

## Effect of company's failure to redeem or purchase

111. (1) This section applies to—

- (a) redeemable shares issued after 1 February 1991;
- (b) shares which have been converted into redeemable shares; and
- (c) shares which a company has agreed to purchase pursuant to section 105.

(2) Without prejudice to any other right of the holder of any shares to which this section applies, a company shall not be liable in damages in respect of any failure on its part to redeem or purchase any such shares.

(3) Neither the High Court nor the Circuit Court shall grant an order for specific performance of the terms of redemption or purchase of the shares to which this section applies if the company shows that it is unable to meet the cost of redeeming or purchasing the shares out of profits available for distribution.

(4) Where, at the commencement of the winding up of a company, any shares to which this section applies have not been redeemed or purchased then, subject to subsections (5), (6) and (7), the terms of redemption or purchase may be enforced against the company and the shares when so redeemed or purchased under this subsection 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 that 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 for 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 capacity as such; and

(b) if other shares carry rights, whether as to capital or 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 the application by section 619 of the rules of bankruptcy in the winding up of 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.