

Section 164 Appraisal Rights

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Dissenting shareholder appraisal remedies were introduced into South African company law upon the implementation of the Companies Act 71 of 2008. In essence, appraisal rights allow a dissenting shareholder, in certain statutorily prescribed circumstances, to force the company to buy back its shares at a fair market value.¹ This affords a minority shareholder, who is unable to prevent a transaction he/she disagrees with, the opportunity to exit the company. The concept originates from the United States of America and has been a part of their statutory law for over a century.² The concept is also a part of the Canadian, Australian and New Zealand legal systems.³

Appraisal rights under the Act are triggered when certain fundamental transaction occur. Sections 112-115 set out certain actions by companies that will be considered a fundamental transaction. These include; the disposal of all or greater part of the company's assets, amalgamations or mergers and schemes of arrangement. In the event that a company gives notice of a meeting to its shareholders regarding a resolution in terms of any of the above mentioned fundamental transactions, the appraisal rights are triggered.⁴ Further, the rights will also be triggered if it gives a notice of meeting to pass a resolution to amend its Memorandum of Incorporation by altering the preferences, rights, limitations or any other terms of any class of shares in a manner materially adverse to the rights or interests of holders of that class of shares.⁵

In the event that any of the abovementioned instances occur, one must then follow the procedure set out in Section 164 of the Act in order to ensure acquisition of their shares at fair market value. At first glance the procedure seems technical, but on closer consideration it is a logical and coherent method to secure a fair value for your shares.

¹ MF Cassim 'The Introduction of the Statutory Merger in South African Corporate Law: Majority Rule Offset by the Appraisal Right (Part I)' (2008) 20 *SA Mercantile Law Journal* 1 at 19.

² Jacqueline Yeats 'Putting Appraisal rights into perspective' (2014) 25 *Stellenbosch Law Review* at 328.

³ *Ibid.*

⁴ Yeats op cit note 1 at 332.

⁵ S 164(2)(a).



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