A) Capital redemption reserve fund.

Section 70 of the Alberta Companies Act is as follows:

**70. (1) Redemption of shares.**—No shares that are, or at the option of the company are, liable to be redeemed shall be redeemed except out of such profits of the company as would otherwise be available for dividend or out of the proceeds of a fresh issue of shares made for the purposes of the redemption.

**(2)** No such shares shall be redeemed unless they are fully paid.

**(2.1)** Where shares have been redeemed under this section, notice thereof shall be given to the Registrar by the company within 30 days of the redemption date and every company which fails to give notice as required by this subsection is guilty of an offence.

**[Subsec. (2.1) added by 1972, c. 21, s. 2.]**

**(3)** Where any such shares are redeemed otherwise than out of the proceeds of a fresh issue, a sum equal to the nominal amount of the shares redeemed shall, out of profits that would otherwise have been available for dividend, be transferred to a reserve fund, to be called "the capital redemption reserve fund," and the provisions of this Act relating to the reduction of the share capital of a company apply, except as provided in this section, as if the capital redemption reserve fund were paid-up share capital of the company.

(4) Where any such shares are redeemed out of the proceeds of a fresh issue, the premium, if any, payable on redemption, shall be provided for out of the profits of the company before the shares are redeemed.

(5) There shall be included in every balance sheet of a company that has issued redeemable preference shares a statement specifying what part of the issued capital of the company consists of such shares, and the date on or before which those shares are, or are to be, liable to be redeemed.

(6) If a company fails to comply with the provisions of subsection (5), the company, and every officer of the company who is in default, is guilty of an offence and liable upon summary conviction to a fine not exceeding five hundred dollars.

(7) Subject to the provisions of this section, the redemption of preference shares thereunder may be effected on such terms and in such manner as may be provided by the articles of the company.

(8) Where pursuant to this section a company has redeemed or is about to redeem any preference shares, it may issue shares up to the nominal amount of the shares redeemed or to be redeemed as if those shares had never been issued, and accordingly the share capital of the company shall not for the purposes of any enactments relating to fees be deemed to be increased by the issue of shares pursuant to this subsection.

(9) Subsection (8) does not apply to the acceptance by a company of the surrender of mutual fund shares pursuant to section 71.

(10) Notwithstanding subsection (8), where new shares are issued before the redemption of the old shares, the new shares shall not, so far as relates to the payment of fees, be deemed to have been issued pursuant to subsection (8) unless the old shares are redeemed within one month after the issue of the new shares.

(11) Where new shares have been issued pursuant to subsection (8), the capital redemption reserve fund may, notwithstanding anything in this section, be applied by the company, up to an amount equal to the nominal amount of the shares so issued, in paying up unissued shares of the company to be issued to members of the company as fully paid bonus shares.

(12) Nothing in this section in any way interferes with the discretion of the court to sanction any scheme for reduction of capital under the provisions of section 48, whether the scheme does or does not involve the cancellation, payment or redemption of preference shares. [R.S.A. 1955, c. 53, s. 79; 1967, c. 9, s. 3]

Under the provisions of the section shares can only be redeemed, without going through the reduction of Capital provisions contained in Section 38, from one of two sources, profits otherwise available for dividend, or the proceeds of a fresh iss redeem the old issue. No problem really arises in the second ca in that the new issue is simply substituted for the old. There may be some mechanical difficulties in the actual timing of the new issue in substitution for the old and perhaps some problem with the registrars fees which are dealt with in sub sections 8, 10, and 11.

Sub Section three contains the provision for the "Capi Redemption Reserve Fund". Looking at the balance sheet of Littl Widget Ltd., in the event the company chose to redeem the 8,000 issued preferred shares at $10.00 each, the following balance sh would be necessary:

A) Cash and deposits would decrease by $80,000.00 leaving a balance of $2,000.00.

B) Issued Capital would decrease by $80,000.00.

C) In principal at lease accumulated surplus would reduce by $80,000.00, and become a figure of $46,500.00, and a separate entry would be made for a Capital Redemption Reserve fund of $80,000.0

D) Authorized capital might remain the same or might become 2,000 redeemable preferred shares.

Dealing with item D) first. The provisions of sub sec 8 would appear to permit the redeemed shares to simply go back i a pool of authorized but unissued redeemable preferred shares. Frankly I am not sure that this is precisly what the sub section state, since it may only refer to the creation of new shares to deem the old shares, and that there would be no additional fees to the registrar since at the end of the entire transaction the capital would presumably remain the same. In the case of <u>in re</u> and Co. Ltd., 1934 1 Chancery 233, it was clearly laid down that deemed shares once redeemed disappear, and that the authorized b issued capital is reduced by the amount of shares so redeemed. can be no ambiguity in the case whatsoever since this was precis

the question to be determined. The decision was approved and u by the House of Lords in the case of Commissioners for Inland Revenue v. Universial Grinding Wheel Co. Ltd. 1955, Appeal Case In any event the Register of Companies for the Province of Albe has taken the view that the shares do not dissappear, if specif stated in the resolution that they do not. This section combi with Sub Section 11 provides for a continual rolling wheel, in v the Capital Redemption Reserve Fund set up once and used again a again. It must always be remembered that cash does come out of asset side of the balance sheet on each of these transactions.

The following salient points should be noted about sec 70:

1) In order to be redeemed, the shares must be fully

2) No resolution or approval is required from the cou

3) Sub Section 7 provides that the redemption may be fected upon such terms etc. as may be provided by ARTICLES of the Company. Since most of the specia rights and conditions, including the right by the mpany to redeem a share, are contained in the capi zation portion of the memorandum, this would seem leave a large gap since presumably if the right we not set out in the Articles the company could not legally do it. I would suggest that in the vast m ority of companies having redeemable preferred sha the provisions concerning there redemption are set forth in the memorandum and not in the Articles. is interesting to note that no provision is made i table A for the redemption of redeemable shares so that Companies incorporated using table A as their Articles, unless some specific provision has been to table A, to cover the requirement of section 70 apparently have no legal way of redeeming shares less they first pass a special resolution amending there Articles.

4) The section is not exclusive, the Company may rede its shares under the provisions of section 38 by a reduction of capital under that section.

5) Any premium on redemption is payable out of the pr of the company.

The Capital Redemption Reserve Fund is, under the provi of sub section 3, treated as paid up share capital of the company therefore can only be eliminated by a reduction of capital under

38. I have never seen a balance sheet of a company which had a Capital Redemption Reserve Fund which specifically set forth a Capital Redemption Reserve Fund figure as "paid up capital" or segregated and separated out of the surplus of the company. I have seen balance sheets which simply refer to a note (after the surplus) and the note attached to the balance shee will then segregate out a Capital Redemption Reserve Fund. Should the Company suffer losses in ensuing years, it would be possible to hav a surplus figure for Little Widgets amounting to $40,000.00, which would in effect create a diffency in the Capital Redemptio Reserve Fund of $40,000.00. At first blush this would seem to leave the creditors little or no protection, but it must be poin out that they would have had no more protection had the redeemab preferred shares still been there and this apparently is the rea that there is no requirement that the Capital Redemption Reserve Fund be any more than a notional entry on the Company's books, rather than an actual separate fund. If the company were able to foresee serious losses coming up in the future, the section c be abused. But the instances of such circumstances where the company would have the liquid assets to redeem its redeemable shares before the losses actually came home to roost, must be rare indeed.

THE AUSTRALIAN COMPANIES ACT

Basically the same provisions occur in section 61, however, since the Australian Companies Act does not permit shar without Par Value and since shares are often sold at a premium, premium payable on the redemption of preferred shares is payable firstly out of the "share premium account", and then out of the profits of the Company.

THE BRITISH COLUMBIA ACT

The Act contains no provision for the redemption of sl without complying with all the formalities of a reduction of ca There is a Capital Redemption Review Fund under section 255 of t Act but it is an actual sinking fund not a notional fund and wi be discussed later under the heading of Reduction of Capital by Redemption of Preferred Shares.

THE GHANA ACT

There is no similar provision for a Capital Redemption Reserve Fund under the Ghana Act. Redemption of shares is treat in the same sections as a purchase by a company of its own share there is no way in which shares can be redeemed without an actua reduction of capital.

THE ONTARIO BUSINESS CORPORATIONS ACT

Similar to the Ghana Act. There is no provision for a Capital Redemption Reserve Fund and a redemption of shares can only be treated as a reduction of capital.

BILL C29

Similar to both the Ontario and Ghana Acts.

THE NEW YORK

Similar to Ontario and Bill C29, there is no provision for a Capital Redemption Reserve Fund.

COMMENTS AND TENTATIVE CONCLUSIONS

This section has caused a good deal of perplexity, in both the legal and accounting professions. Various members of national firms of accountants, with whom I have discussed this have said they are not precisely sure of all of the meaning of Section 70, and when further questioned some have stated that th have obtained opinions from local counsel, and that these opinio have differed substantially. As mentioned earlier, the section seems to fly in the teeth of the decided common law that shares redeemed under that section can then be reissued. I understand Mr. R.B. Love one of the co-authors of the Alberta Corporation M has been using the circulating redeemable preferred share mentio in the text of this paper for some years, but in his actual comm in Alberta Corporation Manual, his final conclusion is that the tion is badly worded and poorly drawn.

The section can be useful in circumstances where the c does have considerable liquid assets and is going through a prog of redeeming its preferred shares, so that a certain number can redeemed each year and at the end of the line only one applicati is necessary to the court in order to reduce the capital of the company by cancelling the Capital Redemption Reserve Fund and transferring the notional amount to funds available for distribu This somewhat nebulous advantage, to my mind, is very much offse by the possibility of abuse, the conflict with the common law, a the theoretical error of the concept. By this last I cannot get over the feeling that the notional entry which sets up the Capit Redemption Reserve Fund is basically a reduction of capital and a company is going to be required to meet certain standards, cer tests, and to obtain certain approvals before reducing its capit then I can see no reason to make an exception such as is contain in Section 70. By tentative recommendation therefore if that th redemption of redeemable shares classed as a reduction of capita and subject to whatever restrictions the committee may decide in this respect.

## SECTION 112 OF THE ALBERTA ACT

Without reproducing the section in full fundamentally what this section does is permit a company to change fully paid shares into shares on which some amount has been paid and the remainder is subject to call. The following points may be noted

1) Any sum of undivided profits may by special resolution be used to return part of the paid up capital of the company.

2) The unpaid capital is increased by an amount equal to the part that is distributed.

3) Any one shareholder can refuse to accept his portion require the company to retain the money. The company then invests it and if the investment turns sour the shareholder is not liable for the difference in the event of any call.

4) The amount paid back to the shareholders is subject to call and presumably would still subject to call in the event of liquidation of the company, if necessary to satisfy the creditors.

5) No time limit is given as to this liability presumably it would be the same time limit as the liability of the shareholder for any unpaid portion of the price of the share. Frankly I have not at this point checked as to what limitation would be, and whether there would be a six year limitation under contract or whether this is an enduring publication.

## THE AUSTRALIAN AND OTHER ACTS

The Australian Act contains a similar section and the wording is almost identical both of them deriving from the 1929 English Act. None of the other acts contain any such provision.

## COMMENTS

1) If as in Bill C29 the partly paid share will be prohibited then it seems only logical that a section similar to section 112 should not be included.

2) Presuming no Par Value shares are the only shares permitted under an act and presuming either sufficient flexibility to convert part of the paid

up capital of the company into redeemable shares or the right of a company to purchase its own shares then I can not see where this section would be necessary, but I understand that Mr. H.G. Field has used this section in one case when desperate, and I would very much like to hear his views to the committee as to whether he thinks the section should be retained.

THE BRITISH COLUMBIA ACT

Sections 255 to 260 of the British Columbia Act cover only the redemption of shares, but the purchase of its own share by a Company so that the sections are not comparable to the prov in our Act or the Australian Act although somewhat confusingly, of the same terms are used. Under section 255 the Capital Redem Reserve Fund is in realty a Sinking Fund which a Company is requ to set up wherever redeemable shares have rights which provide t they shall be redeemed on or before a certain date. Presuming t the shares were to be redeemed ten years after their issue, one of the capital amount required would have to be set aside in the ital Redemption Reserve Fund in each year. This money must come the earnings of the Company available for dividend and no divide can be paid until the amount has been set aside. Section 255 (2 provides that the fund be kept separate from other funds of the Company and invested only in securities in which trustees may by law invest trust money, or such investments authorized under the contained in the issuance of the shares which seems to wipe out protection normally given since it does not take much ingenuity invest these funds in debentures of the company, and there is no restriction preventing this. The income from the Capital Redemp Reserve Fund is the property of the company and may be used by t company.

Section 257 contains the solvency test for either rede or purchase namely that the company may not redeem shares if it insolvent or if the redemption would render the company insolven The question of what actually constitutes insolvency is extremel difficult in modern accounting, particularly with a cost base fo assets and I would think it would be advisable for the project t consult with the accounting profession in this regard. It seems me there are two real tests for insolvency, one is the standard used by most lending institutions for short term loans namely th ratio between current assets and current liabilities. The other the deficit or surplus position of the company which once again us squarely to the problem that balance sheets are presently cas a cost basis of asset rather than actual value.

Section 257 (2) provides an unusual remedy to director a company who may apply to the court for a declaration that in vi of all of the circumstances, the company is insolvent or the pro redemption would make the company insolvent. It will be noted th any one director may make this application. This raises the ques of the "reasonably competent director" and a possible liability i the negligence if having such a right he does not exercise it whe he ought to have known that the redemption would result in insolv

Section 258 (2) states that unless the memorandum or ar otherwise provide redemption must be pro rata amongst the members hold shares of the class or kind to be redeemed.

Section 259 (1) provides that unless the memorandum or articles state otherwise a redeemed share may be reissued. Secti 259 (2) says that the company cannot vote any share that it has r deemed.

Section 260 states that any redemption of shares under section 256 (not mentioned because it is simply the enabling sect is not deemed to be a reduction of capital and requires neither a special resolution nor approval for court. It further adds that redemption of shares does not change the authorized capital of th company, but presumably if the articles so provide, that a redeem share was cancelled upon its redemption, the authorized capital c the company would be reduced upon redemption.

4) Decreased of authorized and issued Capital without any Liability.

A) Redemption of preferred shares without a Capital Redemption Reserve Fund.

THE PRESENT ALBERTA ACT

The power to reduce Capital which is very broad indeed is contained in Section 38 (1) B, which reads:

**38. (1) Powers of company to reorganize share capital.—A company having a share capital by special resolution confirmed by an order of the court,**

**(b) may alter its memorandum so as to reduce its share capital in any way, and without prejudice to the generality of the foregoing power may modify or alter its memorandum so as to**

**(i) extinguish or reduce the liability on any of its shares in respect of share capital not paid up, or**

**(ii) either with or without extinguishing or reducing liability on any of its shares, cancel any paid-up share capital that is lost or unrepresented by available assets, or**

**(iii) either with or without extinguishing or reducing liability on any of its shares, pay off any paid-up share capital that is in excess of the wants of the company.**

I must confess it has been an excersising ingenuit imagine the circumstances under 38(1)(B) (iii) in which a comp pay off any paid up capital without extinguishing or reducin liability on any of its shares, and I invite the members of committee to imagine such circumstances.

Section 39 provides for objections by creditors on application to the court, and provides a method for selling t list of creditors and a method of handling a non consenting c It further provides a penalty for concealing the name of any and an often used provision in Sub Section 5 permitting the c dispense with the provisions of the section so that no advert for creditors is necessary.

Section 40 provides for a minute to be filed with t registrar stating the nature of the capital following the red tion which minute must be signed by the judge, and registrati of the minute. It also has a provision that the court may dir the company to publish the causes that led to the reduction of capital.

Section 41 (1) makes it clear that once the minute h been registered there is no liability on a shareholder as a co butory for the reduced amount of capital. Sub Section 2 howev does make a provision for a creditor who was in ignorance of a the proceedings, and if after the reduction of capital the com unable to pay the amount of such a creditors claim then the shareh are liable to the extent of the reduction of capital, although t section does not quite specifically say that I think this is wh meant. What the section actually says is that the shareholder liable for an amount not exceeding the amount that he would hav liable to contribute if the company had commenced to be wound up o day before registration of the order and the minute. This woul certainly cover a reduction of capital by cancelling any unpaid portion owing on a share but whether these words would actually the amount repaid to a shareholder on a fully paid share or not would seem to be open to some doubt. No specific time limit is

in the section or in any other section so presumably the limitat period of six years would apply.[2]

Presuming that Little Widgets Ltd. is going to reduce capital by cancelling the 8,000 preferred shares at $10.00 each authorizing the repayment to the holders thereof their Par Value $10.00 each. The balance sheet entries would be a reduction of 80,000 from cash and deposits leaving 2,000 in cash and deposits a reduction of issued capital by cancelling the $80,000.00 repre the 8,000 preferred shares at $10.00 each. The authorized capit would also have to be reduced in this case since there is no sav provision that the redeemable shares so redeemed will be anythin but utterly cancelled. It would be apparent that with a balance sheet such as the one for Little Widgets Ltd. that on any applic to the court certainly the consent of the bank would be necessar perhaps the consent of the larger accounts payable. It will be that in the Alberta Act there is no set solvency test either as the current position of the company or as to its ratio of realiz assets to its debts. All of this is left entirely to the discre of the court. Unfortunately many of the supreme court judges do have the necessary commercial or accounting knowledge and tend e to rely on the counsel presenting the petition or on occasion ins on full compliance with the provisions of the section[39] whether it necessary or not.

It must be pointed out of course, that if the company in a liquid position having redeemed its preferred shares it cou then reduce its capital further by paying off $0.99 on each of t common shares. The only balance sheet entry would be the reducti in cash by $4,950.00 and the reduction in issued capital of $4,9 leaving the issued capital at $50.00. No change would occur in authorized capital. Under the present Alberta Act this is about far as the company can go, it cannot purchase its own common shar to reduce the number of common shares outstanding.

B) Reduction of Capital by payment to shareholders.

This could take either of two forms. The first would be to reduce the authorized capital by extinguishing any unpaid call upon shares. Since shares issued subject to call are extremely rare these days, I have never actually seen such an application, but presumably a company could make such an application having already gone through the procedure set forth in section 112 which would extinguish the liability of the shareholders with respect to a possible call upon their shares.

As mentioned above if the company had no Par Value shares a portion of the amount paid for such shares could be returned to them under this section. This would be equally true with respect to Par Value shares and the result would be no liability for any outstanding call.

THE AUSTRALIAN ACT

Section 64 of the Australian Act covers the same material as our Section 38 (1) B, Section 39, Section 40, and Section 41. 64 (1) is almost identical in its wording to Section 38 (1) B. Section 64 (2) and (3) contain the same provisions, with slightly different wording but with the same, as our Section 39. Section 64 (4) follows the English model and contains the provisions of our Section 40 (4) requiring, at the discretion of the court, that the company publish the causes that led to its reduction of capital, and also empowers the court, in its discretion, to compell the company to add the words "and reduced" after its name for whatever period of time the court may require.

Section 64 (5), (6), (7) and (8) cover the material in our Section 40.

Section 64 (9) covers the same material as our Section 41. Section 64 (10) provides the penalty and it is interesting

to note the difference between it and our section 39 (4). Our Section 39 (4) states that "every company" that willfully conceals the name of a creditor or misrepresents the amount of the debt is guilty of an offence. The Australian Act goes right to the heart of the matter and Section 64 (10) is as follows:

> (10) Every officer of the company who—
>
> (a) wilfully conceals the name of any creditor entitled to object to the reduction;
>
> (b) wilfully misrepresents the nature or amount of the debt or claim of any creditor; or
>
> (c) aids abets or is privy to any such concealment or misrepresentation,
>
> shall be guilty of an indictable offence.
>
> Penalty: Imprisonment for three years.

you will note that the offence is pinned to the officer of the company.

It will be remembered that the Australian Act does not provide for no Par Value shares and in a conversation with a friend of mine who carried on business in Australia up until two years ago, apparently company's are still organized on the basis of Par Value shares of a reasonably substantial amount ($10.00 Australian) and sold for one tenth of the remaining nine tenth being subject to call. The Australian Act provides for redeemable shares and is the only concession that it makes to the rule in Trevor v. Whitworth. The situation under the Australian Act is therefore basically the same as under our Act whether shares are being redeemed directly, a liability for an unpaid call is being extinguished, or a portion of the paid up capital is being returned to the shareholder.

## THE BRITISH COLUMBIA ACT

### A) Redemption of redeemable shares.

Under the provisions of the British Columbia Act the redemption of redeemable shares is treated as a purchase by a Company of its own shares and all of the rules relating to purchase of its own shares apply. It will therefore be discussed

under the heading of purchase by a company of its own shares.

B) Provisions for other reductions of capital which do not involve a company purchasing its own shares are set forth in Sections 253 and 254, and are substantially the same as the provisions contained in our act. It might be noted that Section 254 (4) imposes the sanction on the company by making the company guilty of the offence.

None of these three Acts which follow the English mode contain any solvency tests whatsoever in the Act. They simply require a special resolution, confirmation by the court, and pro vision for creditors to object plus penalties for not revealing the names of creditors. Apparently therefore the only people given any protection under these sections are the creditors, following the Capital yardstick principal laid down in Trevor v. Whitworth. Presumably if the company can satisfy the court that there is no creditor who will be adversely affected the order will go. A minority shareholder who objected to the reduction of capital because he thought it might impair the company's abil to function, even though there was no present creditor who could complain, has no remedy whatsoever.

THE GHANA ACT

There is no provision for a Capital Redemption Reserv Fund in the Ghana Act. Redeemable shares may be redeemed from only one of two sources, either the proceeds of a new issue, whi creats no great problem, or from the Share Deals account. The S Deals account is used both for redemption of shares and for the chase by a company of its own shares and consists primarily of t sources, the first being any profit on reselling shares which th company has purchased, and second transfers to the account from "income surplus". Income surplus is the normal surplus of a com less any unrealized appreciation in the value of the assets of t company and any credit balance in the Share Deals accounts immed before ascertainment of the income surplus, so that in effect an balance in the Share Deals account is not reflected twice.

Section 60 (2) contains an interesting provision that if the redeemable shares have become redeemable in accordance wi the terms of issue and there are sufficient funds of the company to enable it to redeem, any holder may serve notice upon the com requiring it to effect the redemption of the shares.

Section 63 (3) provides the restriction ~~bet~~ that no redempt of shares shall be made unless its income surplus is sufficient t enable a transfer from the income surplus to the Share Deals acc In effect this enforces one of the solvency tests the money can c come from surplus and a very carefully defined surplus.

THE ONTARIO BUSINESS CORPORATIONS ACT

The provisions dealing with the redemption of redeemab shares occur in Sections 34, under certain circumstances Section and Section 38. These provisions may be briefly summarized as follows:

1) If part only of the shares are to be redeemed, the shares to be redeemed shall be selected,
   a) By lot
   b) Prorata
   c) Any other manner as the Board of Directors

may determine with the consent of at least 95% of the holders of the special shares.

2) Under section 35 if the shares are made purchasab for cancellation by the articles,

   a) The shares shall be pruchased at the lowest possible price, but not exceeding an amount stated in or determined by the articles.

   b) The shares shall be purchased on the open market with the consent of all of the holders of the shares of that class, or, persuant to tenders addressed to the holders. If in a response to invitation for tenders two or more shareholders submit tenders at the same price and the tenders are accepted as to part only of the shares offered then they must be accepted pro rata with the holdings of the shareholders

3) The company shall not redeem if it is insolvent o1 if the redemption would render it insolvent.

4) Shares that are redeemed by the company are cancelled and the authorized unissued capital of the company is decreased and the articles are amended accordingly.

BILL C29

Under the provisions of Section 34 of the Bill a compa redeem any redeemable shares providing the prices does not excee redemption price stated in the articles, or calculated according formula stated in the articles. It must be remembered that the B provides for no Par Value shares no matter what kind or class of the company may issue. The solvency test used under Section 34 ( which would limit the redemption of shares is broader and more pr than that used in the other acts since it provides that a corporat shall not redeem if there are reasonable grounds for believing th

A) The corporation is, or would after the payment be, unable to pay its liabilities as they become due (a current liability test), or

B) The realizable value of the corporations assets would after the payment be less than the aggregate of

   1) its liabilities

   2) the amount that would be required to pay the holders of shares that have a right to paid on a redemption or in a liquidation rateably with or prior to the holders of the shares t be purchased or redeemed. It is interesting

to note, the complexities that arise with the use of the phrase "the realizable value." Once again this seems to be a step away from a cost basis of the balance sheet.

Upon a redemption of shares the corporation deducts fro its stated capital account maintained for that class of shares, th dollar value of the redemption. Under the provisions of Section 3 (5), redeemed shares are cancelled or if the articles limit the nu of authorized shares they can be restored to the status of authori but unissued shares. This could occur where issued shares have be changed into shares of another class.

NEW YORK BUSINESS CORPORATION ACT

Section 512 (A) authorizes companies to issue redeemabl shares under such conditions as stated in the certificate of incor poration. Sub Section B contains a restriction that a company may not issue redeemable shares giving the holder a right to compell t corporation to redeem (mutual fund shares are excluded from this provision). Sub Section C provides for the situation where the re deemable shares are common shares and state that they shall not be redeemed unless at the time of redemption there is still outstandi a class of common shares that is not subject to redemption. Sub Section D gives authority to a corporation to set up a sinking fun for the redemption of redeemable shares.

Section 513, which also covers purchase of its own shar by a company, provides the restrictions on the redemption of redee able shares. They are as follows, subject always to any restricti contained in the certificate of incorporation of the company:

1) Shares may be redeemed out of surplus except when currently the corporation is insolvent or would thereby be made insolvent.
2) Shares may be redeemed out of stated capital except when the company is insolvent or would thereby be made insolvent, AND except when such redemption would reduce the net assets below the stated capital remaining after giving effect to the cancellation of the redeemable shares.

Sub Section D of Section 513 states that the purchase

price shall not exceed redemption price dated in the certificate o incorporation, but if shares have accumulated preference on dividends, accrued dividends to the next dividend date following the date of redumption may be paid as well.

Section 515 deals with what happens to the redeemed shares after their redemption and this depends primarily on the source of funds used for their redemption. Under Sub Section A, if the shares have been redeemed out of stated capital, the shares are cancelled. Under Sub Section B if they are redeemed out of surplus then they may be retained as treasury shares (authorized but unissued) or cancelled by the board at the time they are redeemed, or at any time thereafter.

As a brief and perhaps not to relevant note I might point out that the New York Act in Sections 516, and 517 contains more detailed provisions with regard to surplus, reserves and stated capital and any of the other Acts.