



# **CAPITAL MAINTENANCE**

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## Conditions for Solvent (Section 112)

1. The company is able to pay debt within 12 months after transaction or after winding up
2. Asset of the company is more than liability

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## INDIRECT FINANCIAL ASSISTANCE

1. When the subsidiary company pays the debt of parent company
  - **ARMOUR HICKS NORTHERN LTD v ARMOUR TRUST LTD**
2. When the company provides security or guarantee to the person who purchases the share in it
  - **CHUNG KHIAW BANK LTD V HOTEL RASA SAYANG SDN BHD**
3. When the company waives the debt of unpaid shares
  - **EH DEY PTY LTD V DEY**



### 3. Company waives debt of unpaid shares

#### EH DEY PTY LTD V DEY

EH DEY PTY LTD

- The Court Held:
  - Waiver of unpaid shares amounting to financial assistance, as it allowed Mr Paul to purchase share at lower price

1. Company sold shares to DEY for **\$12,440**, but DEY still not pay **\$5,942**

DEY

2. Dey sold the shares to Mr Paul for **\$6,498**

- The company waived debt of **\$5,942** owed by Dey

Mr Paul





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# SHARE BUYBACK

Types of share buyback are:

An **on-market share** buyback : the company can only buy back its issued shares through the stock exchange on which the shares are quoted and in accordance with the relevant rules Bursa Malaysia : S 127(2)(b).

An **off-market share** buyback: S. 127(3) allows public listed company to buy back its issued shares which are quoted on the stock exchange through privately arranged transaction, without purchasing its shares through the stock exchange.





## PROCEDURE UNDER SECTION 116

- 1) EGM: special resolution (75% of vote from shareholders)
- 2) The special resolution is filed in the court
- 3) Hearing in court
  - The hearing in court in order to know whether the capital reduction is objected by the creditor. If there is no objection, the reduction of capital can be done.
- 5) After hearing, the court will issue an order for capital reduction.
- 6) The order must be submitted to Companies Commission of Malaysia in order to take effect.



## CONDITIONS FOR REDEMPTION OF PREFERENCE SHARE

- Must be authorised by the constitution (SECTION 72(1))
- Before the redemption, the directors must make solvency statement first [Section 112 & Section 113]
- Can be redeemed if the preference share is fully paid by the shareholders (SECTION 72(4))
- The payment to the shareholders must be from
  - Profits of company (SECTION 72(4))
  - A fresh issue of shares (Exchange with new shares)
  - Capital of the company







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