

Acquisition of own shares

105. (1) A company may acquire its own shares by purchase, or in the case of redeemable shares, by redemption or purchase.

(2) Any such acquisition is subject to payment in respect of the shares' acquisition being made out of—

(a) profits available for distribution; or

(b) where the company proposes to cancel, pursuant to section 106, shares on their acquisition, the proceeds of a fresh issue of shares made for the purposes of the acquisition, but subject to the restriction contained in subsection (3) as respects such proceeds being used to pay a premium there referred to.

(3) Where the shares being acquired were issued at a premium, some or all of the premium payable on their acquisition (being an acquisition to which subsection (2)(b) applies) may be paid out of the proceeds of a fresh issue of shares made for the purposes of the acquisition, up to an amount equal to—

(a) the aggregate of the premiums received by the company on the issue of the shares acquired; or

(b) the current amount of the company's undenominated capital (including any sum transferred to its share premium account in respect of premiums on the new shares),

whichever is less, and in any such case the amount of the company's share premium account or other undenominated capital 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.

(4) Subject to this Part, the acquisition by a company of its own shares shall be authorised by—

(a) the constitution of the company;

(b) the rights attaching to the shares in question; or

(c) a special resolution.

(5) A special resolution under subsection (4) 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 or she had not done so.

(6) With respect to subsection (4) and the matter of passing a special resolution for the purpose thereof by the written means provided for under this Act—

(a) the procedure under section 193 (unanimous written resolutions) is not available for that purpose;

(b) if a resolution referred to in section 194 (majority written resolutions) for the purpose of subsection (4) is signed by a member of the company who holds shares to which the resolution relates, then, in determining whether the requirement under section 194 (4)(a)(ii) — that the resolution be signed by the requisite majority — has been fulfilled, no account shall be taken of the percentage of voting rights conferred by the foregoing shares of that member.

(7) Notwithstanding anything contained in section 189 or in the company's constitution, any member holding one or more shares in the company conferring the right to vote at the meeting concerned may demand a poll on a special resolution under subsection(4).

(8) Where a purchase of shares is proposed to be authorised by special resolution—

(a) the proposed contract of purchase or, if the contract is not in writing, a written memorandum of its terms shall be furnished to the members of the company on request or made available for inspection by the members at the registered office of the company from the date of the notice of the meeting at which the resolution is to be proposed and at the meeting itself;

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

(9) With respect to the proposed authorisation of a purchase of shares by a resolution referred to in section 194, the requirements of subsection (8) shall also apply but with the modification that in paragraph (a) of that subsection “during the period of 21 days before the date of the signing of the resolution by the last member to sign” shall be substituted for “from the date of the notice of the meeting at which the resolution is to be proposed and at the meeting itself”.

(10) A company may agree to a variation of an existing contract of purchase authorised pursuant to a special resolution under this section only if the variation is authorised by special resolution of the company before it is agreed to, and subsections (5) to (9) shall apply in relation to that authority, save that a copy or memorandum (as the case may require) of the existing contract shall also be available for inspection in accordance with subsection (8).

(11) A company shall only make a purchase of its own shares in pursuance of an option if the terms of the option have been authorised by a special resolution of the company in accordance with subsections (5) to (9) and, for the purposes of this subsection, subsection (8) shall have effect as if the references in it to the contract of purchase were references to the contract under which the option arises.

(12) In subsection (11) “option” means an entitlement of the company, or an obligation on the part of the company, to purchase any of its shares that may arise under a contract entered into, being a contract that does not amount to a contract to purchase those shares.