

## Restriction of section 71 (5) in the case of mergers

72. (1) This section applies where the issuing company has secured at least a 90 per cent equity share capital holding in another company in pursuance of an arrangement providing for the allotment of equity share capital in the issuing company, on terms that the consideration for the shares allotted is to be provided—

(a) by the issue or transfer to the issuing company of equity shares in the other company; or

(b) by the cancellation of any such shares not held by the issuing company.

(2) If the equity shares in the issuing company, allotted in pursuance of the arrangement in consideration for the acquisition or cancellation of equity shares in the other company, are issued at a premium section 71 (5) does 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 restriction on the application of section 71 (5) provided by subsection (2) extends to any shares in the issuing company allotted on those terms in pursuance of the arrangement.

(4) Subject to subsection (5), the issuing company ("company X") is to be regarded for purposes of this section as having secured at least a 90 per cent equity share capital holding in another company ("company Y") in pursuance of such an arrangement as is mentioned in subsection (1) if in consequence of an acquisition or cancellation of equity shares in company Y (in pursuance of that arrangement)—

(a) company X holds equity shares in company Y (whether all or any of those shares were acquired in pursuance of that arrangement, or not); and

(b) the aggregate nominal value of the equity shares so held by company X equals 90 per cent or more of the nominal value of company Y's equity share capital (excluding any shares in company Y held as treasury shares).

(5) Where the equity share capital of the other company is divided into different classes of shares, this section does not apply unless the requirements of subsection (1) are satisfied in relation to each of those classes of shares 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, are to be regarded for purposes of this section as held by the issuing company.

(7) In relation to a company and its shares and capital, the following definitions apply for purposes of this section—

(a) “equity share capital” means the company's issued share capital excluding any part of it which, neither as respects dividends nor as respects capital, carries any right to participate beyond a specified amount in a distribution;

(b) “equity shares” means shares comprised in the company's equity share capital; and

(c) “non-equity shares” means shares (of any class) not so comprised,

and “arrangement” means any agreement, scheme or arrangement or 601).

(8) This section does not apply if the issue of shares took place before the commencement of this section.