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COMPANY SELECTIVE SHAREHOLDER BUY-BACK

A company is able to selectively buy-back the shares of one particular shareholder, say when that shareholder is a director / employee who intends on leaving the company, or has been terminated by the company.

The selective buy back procedure first requires approval of 75% of the remaining shareholders, a special resolution.

For clarity and completeness, the procedure for a selective buy back should be set out in every shareholders agreement, when the company is first established.

However, section 257B of the *Corporations Act 2000* (Cth) also sets out the procedure.

The notice to shareholders convening the meeting to vote on the selective buy back should set out all material information relevant to the selective buy-back offer.

ASIC is required to be notified of the intended selective buy back by way of lodgment of an ASIC Form 280 – Notification of share buy-back details, or alternatively ASIC Form 281 – Notice of intention to carry out a share buy-back. It is also necessary to notify ASIC of the completion of the selective buy back and the cancellation of shares, by way of lodgment of ASIC Form 484.

Section 257B of the *Corporations Act* also sets out the steps involved in the following buy-back schemes:

1. equal access scheme, where a company can offer to purchase the same percentage of shares of all shareholders for the same offer / terms; and
2. employee share scheme, where a company can buy back the shares held by employees.

Again, these procedures should be set out in every shareholders agreement at the time of incorporation of the company, to avoid any disputes that may arise at a later time.

Capital gains tax will need to be considered on the sale of shares back to the company, for which accountancy advice should be obtained.

In addition to clearly setting out these mechanisms in the shareholders agreement, it is important that shareholders understand how the provisions operate and when they should be implemented, so that you can do so without unnecessary delay, should the need arise.

Please contact SRM Lawyers to answer any queries you have relating to shareholder agreements or shareholder activity.

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