

A practical guide

To share buy-backs

A company can buy back shares only if:

- (a) The buy-back does not materially prejudice the ability to pay creditors; and
- (b) The procedures in Division 2 of Part 2J.1 of the Corporations Act 2001 (summarised below) are followed.

TYPES OF SHARE BUY-BACK

Type	Short Definition
Minimum holding	Buy-back of all of a holder's shares in a listed company which are below a defined marketable parcel
Employee share scheme	Approved buy-back under such a scheme for employees or salaried directors
On-market	Buy-back by a listed company on the market in ordinary course of trading
Equal access scheme	All holders of ordinary shares have opportunity to participate in proportion to holdings & on the same terms
Selective buy-back	None of the above

10/12 LIMIT

Procedures for some share buy-backs, as set out below, are subject to a 10/12 Limit:

- Buy-back is 10% of smallest number, at any time in last 12 months, of voting shares

REGULATORY SOURCES FOR DETAILED INFORMATION

- Division 2 of Part 2J.1 of the *Corporations Act 2001*
- ASIC Regulatory Guidance RG110 *Share buy-backs*

Next steps

For more information or assistance on *Corporations Act 2001* and financial reporting contact Daniel Gill or Chris King and for tax implications contact Murray Howlett or Kylee Smith on +61 7 3023 1300.

TAX

In order to understand the tax impact on shareholders of share buy-backs, specific tax advice should always be obtained based upon the particular facts of the transaction.

Thanks to recent changes to the tax legislation, the tax treatment of share-buybacks differs for listed and non-listed companies. Share-buy-backs undertaken by non-listed companies usually contain a dividend component, and a capital component. The dividend component can be significant.

Where the company has available franking credits, these deemed dividends may be proportionately franked. This tax outcome may differ from what the company or the shareholder would otherwise have expected. Tax legislation also now aligns the treatment of on-market and off-market share buy-backs for listed companies, such that no portion of the buy-back is permitted to be treated as a dividend.

HOW TO DO A SHARE BUY-BACK

Procedures	Minimum holding	Employee share scheme		On-market		Equal access scheme		Selective buy-back
		within 10/12 limit	over 10/12 limit	within 10/12 limit	over 10/12 limit	within 10/12 limit	over 10/12 limit	
1. Ordinary resolution	-	-	YES	-	YES	-	YES	-
2. Special/unanimous resolution	-	-	-	-	-	-	-	YES
3. Lodge offer documents with ASIC	-	-	-	-	-	YES	YES	YES
4. 14 days notice to ASIC	-	YES	YES	YES	YES	YES	YES	YES
5. Disclose relevant information when offer made	-	-	-	-	-	YES	YES	YES
6. Shares are cancelled	YES	YES	YES	YES	YES	YES	YES	YES
7. Change to company details (Form 484)	YES	YES	YES	YES	YES	YES	YES	YES

Learn more

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