



MEMO

To: Board of Directors
From: Company Secretary
Subject: **SHARE CAPITAL REDUCTION / CANCELLATION**

A company may reduce its share capital, generally speaking, only in one of two ways:-

- Share buy-back; or
- Share capital reduction.

A reduction in a company's share capital occurs when any money paid to a company to acquire shares is returned to the shareholder and the relevant shares are cancelled. However, it can also occur when no monetary payment or other consideration is made to shareholders but some shares are cancelled because there is no longer a need for such shares.

Unless otherwise specifically covered by the Act *, a **share capital reduction** is allowed under sec.256B of the Corporations Act if it:

- (a) is fair and reasonable to the shareholders as a whole
- (b) does not materially prejudice the company's ability to pay its creditors; and
- (c) is approved by shareholders under sec.256C.

All 3 conditions must be satisfied before the reduction can proceed. And once approved all shareholders are obliged to participate, even if they do not want to.

A reduction can be either:

- (i) an equal reduction; or
- (ii) a selective reduction.

An **equal reduction** applies to each holder of ordinary shares in proportion to the number of shares they hold and the terms of the reduction are the same for each shareholder. A **selective reduction** is where any of these criteria do not apply.

Shareholder approval is required to approve the reduction (by ordinary resolution if 'equal' and special resolution if 'selective') 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 only, Form 2205 “Notification of Resolution Regarding Shares” with a copy of the approved resolution must be lodged with ASIC within 14 days after the EGM, but the actual share capital reduction does not take effect until 14 days after lodgement.

Form 484 “Change to Company Details” (Section C1 Cancellation of Shares) must be lodged within 28 days of the actual reduction date to effect the return of capital in ASIC’s records and effect any share cancellation (sec.254Y).

* the Act otherwise specifically covers redeemable preference shares (sec.254J), buy-backs (sec.257A), and other prescribed capital reductions (secs.258A-258F)

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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