Companies Act (1990) – Life Advisory Services

This document will be relevant where you are considering putting a corporate shareholder protection arrangement in place for your clients.

Part XI of the Companies Act (1990), which came into force on the 1st July 1991, allows a private company to buy back its own shares in certain circumstances and subject to certain conditions:

1. **The company must be authorised by its Articles of Association to purchase its own shares.** A special resolution is required to change the Articles of Association.

2. **The company must be authorised to purchase its own shares under a contract entered into in advance of the purchase.** The terms of this contract must be authorised by a special resolution.

   Under section 213(3) of the Act the special resolution authorising the contract to purchase the shares will be ineffective if a member holding shares affected by the resolution exercises his voting rights in respect of the shares in favour of the resolution and it would not have been carried without his vote.

   A special resolution requires not less than 75% of the votes cast by members of the company who 'being entitled to do so, vote in person'.

   The terms of such a contract to purchase its own shares may only be subsequently varied, revoked, or renewed by a further special resolution.

   A copy of the contract must be available for inspection by members both at the registered office of the company for at least 21 days before the meeting at which the resolution will be passed, and at the meeting itself.

3. **A Company can not buy back all its own shares.** A company can not buy its own shares if as a result of the purchase the nominal value of the issued share capital which is not redeemable would be less than 10% of the nominal value of the total issued share capital of the company.

4. **Only fully paid up shares can be purchased by the company.**

5. **A Company can buy back its own shares under a contingent purchase contract, provided the contract has been authorised by a special resolution**. *Same point as no 2.*

6. **A Company purchasing its own shares must pay in full for the shares at the time of purchase. Instalment or phased payments are not allowed.**

7. **A Company can only buy shares 'out of profits available for distribution'.**

We advise that your client seeks professional tax and legal advice as the information given is a guideline only and does not take into account your client's particular circumstances.

Information is correct as at 3 January 2012 but is subject to change.