



Companies (Minority Buy-out Rights) Amendment Act 2008

Public Act 2008 No 69
Date of assent 16 September 2008
Commencement see section 2

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The Parliament of New Zealand enacts as follows:**1 Title**

This Act is the Companies (Minority Buy-out Rights) Amendment Act 2008.

2 Commencement

This Act comes into force on the day after the date on which it receives the Royal assent.

Part 1**Amendments to Companies Act 1993****3 Principal Act amended**

This Part amends the Companies Act 1993.

4 Company may acquire its own shares

Section 58 is amended by omitting “to 112 of this Act” in each place where it appears and substituting in each case “to 112C”.

5 Cancellation of shares repurchased

Section 66(1) is amended by omitting “section 112 of this Act” and substituting “sections 112 to 112C”.

6 Company may hold its own shares

Section 67A is amended by omitting “section 112 of this Act” in each place where it appears and substituting in each case “sections 112 to 112C”.

7 New sections 112 to 112C substituted

Section 112 is repealed and the following sections are substituted:

“112 Price for shares to be purchased by company determined

- “(1) Within 5 working days of giving notice under section 111(2)(e) that the board agrees to the purchase of shares by the company, the board must give to the holder of the shares written notice of—
- “(a) the price it offers to pay for those shares; and
 - “(b) how—
 - “(i) the matters in subsection (2) were calculated; or
 - “(ii) the price was calculated under subsection (3) and why calculating the price using the methodology set out in paragraphs (a) to (c) of subsection (2) would be clearly unfair.
- “(2) That price must be a fair and reasonable price (as at the close of business on the day before the date on which the resolution was passed) for the shares held by the shareholder, calculated as follows:
- “(a) first, the fair and reasonable value of the total shares in each class to which the shares belong must be calculated (the **class value**):
 - “(b) secondly, each class value must be adjusted to exclude any fluctuation (whether positive or negative) in the class value that has occurred (whether before or after the resolution was passed) that was due to, or in expectation of, the event proposed or authorised by the resolution:
 - “(c) thirdly, a portion of each adjusted class value must be allocated to the shareholder in proportion to the number of shares he, she, or it holds in the relevant class.
- “(3) However, a different methodology from that set out in paragraphs (a) to (c) of subsection (2) may be used to calculate the fair and reasonable price for the shares if using the methodology set out in those paragraphs would be clearly unfair to the shareholder or the company.
- “(4) The shareholder may object to the price offered by the board for the shares by giving written notice to the company no later

than 10 working days after the date on which the board gave written notice to the shareholder under subsection (1).

- “(5) If the company does not receive an objection to the price in accordance with subsection (4), the company must purchase all the shares at the nominated price no later than 10 working days after—
- “(a) the date on which the board’s offer under subsection (1) is accepted; or
 - “(b) if the board has not received an acceptance, the date that is 10 working days after the date on which the board gave written notice to the shareholder under subsection (1).
- “(6) The time periods in subsection (5) do not apply if there is a written agreement between the board and the shareholder that specifically sets a different date for purchase of the shares.
- “(7) In this section, **resolution** means the resolution referred to in section 110 or 118 that, due to it having been passed, entitles the shareholder to require the company to purchase the shareholder’s shares in accordance with section 111.

“**112A Price for shares referred to arbitration if shareholder objects to price**

- “(1) If a company receives an objection to the price offered for shares in accordance with section 112(4),—
- “(a) the following issues must be submitted to arbitration:
 - “(i) the fair and reasonable price for the shares, on the basis set out in section 112(2) and (3); and
 - “(ii) the remedies available to the holder of the shares or the company in respect of any price for the shares that differs from that determined by the board under section 112; and
 - “(b) the company must, within 5 working days of receiving the objection, pay to the shareholder a provisional price in respect of each share equal to the price offered by the board under section 112(1).
- “(2) If the price determined for the shares—
- “(a) exceeds the provisional price paid, the arbitral tribunal must order the company to pay the balance owing to the shareholder:

- “(b) is less than the provisional price paid, the arbitral tribunal must order the shareholder to pay the excess to the company.
- “(3) Except in exceptional circumstances, an arbitral tribunal must award interest on any balance owing or excess to be paid under subsection (2).
- “(4) 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.
- “(5) Any sum that must be paid in accordance with this section must be paid no later than 10 days after the date of the arbitral tribunal’s determination, unless the arbitral tribunal specifically orders otherwise.
- “(6) A submission to arbitration under this section is an arbitration agreement for the purposes of the Arbitration Act 1996, and the provisions of that Act apply accordingly.
- “(7) Clause 6 of Schedule 2 of the Arbitration Act 1996 may not be excluded from the arbitration agreement, and the term ‘costs and expenses of an arbitration’ in that clause includes, where a balance is owing to the shareholder,—
- “(a) the reasonable legal costs of the shareholder on a solicitor-and-client basis; and
 - “(b) the reasonable costs of expert witnesses.

“112B Interest payable on outstanding payments

- “(1) Interest is payable on any sum that must be paid under section 112 or 112A that is outstanding after the date on which it falls due on the basis and at the rate that the arbitral tribunal thinks fit having regard to all of the circumstances.
- “(2) The sum on which interest is payable under subsection (1) includes any interest or damages for loss awarded under section 112A.

“112C Timing of transfer of shares

- “(1) On the day on which a board gives notice under section 111(2)(e) that the board agrees to the purchase of shares by the company,—

- “(a) the legal title to those shares passes to the company; and
- “(b) the rights of the shareholder in relation to those shares end.

“(2) However, for the purposes of sections 112 and 112A, **shareholder** and **holder of the shares** means the person who held the legal title to the shares immediately before the board gave notice under section 111(2)(e) that the board agrees to the purchase of those shares by the company.

“(3) Subsection (2) applies despite subsection (1).”

8 Purchase of shares by third party

Section 113(1) is amended by omitting “Section 112 of this Act applies” and substituting “Sections 112 to 112C apply”.

9 Resolution in lieu of meeting

Section 122 is amended by repealing subsection (5) and substituting the following subsection:

“(5) Within 5 working days of a resolution being passed under this section, the company must send to every shareholder who did not sign the resolution or on whose behalf the resolution was not signed,—

- “(a) a copy of the resolution; and
- “(b) if the resolution was a special resolution required by section 106(1)(a) or (b), a statement setting out the rights of shareholders under section 110.”

10 Schedule 1 amended

Clause 2(2) of Schedule 1 is amended by adding “; and” and also by adding the following paragraph:

- “(c) in the case of special resolutions required by section 106(1)(a) or (b), the right of a shareholder under section 110.”

Part 2
**Transitional provision and consequential
amendments to other enactments**

11 Application of amendments in Part 1

The amendments in Part 1 do not apply to any special resolution passed under section 106(1) of the Companies Act 1993 before this Act comes into force.

12 Amendment to Co-operative Companies Act 1996

- (1) This section amends the Co-operative Companies Act 1996.
- (2) Section 29(f) is amended by omitting “112 and” and substituting “112 to”.

13 Amendment to Overseas Investment Regulations 2005

- (1) This section amends the Overseas Investment Regulations 2005.
- (2) Regulation 33(1)(b)(ii) is amended by omitting “section 112” and substituting “sections 112 to 112C”.

14 Amendment to Lawyers and Conveyancers Act (Lawyers: Nominee Company) Rules 2008

- (1) This section amends the Lawyers and Conveyancers Act (Lawyers: Nominee Company) Rules 2008.
 - (2) Regulation 5 of Schedule 1 is amended by omitting “112” and substituting “112C”.
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Legislative history

7 November 2007	Introduction (Bill 167-1)
11 December 2007	First reading and referral to Commerce Committee
27 May 2008	Reported from Commerce Committee (Bill 167-2)
2 September 2008	Second reading
2 September 2008	Reported from committee of the whole House (Bill 167-2)
2 September 2008	Third reading
16 September 2008	Royal assent

This Act is administered by the Ministry of Economic Development.
