



## MEMO

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

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A stock exchange listed company may buy back its own shares (i.e., ordinary fully-paid stock exchange quoted shares) in a number of ways, the most simplified being through an “on-market buy-back”.

Generally such a facility would be limited to 10% of total [voting] shares outstanding within a 12 month period – the “10/12 limit”, see ss257B(4) & (5) of the Corporations Act – otherwise shareholder approval is required (s257C).

To commence an on-market buy-back at least 14 days’ prior notice must be lodged with ASIC (s257F) using Form 281 “Notice of Intention to Carry Out a Share Buy-back” if under 10%, and Form 280 “Notification of Share Buy-back Details” if over 10%.

At the same time an Appendix 3C “Announcement of Buy-back” (which actually covers any type of buy-back) must be lodged with the ASX, specifying:

- Type of buy-back
- Description of relevant share class and number of shares on issue
- 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
- Reasons for the buy-back and any material information.

A common reason for undertaking a share buy-back is where a company has surplus cash and the directors consider investment in the company’s own shares represents a better business opportunity than most alternatives available at the time.

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.

ASX Listing Rule 3.8A details the stock exchange’s documents and lodgement timetables for share buy-backs.



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, in particular:

- L/R 7.29 "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."
- L/R 7.33 "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."

Every day that the buy-back remains active 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.

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

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).

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**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.*