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PURCHASE BY A COMPANY OF ITS OWN SHARES

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POSSIBLE BALANCE SHEET ENTRIES

The balance sheet attached to this paper is the actual balance sheet for a large Canadian Corporation which was sent to the shareholders very recently which I have renamed as International Widgets Ltd. Throughout this discussion I will follow the form of the balance sheet in that figures will be given in thousands unless dealing with shares in which case the actual number will be given. For the purposes of this paper the company's pro rata interest in shares held by a subsiduary and associated companies will be ignored. The stock is presently trading at around $21.00 and we will presume that the company can arrange to purchase one million of its own shares at $21.00 per share. The possible balance sheet entries are as follows:

Possibility #1

Step 1 - cash and short term commercial notes are reduced by 21,000 leaving a balance of 15,945.

Step 2 - marketable investments are increased by 21,000 thus the figure 39,396 becomes 60,396.

COMMENTS

a) This is not a reduction of capital since the shares are held in the companies trading account along with other marketable securities and are still issued shares.

b) The cash has gone and in its place is what has sometimes been described as "Chinese money".

c) The shares are part of the primary or other distribution of shares of the company and are free to be traded.

This is the extreme example of one facet of a company being given the ability to traffic in its own shares by being given the ability to purchase its own shares. It

seems to me to be open to a great deal of abuse in any public company whose stock is traded on a market. A block of one million shares which can either be withheld from the market or dumped on the market at any one time can influence market price. It is the management and the directors who will decide when and where to sell or to hold and this decision may well depend on their own shareholdings and their own knowledge. It is my understanding that when American companies were first given the right to purchase their own shares this method was adopted by some companies and was the subject of considerable abuse. Since all of the loose stock on the market was picked up using the companies funds, then when the price of the shares rose it was not the companies shares that were sold. It is interesting to note that in actual fact the directors of International Widgets Ltd. own directly, slightly over 60,000 shares. Of the twelve directors, five are company officers and hold the majority of the 60,000 shares. They also have stock options available to them.

Possiblity #2

Step 1 - Cash and short term notes are reduced by 21,000 so the figure becomes 25,945.

Step 2 - Issued capital is reduced by reducing the number of shares outstanding by 1,000,000 so the figure becomes 23,442,441 shares and reducing the dollar figure for these no Par Value shares by 21,000,000 so that it becomes 63,739.

Comments

A) This is a straight reduction of capital. It is possible, providing the necessary resolutions and court orders can be obtained, to achieve this under our existing

Alberta Act by simply converting 1,000,000 of the common shares into a special class of shares that are redeemable and then redeeming them.

B) The resolution or the governing Act would have to state whether the shares went back into part of the original authorized capital, or were cancelled for all purposes, but since the issued capital is reduced these shares would not be available for trading. If they went back to form part of the original authorized capital then they would be subject to all other restrictions of a secondary distribution before they could be sold again by the company.

C) This is not the scheme contemplated under any of the Acts that permit a company to purchase its own shares. This is an actual reduction of capital and the funds come from the paid up capital.

Possiblity #3

Step 1 - Same as in previous two possiblitities.

Step 2 - The issued capital remains the same and the 1,000,000 shares are held by the company for resale at any time either as marketable securities or in an account often labeled in the United States as treasury shares in other words these shares are free to be issued without further qualification by prospectus.

Step 3 - Either retained earnings are reduced by 21,000 to become 594,042 or contributed surplus is wiped out and the difference between 21,000 less 5,043 of 15,957 is subtracted from retained earnings leaving a balance in the retained earnings account of

599,085.

Comment

1) Once again the shares are marketable and can be sold at any time by the company without further securities clearance.

2) The contributed surplus has been divided not pro rata, but amongst those shareholders prepared to sell their shares. If a distribution of contributed surplus is to be treated, as it is in the English Act, as a reduction of Capital with all of the necessary requirements and safeguards concerning a reduction of capital, then this is one way to avoid it.

3) The same comment applies to retained earnings, namely, that it is not a pro rata distribution of retained earnings but is a distribution of retained earnings to certain shareholders namely those who sell their shares

4) The remaining shareholders can gain or loose depending upon whether the company sells these shares for more or less than $21.00. Presuming that the shares are sold for more than $21.00, then if the first funds used to buy the shares were from contributed surplus, it would seem logical that the first designation of the proceeds of the sale should be to replace the contributed surplus. Any excess over the $21.00 should, according to present generally accepted accounting principles, be placed in contributed surplus, and the balance returned to retained earnings. If the stock is sold for less than $21.00 then it is the retained earnings that will suffer, if such a priority exists.

Possibility #4

Step 1 - The same as in all previous possibilities.

Step 2 - Issued capital is reduced by one million shares and becomes 23,442,441 shares. The dollar figure for issued capital does not change. The shares which the company has purchased become part of the authorized but unissued capital, and as such would have to go through all of the formalities of clearance for a secondary distribution before they could be sold.

Step 3 - Same as in possibilitiy #3, with the exception of the entries upon the sale of the shares since this could only be done through a secondary distribution.

Comment

It is quite possible that the original prospectus for the company under which the shares may be many years old, and a requirement in the company's act which had this effect would permit a company to purchase its own shares but would cut out some of the possible abuses in the company trafficking in its own shares.

Possibility #4a

Presuming for a moment that International Widgets Ltd. had a share capital whose shares were divided into shares of a Par Value of $3.00 each. The following preliminary adjustments would have to be made to the balance sheet before we can discuss the problem, namely:

A) Authorized capital becomes 40,000,000 shares of a Par Value of $3.00 each.

B) Issued capital becomes 24,442,441 shares at $3.00, and the dollar figure for this is 73,327. This is probably not completely accurate since it does not take into account any underwriting costs but for our purposes it will be sufficient.

C) The difference between 84,739 and 73,327, of 11,412 we will presume is contributed surplus on the basis that some of the shares were sold at a bonus.

Instead of having to keep all this in mind the share-

holders equity portion of the balance sheet would read thus:

SHAREHOLDERS EQUITY

Capital Stock

Authorized 40,000,000 shares of a Par Value of $3.00 each

Issued 24,442,441 shares at $3.00 and the dollar figure for that is 73,327, contrubited surplus 16,455 retained earnings stays the same 615 and the total stays the same 704,824.

Again presuming that the company buys one million of its own shares at $21.00 per share the following balance sheet entries will be necessary:

Step 1 - Same as in all of the steps.

Step 2 - Authorized capital remains the same but issued capital is reduced to 23,442,441 shares.

Step 3 - Try as I might I can see no other entry other than that issued capital must be reduced by 3,000, representing the 3,000 dollars out of the 21,000 paid by the company.

Step 4 - The remaining 18,000 would come from whatever priority the Act set and as I have suggested in the preceding step that this come firstly from contributed surplus and secondly from retained earnings.

Comment

The following excerpt from the most recent accounting recommendations the Institute of Chartered Accountants are interesting and particular paragraph point 11. In March of 1975 the date of this page, their was no act in Canada which permitted a company to buy its own shares, and compelled that the shares so acquired became part of the authorized but unissued capital.

The next succeeding pages are extracts

from the accounting recommendations of the Canadian Institute of Chartered Accountants dealing with share capital, surplus, and reserves.

ACQUISITION OR REDEMPTION OF SHARES

.05 (The remaining recommendations in this Section, dealing with acquisition and redemption of shares, do not necessarily apply to mutual funds.)

.06 Where a company redeems or acquires its own shares, the cost will usually be different from their par, stated or assigned values. Since such transactions are clearly capital transactions, this difference will be excluded from the determination of net income. (See CAPITAL TRANSACTIONS, Section 3610.)

Acquisition of shares

.07 There are two methods of accounting for the acquisition by a company of its own shares; the difference between these methods rests on differing views as to whether the acquisition and subsequent resale should be regarded as two separate transactions or as a single transaction.

.08 Under the two-transaction method, it is held that the acquisition by a company of its own shares ends the relationship between company and shareholder, and therefore the subsequent resale must be viewed as an independent transaction. Accordingly, the share capital and related accounts would be adjusted at the time of acquisition, and when the shares are resold they would be treated as if they were an original issue, that is, share capital and contributed surplus would be credited with the appropriate amounts. (See paragraph 3240.20.)

.09 Under the single-transaction method, the resale by a company of its own shares is viewed as the consummation of a transaction initiated by the acquisition of those shares. No adjustment would be made to share capital and related accounts until the shares are resold. It has sometimes been argued that such shares might be accounted for as an asset. This argument has been rejected since it is an economic and legal fact that a company cannot own part of itself. Accordingly, until final disposition, the cost of the shares would be shown as a deduction from the total of shareholders' equity.

.10 The Committee is of the opinion that the single-transaction method as set out above is the preferable method of accounting for the acquisition by a company of its own shares. This conclusion would also apply where shares are acquired and subsequently cancelled, that is, the cost of the shares would be shown as a deduction from the total of shareholders' equity until cancelled.

.11 ◗ *Where a company acquires its own shares, the shares should be carried at cost and shown as a deduction from shareholders' equity until cancelled or resold.* Shares held are considered to be issued capital for purposes of paragraph 3240.02. [JAN. 1972]

.12 Where a subsidiary acquires its own shares from interests outside the consolidated group, the accounting treatment to be followed in the parent company's consolidated financial statements is outlined in CONSOLIDATED FINANCIAL STATEMENTS AND THE EQUITY METHOD OF ACCOUNTING, Section 1600.

Redemption or cancellation of shares

.13 Where a company redeems its own shares, or cancels shares that it has acquired, and the cost is in excess of the par, stated or assigned values, there are a number of possible methods of allocating the difference. These would include the following:

(a) The excess would be charged first to contributed surplus until the entire account has been eliminated, and the balance to retained earnings. The excess may therefore be offset in part against contributed surplus arising from entirely different sources.

(b) The excess would be charged first to any contributed surplus arising from transactions in shares of the same class, and the balance to retained earnings. The excess may therefore be offset in part against contributed surplus relating to shares which are not being redeemed or cancelled.

(c) The excess would be charged entirely to retained earnings. Contributed surplus arising upon the original issue of shares would not be reduced even though such shares are being redeemed or cancelled.

(d) The excess would be charged to contributed surplus, pro-rata, and the balance to retained earnings. The amount charged would be the direct opposite of the credit previously carried to contributed surplus.

.14 There may be merit in each of these methods. However, the Committee believes that a modification of (d) is most appropriate since any charge to capital accounts (including contributed surplus) should be restricted to the reversal of previous net credits to these accounts.

(See SURPLUS, paragraph 3250.11.) Accordingly, the method recommended below is considered to be the most appropriate to accomplish this objective.

.15 ♦ *Where a company redeems its own shares, or cancels its own shares that it has acquired, and the cost of such shares is equal to or greater than their par, stated or assigned value, the cost should be allocated as follows:*

(a) *To share capital, in an amount equal to the par, stated or assigned value of the shares;* (see paragraph 3240.18 for computation of assigned value)

(b) *Any excess, to contributed surplus to the extent that contributed surplus was created by a net excess of proceeds over cost on cancellation or resale of shares of the same class;*

(c) *Any excess, to contributed surplus in an amount equal to the pro-rata share of the portion of contributed surplus that arose from transactions, other than those in (b) above, in the same class of shares;*

(d) *Any excess, to retained earnings.*

.16 Where the cost is less than the par, stated or assigned value, the difference represents a contribution by the original shareholders which accrues to the benefit of the remaining shareholders. Since a company cannot earn a profit from the acquisition of its own shares, the difference should not be included in retained earnings, but credited to contributed surplus. (See SURPLUS, paragraph 3250.05.).

.17 ◗ *Where a company redeems its own shares, or cancels its own shares that it has acquired, and the cost of such shares is below their par, stated or assigned value, the cost should be allocated as follows:*

(a) *To share capital in an amount equal to the par, stated or assigned value of the shares;* (see paragraph 3240.18 for computation of assigned value)

(b) *The difference, to contributed surplus.*

[JAN. 1972]

.18 For the purposes of paragraphs 3240.15(a) and 3240.17(a), the amounts to be allocated to the share capital account should be based on the average per-share amount in such account for that class of share at the transaction date.

Resale of acquired shares

.19 Where a company acquires its own shares and subsequently resells them, no part of the proceeds should be taken into income.

◗ *Where a company resells shares that it has acquired, any excess of the proceeds over cost should be credited to contributed surplus; any deficiency should be charged to contributed surplus to the extent that a previous net excess from resale or cancellation of shares of the same class is included therein, otherwise to retained earnings.* [JAN. 1972] .20

Dividends

Since a company cannot own a part of itself it cannot receive dividend income on its own shares. .21

◗ *Where a company has acquired its own shares and such shares have not been cancelled, any dividends otherwise payable with respect to these shares should be treated as a reduction of dividends and should not be reflected as income by the company.* [JAN. 1972] .22

Earnings per share

◗ *Where a company has acquired its own shares and such shares have not been cancelled, these shares, subsequent to their acquisition, should not be treated as outstanding for purposes of computing earnings per share.* (See EARNINGS PER SHARE, Section 3500.) [JAN. 1972] .23

THE USE AND LIMITATION OF THE TERM

.01 Dictionary definitions of the word "surplus" relate to a remainder or excess, often in the sense of an arithmetical difference rather than in the sense of a surfeit or overabundance. In accounting, "surplus" has long been used to designate the excess of net assets over the total paid-in par value or stated value of the shares of a corporation. This usage is firmly established in company law and finance, and is not likely to be discontinued.

.02 The convenient usage of the word surplus in the sense indicated above is recognized. Experience shows, however, that a single-word designation of surplus on a financial statement is not sufficiently informative. Lack of uniformity in practice has led to the use of a variety of terms and this has created inconsistencies and ambiguity in many financial statements. For clarity, in every case in which the term surplus is used, it should be qualified with wording related to the method of classification of the various elements of surplus, and to the statutory requirements, if any, as to designations or descriptions. Because of uncertainties as to its meaning, the use of the term "Capital surplus" in financial statements should be avoided unless required by statute.

.03 In recent years, more descriptive phrases have replaced terms which include the word surplus; for example, "retained earnings" is used as an alternative to "earned surplus". The designation "retained earnings" is preferable because it is considered to be more accurately descriptive.

CLASSIFICATION AS TO SOURCE

.04 An adequate view of a company's affairs requires information as to the source of any surplus shown in the balance sheet. A basic distinction exists between amounts received by way of contributions and amounts earned in the conduct of the business (these being the only sources of realized surplus), and this difference should be recognized by classification in the balance sheet.

.05 "Contributed surplus" has frequently been taken to include only amounts paid in by shareholders, but it may include capital donations from other sources as well, for example, capital contributions in the form of building sites or certain governmental subsidies. (See GOVERNMENT GRANTS FOR FIXED ASSETS, paragraph 3065.15.) Contributed surplus in the form of surplus paid in by shareholders includes premiums on shares issued, any portion of the proceeds of issue of shares without par value not

allocated to share capital, gain on forfeited shares, proceeds arising from donated shares, credits resulting from redemption or conversion of shares at less than the amount set up as share capital, and any other contribution by shareholders in excess of amounts allocated to share capital.

.06 "Retained earnings" represent the accumulated balance of income less losses arising from the operation of the business, after taking into account dividends, refundable taxes and other amounts that may properly be charged or credited thereto. When the accumulation is a negative figure, the single word "deficit" is a suitable designation.

.07 ► *Items of surplus should be segregated so as to distinguish between those derived from earnings and those derived from contributions.* This may be accomplished by setting out the surplus items under two main headings, "Retained earnings" and "Contributed surplus" or in some circumstances by way of note. In some cases, additional information concerning the segregation or availability of items of surplus to reflect contractual or statutory conditions or management policy may be presented by subclassification under the headings of "Retained earnings" and "Contributed surplus". Such information, when required, often may be presented most conveniently and suitably in notes to the financial statements.

.08 ► *Compliance with statutory requirements as to special designations of certain items of realized surplus should not distort the basic classification as to source, e.g., the statutory item "Capital surplus" under the Canada Corporations Act should be classified as appropriated retained earnings.*

.09 ► *Where statutory designations deviate from accepted usage in financial statements or are otherwise inadequate, appropriate description or explanation should be added.*

.10 ► *Where there is a condition restricting or affecting the distribution of retained earnings, the details thereof should be disclosed.*

.11 ► *Charges against contributed surplus should be restricted to instances where that disposition is clearly warranted by the circumstances, such as:*

(a) *a charge which is the direct opposite of a credit previously carried to contributed surplus, e.g., where contributed surplus reflects premiums on an issue of preferred shares it is appropriate to offset premiums on redemption of shares of that issue, pro-rata;*

(b) *the elimination or reduction of a deficit, when made with the approval of the shareholders.*

► *If any deficit has been eliminated by reduction of share capital, reduction of contributed surplus, or other financial rearrangement, the description of retained earnings thereafter for at least three years should indicate the date of the rearrangement.* .12

► *Changes in each of retained earnings and contributed surplus during the period should be disclosed.* .13

reserves

► *The use of the term "reserve" should be limited to an amount which, though not required to meet a liability or contingency known or admitted or a decline in value which has already occurred as at the balance sheet date, has been appropriated from retained earnings or other surplus:* .01

(a) *at the discretion of management, e.g., reserve for future decline in inventory values, reserve for general contingencies, reserve for future plant extension, or*

(b) *pursuant to the requirements of a statute, the instrument of incorporation or by-laws of a company or a trust indenture, or other agreement, e.g., sinking fund reserve, general reserve, preferred stock redemption reserve.*

► *Reserves should be created or increased only by appropriations of retained earnings or other surplus. They should not be set up or increased by charges made in arriving at net income for the period.* .02

► *Regardless of how a reserve was originally created, all reductions in reserves should be returned to retained earnings or other surplus and no charges should be made against the reserves which would relieve the income account of charges that should properly be taken into account in determining the net income for the period.* .03

► *Reserves should be shown as part of shareholders' equity and the source from which they were created, i.e., retained earnings or contributed surplus, should be indicated.* .04

► *Changes in reserves during the period should be disclosed in the financial statements.* .05

[THE NEXT PAGE IS 1591]

#4. The Manner in which a company may buy its own shares

Providing the statute permits a company to buy its own shares, a company may do so under any one of the five following circumstances:

a) If it is a public company whose stock is traded upon an exchange, it may go out and purchase its own shares on the exchange like any other buyer.

b) It may purchase a proportion of them by tender to all of its own shareholders, a sort of rights offering in reverse.

c) It may buy some of its own shares by private contract.

d) If the incorporating statute so provides it may in certain circumstances be compelled to buy its own shares.

e) It may have a contractual obligation to purchase its own shares, which obligation can either be certain or may be contingent upon the happening of a certain event or events.

#5. Provisions contained in the Canadian Acts which provide for the purchase by a company of its own shares.

Three Acts in Canada now permit a company to purchase its own shares, and in order of their becoming law they are:

The Ontario Business Corporations Act

The British Columbia Companies Act

The New Canada Corporations Act

THE ONTARIO BUSINESS CORPORATIONS ACT

In the second edition of Gower on Company Law published in 1959, Professor Gower points out the inadequacies of the present rules relating to capital as follows:

> The weakness of the legal rules relating to the raising and maintenance of share capital is caused mainly by four factors: —
>
> (1) There is no requirement that shares must be of a reasonable nominal value and that part of this value must be left uncalled. Hence the practice is to have shares of low denomination issued fully paid on allotment. Uncalled capital, which was envisaged as the main protection of the creditor, has virtually disappeared,[94] thus removing any element of personal credit from the concept of capital.
>
> (2) There is equally no requirement of a minimum paid up capital. Hence the rules which seek to secure the maintenance of paid up capital are valueless except in the case of large public companies. With private companies having small issued capital no reliance whatever can be placed on the capital as a guarantee fund. Indeed, this is recognised in practice, and such companies are treated much as partnerships, the members being required personally to guarantee any formal credit facilities. Even in the case of a public company a yardstick based on the nominal value of money is unrealistic in times of inflation.
>
> (3) Since shares may be issued for a consideration other than cash, and since the courts will not normally investigate the adequacy of the consideration, there is not even any assurance that the company ever received assets equivalent to the nominal value of its issued capital.
>
> (4) Even if the capital has been raised, the law cannot ensure that it is not lost in subsequent trading; at the most it can prevent its being repaid to the members. This the rules seek to accomplish, but they only prevent an open return of capital and have not been effective in preventing payment of dividends until past losses have been recouped.[95]
>
> Having regard to these weaknesses it may well be that these rules have outgrown their usefulness just as the *ultra vires* doctrine has.

Apparently Professor Gower did submit a brief to the Jenkins committee recommending a provision that companies be permited to buy their own shares, however the Jenkins committee did not recommend such a change their reasons are set forth in paragraph 168 of their report which was published in January of 1960.

" 168. In our view, if the Companies Act were amended to give a limited company a general power to buy its own shares it would be necessary to introduce stringent safeguards to protect both creditors and shareholders. We think it would be possible to devise effective safeguards and we do not think they need to be unduly complicated. On the other hand, we have received no evidence that British companies need this power and the relatively few witnesses who offered any evidence on this matter were almost unanimous in opposing the introduction of a general power for companies to buy their own shares. The power might occasionally be useful when a minority of the members of a small company whose shares were not readily marketable wished to retire from the company and the other members were unable or unwilling to buy their shares at a fair price; we doubt if such a power would often be exercised for this purpose since it would usually give rise to a surtax assessment in respect of past profits of the company still undistributed and, in cases where tax difficulties can be overcome, a quasi-purchase of the shares of the company can be, and in practice is, carried out by the machinery of a reduction of capital by repaying those shares at a premium. We have therefore reached the conclusion that there is no justification for the general abrogation of the familiar rule that a limited company may not buy its own shares; indeed, we think that the rule should be expressly stated in the Act."

In his third edition of his text on company law published in 1969 after both the Laurance report (1967) and the report of the Jenkins committee, Professor Gower comments as follows:

The Jenkins Committee [65] considered whether, as in the U.S.A., there should be a general power for companies to buy their own shares. Although they recognised that the needful safeguards could be provided and would not be unduly complicated, they rejected this idea largely because there was no demand for it. This illustration of the conservatism of the English legal and commercial world is regrettable, since such a power would undoubtedly be useful to private companies and to all companies wishing to introduce employee share-ownership schemes and would enable unit trusts to operate as companies instead of through the more complicated medium of a trust.[66]

He did however get his chance to implement his views when he prepared The Ghana Act the provisions of which we shall be examining later.

The Laurance report considered both Gower's second edition and the report of the Jenkins committee, but came to a different conclusion than the Jenkins committee having also, as they set out in their report, examined the provisions of sections 513, 514, and 515 of the New York Business Corporation Law (which we shall be examining later), and made the following recommendations:

> 5.2.8. There are many legitimate and useful reasons for a company wishing to purchase its own shares. For example, companies may wish to purchase outstanding common shares in order to provide for incentive, bonus or stock option plans without being required to extend their equity base to provide the required shares. Purchase of outstanding common shares is a feasible method whereby a company could contract its equity base as the financial requirements of the company may dictate. The right to purchase common shares could also facilitate mergers and acquisitions in some cases and certainly provides a much needed flexibility for closely-held companies and their shareholders in the event of the death or retirement from the business of one of the principal shareholders.
>
> 5.2.9. The Committee therefore recommends that the Ontario Act be amended so as to effect the abolition of the rule in *Trevor v. Whitworth* and recommends that provisions be enacted comparable substantively to Sections 513, 514 and 515 of the New York Business Corporation Law.[66] The effect of this recommendation, if implemented, would be that a company may, subject to any restrictions contained in its charter, purchase its own common shares out of surplus unless the corporation is insolvent or would thereby be made insolvent. Further, companies would be permitted to purchase their outstanding common shares out of capital (subject to the solvency test) if the purchase is made for certain specified purposes such as eliminating fractions of common shares or collecting or compromising indebtedness to the company. Outstanding common shares which are thus re-acquired by a company may either be retained as "treasury shares" or cancelled by the directors, except that common shares so re-acquired out of capital shall be cancelled upon re-acquisition.
>
> 5.2.10. The Committee, however, recognizes the distinction which differentiates a purchase by a company of its own common shares at values which reflect the net worth of the company from the purchase or redemption of preference shares at prices which equate the amount paid up thereon plus a premium of a limited amount. It is therefore recommended that the revisions to the Act should provide that

the power of a company to purchase its outstanding common shares shall be exercised only by the directors acting in good faith and in the best interests of the company. Violation of the statutory restrictions on the right to purchase would give rise to liability on the part of directors or shareholders who authorized or received the payment of purchase money for common shares acquired in violation of the statutory safeguards. Because a company's trading in its own shares can be said to be a form of "insider trading", the Committee further recommends that Section 86 of the Act should be amended to require the disclosure, in the balance sheet or a note thereto, of the dates of purchase and sale by the company in the year of any equity shares carrying voting rights under all circumstances and the prices at which such purchases and sales were made.

THE ONTARIO ACT

Section 26 of the Ontario Act specifically provides that common shares must have a vote, that if a company has only one class of shares they are deemed to be common shares, and that all other shares are special shares. Sub section 4 also provides that if the word "preferred" is used as one of the special rights then there must be a preference of some kind contained in the special rights. The Act contains slightly different provisions with respect to a company buying its own shares depending upon whether the shares being purchased are common shares or special shares.

26. (1) **Common shares.**—The common shares of a corporation shall be shares to which there is attached no preference, right, condition, restriction, limitation or prohibition set out in the articles of the corporation, other than a restriction on the allotment, issue or transfer.

(2) Classes of shares.—Except as provided in subsection (1) of section 37 where a corporation has one class of shares, that class shall be common shares and designated as provided in the articles.

[Subsec. (2) amended by 1972, c. 138, s. 8(1).]

(3) Idem.—Except as provided in subsection (1) of section 37 where a corporation has more than one class of shares, one class shall be common shares, designated as provided in the articles, and the other shares shall be special shares and may consist of one or

more classes of special shares and shall have attached thereto the designations, preferences, rights, conditions, restrictions, limitations or prohibitions set out in the articles.

[Subsec. (3) amended by 1972, c. 138, s. 8(2).]

(4) **Preference shares.**—No class of special shares shall be designated as preference shares or by words of like import, unless that class has attached thereto a preference or right over the common shares. 1970, c. 25, s. 26.

Section 35 deals with the company buying special shares and reads as follows:

35. (1) **Purchase of special shares for cancellation.**—Where the shares of a class of special shares are made purchasable for cancellation by the articles, then,

(a) the shares shall be purchased at the lowest price at which, in the opinion of the directors, the shares are obtainable, but not exceeding an amount stated in or determined by the articles; and

(b) the shares shall be purchased either,

(i) on the open market,

(ii) with the consent of all the holders of the shares of the class, or

(iii) pursuant to tenders received by the corporation upon request for tenders addressed to all the holders of the shares of the class and the corporation shall accept only the lowest tenders,

but the articles may confine the manner of purchase to one or more of those set out in sub-clauses (i), (ii) and (iii).

[Subsec. (1) substituted by 1971, c. 26, s. 7.]

(2) **Idem.**—Where, in response to the invitation for tenders, two or more shareholders submit tenders at the same price and the tenders are accepted by the corporation as to part only of the shares offered, the corporation shall accept part of the shares offered in each tender in proportion as nearly as may be to the total number of shares offered in each tender. 1970, c. 25, s. 35.

Provisions for the purchase of the shares must be contained in the articles. The price that the company is to pay is a statutory requirement set out in 35 (1)(a) there are only three ways in which the company can aquire shares and

these are set out in 35 (1)(b). The purchase of an outstanding block of shares from one shareholder would not be permitted under 35 (1)(b) without calling for tenders from all holders of the special class of shares. Section 35 (2) covers the awkward situation of equal tender price.

Section 38,

> 38. (1) **Redemption, purchase or surender while insolvent.**—A corporation shall not redeem or purchase special shares or accept mutual fund shares for surrender if the corporation is insolvent or if the redemption, purchase or surrender would render the corporation insolvent.
>
> (2) **Cancellation on redemption, purchase or surrender.**—Special shares that are redeemed or purchased by a corporation are thereby cancelled, and the authorized and issued capital of the corporation are thereby decreased and the articles are amended accordingly.

provides a restriction that the shares shall not be redeemed or purchased if the corporation is insolvent or if the redemption or purchase would render the corporation insolvent. While not strictly within this topic it will be noted that this section covers mutual fund shares as well. Sub section 2 also makes it clear that both the authorized and issued capital are reduced and the articles are amended accordingly.

Section 39 deals with the purchase of common shares by the company and reads as follows:

> 39. (1) **Purchase of common shares.**—A corporation may purchase any of its issued shares if the purchase is made for the purpose of eliminating fractions of shares or for the purpose of collecting or compromising indebtedness to the corporation.
>
> (2) **Idem.**—Where authorized in its articles and subject to any restrictions contained therein, a corporation may purchase any of its issued common shares.

(3) **Idem.**—A corporation shall not purchase shares under this section if the corporation is insolvent or if the purchase would render the corporation insolvent.

(4) **Idem.**—No purchase of shares shall be made under this section by a corporation unless the purchase is authorized by a resolution of the board of directors.

(5) **Method of purchase.**—Where a corporation purchases shares under subsection (2), the purchase shall be made at the lowest price at which, in the opinion of the directors, such shares are obtainable, and,

(a) pursuant to tenders received by the corporation upon request for tenders addressed to all the holders of the shares of the class and the corporation shall accept only the lowest tenders; or

(b) from *bona fide* full-time employees and former employees of the corporation; or

(c) where the shares to be purchased are of a body corporate that is offering its shares to the public, by purchase on the open market.

(6) **Idem.**—Where, in response to the invitation for tenders, two or more shareholders submit tenders at the same price and the tenders are accepted by the corporation as to part only of the shares offered, the corporation shall accept part of the shares offered in each tender in proportion as nearly as may be to the total number of shares offered in each tender.

[S. 39 substituted by 1972, c. 138, s. 13.]

Section 39(1) is really an exception and covers the fractional share or the "arrangement" sections of the act. Section 39(2) specifies that the power to purchase its own shares must be contained in the companies articles. Sub section 3 contains the insolvency test. Sub section 4 provides that the purchase must be authorized by the directors not the shareholders, and subsection 5 sets out the three possible methods of purchase. It will be noted that section 39 (5) (a) corresponds to section 35(1)(b)(iii) and that 39(5)(c) corresponds to 35(1)(b)(i). 39(5)(b) is an enabling provision which would permit a scheme under which employees aquired shares while they were working for the company but the company bought them back from the employee upon termination of his employment.

Section 40 reads as follows:

> **40.** (1) Cancellation on purchase.—Shares or fractions thereof purchased under subsection (1) of section 39 are thereby cancelled and the authorized and issued capital are thereby decreased and the articles are amended accordingly.
>
> **(2)** Cancellation or resale.—Where its issued common shares are purchased by a corporation under subsection (2) of section 39, where mutual fund shares are accepted for surrender by a corporation under section 37, where a corporation accepts the donation of any of its shares under section 43, or where a corporation purchases the shares of a dissenting shareholder under section 100,
>
> **(a)** if the articles so require, the shares shall be cancelled and thereupon the authorized and issued capital of the corporation are thereby decreased, and the articles are amended accordingly;
>
> **(b)** if the articles do not require the shares to be cancelled,
>
> **(i)** the board of directors may cancel the shares at such time as it determines, in which case the authorized and issued capital of the corporation are thereby decreased and the articles are amended accordingly; or
>
> **(ii)** the board of directors may resell the shares at such time and price and on such terms as it determines.

Sub section (1) deals with the purchase of common shares under 39(1) only and reads the same as the provisions with respect to special shares namely that both the authorized and the issued capital are reduced. Sub section 2 provides an alternative depending upon the provisions contained in the articles of the company. If the articles so require then the provisions are the same as sub section 1, but if the articles do not require the shares to be cancelled then the board of directors may, either resolve that they do be cancelled in which case both authorized and issued capital are reduced, or they may sell the shares at such time and price, and on such terms as they see fit.

Under the provisions of section 41 a corporation purchasing its own shares is deemed to be an insider both with respect to the purchase and the resale if they are held for

resale.

> **41. Corporation insider re purchase and resale of own shares.**— Where a corporation purchases its issued common shares under subsection (2) of section 39, accepts a donation of any of its shares under section 43, purchases any of its shares under section 100, or resells them, the corporation shall be deemed to be an insider in respect of the purchase or resale, and sections 148 to 152 apply to the purchase or resale.

Section 42 deals with the problems of the enforceability of an agreement between the shareholder and the company for the company to purchase its own shares when under the solvency provisions it may not be able to do so and provides that if it is performed it is valid subject to the provisions of section 135(2) which permits an application to the court by a creditor or a shareholder at any time within two years of the transaction. In such an application the court may make an order making the shareholder whose shares were aquired liable to the corporation jointly and severly with the directors. 42(b) leaves the right to the shareholder to call for part performance up to the companies capability of performing within the solvency test.

Under section 33 of the Act wherever an issued share the company is cancelled the issued capital is decreased by an amount depending on whether it was a par value share or a no par value share. The importance of this statement in the Act is that it brings into play sections 189 and 190 of the Act dealing with an amendment of articles and in particular section 190(3) dealing with the decrease of capital which is reproduced below.

> 190 **(3) Decrease of capital.**—Where the articles of amendment are to decrease the authorized or issued capital, the articles of amendment shall be accompanied by evidence that establishes to the satisfaction of the Minister that the corporation is not insolvent and that the decrease will not render the corporation insolvent, and, if required by the Minister, by evidence that establishes to his satisfaction that no creditors object to the amendment.

MAIN POINTS

1) The Act contains no specific provision preventing a company from purchasing all of its own shares.

2) There are basic requirements with respect to the price to be paid both for common and for special shares.

3) The methods used to purchase both common and preferred shares had been limited.

4) The only test is the test of solvency, or the negative that the company cannot do it if it isn't solvent or if the purchase would make it insolvent.

5) No shareholder approval is required. The decision is that of the directors.

6) No court approval is required. The decision is that of the Minister under section 190(3).

7) The Act does attempt to deal with the problem of enforceability of a contract between a company and one of its shareholders to purchase that shareholders shares.

8) The Act permits common shares which have been purchased by the company to be resold by the company.

42. Performance of agreement to purchase shares.—An agreement for the purchase by a corporation of its shares under section 39 is not invalid or unenforceable because of the possibility that the corporation may not be able to comply with section 39, but such agreement is,

(a) subject to subsection (2) of section 135, valid if performed; and

(b) if not performed, valid and enforceable to the extent the corporation is able to purchase its shares at the time for performance.

ADDENDUM

Section 98(2) provides that where its own shares are purchased by a corporation under sub section (2) of section 39 or under the dissenting shareholder provisions or under the gift provisions and are not cancelled, no person is entitled to receive a notice of or to vote at meetings nor are they entitled to receive any dividend or other distribution made in respect of such shares until the shares are resold.

THE BRITISH COLUMBIA ACT

Section 256 specifically empowers a company to purchase its own shares by a resolution of its directors and if authorized by its memorandum or articles.

Company may redeem or purchase.

256. Subject to sections 257 and 258, every company may, by resolution of its directors,

(*b*) where it is so authorized by, and subject to any restriction in, its memorandum or articles, purchase any of its shares. 1973, c. 18, s. 256.

Section 257 contains the solvency test and an additional provision that a presumably dissenting director can make an application to the court for a declaration that the company is insolvent. This provision has promptly been inserted in the Act because the obligations falling upon the directors are so onerous and a dissenting director is therefore given the right to object not only at the meeting but in more effective terms to the company purchasing its own shares.

Redemption, purchase, or acquisition prohibited when insolvent.

257. (1) No company shall redeem, purchase, or otherwise acquire any of its shares, if, at the time of the proposed redemption, purchase, or acquisition, the company is insolvent, or if the redemption, purchase, or acquisition would render the company insolvent.

(2) The Court may, on the application of a director of a company, declare that, in view of all the circumstances, the company is insolvent, or that the proposed redemption or purchase would render the company insolvent. 1973, c. 18, s. 257.

The British Columbia Act defines insolvency in this definition as follows:

> "insolvent" includes the inability of a company to pay its debts as they become due in the usual course of its business;

Section 258 although somewhat curiously worded would seem to mean that the company can only purchase its own shares through the medium of a stock exchange or an offer to purchase pro rata addressed to every member.

> Shares to be purchased or redeemed pro rata.
>
> **258.** (1) Where a proposed purchase by a company of its shares is not to be made through a stock exchange, the company shall make its offer to purchase pro rata to every member who holds shares of the class or kind to be purchased.
>
> (2) Unless the memorandum or articles otherwise provide, where a company proposes to redeem some, but not all, of its shares of a particular class or kind, the redemption shall be made pro rata among every member who holds shares of the class or kind to be redeemed.
>
> (3) This section does not apply to a purchase of shares under section 228. 1973, c. 18, s. 258.

Subsection (3) refers to section 228 dealing with the dissenting shareholder and excepts the compulsory purchase by the company from a dissenting shareholder from the provisions of subsection (1).

Section 259 is explicit that the company may resell any share that it has repurchased. Section 40 referred to in that subsection is the premptive right which under the British Columbia Act is granted only to the shareholders of a non reporting company. Section 260 explicitly states that a repurchase of its own shares by a company is not a reduction of either the authorized or issued capital.

Company dealing with shares.

259. (1) Subject to section 40, a company may, unless the memorandum or articles otherwise provide, issue any share that it has redeemed or sell any shares that it has purchased.

(2) No company may vote any share that it has redeemed or purchased. 1973, c. 18, s. 259.

Not a reduction of capital.

260. No redemption or purchase of shares under section 256 shall be deemed to reduce capital within the meaning of section 253 or to change the authorized capital of the company. 1973, c. 18, s. 260.

The definition of "insider" contained in the definition section of the Act specifically includes the corporation itself and every director or senior officer of a corporation that is an insider.

"insider of a corporation" means

(*a*) any director or senior officer of the corporation or his associates;

(*b*) any person who beneficially owns, directly or indirectly, shares of the corporation carrying more than ten per cent of the voting rights attached to all shares of the corporation entitled to vote for the time being outstanding, or his associate, but not including, in the case of a registrant, shares that have been acquired by him as underwriter in the course of a current distribution to the public of those shares; or

(*c*) the corporation itself,

and every director or senior officer of a corporation that is itself an insider of a corporation is an insider of the corporation;

Section 262 of the Act, while not reproduced here, permits the company to issue fractional shares and to purchase fractional shares, with the provision that fractional shares when purchased must be combined into whole shares but they are available for re-issue under the above provisions.

Reading the British Columbia Companies Act by itself it would appear that a company purchasing its own shares could promptly trade them or sell them however section

(2)(l) of the British Columbia Securities Act, the interpretation section, defines primary distribution to the public to mean, interalia,

> "trade made by a company for the purpose of distributing to the public its previously issued securities which it has purchased"

SUMMARY

1) The B.C. Act does not contain any provision against a company purchasing all of its own voting shares.

2) The B.C. Act contains no statutory provision as to the price to be paid by the company for its shares.

3) Under section 258 the B.C. Act does limit the manner in which a company can purchase its shares which can only be through a stock exchange or an offer to purchase pro rata to every shareholder.

4) Substantially the same solvency test as is used in the British Columbia Act but "insolvent" is defined.

5) No shareholder approval is necessary.

6) No court approval is required nor is there any necessity to satisfy anyone. The British Columbia Act relies on the owners provisions placed upon directors who do this and who adversly affect the rights of creditors or shareholders by so doing.

7) The Act does not deal with the problem of enforceability of an agreement between a company and its shareholder to purchase its own shares.

8) Neither authorized nor issued capital is diminished and the Companies Act itself does not prohibit trafficking in its own shares but this is covered in The Securities Act.

9) Section 259(2) does contain a statutory provision concerning a vote on a share purchased by a company.

10) There is no statutory provision dealing with a dividend on a share purchased by a company and held by the company. Presumably this is left up to the general accounting principles.

THE CANADA CORPORATIONS ACT

Section 30 limits the circumstances in which a company may hold shares in itself or its holding company too provisions of sections 31 to 34.

Corporation holding its own shares

30. Except as provided in sections 31 to 34, a corporation shall not hold shares in 2 itself or in its holding body corporate.

Section 31 provides two exceptions to the provisions of section 30, namely, if the company holds the shares in itself as a legal representative for someone else and has no beneficial interest in them, or if it holds them by way of security for the purposes of a transaction entered into it in the ordinary course of business. It cannot however vote these shares unless it is acting as a bare trustee and unless it has complied with the provisions of section 147 which prohibits voting of any share registered in one name but beneficially owned by another and unless the person in whose name the shares are registered complies with the provisions of that section the main one being that he must forward financial statements, proxy circular etc. to the beneficial owner promptly when he receives them.

Exception

31. (1) A corporation may in the capacity of a legal representative hold shares in itself or in its holding body corporate unless it or the holding body corporate or a subsidiary of either of them has a beneficial interest in the shares.

Exception

(2) A corporation may hold shares in itself or in its holding body corporate by way of security for the purposes of a transaction entered into by it in the ordinary course of a business that includes the lending of money.

Voting shares

(3) A corporation holding shares in itself or in its holding body corporate shall not vote or permit those shares to be voted unless the corporation

(*a*) holds the shares in the capacity of a legal representative; and

(*b*) has complied with section 147.

Section 32,

Acquisition of corporation's own shares

32. (1) Subject to subsection (2) and to its articles, a corporation may purchase or otherwise acquire shares issued by it.

Limitation

(2) A corporation shall not make any payment to purchase or otherwise acquire shares issued by it if there are reasonable grounds for believing that

(*a*) the corporation is, or would after the payment be, unable to pay its liabilities as they become due; or

(*b*) the realizable value of the corporation's assets would after the payment be less than the aggregate of its liabilities and stated capital of all classes.

permits a company to purchase its own shares with the identical, double barrelled, solvency test required for a reduction of capital.

Section 33 is a somewhat wierd piece of legislative drafting since it appears to me that 33(2) should probably have been a subsection of section 32. However under 33(2) the company may purchase or acquire shares issued by it under the dissenting shareholders section, namely section 184 or to comply with an order under section 234 which is an order of a court granted to a shareholder for relief against oppression. Apparently no solvency test applies in these cases and the company simply has to scrounge up the money somewhere to do it.even if it means putting the company in a deficit position.

Section 33(1) and 33(3), combined give the company a right to acquire its own shares for the reasons set out as A, B, and C in 33(1), subject to a slightly different solvency test. The current asset test remains the same but instead of the realizable value of the corporations asset less liabilities and stated capital the test becomes relizable value of the corporations asset less liabilities and the amount required for the preference shares, in other words only a portion of the stated capital.

Alternative acquisition of corporation's own shares

33. (1) Notwithstanding subsection 32 (2), but subject to subsection (3) and to its articles, a corporation may purchase or otherwise acquire shares issued by it to

(*a*) settle or compromise a debt or claim asserted by or against the corporation;

(*b*) eliminate fractional shares; or

(*c*) fulfil the terms of a non-assignable agreement under which the corporation has an option or is obliged to purchase shares owned by a director, an officer or an employee of the corporation.

Idem

(2) Notwithstanding subsection 32(2), a corporation may purchase or otherwise acquire shares issued by it to

(*a*) satisfy the claim of a shareholder who dissents under section 184; or

(*b*) comply with an order under section 234.

Limitation

(3) A corporation shall not make any payment to purchase or acquire under subsection (1) shares issued by it if there are reasonable grounds for believing that

(*a*) the corporation is, or would after the payment be, unable to pay its liabilities as they become due; or

(*b*) the realizable value of the corporation's assets would after the payment be less than the aggregate of its liabilities and the amounts required for payment on a redemption or in a liquidation of all shares the holders of which have the right to be paid prior to the holders of the shares to be purchased or acquired.

Under section 26(1) the corporation is required to maintain a seperate stated capital account for each class and series of shares issued.

Stated capital account

26. (1) A corporation shall maintain a separate stated capital account for each class and series of shares issued, and the consideration received by the corporation for each share issued shall be added to the stated capital account maintained for the shares of that class or series.

Section 34 deals with the redemption of redeemable shares and has been covered previously in our discussions regarding capital.

Section 37 is reproduced in its entirety simply to show in one place the varying adjustments that may be made to the stated capital account. For the purpose of this particular section of the paper on capitalization it is section 37 (5) and (6) which are of interest. It will be noted that under section 37 (5) that when the company purchases its own shares except for the highly specialized purposes in 31(1) and (2), that the shares become part of the authorized but unissued capital. They would therefore be subject to all other restrictions on a secondary issue with respect to prospectus qualification etc.

Adjustment of stated capital account

37. (1) Upon a purchase, redemption or other acquisition by a corporation under section 32, 33, 34 or 184 or paragraph 234(3)(*f*), of shares or fractions thereof issued by it, the corporation shall deduct from the stated capital account maintained for the class or series of shares purchased, redeemed or otherwise acquired an amount equal to the result obtained by multiplying the stated capital of the shares of that class or series by the number of shares of that class or series or fractions thereof purchased, redeemed or otherwise acquired, divided by the number of issued shares of that class or series immediately before the purchase, redemption or other acquisition.

37

to the change to the stated capital account maintained or to be maintained for the class or series of shares into which the shares have been changed.

Cancellation or restoration of shares

(5) Shares or fraction thereof issued by a corporation and purchased, redeemed or otherwise acquired by it shall be cancelled or, if the articles limit the number of authorized shares, shall be restored to the status of authorized but unissued shares.

Exception

(6) For the purposes of this section, a corporation holding shares in itself as permitted by subsections 31(1) and (2) is deemed not to have purchased, redeemed or otherwise acquired such shares.

Adjustment of stated capital account

(2) A corporation shall deduct the amount of a payment made by the corporation to a shareholder under paragraph 234(3)(*g*) from the stated capital account maintained for the class or series of shares in respect of which the payment was made.

Adjustment of stated capital account

(3) A corporation shall adjust its stated capital account or accounts in accordance with any special resolution referred to in subsection 36(2).

Adjustment of stated capital account

(4) Upon a change under section 167, 185 or 234 of issued shares of a corporation into shares of another class or series, the corporation shall

(*a*) deduct from the stated capital account maintained for the class or series of shares changed an amount equal to the result obtained by multiplying the stated capital of the shares of that class or series by the number of shares of that class or series changed, divided by the number of issued shares of that class or series immediately before the change; and

(*b*) add the result obtained under paragraph (*a*) and any additional consideration received by the corporation pursuant

Change of shares

(7) Shares issued by a corporation and changed under section 167, 185 or 234 into shares of another class or series shall become issued shares of the class or series of shares into which the shares have been changed.

Effect of change of shares on number of unissued shares

(8) Where the articles limit the number of authorized shares of a class or series of shares of a corporation and issued shares of that class or series have become, pursuant to subsection (7), issued shares of another class or series, the number of unissued shares of the first-mentioned class or series shall, unless the articles of amendment or reorganization otherwise provide, be increased by the number of shares that, pursuant to subsection (7), became shares of another class or series.

Repayment

(9) Debt obligations issued by a corporation are not redeemed by reason only that the indebtedness evidenced by the debt obligations is repaid.

Acquisition and reissue of debt obligations

(10) Debt obligations issued by a corporation and purchased, redeemed or otherwise acquired by it may be cancelled or, subject to any applicable trust indenture or other agreement, may be reissued, pledged or hypothecated to secure any obligation of the corporation then existing or thereafter incurred, and any such acquisition and reissue, pledge or hypothecation is not a cancellation of the debt obligations.

Section 38 deals with the enforcability of a contract between the shareholder and the company under which the company is obliged to purchase its own shares.

Enforceability of contract

38. (1) A contract with a corporation providing for the purchase of shares of the corporation is specifically enforceable against the corporation except to the extent that the corporation cannot perform the contract without thereby being in breach of section 32 or 33.

Burden of proof

(2) In any action brought on a contract referred to in subsection (1), the corporation has the burden of proving that performance thereof is prevented by section 32 or 33.

Status of contracting party

(3) Until the corporation has fully performed a contract referred to in subsection (1), the other party retains the status of a claimant entitled to be paid as soon as the corporation is lawfully able to do so or, in a liquidation, to be ranked subordinate to the rights of creditors but in priority to the shareholders.

Section 38(1) is what one would normally expect, but 38(2) is an interesting section which does not occur in any of the other Acts in that it shifts the burden of proof. Subsection 3 defines the contracting shareholders status on a liquidation.

Section 121 contains the definitions for the Insider Trading Part X of the Act. Subsection B of the definition of Insiders specifically includes a corporation purchasing its own shares.

PART X

INSIDER TRADING

Definitions **121.** (1) In this Part,

"distributing corporation" "distributing corporation" means a corporation, any of the issued securities of which are or were part of a distribution to the public and remain outstanding and are held by more than one person;

"insider" "insider" means, except in section 125,

(*a*) a director or officer of a distributing corporation,

(*b*) a distributing corporation that purchases or otherwise acquires, except under section 34, shares issued by it or by any of its affiliates, or

(*c*) a person who beneficially owns or exercises control or direction over more than ten per cent of the shares of a distributing corporation, excluding shares owned by an underwriter under an underwriting agreement while those shares are in the course of a distribution to the public;

COMMENTS

1. The Canada Corporations Act does not contain any provision against a company purchasing all of its own voting shares.
2. There is no statutory provision

as to the price to be paid by the company for its shares.

3. There is no limitation on the manner on which the company may acquire its own shares.

4. No shareholder approval is necessary.

5. No court approval is required.

6. Not only is there a more comprehensive solvency test there is a different solvency test used for different circumstances in which a company purchases its own shares.

7. The act does attempt to deal the problem of enforceability of a contract between a company and one of its shareholders, to purchase its own shares.

8. Authorized capital is not diminished but issued capital is and since there is not federal securities act this would bring into play any of the provincial securities acts.

9. The problem of a vote for a repurchase share is dealt with more than adequately since not only is the share authorized but unissued but the company specifically cannot vote its share.

10. There is no statutory provision dealing with the payment of a dividend to a company holding its own share but this would follow logically as a matter of law since the share is classed as authorized but unissued capital.