7. SHAREHOLDERS

REMOVAL OF DIRECTORS (S.168)

s.168(2): To remove a director under section, ***special notice*** is required

- *s.312(1)*: Special notice: At least ***28 clear days***
- *s.360(1)*: ***Clear day rule*** applies for *s.312(1)*
- Typically, a *s.168* removal notice will be accompanied by a *s.303* request (to ensure that the directors call a GM)

Possible actions of the company:

1) ***Board place the removal resolution on the agenda, and call a GM***
   - Board give the shareholders notice of that removal resolution
     - *s.312(2)*: Same time & manner as per usual for a notice
     - *s.312(3)*: If not practical then by newspaper/advertisement
   - *s.307(1)*: 14 clear days' notice of removal resolution
2) ***Board do not place removal resolution on the agenda***
   - Directors are not bound to place the resolution on agenda (*Pedley*)
   - Shareholders therefore need to call a GM themselves

SHAREHOLDERS POWER TO CALL A GM

s.303(1): ***Request for the GM*** must state the ***nature of the business*** which the shareholders wish to be dealt with at the GM (removal resolution under *s.168*)

- Shareholders (together) must hold not less than 5% of paid up voting share capital of the company

s.304: If the conditions of *s.303* are met:

- The directors ***must call*** a meeting within ***21 days*** from the *s.303* request
- The meeting ***must be held*** not more than ***28 days*** after the date of notice convening the meeting

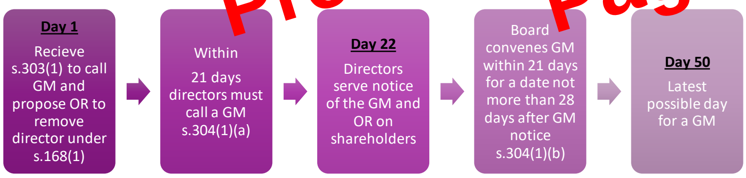
s.305: If directors fail to do this, the ***members*** (representing at least *50%* of the *voting right members who submitted the s.303* request) ***can call a meeting*** themselves pursuant to this section:

- The meeting ***must be held*** within ***3 months*** of the date
- *S.305(6)*: if shareholders are forced to call, they can recover expenses

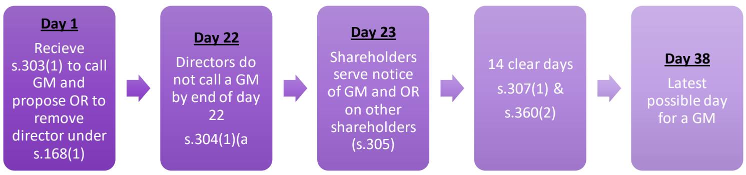
Conclusion:

- A *s.168* ***notice for removal***, and *s.303* ***notice for a GM*** are always submitted ***at the same time*** to ensure steps for removal take place

Cooperative Board



Uncooperative Board:



MATTERS AT THE GM

s.169(1): Once the company receives a removal notice, it must send a copy to the director concerned immediately

s.169(3): The director has the right to make written representations of reasonable length to be circulated to the members (or read at GM)

s.169(2): The director has a right to be heard at the meeting irrespective of whether he is a shareholder

Voting on Removal:

- *s.168*: voting under this section requires an **OR** (show of hands or poll **MA** 44) (*s.288(2)(a)* does not allow **WR** to remove a director)
- *Bushell v Faith*: clause in AA, gives D, who is also a shareholder weighted voted rights, for a *s.168* resolution

COMPENSATION FOR LOSS OF OFFICE

s.168(5): ***confirms that removal of directors does not deprive a person of rights to compensation or damages***

Check to see if the director is an ***executive director*** or not (is he an employee with a salary also, as well as a director; usually an employment contract)

- Assume in the exam that if the director has a title (e.g. Finance Director) then they are also an employee, therefore entitled to breach of contract damages –
- Typically, directors will have long notice period provisions to be upheld before termination. Early dismissal can therefore give rise to:
  - ***Payment in lieu of notice***; or
  - Claim for ***wrongful dismissal***
- Under employment law, the company may also be liable for ***unfair dismissal*** (due to unfair procedure in passing the *s.168* **OR**)

s.215: ***Payment for Loss of Office***

- The company may also choose to compensate the director for his loss of office, which requires shareholder approval under *s.217*; approval is not needed however if:
  - *s.220*: the payment is made in good faith to: discharge a legal obligation, by way of damages, in settlement of a claim, or by way of pension

CONSEQUENCES OF BREACH

s.222(1)(a): Where ***payment is made in contravention of*** *s.217*, the recipient shall hold the payment on trust for the company

- *s.222(1)(b)*: In addition, the directors who authorise the payment are held jointly and severally liable to indemnify the company that made the payment from any resulting loss

RATIFICATION OF DIRECTORS CONDUCT

s.239(2): an **OR** ***must be passed to ratify conduct*** by a director amounting to negligence, default or breach

- Any votes from the director, and any persons connected to him (*s.252*) cannot count towards the vote
  - *S.239(3)*: under a **WR** procedure, the resolution need not be sent to the members (connected, and the D concerned) who cannot vote on the matter
  - *S.239(4)*: under the **OR** procedure, the necessary majority must be achieved disregarding any votes in favour made by the director/connected persons (but they may still attend and count in the quorum)

9. RETURNING VALUE TO SHAREHOLDERS

Doctrine of Maintenance of Share Capital:

- Capital investments made by shareholders is considered working capital and cannot be returned
- *Trevor v Whitworth*: Share capital of a company seen as permanent fund available to creditor (the 'creditors cushion')
- *s.658*: Ltd company cannot acquire own shares, whether by purchase, subscription or otherwise unless ***statutory exceptions*** apply

DIVIDENDS

s.830(1): a company must not make a distribution of assets to shareholders except out of realised profits available for distribution

- Company must declare dividends in accordance with **MA 30**
  - BM: directors recommend dividend & amount
  - GM: Vote on dividend by **OR**
  - Directors can also make interim dividend

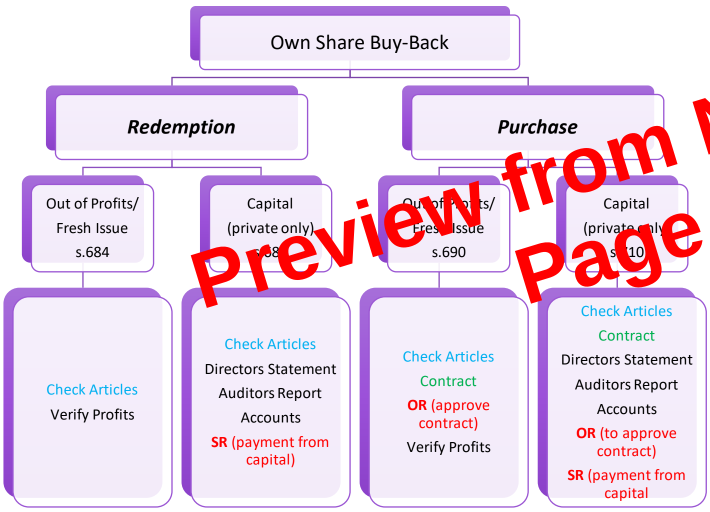
REALISING CAPITAL GAIN

Generally, the only way for a shareholder to realise his capital gain is to sell his shares to another person:

- Difficult in Private Ltd companies due to doctrine of maintenance of share capital and prohibition on public offering

However, it is possible for a company to ***buy-back its own shares*** through 2 ways:

1) ***Redemption of (redeemable) shares***
   - Out of profits/fresh issue
   - Out of capital (private only)
2) ***Purchase of shares***
   - Out of profits/fresh issue
   - Out of capital (private only)



REDEMPTION FROM PROFITS/FRESH ISSUE

Pre-Meeting:

- Check shares in question are redeemable shares
- *S.684(2)*: No exclusion/restriction of redeemable shares in AA
  - *S.684(4)*: Company must have redeemable shares in issue
  - *S.684(1)*: Redeemable shares must be fully paid up to redeem

Board Meeting:

- **BR** to redeem shares using profits; *or*
- **BR** to issue new redeemable shares
- *s.685*: terms of redemption: D's can determine rights, unless limited by the AA or an OR

Post Meeting Matters (PMM):

- *s.689(1)*: Companies House notified within one month of redemption
- *s.689(2)*: Statement of Capital
- *s.112-113*: Update Register of Members
- *s.688*: Cancel/Reissue Share Certificates (as necessary)

REDEMPTION FROM CAPITAL

Pre-Meeting:

- Check shares in question are redeemable shares
- *s.684(2)*: No exclusion/restriction of redeemable shares in AA
- *s.709(1)*: AA must not prohibit use of capital for buy-back of shares
- *s.687(1)*: Private companies only

Board Meeting:

- *s.714(3)*: Directors written statement of solvency
- *s.714(6)*: Auditors report (annexed)
- Call GM (for required **SR**)

General Meeting:

- *s.718(2)*: Copy of director's statement and auditors report:
  - If WR: sent to every member before resolution is sent
  - If GM: available for inspection at the meeting
  - *s.720*: both available for inspection at reg. office
- *s.716(1)*: **SR** to approve payment out of share capital

Post Meeting Matters (PMM):

- *s.719(1-2)*: Notify creditors of SR within 1 week (Gazette/Newspaper)
- *s.719(4)*: Send copy of director's statement and auditors report to CH
- *s.30(1)*: File **SR** at CH within 15 days
- *s.723*: Payment from capital must be made within 5-7 weeks from **SR**
- *s.689(1)*: CH notified within one month of redemption
- *s.689(2)*: Statement of Capital
- *s.112-113*: Update Register of Members
- *s.688*: Cancel/Reissue Share Certificates (as necessary)

PURCHASE FROM PROFITS/FRESH ISSUE

Pre-Meeting:

- *s.690(1)*: AA must not prohibit own share purchase

Board Meeting:

- Call GM (for required **OR**)
- *s.696(2)*: Contract made available for 15 days before GM, and at GM, or sent with any **WR**

General Meeting:

- *s.694(2)*: **OR** to approve contract

Post Meeting Matters (PMM):

- *s.707(1)*: Returns sent to CH within 28 days of purchase (**SH03**)
- *s.708(1-2)*: Notice of cancellation of shares & statement of capital sent to CH within 28 days of purchase (**SH06**)
- *s.112-113*: Update Register of Members
- *s.706*: Cancel/Reissue Share Certificates (as necessary)
- *s.702(3)*: Keep copy of contract at reg. office for 10 years

PURCHASE FROM CAPITAL

Pre-Meeting:

- *s.690(1)*: AA must not prohibit own share purchase
- *s.709(1)*: AA must not prohibit use of capital for buy-back of shares
- *s.692(1)*: Private companies only

Board Meeting:

- *s.714(3)*: Directors written statement of solvency
- *s.714(6)*: Auditors report (annexed)
- Call GM (for required **SR** & **OR**)
- *s.696(2)*: Contract made available for 15 days before GM, and at GM, or sent with any **WR**

General Meeting:

- *s.718(2)*: Copy of director's statement and auditors report:
  - If WR: sent to every member before resolution is sent
  - If GM: available for inspection at the meeting
  - *s.720*: both available for inspection at reg. office
- *s.694(2)*: **OR** to approve contract
- *s.716(1)*: **SR** to approve payment out of share capital

Post Meeting Matters (PMM):

- *s.719(1-2)*: Notify creditors of SR within 1 week (Gazette/Newspaper)