



COMPANIES ACTS 1931 TO 2004 (TREASURY SHARE) REGULATIONS 2013

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*Companies Act 1992*

COMPANIES ACTS 1931 TO 2004 (TREASURY SHARE) REGULATIONS 2013

*Approved by Tynwald:**Coming into Operation:**1 December 2013*

The Department of Economic Development makes the following Regulations under section 25A of the Companies Act 1992.

1 Title

These Regulations are the Companies Acts 1931 to 2004 (Treasury Share) Regulations 2013.

2 Commencement

If approved by Tynwald, these Regulations come into operation on 1 December 2013.

3 Interpretation

(1) In these Regulations —

“**the Act**” means the Companies Act 1992;

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

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

“**incorporated in the Island**” includes companies incorporated, formed and registered or capable of being wound up under the Companies Act 1931;

“**qualifying company**” means a company incorporated in the Island —

- (a) whose shares are admitted to trading on an established market;
- (b) which is a public company within the meaning given by section 341 of the Companies Act 1931; or
- (c) which is a collective investment scheme within the meaning given in Part 1 of the Collective Investment Schemes Act 2008;

“**qualifying shares**” are the shares of a qualifying 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).
- (2) In these Regulations “**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;
 - (c) a release of a liability of the company for a liquidated sum;
 - (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; or
 - (e) 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 payment, in cash.

For this purpose “cash” includes foreign currency.

4 Treasury shares

- (1) This regulation applies where —
- (a) a qualifying 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); or
 - (b) deal with any of them, at any time, in accordance with regulations 7 and 9.
- (3) Where shares are held by the company, the company must be entered in its register of members as the member holding the shares.
- (4) In these regulations, references to a company holding shares as treasury shares are to the company holding shares that —
- (a) were (or are treated as having been) purchased by it in circumstances in which this regulations applies; and
 - (b) have been held by the company continuously since they were so purchased (or treated as purchased).

5 Notice of purchase

- (1) Where shares are purchased (or treated as having been purchased) by a company as treasury shares, the company must deliver a return to the Companies Registry not later than one month after the shares are purchased.
- (2) The return must state with respect to shares of each class purchased —
 - (a) the number and nominal value of the shares;
 - (b) the date on which they were purchased;
 - (c) the total number of shares held in treasury; and
 - (d) the total number of shares in issue.
- (3) Particulars of shares purchased on different dates may be included in a single return.

6 Exercise of rights

- (1) This regulation applies where shares are held by a company as treasury shares.
- (2) The company must not exercise any right in respect of the treasury shares, and purported exercise of such a right is void.

This applies, in particular, to any right to attend or vote at meetings.
- (3) 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 liquidation) may be made to the company, in respect of the treasury shares.
- (4) Nothing in this section 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).
- (5) Shares allotted as fully paid bonus shares in respect of the treasury shares are treated as if purchased by the company, at the time they were allotted, in circumstances in which regulation 4 applies.

7 Disposal

Where shares are held as treasury shares, the company may at any time —

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

8 Notice of disposal

- (1) Where the shares held by a company as treasury shares —
 - (a) are sold; or
 - (b) are transferred for the purposes of an employees' share scheme,the company must deliver a return to the Companies Registry not later than one month after the disposal of the shares.
- (2) The return must state with respect to shares of each class disposed of —
 - (a) the number and nominal value of the shares;
 - (b) the date of disposal of the shares;
 - (c) the total number of shares held in treasury; and
 - (d) the total number of shares in issue.
- (3) Particulars of shares disposed of on different days may be included in a single return.

9 Cancellation

- (1) Where shares are held as treasury shares, the company may at any time cancel the shares (or any of them).
- (2) If the shares held as treasury shares cease to be qualifying shares, the company must forthwith 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 any established market on which they may be traded.
- (4) If the company cancels shares held as treasury shares, the amount of the company's share capital is reduced accordingly by the nominal amount of the shares cancelled.
- (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).

10 Notice of cancellation

- (1) Where shares held by a company as treasury shares are cancelled, the company must deliver a return to the Companies Registry not later than one month after the shares are cancelled.

This does not apply to shares that are cancelled forthwith on their acquisition by the company.

- (2) The return must state with respect to shares of each class cancelled —
 - (a) the number and nominal value of the shares;
 - (b) the date on which they were cancelled;

- (c) the total number of shares held in treasury; and
 - (d) the total number of shares in issue.
- (3) Particulars of shares cancelled on different dates may be included in a single return.

11 Treatment of proceeds of sale

- (1) Where shares held as treasury shares are sold, the proceeds of the 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 for these purposes as a realised profit of the company.
- (3) If the proceeds of the 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 determined by the application of 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.

12 Maximum holdings

Any obligation to dispose of or cancel treasury shares held in excess of 10% of the issued shares of any class under Companies Act 1931 to 2004 (Treasury Share) Regulations 2010 ceases to exist on 1 December 2013.

13 Modification of section 10 of the Act

- (1) Section 10 of the Act is modified as follows.
- (2) After subsection (1) insert —
 - ☐(1A) Subject only to subsection (3), 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). ☐”.
- (3) For subsection (3) substitute —
 - ☐“(3) A company may not purchase any of its shares under this section if as a result of the purchase of the shares in question there would no longer be any member of the company holding shares other than —

- (a) redeemable shares; or
- (b) shares held as treasury shares. **22**.

14 Revocations

The Companies Act 1931 to 2004 (Treasury Share) Regulations 2010 are revoked.

MADE

J P SHIMMIN

Minister for Economic Development

Consultation Draft

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations apply to certain companies incorporated under the Companies Act 1931. These companies are public limited companies, companies whose shares are admitted to trading on an established market and collective investment schemes within the meaning given in Part 1 of the Collective Investment Schemes Act 2008.

Companies that wish to repurchase shares already issued must ordinarily do this under Part 1 of the Companies Act 1992. Any shares that are repurchased using this method must, on repurchase, be cancelled and the issued share capital of the company is reduced accordingly.

A company to which these Regulations apply, may purchase its own shares without complying with the requirement to cancel these shares. The company must be entered on the register of members. While shares are held by the company as treasury shares, the normal rights that attach to shares, such as the right to vote and to receive a dividend, are suspended.

These Regulations replace the regime that was in place under the Companies Act 1931 to 2004 (Treasury Share) Regulations 2010 and revoke the 2010 Regulations.