



MEMO

To: Board of Directors
From: Company Secretary
Subject: **ON-MARKET SHARE BUY-BACK**

An 'on-market' share buy-back relates to a stock exchange listed company.

A listed company may buy back its ordinary shares, subject to the provisions of Part 2J.1 Division 2 (ss257A ~ 257J) of the Corporations Act and compliance with the stock exchange listing rules. In some circumstances shareholder approval is also required.

The company's constitution must also be consulted to ensure that there is no restriction to conducting a share buy-back; if so it would need a special resolution of shareholders to suitably amend the constitution.

The most common reason for undertaking a share buy-back is where a company has surplus cash and the directors consider that – what amounts to investment in the Company's own shares – represents a better business scenario than any alternative at the time.

For a company listed on ASX the most common methods of share buy-back are:

- (a) On-market
- (b) Pari passu / equal access
- (c) Selective.

Where any of these methods is to be utilized at least 14 days' prior notice must be lodged with ASIC (s257F) and the ASX. Generally ASIC Form 280 "Notification of Share Buy-back Details" is used, except for (a) if under the "10/12 limit" where Form 281 "Notice of Intention to Carry Out a Share Buy-back" is used.

ASX Listing Rule 3.8A details the stock exchange's documents and lodgement timetables for share buy-backs. Appendices 3C ~ F are used for ASX announcements.

ASX lodgment must be accompanied by an **Appendix 3C** "Announcement of Buy-back" for all these buy-back methods, specifying:

- Type of buy-back
- Description of relevant share class and number of shares on issue
- Reasons for the buy-back and any material information
- Details of the buy-back offer, including:



- Maximum number of shares to be bought back
- Offer time period (or a statement that it is to be for an unlimited duration)
- Stock broker appointed, if applicable.

Any director/related party participation in a buy-back must be by prior notice in the original Appendix 3C, or a subsequent Appendix 3D. The listed company would also be required, after any director/related entity buy-back occurred, to lodge an Appendix 3Y "Change of Director's Interest Notice" notifying of the changes to that director's shareholding interests.

ASIC Information Sheet (INFO 69) also states that: "It is the responsibility of the director/s to ensure that a share buy-back does not cause the company to become insolvent. If it does, the director/s may be personally liable for the loss. Further, if a share buy-back causes the company to become insolvent, the liquidator may be able to recover compensation from the selling shareholders."

When a company conducts an 'on-market buy-back' it is effectively a 'first come, first served' offer to buy-back its own shares from shareholders at the current share market price in the ordinary course of trading, subject to the announced terms of the offer and the stock exchange rules governing buy-backs.

L/R 7.29 states that "A company may only buy shares under an on-market buy-back if transactions in the company's shares were recorded on ASX on at least 5 days in the 3 months before it buys back the shares."

And L/R 7.33 states "A company may only buy back shares under an on-market buy-back at a price which is not more than 5% above the average of the market price for securities in that class. The average is calculated over the last 5 days on which sales in the shares were recorded before the day on which the purchase under the buy-back was made."

If an on-market buy-back is to exceed the "10/12 limit" then prior shareholders' approval, by ordinary resolution, is required (s257C).

Any changes to the buy-back scheme must be lodged with ASX using **Appendix 3D** "Changes Relating to Buy-back".

Every day that the buy-back is active (ie, some shares have actually been bought back) the company must lodge an **Appendix 3E** "Daily Share Buy-back Notice" with ASX, at least ½ hour before daily trading commences, detailing the number of shares bought, price(s) and highest/lowest prices during the buy-back.

Within 28 days after any shares are bought back they are taken as being cancelled (s257H) and the company must lodge with ASIC/ASX a Form 484 "Change to Company Details" (Section C1 Cancellation of Shares) stating the number and class of shares bought back and the consideration paid – s254Y.



Once a company has reached the stated maximum number, or has bought back all the shares it needs, it must lodge with ASX an **Appendix 3F** “Final Share Buy-back Notice”. But lodgement of such form may effectively be delayed ‘forever’ if the maximum is not reached (and the previously announced time period was of unlimited duration).

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.

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