STATUTORY RULES OF NORTHERN IRELAND

2004 No. 275

COMPANIES

Companies (Acquisition of Own Shares) (Treasury Shares) Regulations (Northern Ireland) 2004

Made - - - -	*28th June 2004*
Coming into operation	*2nd August 2004*

The Department of Enterprise, Trade and Investment, being a Department designated(**1**) for the purposes of section 2(2) of the European Communities Act 1972(**2**) in relation to measures relating to the acquisition by companies of their own shares, and to distributions to their shareholders, in exercise of the powers conferred on it by the said section 2(2) and of every other power enabling it in that behalf, hereby makes the following Regulations:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Companies (Acquisition of Own Shares) (Treasury Shares) Regulations (Northern Ireland) 2004 and shall come into operation on 2nd August 2004.

(2) In these Regulations, "the 1986 Order" means the Companies (Northern Ireland) Order 1986(**3**).

(3) The Interpretation Act (Northern Ireland) 1954(**4**) shall apply to these Regulations as it applies to an Act of the Assembly.

Amendment of Article 172

2.—(1) Article 172 of the 1986 Order (power of company to purchase own shares) is amended as follows.

(2) For paragraph (2) substitute –

"(2) Articles 169 and 170 apply to the purchase by a company under this Article of its own shares as they apply to the redemption of redeemable shares.

This is subject to paragraphs (2A) and (2B).

(**1**) S.I. 1999/654
(**2**) 1972 c. 68 as amended by the European Economic Area Act 1993 (c. 51)
(**3**) S.I. 1986/1032 (N.I. 6)
(**4**) 1954 c. 33 (N.I.)

(2A) The terms and manner of a purchase under this Article need not be determined by the Articles as required by Article 170(3).

(2B) Where a company makes a purchase of qualifying shares out of distributable profits under this Article, Article 172A applies to the shares purchased and accordingly Article 170(4) does not apply to those shares.".

(3) At the end of paragraph (3) insert "or shares held as treasury shares".

(4) After paragraph (3) insert the following paragraph –

"(4) For the purposes of this Chapter "qualifying shares" are shares which –

(a) are included in the official list in accordance with the provisions of Part 6 of the Financial Services and Markets Act 2000(**5**),

(b) are traded on the market known as the Alternative Investment Market established under the rules of London Stock Exchange plc,

(c) are officially listed in an EEA State, or

(d) are traded on a market established in an EEA State which is a regulated market for the purposes of Article 16 of Council Directive 93/22/EEC on investment services in the securities field(**6**),

and in sub-paragraph (a) "the official list" has the meaning given in section 103(1) of the Financial Services and Markets Act 2000.".

Insertion of Articles 172A to 172G

3. After Article 172 of the 1986 Order insert the following Articles –

"Treasury shares

172A.—(1) Where qualifying shares are purchased by a company out of distributable profits in accordance with Article 172, the company may –

(a) hold the shares (or any of them), or

(b) deal with any of them, at any time, in accordance with Article 172D.

(2) Where shares are held under paragraph (1)(a) then, for the purposes of Article 360, the company must be entered in the register as the member holding those shares.

(3) In this Order, references to a company holding shares as treasury shares are references to the company holding shares which –

(a) were (or are treated as having been) purchased by it in circumstances in which this Article applies, and

(b) have been held by the company continuously since they were so purchased.

Treasury shares: maximum holdings

172B.—(1) Where a company has shares of only one class, the aggregate nominal value of shares held as treasury shares must not at any time exceed 10 per cent of the nominal value of the issued share capital of the company at that time.

(2) Where the share capital of a company is divided into shares of different classes, the aggregate nominal value of the shares of any class held as treasury shares must not at any

(**5**) 2000 c. 8
(**6**) O.J. No. L141, 11.6.93, p. 27

time exceed 10 per cent of the nominal value of the issued share capital of the shares in that class at that time.

(3) Where paragraph (1) or (2) is contravened by a company, the company must dispose of or cancel the excess shares, in accordance with Article 172D, before the end of the period of 12 months beginning with the day on which that contravention occurs.

For this purpose "the excess shares" means such number of the shares, held by the company as treasury shares at the time in question, as resulted in the limit being exceeded.

Treasury shares: voting and other rights

172C.—(1) This Article applies to shares which are held by a company as treasury shares ("the treasury shares").

(2) The company must not exercise any right in respect of the treasury shares and any purported exercise of such a right is void.

(3) The rights to which paragraph (2) applies include any right to attend or vote at meetings (including meetings under Article 418).

(4) No dividend may be paid, and no other distribution (whether in cash or otherwise) of the company's assets (including any distribution of assets to members on a winding up) may be made, to the company in respect of the treasury shares.

(5) Nothing in this Article is to be taken as preventing –

(a) an allotment of shares as fully paid bonus shares in respect of the treasury shares, or

(b) the payment of any amount payable on the redemption of the treasury shares (if they are redeemable shares).

(6) Any shares allotted as fully paid bonus shares in respect of the treasury shares shall be treated for the purposes of this Order as if they were purchased by the company at the time they were allotted, in circumstances in which Article 172A(1) applied.

Treasury shares: disposal and cancellation

172D.—(1) Where shares are held as treasury shares, a company may at any time –

(a) sell the shares (or any of them) for cash,

(b) transfer the shares (or any of them) for the purposes of or pursuant to an employees' share scheme, or

(c) cancel the shares (or any of them).

(2) For the purposes of paragraph (1)(a), "cash", in relation to a sale of shares by a company, means –

(a) cash (including foreign currency) received by the company, or

(b) a cheque received by the company in good faith which the directors have no reason for suspecting will not be paid, or

(c) a release of a liability of the company for a liquidated sum, or

(d) an undertaking to pay cash to the company on or before a date not more than 90 days after the date on which the company agrees to sell the shares.

(3) But if the company receives a notice under Article 422 (right of offeror to buy out minority shareholders)(**7**) that a person desires to acquire any of the shares, the company must not, under paragraph (1), sell or transfer the shares to which the notice relates except to that person.

(4) If under paragraph (1) the company cancels shares held as treasury shares, the company must diminish the amount of the issued share capital by the nominal value of the shares cancelled; but the cancellation is not to be taken as reducing the amount of the company's authorised share capital.

(5) The directors may take such steps as are requisite to enable the company to cancel its shares under paragraph (1) without complying with Articles 145 and 146 (special resolution for reduction of share capital; application to court for order of confirmation).

Treasury shares: mandatory cancellation

172E.—(1) If shares held as treasury shares cease to be qualifying shares, the company must forthwith cancel the shares in accordance with Article 172D.

(2) For the purposes of paragraph (1), shares are not to be regarded as ceasing to be qualifying shares by virtue only of –

(a) the suspension of their listing in accordance with the applicable rules in the EEA State in which the shares are officially listed, or

(b) the suspension of their trading in accordance with –

(i) in the case of shares traded on the market known as the Alternative Investment Market, the rules of London Stock Exchange plc, and

(ii) in any other case, the rules of the regulated market on which they are traded.

(3) For the purposes of this Article "regulated market" means a market which is a regulated market for the purposes of Article 16 of Council Directive 93/22/EEC on investment services in the securities field.

Treasury shares: proceeds of sale

172F.—(1) Where shares held as treasury shares are sold, the proceeds of sale shall be dealt with in accordance with this Article.

(2) Where the proceeds of sale are equal to or less than the purchase price paid by the company for the shares, the proceeds shall be treated for the purposes of Part IX as a realised profit of the company.

(3) Where the proceeds of sale exceed the purchase price paid by the company for the shares –

(a) that part of the proceeds of sale that is equal to the purchase price paid shall be treated for the purposes of Part IX as a realised profit of the company, and

(b) a sum equal to the excess shall be transferred to the company's share premium account.

(4) The purchase price paid by the company for the shares shall be determined by the application of a weighted average price method.

(5) Where the shares were allotted to the company as fully paid bonus shares, the purchase price paid for them shall, for the purposes of paragraph (4), be treated as being nil.

(**7**) Article 422 was substituted by Article 26 of the Companies (Northern Ireland) Order 1989 (S.I. 1989/2404 (N.I. 18))

Treasury shares: penalty for contravention

172G. If a company contravenes any provision of Articles 172A to 172F every officer of it who is in default is liable to a fine.".

Consequential amendments

4. The Schedule (which contains consequential amendments) has effect.

Sealed with the Official Seal of the Department of Enterprise, Trade and Investment on 28th June 2004.

Michael Bohill
A senior officer of the
Department of Enterprise, Trade and Investment