



COMPANY SECRETARIAL AND CORPORATE GOVERNANCE

Buy Back v Redemption - The Importance of Getting it Right

by **lk-shields**

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The Companies Act 2014 provides the mechanism for a private limited company (“LTD”) in Ireland to acquire its own shares. However, it is extremely important for Directors to understand the correct mechanism to use to acquire its own shares as otherwise the transaction will be deemed void and the Directors will be guilty of a Category 2 offence.

There are various reasons as to why an LTD would consider acquiring its own shares including:

1. To return share to a shareholder(s)
2. To exit a shareholder(s)
3. To raise funds
4. To alter current shareholdings

Redemption V Buy Back

Whilst both methods essentially have the same outcome, a redemption of shares can only be completed where there are redeemable shares which were issued solely with the purpose that they be redeemed at some point in the future, if desired. Whereas a buyback of shares can be applied to shares in their current form and the required contract is used for the buyback of the shares.

Key Company Secretarial Considerations

Also, any acquisition by way of a buyback or redemption must be funded from distributable profits (limited exemptions exist) which means that either method is only available where an LTD has sufficient reserves.

In terms of authorisation, Section 105 of the Companies Act 2014 provides various conditions which must be satisfied in the course of the transaction. The redemption or purchase of shares by a company may only be authorised through:

- Authorisation contained in the Constitution of the Company;
- A Special Resolution of the Shareholders: and
- The specific rights which are attached to the shares in question.

Finally, when the shares have been redeemed or bought back, the shares can either be cancelled or held as treasury shares and consideration needs to be given to this decision as once the shares are cancelled, they can no longer be used by the Company for other transactions.

Obtaining Correct Advice

It is always important for a company considering the acquisition of its own shares seek consultation from an experienced company secretarial provider. The [LK Shields Company Secretarial and Compliance team](#) would be pleased to answer any questions that may arise as well as assist with the planning and implementation stages.

About the Author