



MEMO

To: Board of Directors
From: Company Secretary
Subject: **SHARE BUY-BACKS – NEGATIVE EQUITY**

Further to today's meeting/discussions I confirm that (except in some circumstances which are not applicable to us) in my opinion generally the only way a company can reduce its share capital is through a 'share buy-back' which can either be 'equal' (ie, the same for all shareholders) or 'selective' (ie, to only some shareholders based on certain criteria). A selective buy-back will need shareholder approval and would effectively take a minimum of about 39 days to implement (ie, 1 day lodgement of documents (Explanatory Memorandum, Notice, etc) with ASIC + 24 days' notice/ mailing time + 14 days wait period after EGM).

I also mention (again, only my opinion) that technically (ie under Corporations Act) all shares are worth the same, regardless of whether they were issued for zero or 30cents - the issue price is no longer relevant once they are issued. To determine that worth one could take the total equity and divide it by the number of shares on issue (to equal Net Asset Backing). The resultant NAB must be a positive sum (otherwise the company could be insolvent - see below*) so any buy-back would usually be based on paying back to the shareholder that sum per share or a portion thereof. In our case I imagine we could make the terms of any selective buy-back such that it relates to all shares originally issued for zero and that the payback sum be zero. This of course would then be a disadvantage to those shareholders because they are then forfeiting the sum equal to the worth per share (NAB). But it would advantage all other shareholders.

Whatever the deal is it must be realistic in the eyes of ASIC, the other shareholders and creditors, and not prejudice any of them - I imagine the above scenario would pass that test.

I leave you and the board to continue to consider our options.

*unfortunately this may not work for us as that worth (NAB) based on the most recent management accounts is negative (so is the company insolvent?). So, even giving zero to buy-back participants is 'impossible'. Reducing the number of shares would in fact make the negative NAB per share even worse for remaining shareholders (if that means anything). I cannot see that in such case it would get through ASIC because in our explanation they would see the problem. And amongst other things the directors must state in the Explanatory



Memorandum that (effectively) the company will remain solvent notwithstanding the buy-back; otherwise they may be personally liable.

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.