

## MINORITY BUY-OUT RIGHTS - NEW PROTECTIONS FOR MINORITY SHAREHOLDERS

The Companies (Minority Buy-out Rights) Amendment Bill amends the Companies Act 1993 to clarify the minority buy-out provisions for dissenting shareholders. The key objective of the Bill is to improve the practical operation of the minority buy-out regime.

### THE CURRENT REGIME:

The purpose of the minority buy out provisions is to provide an exit strategy for dissenting shareholders of a company who have unsuccessfully opposed a major change to the structure or operation of the company. This could be in the form of: adopting a constitution or, if it has one, altering or revoking the company's constitution; approving a major transaction; approving an amalgamation of the company under section 221 of the Companies Act 1993; or putting the company into liquidation. In this situation, the dissenting shareholders are entitled to require the company to purchase their shares for a "fair and reasonable price" but the current regime provides no guidance as to how a fair and reasonable price is to be calculated nor any indication as to the date on which the price is to be ascertained.

### PROPOSED CHANGES:

The Bill amends the minority buy-out provisions by creating a clear process for determining the price to be paid for the shares in such a situation. The proposed amendments incorporate recommendations from a Law Commission Review which was borne out of a court decision of Justice Doogue in *Natural Gas Corporation v Infratil 1998 Limited*, where it was concluded that the provisions required revision to provide a more workable method of valuing a minority shareholding.

The proposed changes to the current regime are as follows:

1 The price of the shares in a minority buy-out must be calculated from the date that the company gives the shareholder notice agreeing to buy back the shares.

2 The Board of the company must give the shareholder written notice of the price it will pay for the shares and how the price was calculated. The price must be an honest estimate of the value of those shares, determined as follows:

(a) The value of the total shares in each class to which the shares belong must be calculated (the class value).

(b) Each class value must be adjusted to exclude any variation in the class value that the board reasonably considers was due to, or in expectation of, the event proposed or authorised by the resolution; and (c) A portion of each adjusted class value must be allocated to the shareholder proportionate to the number of shares he, she or it holds in the relevant class.

3 (a) The Bill provides for arbitration where the shareholder objects to the price offered by the company for their shares. If the shareholder objects to the price offered for the shares, the company must refer the matter to arbitration for determination of the share value, and remedies available to the shareholder or the company where the share valuation differs from that determined by the Board.

(b) The differences with the current law are that except in exceptional circumstances, an arbitral tribunal must award interest on any balance owing or excess to be paid. If a balance is owing to the shareholder, an arbitral tribunal may award to the shareholder, in addition to or instead of an award of interest, damages for loss attributable to the shortfall in the initial payment.

4 The legal title to the shares and all voting rights attached to them remain with the shareholder until the price is ascertained and paid in full, but from the time that the shareholder gives notice to the company to purchase its shares, any attempted sale of the shareholders' shares, except in favour of the company, will have no effect.

# ARTICLES

## **CONCLUSION:**

If the Bill is passed, the new regime for minority buy-out rights seeks to provide an effective and cost efficient process for minority buy-out rights, to better protect the interests of minority shareholders.

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