

170A. Liability of directors and shareholders involved in share redemption or buy-back out of capital

- (1) This section applies where a company is being wound up and—
 - (a) it has under Division 4 of Part 5 of the Companies Ordinance (Cap. 622) made a payment out of capital in respect of the redemption or buy-back of any of its own shares (*payment out of capital*) from a person (*past shareholder*); and
 - (b) the aggregate amount of the company's assets and the amounts paid by way of contribution to its assets (apart from this section) is insufficient for payment of its debts and liabilities, and the costs, charges and expenses of the winding up.
- (2) If the winding up commenced on, or within 1 year after, the date on which the payment out of capital was made, then the following persons are liable to contribute to the company's assets in accordance with subsection (3) so as to enable the insufficiency mentioned in subsection (1)(b) to be met—
 - (a) the past shareholder; and
 - (b) the directors who signed the solvency statement required to be made under section 259(1) of the Companies Ordinance (Cap. 622) in relation to the payment out of capital (except a director who shows that the director had reasonable grounds for forming the opinion expressed in the statement).
- (3) For the purposes of subsection (2)—
 - (a) the past shareholder is liable to contribute an amount not exceeding the amount of the payment out of capital made by the company in respect of the shares redeemed or bought back from the past shareholder; and
 - (b) the directors are jointly and severally liable with the past shareholder to contribute the amount to which the past shareholder is liable to contribute.
- (4) A person who has contributed any amount to the assets of a company under this section may apply to the court for an order directing any other person who is jointly and severally liable in respect of that amount to pay the person an amount that the court thinks just and equitable.
- (5) The limitations under section 170 on any liability to contribute do not apply in relation to liability accruing under this section.

(Added 14 of 2016 s. 20)