the business of the company of which they are directors as may be prescribed and shall identify the person to whom the assistance is to be given;
 - (b) state that the directors have formed the opinion as regards its initial situation immediately following the date on which the assistance is proposed to be given, that there will be no ground on which their company could then be found to be unable to pay its debts; and either-
 - (i) if it is intended to commence the winding up of the company within 12 months of that date, that the company will be able to pay its debts in full within 12 months of the commencement of the winding up; or
 - (ii) in any other case, that the company will be able to pay its debts as they fall due during the year immediately following that date.

In forming their opinion for the purposes of this subsection, the directors shall take into account any liabilities of the company which the court would be required by paragraph (3) of section 163(l) of the 1931 Act to take into account in determining for the purposes of section 162(5) of that Act (circumstances in which a company may be wound up by the court) whether the company was unable to pay its debts.

(8) Any statutory declaration made under subsection (6) shall have annexed to it a report addressed to the directors by the auditors of their company (and if none, they shall be appointed for this purpose) stating that they have inquired into the state of affairs of that company and are not aware of anything to indicate that the opinion expressed by the directors in the declaration as to any of the matters, mentioned in subsection (7)(b) is unreasonable in all the circumstances.

[Subs (8) amended by Companies, etc. (Amendment) Act 2003 Sch 1.]

- (9) Financial assistance shall not be given in pursuance of this section-
- (a) where a special resolution is required by this section to be passed approving the giving of that assistance, before the expiry of the period of 4 weeks beginning with the date on which that special resolution is passed or, where more than one such resolution is passed, the date on which the last of them is passed unless, as respects that resolution (or, if more than one, each of them), every member of the company which passed the resolution who is entitled to vote at general meetings of the company voted in favour of the resolution;
 - (b) where an application for the cancellation of any such resolution is made under section 8, before the final determination of the application, unless the court otherwise orders;
 - (c) after the expiry of the period of 8 weeks beginning with the date on which the directors of the company proposing to give the financial assistance made the statutory declaration in pursuance of subsection (6), or, where that company is a subsidiary and both its directors and the directors of any of its holding companies made such a declaration, the date on which the earliest of the declarations is made, unless the court, on any such application as is mentioned in paragraph (b), otherwise orders.

8 Provisions supplementary to section 7

(1) A special resolution required by section 7 to be passed by any company approving the giving of any financial assistance must be passed on the date on which the directors of that company made the statutory declaration required by that section in connection with the giving of that assistance or within the week immediately following that date.

(2) Where any such special resolution is passed by a company, an application may be made to the court for the cancellation of that resolution-

- (a) by the holders of not less in the aggregate than 10 per cent. in nominal value of the company's issued share capital or any class thereof; or

- (b) if the company is not limited by shares, by not less than 10 per cent. of the company's members;

but any such application shall not be made by any person who has consented to or voted in favour of the resolution.

(3) A special resolution passed by a company shall not be effective for the purposes of section 7-

- (a) unless the declaration made in compliance with subsection (7) of that section by the directors of the company, together with the auditors' report annexed thereto, is available for inspection by members of the company at the meeting at which the resolution is passed;
- (b) if it is cancelled by the court on an application under this section.

(4) Any statutory declaration made by the directors of any company in compliance with section 7(7), together with any auditors' report annexed thereto, shall be delivered to the Financial Supervision Commission-

- (a) together with a copy of any special resolution passed by the company under section 7(4) or (5) and delivered to the Financial Supervision Commission in compliance with section 117 of the 1931 Act; or

[Para (a) amended by Companies (Transfer of Functions) Act 2000 Sch 1.]

- (b) where no such special resolution is required to be passed, within 15 days after the making of the declaration.

[Subs (4) amended by Companies (Transfer of Functions) Act 2000 Sch 1.]

(5) If a company fails to comply with subsection (4), the company and every officer of the company who is in default shall be liable on summary conviction to a fine not exceeding £5,000 or on conviction after continued contravention to a default fine not exceeding £50.

(6) A director of a company who makes a statutory declaration under section 7 without having reasonable grounds for the opinion expressed in that declaration shall be liable-

- (a) on conviction on information, to imprisonment for a term not exceeding 2 years or a fine, or both; and
- (b) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding £5,000, or both.

(7) In section 7, 'financial assistance' and 'net assets' have the meanings given by subsections (8) and (11) of section 6 respectively.

(8) An application under subsection (2) must be made within 28 days after the passing of the resolution and may be made on behalf of the persons entitled to make the application by such one or more of their number as they may appoint in writing for the purpose.

(9) If an application is made under subsection (2), the company-

- (a) shall forthwith give notice in the prescribed form of that fact to the Financial Supervision Commission; and

[Para (a) amended by Companies (Transfer of Functions) Act 2000 Sch 1.]

- (b) where on the hearing of that application an order cancelling or confirming the resolution is made under subsection (10), shall, within 15 days from the making of that order, or within such longer period as the court may at any time by order direct, deliver an office copy of the order to the Financial Supervision Commission.

[Para (b) amended by Companies (Transfer of Functions) Act 2000 Sch 1.]

(10) On the hearing of an application under subsection (2) the court shall make an order either cancelling or confirming the resolution and-

- (a) may make that order on such terms and conditions as it thinks fit, and may, if it thinks fit, adjourn the proceedings in order that an arrangement may be made to the satisfaction of the court for the purchase of the interests of dissentient members; and
- (b) may give such directions and make such orders as it thinks expedient for facilitating or carrying into effect any such arrangement.

(11) An order under this section may, if the court thinks fit, provide for the purchase by the company of the shares of any members of the company and for the reduction accordingly of the company's capital and may make such alterations in the memorandum and articles of the company as may be required in consequence of that provision.

(12) Where an order under this section requires the company not to make any, or any specified, alteration in its memorandum or articles of association, then, notwithstanding anything in the Companies Acts 1931 to 1992, the company shall not have power without the leave of the court to make any such alteration in breach of that requirement.

(13) An alteration in the memorandum or articles of association made by virtue of an order under this section, other than one made by resolution of the company, shall be of the same effect as if made by resolution of the company, and the provisions of the Companies Acts 1931 to 1992 apply to the memorandum or articles as so altered accordingly.

(14) A company which fails to comply with subsection (9) and any officer of the company who is in default shall be guilty of an offence and liable on summary conviction to a fine not exceeding £2,500 or, on conviction after continued contravention, to a default fine not exceeding £200 for each day until the notice or, as the case may be, the copy required to be given or delivered by that subsection is given or delivered.

Power of company to issue redeemable shares

9 Power of company to issue redeemable shares

(1) Subject to the following provisions of this Part, 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 any 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.

(4) The terms of redemption must provide for payment on redemption.

(5) Subject to subsection (6) and sections 18 and 23(4)-

- (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
- (b) any premium payable on redemption must be paid out of distributable profits of the company.

(6) Where 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 any such 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.

(7) Subject to the provisions of this Part, the redemption of shares under this section may be effected on such terms and in such manner as may be determined by or in accordance with the articles of the company.

(8) 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 under this section by a company shall not be taken as reducing the amount of the company's authorised share capital.

(9) Without prejudice to subsection (8), where a company is about to redeem any shares under this section it shall have power to issue shares up to the nominal amount of the shares to be redeemed as if those shares had never been issued.

(10) This section and sections 17 to 25 do not apply in respect of preference shares to which section 46A of the 1931 Act applies (power to issue redeemable preference shares).

Purchase by a company of its own shares

10 Power to purchase own shares

(1) Subject to the following provisions of this Part, 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) Section 9 (except subsection (4) of that section) shall apply in relation to the purchase by a company under this section of any of its own shares as it applies in relation to the redemption of redeemable shares by a company under that section, save that the terms and manner of purchase need not be determined by or in accordance with the articles as required by subsection (7) of that section.

(3) A company may not purchase any of its shares under this section if as a result of the purchase of the shares in question there would no longer be any member of the company holding shares other than redeemable shares.

11 Authority for off-market purchase

(1) This section applies to an off-market purchase by a company of any of its own shares.

(2) A purchase by a company of any of its own shares is an off-market purchase for the purposes of this section if either-

- (a) the shares are purchased otherwise than on a recognised stock exchange; or
- (b) the shares are purchased on a recognised stock exchange but are not subject to a marketing arrangement on that stock exchange.

(3) For the purposes of this section shares of a company 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 accorded 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.

(4) A company may only make an off-market purchase of its own shares under a contract approved in advance in accordance with the following provisions of this section or under section 12.

(5) The terms of the proposed contract of purchase must be authorised by a special resolution of the company before the company enters into the contract.

(6) Subject to subsection (7), the authority conferred by any such resolution may be varied, revoked or from time to time renewed by special resolution of the company.

(7) In the case of a public company the authority for a proposed contract of purchase conferred by any such resolution must specify a date on which the authority is to expire.

(8) The date specified in accordance with subsection (7) in any special resolution of a public company to confer or renew authority for a proposed contract of purchase shall not be later than 18 months after the date on which the resolution is passed.

(9) A special resolution of a company to confer, vary, revoke or renew authority for a proposed contract for the purchase of any of its own shares shall not be effective for the purposes of this section 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 the purposes of this subsection a member who holds shares to which the resolution relates shall be regarded as exercising the voting rights carried by those shares in voting on the resolution not only if he votes in respect of those shares on a poll on the question whether that resolution shall be passed but also if he votes on that resolution otherwise than on a poll; and, notwithstanding anything in a company's articles, any member of the company may demand a poll on the question whether any such resolution shall be passed.

(10) Any such resolution shall not be effective for the purposes of this section unless (if the proposed contract of purchase is in writing) a copy of that contract or (if it is not in writing) a written memorandum of its terms is available for inspection by members of the company both-

- (a) at the registered office of the company for not less than the period of 15 days ending with the date of the meeting at which the resolution is passed; and
- (b) at the meeting itself.

Any memorandum of the terms of the contract of purchase made available for the purposes of this section must include the names of any members holding shares to which the contract relates, and any copy of the contract made available for those purposes must have annexed to it a written memorandum specifying any such names which do not appear in the contract itself.

(11) A company may agree to a variation of an existing contract of purchase approved under this section, but only if the variation is authorised by a special resolution of the company before the company agrees to it; and subsections (6) to (10) shall apply in relation to the authority for a proposed variation as they apply in relation to the authority for a proposed contract of purchase, save that a copy or memorandum (as the case may require) of the original contract (together with any variations previously made) must also be available for inspection in accordance with subsection (10).

(12) For the purposes of this section a vote and a demand for a poll by a person as proxy for a member shall be the same respectively as a vote and a demand by the member.

12 Contingent purchase contracts

(1) This section applies to the purchase by a company of its own shares under a contract 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;

and any such contract is referred to in this section as a contingent purchase contract.

(2) A company may only make a purchase of its own shares under a contingent purchase contract if the contract is approved in advance in accordance with subsection (3).

(3) The terms of the proposed contract must be authorised by a special resolution of the company before the company enters into the contract, and subsections (6) to (12) of section 11 shall apply in relation to the authority for a proposed contingent purchase contract and the variation of an existing contingent purchase contract respectively as they apply in relation to the authority for a proposed contract of purchase and the variation of an existing contract of purchase.

13 Authority for market purchase

(1) This section applies to a market purchase by a company of any of its own shares.

(2) A purchase by a company of any of its own shares is a market purchase for the purposes of this section if it is a purchase made on a recognised stock exchange, other than a purchase which is an off-market purchase for the purposes of section 11 by virtue of subsection (2)(b) of that section.

(3) 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.

(4) A resolution authorising market purchases of a company's own shares in accordance with this section may confer general authority for that purpose or authority limited to the purchase of shares of any particular class or description, and the authority conferred may be unconditional or subject to conditions.

(5) Any such 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 those shares; and
- (c) specify a date on which the authority is to expire.

(6) Subject to subsection (5), any such authority may be varied, revoked or from time to time renewed by the company in general meeting.

(7) The date specified in accordance with subsection (5)(c) in any resolution of a company to confer or renew authority for market purchases shall not be later than 18 months after the date on which the resolution is passed.

(8) A company may make a purchase of its own shares in accordance with this section after the expiry of any time limit imposed by virtue of subsection (5)(c) in any case where 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 the authority expired.

(9) A resolution of a company to confer or vary authority for market purchases of its own shares may determine either or both of the prices mentioned in subsection (5)(b) 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.

(10) Section 117 of the 1931 Act (registration of copies of certain resolutions and agreements) shall apply to any resolution of a company conferring, varying, revoking or renewing any such authority.

14 Assignment or release of company's right to purchase own shares

(1) The rights of a company under any contract approved under section 11 or 12 or any contract for a purchase authorised under section 13 shall not be capable of assignment.

(2) Any agreement by a company to release its rights under any contract approved under section 11 or 12 shall be void unless the release is approved in advance in accordance with subsection (3).

(3) The terms of the proposed release agreement must be authorised by a special resolution of the company before the company enters into the agreement; and subsections (6) to (12) of section 11 shall apply in relation to the authority for a proposed release agreement as they apply in relation to the authority for a proposed variation of an existing contract of purchase.

15 Payments apart from purchase price to be made out of distributable profits

(1) Any payment made by a company in consideration of-

- (a) acquiring any right with respect to the purchase of any of its own shares under a contract approved under section 12;
- (b) the variation of any contract approved under section 11 or 12; or
- (c) the release of any of the company's obligations with respect to the purchase of any of its own shares under any contract approved under section 11 or 12 or under any contract for a purchase authorised under section 13;

must be made out of distributable profits of the company.

(2) If the requirements of subsection (1) are not satisfied in relation to any contract-

- (a) in a case within subsection (1)(a), no purchase by the company of any of its own shares under that contract shall be lawful by virtue of this Part;
- (b) in a case within subsection (1)(b), no such purchase following the variation shall be lawful by virtue of this Part; and
- (c) in a case within subsection (1)(c), the purported release shall be void.

16 Disclosure of particulars of purchases and authorised contracts

(1) Within the period of one month beginning with the date on which any shares purchased by a company under section 10 are delivered to the company the company shall deliver to the Financial Supervision Commission 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.

[Subs (1) amended by Companies (Transfer of Functions) Act 2000 Sch 1 and by Companies, etc. (Amendment) Act 2003 Sch 1.]

- (2) In the case of a public company the return required by this section 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 under this section; and in any such case the amount required to be stated by subsection (2)(a) shall be the aggregate amount paid by the company for all the shares to which the return relates.
- (4) Where a company enters into any contract approved under section 11 or 12 or any contract for a purchase authorised under section 13 the company shall keep at its registered office-
- (a) if the contract is in writing, a copy of that contract; or
 - (b) if it is not in writing, a memorandum of its terms;
- from the conclusion of the contract until the end of the period of 6 years beginning with the date on which the purchase of all the shares under the contract is completed or (as the case may be) the date on which the contract otherwise determines.
- (5) Every copy and memorandum required to be kept by subsection (4) shall, on the payment of such reasonable charge as the company prescribes, 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 the inspection-
- (a) of any member of the company; and
 - (b) if the company is a public company, of any other person.
- (6) If default is made in delivering to the Financial Supervision Commission any return required by this section, every officer of the company who is in default shall be liable-
- (a) on conviction on information to a fine;
 - (b) on summary conviction to a fine not exceeding £5,000 or, on conviction after continued contravention, to a default fine not exceeding £200.
- [Subs (6) amended by Companies (Transfer of Functions) Act 2000 Sch 1.]**
- (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 the company who is in default shall be liable on summary conviction to a fine not exceeding £2,500 or, on conviction after continued contravention, to a default fine not exceeding £40.
- (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 the copy or memorandum.
- (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 shall apply to any variation of that contract so long as it applies to that contract.

Maintenance of capital on redemption or purchase of own shares otherwise than out of capital

17 The capital redemption reserve fund

- (1) Where under section 9 or 10 any shares of a company are redeemed or purchased wholly out of the profits of the company the amount by which the company's issued share capital is diminished in accordance with subsection (8) of section 9 on cancellation of the shares redeemed or purchased shall be transferred to the capital redemption reserve fund.
- (2) Subject to subsection (6)(b) of section 18, where under that section any shares of a company 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 fund.

Redemption or purchase of own shares out of capital

18 Power of private companies to redeem or purchase own shares out of capital

(1) Subject to the following provisions of this Part, a private company limited by shares or limited by guarantee and having a share capital may, if authorised to do so by its articles, make a payment in respect of the redemption or purchase under section 9 or (as the case may be) under section 10 of any of its own shares otherwise than out of distributable profits of the company or the proceeds of a fresh issue of shares; and references in this Part to payment out of capital are (subject to subsection (6)) references to any payment so made (whether or not it would be regarded apart from this section as a payment out of capital).

(2) The payment which may (if authorised in accordance with the following provisions of this Part) be made by any company out of capital in respect of the redemption or purchase of any of its own shares shall be such an amount as, taken together with-

- (a) any available profits of the company; and
- (b) the proceeds of any fresh issue of shares made for the purposes of the redemption or purchase;

is equal to the price of redemption or purchase.

(3) The payment permissible in accordance with subsection (2) in respect of the redemption or purchase by a company of any of its own shares is referred to in this Part as the permissible capital payment for the shares.

(4) Subject to subsection (6), if the permissible capital payment for any shares redeemed or purchased by a company is less than their nominal amount, the amount of the difference shall be transferred to the capital redemption reserve fund.

(5) Subject to subsection (6), if the permissible capital payment for any shares redeemed or purchased by a company is greater than their nominal amount the amount of any capital redemption reserve fund, share premium account or fully paid share capital of the company may be reduced by a sum not exceeding (or by sums not in the aggregate exceeding) the amount by which the permissible capital payment exceeds the nominal amount of those shares.

(6) In any case where the proceeds of a fresh issue are applied by a company in making any redemption or purchase of its own shares in addition to a payment out of capital under this section-

- (a) the references in subsections (4) and (5) to the permissible capital payment shall be read as references to the aggregate of that payment and those proceeds;
- (b) subsection (2) of section 17 shall not apply.

(7) The reference in subsection (2)(a) to available profits of the company is a reference to the company's profits which are available for distribution and the question whether a company has any profits so available and the amount of any such profits shall be determined for the purposes of this section in accordance with the following provisions of this section.

(8) Subject to subsection (9), that question shall be determined by reference to such accounts, prepared as at any date within the period of 3 months ending with the date on which the statutory declaration of the directors purporting to specify the amount of the permissible capital payment is made under section 19(3), as are necessary to enable a reasonable judgment to be made.

(9) For the purposes of determining the amount of the permissible capital payment for any shares under this section, the amount of the company's available profits (if any) determined in accordance with subsection (8) shall be treated as reduced by the amount of any distributions lawfully made by the company after the date of the relevant accounts and before the end of the period for determining the amount of that payment.

(10) References in this section to the period for determining the amount of the permissible capital payment for any shares are references to the period of 3 months ending with the date on which the statutory declaration of the directors purporting to specify the amount of that payment is made in accordance with section 19(3).

19 Requirements for redemption or purchase out of capital: special resolution approving payment

(1) Subject to any order made by the court under section 21 a payment out of capital by any company for the redemption or purchase of any of its own shares shall not be lawful by virtue of section 18 unless the requirements of this section and section 20 are satisfied.

(2) The payment out of capital must be approved by a special resolution of the company (referred to in this section and in section 20 as the resolution for payment out of capital).

(3) The directors of the company must make a statutory declaration specifying the amount of the permissible capital payment for the shares in question and stating that, having made full inquiry into the affairs and prospects of the company, they have formed the opinion-

- (a) as regards its initial situation immediately following the date on which the payment out of capital is proposed to be made, that there will be no ground on which the company could then be found to be unable to pay its debts; and
- (b) as regards its prospects for the year immediately following that date, that, having regard to their intentions with respect to the management of the company's business during that year and to the amount and character of the financial resources which will in their view be available to the company during that year, the company will be able to continue to carry on business as a going concern (and will accordingly be able to pay its debts as they fall due) throughout that year.

(4) In forming their opinion for the purposes of subsection (3)(a) the directors shall take into account any liabilities of the company which the court would be required by paragraph (3) of section 163(1) of the 1931 Act to take into account in determining for the purposes of section 162(5) of that Act (circumstances in which a company may be wound up by the court) whether the company was unable to pay its debts.

(5) The statutory declaration made by the directors must be in the prescribed form and contain such information with respect to the nature of the company's business as may be prescribed, and must in addition have annexed to it a report addressed to the directors by the auditors of the company stating that-

- (a) they have inquired into the company's state of affairs; and
- (b) the amount specified in that declaration as the permissible capital payment for the shares in question is in their view properly determined in accordance with section 18 of this Act; and
- (c) they are not aware of anything to indicate that the opinion expressed by the directors in that declaration as to any of the matters mentioned in subsection (3) is unreasonable in all the circumstances.

(6) The resolution for payment out of capital must be passed on, or within the week immediately following, the date on which the directors make the statutory declaration required by subsection (3), and the payment out of capital must be made not earlier than 5 nor more than 7 weeks after the date of the resolution.

(7) A special resolution of a company to approve a payment out of capital for the redemption or purchase of any of its own shares shall not be effective for the purposes of this section 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 the purposes of this subsection a member who holds shares to which the resolution relates shall be regarded as exercising the voting rights carried by those shares in voting on the resolution not only if he votes in respect of those shares on a poll on the question whether that resolution shall be passed but also if he votes on that resolution otherwise than on a poll; and, notwithstanding anything in a company's articles, any member of the company may demand a poll on the question whether any such resolution shall be passed.

(8) Any such resolution shall not be effective for the purposes of this section unless copies of the statutory declaration and auditors' report required by this section are available for inspection by members of the company-

- (a) at the registered office of the company from the day on which the declaration is made until the day of the meeting at which the resolution is passed; and
- (b) at that meeting.

(9) Any director of a company who makes a declaration under this section without having reasonable grounds for the opinion expressed in that declaration shall be liable-

- (a) on conviction on information to imprisonment for a term not exceeding 2 years or a fine, or both; and
- (b) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding £5,000, or both.

(10) For the purposes of this section a vote and a demand for a poll by a person as proxy for a member shall be the same respectively as a vote and a demand by the member.

20 Publicity for proposed payment out of capital

(1) Within the week immediately following the date of the resolution for payment out of capital the company must cause to be published in 2 newspapers published and circulating in the Island a notice-

- (a) stating that the company has approved a payment out of capital for the purpose of acquiring its own shares by redemption or purchase or both (as the case may require);
- (b) specifying the amount of the permissible capital payment for the shares in question and the date of the resolution for payment out of capital;
- (c) stating that the statutory declaration of the directors and the auditors' report required by section 19 are available for inspection at the company's registered office; and
- (d) stating that any creditor of the company may at any time within the 5 weeks immediately following the date of the resolution for payment out of capital apply to the court under section 21 for an order prohibiting the payment.

(2) Within the week immediately following the date of that resolution the company must also either-

- (a) cause a notice to the same effect as that required by subsection (1) to be published in 2 newspapers circulating throughout the country or territory in which, in the opinion of the directors, a substantial number of the creditors of the company reside; or
- (b) give notice in writing to that effect to each of its creditors.

(3) References in this section to the first notice date are references to the day on which the company first publishes the notice required by subsection (1) or first publishes or gives the notice required by subsection (2) (whichever is the earlier).

(4) Not later than the first notice date the company must deliver a copy of the statutory declaration of the directors and the auditors' report required by section 19 to the Financial Supervision Commission.

[Subs (4) amended by Companies (Transfer of Functions) Act 2000 Sch 1.]

(5) The statutory declaration and auditors' report shall be kept at the company's registered office throughout the period beginning with the first notice date and ending 5 weeks after the date of the resolution for payment out of capital and shall during business hours on any day during that period be open to the inspection of any member or creditor of the company without charge.

(6) If an inspection required under subsection (5) is refused, the company and every officer of the company who is in default shall be liable on summary conviction to a fine not exceeding £2,500 or, on conviction after continued contravention, to a default fine not exceeding £40.

(7) In the case of a refusal of an inspection required under subsection (5) of a declaration or report, the court may by order compel an immediate inspection of that declaration or report.

21 Objections by members or creditors

(1) Where a private company passes a special resolution approving for the purposes of this Part any payment out of capital for the redemption or purchase of any of its shares-

- (a) any member of the company other than one who consented to or voted in favour of the resolution; and

(b) any creditor of the company;
may within 5 weeks of the date on which the resolution was passed apply to the court for the cancellation of the resolution.

(2) An application under this section may be made on behalf of the persons entitled to make the application by such one or more of their number as they may appoint in writing for the purpose.

(3) If an application is made under this section, the company shall-

(a) forthwith give notice in the prescribed form of that fact to the Financial Supervision Commission; and

[Para (a) amended by Companies (Transfer of Functions) Act 2000 Sch 1.]

(b) within 15 days from the making of any order of the court on the hearing of the application, or such longer period as the court may by order direct, deliver an office copy of the order to the Financial Supervision Commission.

[Para (b) amended by Companies (Transfer of Functions) Act 2000 Sch 1.]

(4) On the hearing of an application under this section the court may, if it thinks fit, adjourn the proceedings in order that an arrangement may be made to the satisfaction of the court for the purchase of the interests of dissentient members or for the protection of dissentient creditors, as the case may be, and the court may give such directions and make such orders as it thinks expedient for facilitating or carrying into effect any such arrangement.

(5) Without prejudice to its powers under subsection (4), on the hearing of an application under subsection (1), the court shall make an order on such terms and conditions as it thinks fit either confirming or cancelling the resolution; and, where the court confirms the resolution, it may in particular by order alter or extend any date or period of time specified in the resolution or in any provision of this Part which applies to the redemption or purchase of shares to which the resolution refers.

(6) A company which fails to comply with subsection (3) and any officer of the company who is in default shall be liable on summary conviction to a fine not exceeding £2,500 or, on conviction after continued contravention, to a default fine not exceeding £40.

(7) An order under this section may, if the court thinks fit, provide for the purchase by the company of the shares of any members of the company and for the reduction accordingly of the company's capital and make such alterations in the memorandum and articles of the company as may be required in consequence of that provision.

(8) Where an order under this section requires the company not to make any, or any specified, alteration in its memorandum or articles, then, notwithstanding anything in the Companies Acts 1931 to 1992, the company shall not have the power without the leave of the court to make any such alteration in breach of that requirement.

(9) Any alteration in the memorandum or articles of the company made by virtue of an order under this section, other than one made by resolution of the company, shall be of the same effect as if duly made by resolution of the company, and the provisions of the Companies Acts 1931 to 1992 shall apply to the memorandum and articles as so altered accordingly.

22 Liability of past shareholders and directors

(1) This section applies where a company has made a payment out of capital in respect of the redemption or purchase of any of its shares, referred to as the 'relevant payment'.

(2) Where the company is being wound up and the aggregate of the amount of its assets and the amounts paid by way of contribution to its assets (apart from this section) is not sufficient for payment of its debts and liabilities and the costs, charges and expenses of the winding up, then, if the winding up commenced within one year of the date on which the relevant payment was made-

(a) the person from whom the shares were redeemed or purchased; and

(b) the directors of the company who signed the statutory declaration made in accordance with section 19(3) for the purposes of the redemption or purchase, except a director who shows that he had reasonable grounds for forming the opinion set out in the declaration;

shall, so as to enable that insufficiency to be met, be liable to contribute to the assets of the company to the extent specified in subsection (3).

(3) A person from whom any of the shares were redeemed or purchased shall be liable to contribute to the assets of the company an amount not exceeding the amount of so much of the relevant payment as was made by the company in respect of his shares and the directors of the company shall be jointly and severally liable with that person to contribute that amount to the assets of the company.

(4) Any person who has contributed an amount to the assets of a company under this section may apply to the court for an order directing any other person jointly and severally liable in respect of that amount to pay to him such amount as the court thinks just and equitable.

(5) Section 156 of the 1931 Act (liability of contributories) shall not apply in relation to any liability accruing by virtue of this section.

(6) Any reference in the articles of any company to a contributory shall not unless the context requires include a reference to any person who is a contributory only by virtue of this section.

(7) A person who is liable by virtue of this section to contribute to the assets of any company in the event of its being wound up may by petition apply to the court for the winding up of the company on either of the grounds set out in paragraphs (5) and (6) of section 162 of the 1931 Act (inability of company to pay its debts and the 'just and equitable' ground) and paragraph (a) of the proviso to section 164(1) of that Act (restrictions on right of contributory to present petition) shall not apply in relation to a petition made by any such person; but unless he is a contributory otherwise than by virtue of this section he may not in his character as contributory present such a petition on any other ground.

Miscellaneous and supplemental

23 Effect of company's failure to redeem or purchase own shares

(1) Where on or after the appointed day a company-

- (a) issues shares on terms that they are or are liable to be redeemed; or
- (b) agrees to purchase any of its own shares;

the following provisions of this section shall apply in relation thereto.

(2) A company shall not be 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 any 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 cost of redeeming or purchasing the shares in question out of distributable profits.

(4) Where the company is wound up and at the commencement of the winding up any of the shares have not been redeemed or purchased then subject to the following provisions of this section the terms of redemption or purchase may be enforced against the company; and when shares are redeemed or purchased under this subsection they shall be treated as cancelled.

(5) Subsection (4) shall not apply if-

- (a) the terms of redemption or purchase provided for the redemption or purchase to take place at a date later than the date 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 by virtue of 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 23(3) of the Bankruptcy Code 1892 (payment of interest on debts) as applied by section 248 of the 1931 Act (application of bankruptcy rules to insolvent companies) 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 shall for the purposes of subsection (6) include the liability to pay that interest.

24 Power to alter certain provisions with respect to redemption or purchase by a company of its own shares

(1) The Treasury may by regulations modify the provisions of this Part with respect to any of the following matters-

- (a) the authority required for a purchase by a company of any of its own shares;
- (b) the authority required for the release by a company of its rights under any contract for the purchase of its own shares or any contract under which the company may (subject to any conditions) become entitled or obliged to purchase any of its own shares;
- (c) the information to be included in any return delivered by a company to the Financial Supervision Commission in accordance with section 16(1);

[Para (c) amended by Companies (Transfer of Functions) Act 2000 Sch 1.]

- (d) the matters to be dealt with in the statutory declaration of the directors required by section 19 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 Treasury may also by regulations make such provision (including provision by way of modifying the provisions of this Part) as appears to it to be appropriate-

- (a) for wholly or partly relieving companies from the requirement under section 18(2)(a) that any available profits must be taken into account in determining the amount of the permissible capital payment for any shares under that section; or
- (b) for permitting a company's share premium account to be applied, to any extent appearing to the Treasury to be appropriate, in providing for the premiums payable on the redemption or purchase by the company of any of its own shares.

(3) Regulations under this section may make such further modifications of any provisions of this Part as appear to the Treasury to be reasonably necessary in consequence of any provision made by any such regulations by virtue of subsection (1) or (2).

(4) Regulations under this section shall not come into operation unless they have been approved by Tynwald.

25 Interpretation of Part 1

In this Part-

'capital redemption reserve fund' has the same meaning as in section 46A of the 1931 Act;

'distributable profits', in relation to the making of any payment or the giving of any financial assistance (within the meaning of section 6(8)) by any company, means those profits out of which it could lawfully make a distribution equal in value to that payment or assistance;

'distribution' means every description of distribution of a company's assets to members of the company, whether in cash or otherwise, except distributions made by way of-

- (a) an issue of shares as fully or partly paid bonus shares;
- (b) the redemption of preference shares out of the proceeds of a fresh issue of shares made for the purposes of the redemption and the payment of any premium on their redemption out of the company's share premium account;
- (c) the reduction of share capital by extinguishing or reducing the liability of any of the members on any of its shares in respect of share capital not paid up or by paying off paid up share capital; and

(d) a distribution of assets to members of the company on its winding up;
'permissible capital payment' has the meaning given by section 18(3);
and references to payment out of capital shall be construed in accordance with section 18(1).

PART 2

MISCELLANEOUS AND SUPPLEMENTAL

26 Disqualification of unfit persons

(1) Where on an application by the Financial Supervision Commission under this section it appears to the Court that a person's conduct makes him unfit-

- (a) to be a director or secretary of a company; or
- (b) to be a liquidator of a company; or
- (c) to be a receiver or manager of a company's property; or
- (d) in any way, whether directly or indirectly, to be concerned or take part in the promotion, formation or management of a company,

the Court may make a disqualification order.

[Subs (1) amended by Companies (Transfer of Functions) Act 2000 Sch 2.]

(2) A person who is the subject of a disqualification order shall not, without the leave of the Court, undertake any of the offices and activities referred to in subsection (1)(a) to (d).

(3) Without prejudice to the generality of subsection (1), the Court may treat a person as unfit to undertake any of the offices or activities referred to in paragraphs (a) to (d) of that subsection if the person or a body corporate of which that person is a director or similar officer, or the secretary-

- (a) has been convicted of an offence (whether in the Island or elsewhere) which involves dishonesty;
- (b) has been convicted (whether in the Island or elsewhere) within the 25 years ending with the date of the application of any combination of 3 or more offences under-
 - (i) the Companies Acts 1931 to 2004 or the Companies Act 2006;

[Subpara (i) amended by Companies Act 2006 Sch 1.]

- (ii) legislation having equivalent effect in any country or territory outside the Island, whether or not convicted on the same occasion;
- (c) has been convicted of any offence under-
 - (i) the Prevention of Fraud (Investments) Act 1968, the Banking Acts 1975 to 1986, the Insurance Act 1986, the Company Securities (Insider Dealing) Act 1987, the Insider Dealing Act 1998, the Financial Supervision Act 1988 or the Investment Business Act 1991 or the Insurance Intermediaries (General Business) Act 1996 or the Corporate Service Providers Act 2000; or

[Subpara (i) amended by Insurance Intermediaries (General Business) Act 1996 s 18, by Insider Dealing Act 1998 s 15 and by Corporate Service Providers Act 2000 Sch 3.]

- (ii) legislation having equivalent effect in any country or territory outside the Island;
- (d) has failed to comply with a direction of the Court under subsection (4).

(4) Without prejudice to any other powers of the Court, where a person is in default in relation to any provision of the Companies Acts 1931 to 1992 the Court may, on an application to it by the Financial Supervision Commission or by any person affected by the default, by order direct the person in default (whether or not he is in the Island) to rectify the default forthwith.

[Subs (4) amended by Companies (Transfer of Functions) Act 2000 Sch 2.]

(5) The Financial Supervision Commission shall keep an index, in the prescribed form and with the prescribed particulars of those persons subject to disqualification orders and shall make the index available for inspection-

- (i) at the office for the registration of companies; and

- (ii) on the Financial Supervision Commission website or in such other manner as the Financial Supervision Commission may deem appropriate.

[Subs (5) added by Companies, etc. (Amendment) Act 2003 Sch 1.]

27 Section 26: supplementary provisions

(1) The period for which a disqualification order under section 26 shall operate shall begin with the date of the order and shall not be less than 3 years nor be more than 15 years.

(2) A disqualification order or a direction under section 26(4) may be made on grounds which are or include-

- (a) matters arising before or after the commencement of section 26; and
- (b) matters other than criminal convictions, even if the person in respect of whom it is to be made may be criminally liable in respect of those matters.

(3) In considering whether to make a disqualification order on the grounds that the person concerned was a director or similar officer, or the secretary, of a body corporate which has been convicted of offences specified in section 26(3)(a) to (c) or which has failed to comply with a direction under section 26(4), the Court shall give due account to any evidence given by or on behalf of the person concerned that he took all such steps as were reasonably open to him to ensure that no offence would be committed or, as the case may be, that no such failure would occur.

(4) Rules of Court may be made with regard to the procedure for obtaining-

- (a) a disqualification order;
- (b) leave of the Court under section 26(2);
- (c) a direction under section 26(4),

and may include such provision as to evidence or proof of any matter for the purposes of such procedure.

(5) Section 26 is in addition to and not in derogation of section 31 of the Companies Act 1982.

(6) If a person acts in contravention of a disqualification order, he shall be guilty of an offence and shall be liable-

- (a) on conviction on information to imprisonment for a term not exceeding 2 years or a fine, or to both;
- (b) on summary conviction to imprisonment for a term not exceeding 6 months or a fine not exceeding £5,000, or to both.

(7) In section 26-

'company' includes any body corporate (wherever incorporated) and includes any association;

'director' includes any person in accordance with whose directions or instructions the directors of the company are accustomed to act.

28 Transfer of securities

(1) The Financial Supervision Commission with the concurrence of the Treasury may make provision by regulations for enabling title to securities to be evidenced and transferred without a written instrument.

In this section-

- (a) '**securities**' means shares, stock, debentures, debenture stock, loan stock, bonds, units of a collective investment scheme within the meaning of the Financial Supervision Act 1988 and other securities of any description;
- (b) references to title to securities include any legal or equitable interest in securities; and
- (c) references to a transfer of title include a transfer by way of security.

[Subs (1) amended by Companies (Transfer of Functions) Act 2000 Sch 2.]

(2) The regulations may make provision-

- (a) for procedures for recording and transferring title to securities, and
- (b) for the regulation of those procedures and the persons responsible for or involved in their operation.

(3) The regulations shall contain such safeguards as appear to the Financial Supervision Commission appropriate for the protection of investors and for ensuring that competition is not restricted, distorted or prevented.

[Subs (3) amended by Companies (Transfer of Functions) Act 2000 Sch 2.]

(4) The regulations may for the purpose of enabling or facilitating the operation of the new procedures make provision with respect to the rights and obligations of persons in relation to securities dealt with under the procedures.

But the regulations shall be framed so as to secure that the rights and obligations in relation to securities dealt with under the new procedures correspond, so far as practicable, with those which would arise apart from any regulations under this section.

(5) The regulations may include provision for the purpose of giving effect to-

- (a) the transmission of title to securities by operation of law;
- (b) any restriction on the transfer of title to securities arising by virtue of the provisions of any enactment or instrument, court order or agreement;
- (c) any power conferred by any such provision on a person to deal with securities on behalf of the person entitled.

(6) The regulations may make provision with respect to the persons responsible for the operation of the new procedures-

- (a) as to the consequences of their insolvency or incapacity, or
- (b) as to the transfer from them to other persons of their functions in relation to the new procedures.

(7) The regulations may for the purposes mentioned above-

- (a) modify or exclude any provision of any enactment or instrument, or any rule of law;
- (b) apply, with such modifications as may be appropriate, the provisions of any enactment or instrument (including provisions creating criminal offences);
- (c) require the payment of fees, or enable persons to require the payment of fees, of such amounts as may be specified in the regulations or determined in accordance with them.

(8) Regulations under this section shall not come into effect unless they are approved by Tynwald.

29 Names of public companies

(1) The name of a public company to which this section applies and which is limited by shares or by guarantee must end with the words 'public limited company' and those words may not be preceded by the word 'limited'.

(2) This section applies to-

- (a) every public company other than an existing public company; and
- (b) any existing public company which passes a resolution under subsection (3).

(3) An existing public company may, by special resolution-

- (a) resolve that this section shall apply to it; and
- (b) alter the provisions of its memorandum and articles so that they comply with this section.

(4) In subsection (2)(a), 'existing public company' means a company which was a public company immediately before the commencement of this section.

(5) [Amends section 18 of the Companies Act 1931.]

30 Alternative designations

(1) A company which is required or entitled by any provision of the Companies Acts 1931 to 1992 to include in its name, as its last part, any of the words specified in subsection (4) may, instead of those words, include as the last part of the name, the abbreviations there specified as an alternative in relation to those words.

(2) Any reference in those Acts to the name of a company or to the inclusion of any of those words in the name of the company includes a reference to the name including (in place of any of the words so specified) the appropriate alternative, or to the inclusion of the appropriate alternative, as the case may be.

(3) A provision of those Acts requiring a company not to include any of those words in its name also requires it not to include the abbreviated alternative specified in subsection (4).

(4) For the purposes of this section-

- (a) the alternative of 'limited' is 'Ltd.';
- (b) the alternative of 'public limited company' is 'P.L.C.'.

31 (1)(a) [Repeals section 38A of the Companies Act 1931.]

(b) and (c) [Amend sections 41 and 95 respectively of the Companies Act 1931.]

(d) and (e) [Repeal sections 112 and 139 respectively of the Companies Act 1931.]

(f) [Amends section 165 of the Companies Act 1931.]

(2) to (4) [Amend sections 95, 162 and 164 respectively of the Companies Act 1931.]

(5)(a) [Amends section 2 of the Companies Act 1968.]

(b) Repeals section 16 of the Companies Act 1974.]

(c) [Amends Schedule 1 to the Fines Act 1986.]

32

[S 32 repealed by Insider Dealing Act 1998 Sch 4.]

33 Amendment of accounting requirements etc

(1) The Treasury may by order modify Schedule 1 to the Companies Act 1982.

(2) Without prejudice to the generality of that power an order under this section may-

- (a) impose new requirements with respect to the accounts of companies, the notes to accounts and the documents required to be annexed to the balance sheet of a company;
- (b) prescribe formats for the accounts of companies;
- (c) provide for exemptions from Part 1 and Schedule 1 of the Companies Act 1982 in respect of specified classes of company or business;
- (d) apply as part of that Schedule statements of standard accounting practice issued by such body or bodies as may be prescribed;
- (e) make consequential modifications in the Companies Acts 1931 to 1992 and any other enactments relating to the accounts of companies.

(3) Before making an order under this section the Treasury shall consult with such bodies as appear to it to be representative of accountants in the Island.

(4) An order under this section shall not come into operation unless it is approved by Tynwald.

34 Amendments

(1) The amendments in Schedule 1, being amendments relating to the companies registry, shall have effect.

(2) The amendments in Schedule 2, being amendments relating to the administration of companies, shall have effect.

(3) The amendments in Schedule 3, being amendments relating to written resolutions of private companies, shall have effect.

(4) The amendments in Schedule 4, being amendments relating to exemptions for private companies, shall have effect.

(5) The amendments in Schedule 5, being amendments relating to charitable companies, shall have effect.

(6) The amendments in Schedule 6, being amendments of a miscellaneous nature, shall have effect.

35 Repeals

The enactments mentioned in Schedule 7 are repealed to the extent specified in the third column of that Schedule.

36 Short title and commencement

(1) This Act may be cited as the Companies Act 1992 and shall come into operation on such day as may be appointed by order made by the Treasury and different days may be appointed for different provisions or different purposes.

(2) This Act shall be construed as one with the Companies Acts 1931 to 1986, and those Acts and this Act may be cited together as the the Companies Acts 1931 to 1992.

(3) An order bringing into force any provision may contain such transitional provisions and savings as appear to the Treasury to be necessary or expedient.

[ADO 1/10/1992

(Ss 28 to 33.

Ss 34 and 35, but only iro the paragraphs and entries in Schs 1 to 7 referred to below.

S 36.

In Sch 1 - Paras 2, 4 to 7, 9 to 11, 13, 14 and 16.

In Sch 2 - Paras 1 to 4, 6, 7, 9 to 11, 15 to 17 and 20 to 23.

In Sch 3 - Paras 1 to 3.

In Sch 4 - Paras 1 to 3.

In Sch 5 - Paras 1 to 3.

In Sch 6 - Paras 1 to 16.

In Sch 7 - the entries relating to-

Registration of Business Names Act 1918,

ss 38A, 41, 42, 95, 96, 106, 112, 139, 140, 151, 165 and 319A of the Companies

Act 1931,

Prevention of Fraud (Investments) Act 1968,

Companies Act 1968,

Banking and Financial Dealings (Isle of Man) Act 1973,

Companies Act 1974,

Companies Act 1982, except the repeal relating to s 45(3) of the Companies Act 1931,

Treasury Act 1985,

Fines Act 1986, except the repeal relating to s 45(3) of the Companies Act 1931,

Treasury Act 1985,

Fines Act 1986, except the repeal relating to s 45(3) of the Companies Act 1931,

s 35 of the Companies Act 1986,

Investment Business Act 1991.)

(GC348/92);

1/12/1992.

(Ss 1 to 5.

Ss 6 to 8, but only iro companies which are not restricted schemes or authorised schemes within the meanings provided respectively by ss 11(5) and 31(1) of the Financial Supervision Act 1988.

Ss 9 to 27.

Ss 34 and 35, but only iro the paras and entries in Schedules 1, 2 and 7 referred to below-

In Sch 1 - paras 3, 12 and 15.

In Sch 2 - paras 5 and 8.

In Sch 7 - the entries relating to-

s 45 of the Companies Act 1931,

the Companies Act 1982, the repeal relating to s 45(3) of the Companies Act 1931,

the Fines Act 1986, the repeal relating to s 45(3) of the Companies Act 1931,

but only iro companies which are not restricted schemes or authorised schemes within the meanings provided respectively by ss 11(5) and 31(1) of the Financial Supervision Act 1988.)

(GC437/92);

21/12/1992

(S 35 but only iro the entry in Sch 7 relating to s 53 of the Partnership Act 1909.)

(GC475/92);

1/11/1993

(S 34(1) - but only iro entry 8 in Sch 1.

In Sch 1 - entry 8.)

(SD341/93);

1/1/1994

Ss 34 and 35, but only iro entries in Schs 2 and 7 referred to below.

In Sch 2 - entries 12 to 14, 18, 19 and 24.
In Sch 7 - the entry relating to the Companies Act 1986.)
(SD418/93);
1/4/1994
(The rest of the provisions)
(SD88/94).]

Schedule 1

Amendments Relating to the Companies Registry

[Sch 1 amended by Companies, etc. (Amendment) Act 2003 Sch 2, and amends the following Acts-
Companies Act 1931 q.v.
Companies Act 1961 q.v.]

Schedule 2

Amendments Relating to the Administration of Companies

[Sch 2 amended by Companies, etc. (Amendment) Act 2003 Sch 2, and amends the following Acts-
Companies Act 1931 q.v.
Companies Act 1974 q.v.
Stock Exchange (Completion of Bargains) (Isle of Man) Act 1979 q.v.
Companies Act 1982 q.v.]

Transitional

24. Where a company was, immediately before the commencement of this Schedule, in default with respect to the delivery of one or more annual returns, this Schedule does not affect its obligation to make such a return (in accordance with sections 107 to 110 of the 1931 Act as they then had effect) or any liability arising from failure to do so.

Schedule 3

Amendments Relating to Written Resolutions of Private Companies

[Sch 3 amends the following Act-
Companies Act 1931 q.v.]

Schedule 4

Amendments Relating To Exemptions For Private Companies

[Sch 4 amends the following Acts-
Companies Act 1931 q.v.
Companies Act 1982 q.v.]

Schedule 5

Amendments Relating to Charitable Companies

[Sch 5 amends the following Acts-
Companies Act 1986 q.v.
Charities Registration Act 1989 q.v.]

Schedule 6

Miscellaneous Amendments

[Sch 6 amended by Companies, etc. (Amendment) Act 2003 Sch 2, and amends the following Acts-
Registration of Business Names Act 1918 q.v.
Companies Act 1931 q.v.
Prevention of Fraud (Investments) Act 1968 q.v.
Banking and Financial Dealings (Isle of Man) Act 1973 q.v.
Companies Act 1982 q.v.]

Schedule 7 Repeals

[Sch 7 repeals the following Acts in part-
Partnership Act 1909
Registration of Business Names Act 1918
Companies Act 1931
Prevention of Fraud (Investments) Act 1968
Companies Act 1968
Banking and Financial Dealings (Isle of Man) Act 1973
Companies Act 1974
Companies Act 1982
Treasury Act 1985
Fines Act 1986
Companies Act 1986
Investment Business Act 1991.]
