



## MEMO

To: Board of Directors  
From: Company Secretary  
Subject: **PREFERENCE SHARES – CANCELLATION**

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A company can issue preference shares, with varying rights to distinguish them from ordinary [and other] share classes.

Preference shares are those that give holders some right or preference such as priority payment of dividends or return of capital over other share classes.

In our case the shares were issued as Convertible Preference Shares ('CPS'), ie, convertible into ordinary shares when the company completes its ASX listing - on terms and conditions outlined in the Participation Agreement between the company and the CPS shareholder.

### **Corporations Act Provisions**

Corporations Act sections 124 and 254A are the most relevant to the powers and rights of issuing and cancelling preference shares.

In summary, the rights attached to an issue of preference shares must be approved by a special resolution of shareholders, or be set out in the company's constitution. This protects the interests of existing shareholders by ensuring that they agree to the rights of the preference shares.

Cancelling preference shares may also require shareholders' approval, although some such shares may be redeemable or otherwise cancellable.

### **Cancellation**

Cancellation of the CPS is not contemplated under the Agreement. So we must turn to the statutory requirements of s.25B and related sections of the Act.

Preference shares can be cancelled under s.256B, but Shareholder approval is required to approve the reduction (by special resolution because it is deemed a 'selective' reduction) and, if the reduction also involves the cancellation of shares, by a special resolution passed by the shareholders whose shares are to be cancelled.

Form 2560 *Notification of Reduction in Share Capital Details* must be lodged with ASIC, with a copy of the meeting documents, at least the day before [the date of] the notice calling the shareholders' meeting is despatched.



For a selective reduction (which is the case here), Form 2205 *Notification of Resolution Regarding Shares* with a copy of the approved resolution must be lodged with ASIC within 14 days after the shareholders' meeting, but the actual share capital reduction does not take effect until 14 days after lodgement.

S.254Y requires a company to lodge a Form 484 Part C *Change to Company Details* with ASIC 'within one month after the shares are cancelled', even though the Form itself states that it must be lodged within 28 days, advising:

- the number of shares cancelled; and
- any amount paid by the company (in cash or otherwise) on the cancellation of the shares; and
- if the shares are cancelled following a share buy-back, the amount paid by the company on the buy-back; and
- if the company has different classes of shares, the class to which each cancelled share belonged.

### **Redeemable Preference Shares**

Redeemable preference shares are shares that according to their terms of issue, are liable to be redeemed at:

- the company's option; or
- the shareholders' option; or
- a fixed time or on a specified date.

On redemption payment is made to the redeemable preference shareholder in accordance with the shares' terms and the shares must be cancelled: s.254J. However, pursuant to s.254K a company may only redeem such shares if the shares are fully paid up and the redemption is made out of profits or the proceeds of a new issue of shares made specifically for that purpose.

Within 28 days of cancellation/re-issue of shares Form 484(C) *Change to Company Details* must be lodged with ASIC.

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#### **DISCLAIMER**

*The comments in this memo reflect some commercial aspects and observations on the matter experienced or observed by the writer in practice as he understands them. The information is given as a guide only and does not represent a definitive or legal view of any of the issues raised, covered or referred to and the reader is urged to seek his own professional advice on all aspects of, or pertaining to, this and any related matter.*