



COMPANIES ACT 1992

**COMPANIES ACT 1931 to 2004 (TREASURY SHARE)  
REGULATIONS 2010**

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**COMPANIES ACT 1931 to 2004 (TREASURY  
SHARE) REGULATIONS 2010**

*Approved by Tynwald*                      *April 2010*

*Coming into operation*                      *1 May 2010*

The Financial Supervision Commission makes these Regulations under section 25A of the Companies Act 1992<sup>1</sup>.

**1 Title**

These Regulations are the Companies Act 1931 to 2004 (Treasury Share) Regulations 2010.

**2 Commencement**

If approved by Tynwald<sup>2</sup>, these Regulations come into operation on 1 May 2010.

**3 Interpretation**

In these Regulations —

“the Act” means the Companies Act 1992;

“cash consideration” means —

- (a) cash received by the company;
- (b) a cheque received by the company in good faith that the directors have no reason for suspecting will not be paid; or
- (c) payment by any other means giving rise to a present or future entitlement (of the company or a person acting on the company’s behalf) to a payment, or credit equivalent to

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<sup>1</sup> 1992 c.4

<sup>2</sup> As required by section 25A(4) of the Act

payment, in cash. For this purpose “cash” includes foreign currency;

“the Companies Registry” means the Department of Economic Development;

“distributable profits” has the meaning given in section 25 of the Act;

“excess shares” means the number of treasury shares held by the company that results in the maximum allowable limit of 10% of the nominal value of issued capital of any class of shares being exceeded;

“incorporated in the Island” includes companies incorporated, formed and registered or capable of being wound up under the Companies Act 1931<sup>3</sup>;

“market traded company” means a company incorporated in the Island, whose shares are admitted to trading on an established market;

“qualifying shares” are the shares (which are listed or traded on a market) of a market traded company; and

“treasury shares” means those shares of a company which—

- (a) were (or are treated as having been) purchased by the company in the circumstances prescribed in these Regulations; and
- (b) have been held continuously by the company since they were purchased (or treated as purchased).

#### **4 Treasury shares**

- (1) This regulation applies where—
  - (a) a market traded company purchases its own shares in accordance with section 10 of the Act;
  - (b) the purchase is made out of distributable profits; and
  - (c) the shares are qualifying shares.
- (2) Where this regulation applies the company may—
  - (a) hold the shares (or any of them);
  - (b) dispose of any of them under regulation 8; or
  - (c) cancel any of them under regulation 10.

#### **5 Notice of purchase (FORM T1)**

- (1) Where treasury shares are held by the company, the company must be entered in its register of members as the member holding the shares.
- (2) Within one month of the purchase of treasury shares a company must deliver a return to the Companies Registry. The return must include details of—
  - (a) the class of shares;
  - (b) the number and nominal value of the shares; and

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<sup>3</sup> XIII p.235

- (c) the date of purchase of the shares.

## **6 Maximum holdings**

- (1) Where a company has shares of only one class, the aggregate nominal value of treasury shares must not at any time exceed 10% of the nominal value of the issued share capital of the company at that time.
- (2) Where a company has different classes of shares, the aggregate nominal value of the shares of any class held as treasury shares must not at any time exceed 10% of the nominal value of the issued capital for that class at that time.
- (3) If a company exceeds the maximum holding of 10% in paragraphs (1) or (2), the company must dispose of or cancel the excess shares, in accordance with regulation 8 or regulation 10.
- (4) A company required to cancel or dispose of excess shares under paragraph 3 must do so within twelve months of the date on which the contravention occurred.
- (5) Purchases leading to excess shares being held are not void.

## **7 Exercise of rights**

- (1) The rights of treasury shares are suspended and any attempt to exercise any right is void. In particular—
  - (a) the company must not exercise any right to attend or vote at meetings; and
  - (b) no dividend may be paid, and no other distribution 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.
- (2) Nothing in this regulation prevents—
  - (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).
- (3) Shares allotted as fully paid bonus shares in respect of the treasury shares are treasury shares and are treated as if purchased by the company at the time they were allotted to it.

## **8 Disposal**

The company may at any time—

- (a) sell the treasury shares (or any of them) for a cash consideration; or
- (b) transfer the treasury shares (or any of them) for the purposes of or pursuant to an employees' share scheme.

## **9 Notice of disposal (FORM T2)**

- (1) Where treasury shares—
  - (a) are sold; or
  - (b) are transferred for the purposes of an employees' share scheme;the company must file a return at the Companies Registry within one month of the date of disposal of the shares.
- (2) The return must include the following information—
  - (a) the class of shares;
  - (b) the number and nominal value of the shares, and
  - (c) the date the shares were disposed of.
- (3) Details of shares disposed of on different dates may be included in a single return.

## **10 Cancellation**

- (1) A company may at any time cancel treasury shares (or any of them).
- (2) As soon as a company becomes aware that treasury shares cease to be qualifying shares, the company must cancel the shares.
- (3) For this purpose shares are not to be regarded as ceasing to be qualifying shares by virtue only of the suspension of their trading in accordance with the rules of the market on which they are traded.
- (4) If a company cancels treasury shares, the amount of the company's issued share capital is reduced by the nominal amount of the shares cancelled but the cancellation does not reduce the amount of the company's authorised share capital.
- (5) The directors may take any steps required to enable the company to cancel its shares under this regulation without complying with the provisions of sections 56 to 61 of the Companies Act 1931 (Reduction of Share Capital).

## **11 Notice of cancellation (FORM T3)**

- (1) A company that cancels treasury shares must deliver a return to the Companies Registry within one month of the date on which the shares are cancelled.
- (2) The return must state with respect to shares of each class cancelled—
  - (a) the number and nominal value of the shares; and
  - (b) the date on which they were cancelled.
- (3) Details of shares cancelled on different dates may be included in a single return.
- (4) The return must be accompanied by a statement of capital which must state with respect to the company's share capital immediately following the cancellation—
  - (a) the total number of shares of the company;
  - (b) the aggregate nominal value of those shares;

- (c) for each class of shares—
  - (i) details of any rights attached to the shares;
  - (ii) the total number of shares of that class; and
  - (iii) the aggregate nominal value of shares of that class; and
- (d) the amount paid up and the amount (if any) unpaid on each share and must state whether of the unpaid amount relates to the nominal value of the share or the share premium.

## **12 Treatment of proceeds of sale**

- (1) Where treasury shares are sold, the proceeds of sale must be dealt with in accordance with this regulation.
- (2) If the proceeds of sale are equal to or less than the purchase price paid by the company for the shares, the proceeds are treated as a realised profit of the company.
- (3) If the proceeds of sale exceed the purchase price paid by the company—
  - (a) an amount equal to the purchase price paid is treated as a realised profit of the company; and
  - (b) the excess must be transferred to the company's share premium account.
- (4) For the purposes of this regulation—
  - (a) the purchase price paid by the company must be calculated using a weighted average price method; and
  - (b) if the shares were allotted to the company as fully paid bonus shares, the purchase price paid for them is treated as nil.

## **13 Amendment of section 10 of the Act**

After section 10(1) insert—

“(1A) Notwithstanding anything to the contrary in this section, a company may purchase and hold its shares in treasury in accordance with regulations under section 25A (power to permit the holding of treasury shares.)”.

Made 15<sup>th</sup> March 2010.

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Commissioner

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Chief Executive

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## **EXPLANATORY NOTE**

(This note is not part of the Regulations)

These Regulations apply to companies incorporated under the Companies Act 1931 whose shares are traded on a market. These companies are permitted to purchase and hold a maximum of 10% of the nominal value of each share class in treasury (i.e. held by the company itself without it being obliged to cancel these shares).

A company may, at its discretion, continue to hold, dispose of or cancel treasury shares where the holding is less than the maximum.

The Regulations require returns to be filed at the Companies Registry on purchase, disposal or cancellation of treasury shares.