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The Companies (Purchase of Own Shares) (Treasury Shares) Ordinance, 2006

**The Companies (Purchase of Own Shares)
(Treasury Shares) Ordinance, 2006**

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The Companies (Purchase of Own Shares) (Treasury Shares) Ordinance, 2006

THE STATES, in pursuance of their Resolution of the 28th September 2005^a, and in exercise of the powers conferred upon them by section 12 of the Companies (Amendment) (Guernsey) Law, 1996^b, and of all other powers enabling them in that behalf, hereby order:-

Nature and treatment of treasury shares.

1. (1) A company may hold any shares, purchased by it -
 - (a) in accordance with the Companies (Purchase of Own Shares) Ordinance, 1998^c ("**the 1998 Ordinance**"), and
 - (b) out of distributable profits,

as treasury shares if it is authorised to do so by virtue of -

- (i) the provisions of its memorandum or articles, or
- (ii) a resolution passed in general meeting.

(2) Where the company holds its shares as treasury shares the following provisions of this Ordinance and not section 3(3) of the 1998 Ordinance

^a Article XIII of Billet d'État No. XIV of 2005.

^b Order in Council No. XIV of 1996.

^c No. VIII of 1998.

(cancellation of shares purchased by company) shall apply to those shares.

(3) Where a company holds shares as treasury shares, and for the duration of the period for which they are so held -

- (a) the rights in respect of those shares shall not be exercised by or against the company,
- (b) the obligations in respect of those shares shall not be enforced by or against the company,
- (c) any purported such exercise or enforcement shall be void.

(4) Without prejudice to the generality of subsection (3), the company shall not -

- (a) exercise any voting rights attaching to those shares,
- (b) make or receive any dividend in respect of those shares,
- (c) make or receive any other distribution (whether in cash or otherwise) of the company's assets (including any distribution of assets to members on a winding up) in respect of those shares.

(5) Where a company holds shares as treasury shares, the Register of Members, within the meaning of section 55 of the Companies

(Guernsey) Law, 1994^d ("the 1994 Law"), shall include an entry indicating the number of shares held as treasury shares.

- (6) Nothing in this section is to be taken as preventing -
 - (a) an allotment of shares as fully paid bonus shares in respect of treasury shares, or
 - (b) the payment of any amount payable on the redemption of the treasury shares (if they are redeemable shares).

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

- (8) Where a company holds shares as treasury shares, it may -
 - (a) continue to hold them in accordance with this section,
 - (b) cancel them in accordance with section 3,
 - (c) sell them in accordance with section 4, or
 - (d) transfer them to an employees' share scheme.

(9) The Schedule to this Ordinance, which makes various amendments consequent to the creation of treasury shares, shall have effect.

^d No. XXXIII of 1994.

Maximum holding of treasury shares.

2. (1) The aggregate nominal value of the shares of any class held as treasury shares must not at any time exceed 10 per cent (or such other per cent as the Department may by regulations prescribe) of the nominal value of the issued share capital of the shares in that class at that time.

(2) In the case of shares held as treasury shares which are shares of no par value within the meaning of the Companies (Shares of No Par Value) Ordinance, 2002^e ("**the 2002 Ordinance**"), the number of those shares of any class must not at any time exceed 10 per cent (or such other per cent as the Department may by regulations prescribe) of the total number of issued shares of that class at that time.

Cancellation of treasury shares.

3. (1) Where shares held as treasury shares are cancelled, the amount of the company's issued share capital shall be diminished by the nominal value of those shares: but the cancellation is not to be taken as reducing the amount of the company's authorised share capital.

(2) The amount by which the company's issued share capital is diminished on cancellation of those shares shall be transferred to the capital redemption reserve.

(3) This section shall not apply to shares of no par value within the meaning of the 2002 Ordinance.

Sale of treasury shares.

^e No. VI of 2002.

4. (1) Where shares held as treasury shares are sold and 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 as a distributable profit of the company.

(2) Where shares held as treasury shares are sold and 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 as a distributable profit of the company, and

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

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

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

Interpretation.

5. (1) In this Ordinance, unless the context requires otherwise -

"Department" means the Commerce and Employment Department,

"employees' share scheme" is a scheme for encouraging or facilitating the holding of shares or debentures in a company by or for the benefit of -

- (a) the bona fide employees or former employees of the company, the company's subsidiary or holding company or a subsidiary of the company's holding company,
- (b) the wives, husbands, widows, widowers or children or step-children under the age of 18 of such employees or former employees, or
- (c) such other persons or classes of persons as the Department may by regulations prescribe,

"the 1994 Law" means the Companies (Guernsey) Law, 1994,

"the 1998 Ordinance" means the Companies (Purchase of Own Shares) Ordinance, 1998,

"the 2002 Ordinance" means the Companies (Shares of No Par Value) Ordinance, 2002,

"treasury shares" means shares held in accordance with the provisions of this Ordinance.

(2) Expressions used in this Ordinance shall, unless the context requires otherwise, have the same meanings as in the 1998 Ordinance.

(3) References in this Ordinance to an enactment are references thereto as from time to time amended, re-enacted (with or without modification), extended or applied.

Citation.

6. This Ordinance may be cited as the Companies (Purchase of Own Shares) (Treasury Shares) Ordinance, 2006.

Commencement.

7. This Ordinance shall come into force on the 1st day of May, 2006.

SCHEDULE

Section 1(9)

Consequential Amendments

1. In section 19(2)(a) of the 1994 Law (annulment of alteration of objects by holders of 15% of issued share capital) after the words "issued share capital" insert the words ", excluding any shares held as treasury shares".

2. In section 28(2)(c) of the 1994 Law (return to state names and addresses of company's members) after the words "company's members" insert the words ", other than the company itself where it holds its own shares as treasury shares".

3. In section 28(2)(d) of the 1994 Law (return to state number of shares issued to each member) after the words "each member" insert the words ", other than the company itself where it holds its own shares as treasury shares,".

4. After section 28(2)(d) of the 1994 Law insert the following paragraph

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"(da) the number of shares the company holds as treasury shares;".

5. In section 51(2) of the 1994 Law (annulment of variation of class rights by holders of 15% of issued share capital) after the words "issued shares of the class in question" insert the words ", excluding any shares held as treasury shares,".

6. In section 55(1) of the 1994 Law (Register of Members) after the

word "shareholders" insert the words ", other than the company itself where it holds its own shares as treasury shares,".

7. In section 57(1) of the 1994 Law (index of members) after the words "members of the company" insert the words ", other than the company itself where it holds its own shares as treasury shares,".

8. In section 69(d) of the 1994 Law (list of members available for inspection during meeting) after the words "of all members" insert the words ", other than the company itself where it holds its own shares as treasury shares,".

9. In section 69(g) of the 1994 Law (quorum of members for meeting) after the words "between them" insert the words ", excluding any shares held as treasury shares,".

10. In section 69(m) of the 1994 Law (one tenth of members can demand a poll at a meeting) after the words "issued share capital between them" insert the words ", excluding any shares held as treasury shares,".

11. In section 70(2) of the 1994 Law (members' requisition of extraordinary general meeting) after the words "between them" insert the words ", excluding any shares held as treasury shares,".

12. In section 94(d) of the 1994 Law (compulsory winding up if less than two members) after the words "members of the company" insert the words ", other than the company itself where it holds its own shares as treasury shares,".