

CAPITAL MAINTENANCE

Chapter 2J CA	803 - 818	<p>Transactions affecting Share Capital</p> <ul style="list-style-type: none"> Financial assistance [s260] (only applies to buy shares, not other financial assistance) [pg440 for chart] Permitted share buy-backs [s257] [pg 444 & pg445 for chart] Self acquisition [s259] Reductions of capital [s256] (to return excess capital, cancel uncalled capital, or cancel capital no longer represented by assets) <ul style="list-style-type: none"> Mandatory once procedure is followed. Not an offer, binds members. <p>Can be used to kick someone out of the board.</p>
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FINANCIAL ASSISTANCE

S260A	816	<p>Financial Assistance by a Company for Acquisition of Shares (own or holding)</p> <p>S260(1) : A company may financially assist a person to acquire shares (or units) in the company or a holding company of the holding company only if :</p> <ol style="list-style-type: none"> Giving the assistance does not materially prejudice: <ol style="list-style-type: none"> The <i>interest</i> of the <i>company</i> or its <i>shareholders</i>; OR The company's <i>ability to pay its creditors</i>; OR The assistance is approved by shareholders under s260B The assistance is exempted under s260C. 	<ul style="list-style-type: none"> Not necessarily have to be shares bought from the company. Could also be bought from the stock market. It's as long as it's the shares OF the company. Examples of financial assistance : <ul style="list-style-type: none"> Giving a loan Giving a guarantee Company or subsidiary making payment to the acquirer <p>Material Prejudice <i>ASIC v Adler (pg442)</i></p> <ul style="list-style-type: none"> Material prejudice will occur where the company is impoverished overall by the transaction.
S260B	816	<p>Shareholder Approval</p> <p>s260B(1) Approval of own shareholders :</p> <ol style="list-style-type: none"> <i>special resolution</i> at GM, with no votes being cast in favour of the resolution by the person acquiring the shares; OR <i>ordinary resolution</i> at GM by <i>ALL ordinary shareholders</i>. 	
S260C	817	Exempted Financial Assistance : BANK	
S260D	818	<p>Consequences of Failing to Comply with s260A:</p> <ul style="list-style-type: none"> S260D(1) : contravention by the company but no penalty for the company and transaction is still valid S260D(2) : person involved liable for civil penalty S260D(3) : Criminal consequences if <i>dishonest</i> 	
S260E	818	<p>GENERAL DUTIES STILL APPLY</p> <p>A director is not relieved from any of their duties under this Act (including s180-184), or their fiduciary duties, in connection with a transaction merely because the transaction is authorised by a provision under this Chapter or is approved by a resolution of members under a provision of this Chapter.</p>	

SHARE BUYBACKS

S257A	806	<p>The Company's power to buy back its own shares</p> <ul style="list-style-type: none"> The company may buy back its own shares if : <ul style="list-style-type: none"> a. Buy-back does <i>not materially prejudice</i> the company's <i>ability to pay its creditors</i> <p>The company follows the procedures laid down in s257B.</p>	<p>- Up to members to decide whether to accept the company's offers and sell their shares, or reject the offer and keep their shares.</p> <ul style="list-style-type: none"> You can't get rid of someone through a share buyback.
S257B	806	Buy-Back Procedure - general	
S257C	808	Buy-Back Procedure - Shareholder Approval if the 10/12 Limit Exceeded Ordinary resolution	
S257D	808	<p>Buy-Back Procedure - Special Shareholder Approval for Selective Buy-Back</p> <ul style="list-style-type: none"> S257D(1)(a) : a <i>special resolution</i> passed at a GM, with <i>no votes cast</i> in favour of the resolution by any <i>person</i> whose <i>shares</i> are <i>proposed</i> to be <i>bought back</i> or by their <i>associates</i>; OR <p>An <i>ordinary resolution</i> agreed to, at GM, <i>by all ordinary shareholders</i>.</p>	

PROHIBITED SELF-ACQUISITION

S259A	812	<p>Directly Acquiring Own Shares</p> <p>A company must not acquire shares (or units of shares) in itself except:</p> <ol style="list-style-type: none"> In buying back shares under s257A; OR In <i>acquiring an interest</i> (other than a legal interest) <i>in fully-paid shares</i> in the company if no consideration is given for the acquisition by the company or an entity it controls; OR Under a <i>court order</i>; OR In circumstances covered by <i>s259B(2) or (3)</i> 	<p>Corporation Act prohibits:</p> <ul style="list-style-type: none"> A company directly acquiring its own shares or any right or interest in its own shares. A company taking security over shares in itself or in a company that controls it. The issue or transfer of shares or interests in shares of the company to an entity that it controls. <p>- does NOT extend to redeemable preference shares. [s258E(a)]</p> <p>Prohibited self Acquisition <i>Trevor v Whitworth (pg 438)</i></p> <ul style="list-style-type: none"> <i>Company has no power to purchase its own shares.</i>
S259F	815	<p>Consequences of Failing to Comply with s259A OR s259B:</p> <ul style="list-style-type: none"> S259F(1) : contravention by the company but no penalty for the company and transaction is still valid S259F(2) : person involved liable for civil penalty S259F(3) : Criminal consequences if <i>dishonest</i> 	