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Buy Back of Shares by Private and Unlisted Public Company

Relevant Provisions

1. Section 68 of the Companies Act, 2013
2. Section 69 of the Companies Act, 2013
3. Section 70 of the Companies Act, 2013
4. Rule 17 of the Companies (share capital & Debentures) Rules, 2014
5. Securities and Exchange Board of India (Buy Back of Securities) Regulations 2018 (For Listed Companies)

Meaning of Buy Back

Buy-Back of shares is a process whereby a company repurchases its own shares from the shareholders at a price usually higher than its market price.

Reason for Buy Back

It is a mode of Capital restructuring with an objective of increasing Earning per share, preventing hostile takeovers, increasing the market price of shares and changing the capital and shareholding structure of the Company. It is an alternative to Reduction of Capital.

An Illustration to explain the benefits of Buy Back:

Company XYZ issues shares 1,00,000 shares at Rs. 50 per share, raising Rs. 50,00,000.

Now during Covid period and due to halt of company operation in this period, Company shares price falls down to Rs. 25 per share.

Company decided to repurchase 25,000 shares at Rs. 30 per share for a total outlay of Rs. 7,50,000.

Now as the situation improves, company performance also improves and this drives the price to Rs. 60 per share.

Company again issues that repurchased 25,000 shares at market price i.e., Rs. 60 per share, raising Rs. 15,00,000.

By doing this company is able to raise additional Rs. 7,50,000 without further diluting ownership by issuing additional shares.

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Money initially raised	Rs. 50,00,000
Money spent on Buy Back	Rs. (7,50,000)
Money raised again by issuing bought back shares	Rs. 15,00,000
Net Amount raised by Company	Rs. 57,50,000

Source of funds for Buy Back

Out of:

1. Free Reserves
2. The Securities premium account
3. The proceeds of the issue of any shares or other specified securities.

Steps and Procedure of Buy Back

1. Check and Alter AOA

First and foremost, step is to check the Article of Association of the Company, Articles of Association (AOA) should contain provision for buying back of shares by the company if not authorised, then company shall alter its AOA for incorporating such provision.

2. Approval from Board and shareholders

Board Resolution is enough if the quantum of Buy back is up to 10% of the aggregate of free reserves and paid-up capital of the company.

Shareholders' approval is required if the quantum of Buy back is more than 10% and up to 25% of the aggregate of free reserves and paid-up capital of the company.

3. Pass Board resolution and issue notice of shareholders meeting, if required.

Such notice shall be accompanied by an explanatory statement that must contain required disclosure as per rule 17 of the Companies (share capital and Debentures) Rules, 2014.

4. Conduct and pass special resolution for the approval of Buy back. File MGT-14 with ROC within 30 days from the date of passing Special Resolution.
5. File letter of offer with ROC in form SH-8.
6. Dispatch letter of offer to shareholders within 20 days from the date of filing such letter of offer with ROC.

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7. Offer shall be open for minimum 15 days and maximum of 30 days from the date of dispatch of letter of offer.

Provided that where all members of a company agree, the offer for buy-back may remain open for a period less than fifteen days.

8. After the date of the offer, the Company shall open separate bank accounts for the shareholders who have accepted such offer and the due amount is to be deposit in that account.

9. Do the verification of offer received within 15 days from the date of closure of offer.

10. Intimate the shareholder in case of rejection within 21 days from the date of closure of offer.

11. Make cash payment to the shareholders within 7 days from the last date of verification of application received.

12. Return the share certificates to those shareholders, whose shares have not been accepted for buy back within 7 days from the date of rejection.

13. Extinguish and physically destroy the share certificates bought back within 7 days from the last date of completion of Buy back.

14. Maintain register of shares which have been bought back in SH-10.

15. Return of Buy back shall be filed with ROC in form SH-11 within 30 days from the date of completion of process of buy back.

Penalty for Default in Buy back procedure

Company shall be punishable with fine which shall not be less than 1 lac rupees but which may extend to 3 lac rupees.

Every officer of the Company shall be punishable with fine which shall not be less than 1 lac rupees but which may extend to 3 lac rupees.

Important Points

1. No buy back shall be made out of proceeds of an earlier issue of same kind of shares.

2. No Buy back is allowed if the ratio of the aggregate of secured and unsecured debts owed by the company after buy-back is more than twice the paid-up capital and its free reserves (for Government Company, ratio is 6:1).

3. All the shares or other specified securities for buy-back must be fully paid-up.

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4. One year gap should be present between two consecutive Buyback offer.
5. Procedure of Buy back shall be completed within a year from the date of passing Board Resolution or Shareholder resolution.
6. The Company shall not make a further issue of the same kind of shares or other securities including allotment of new shares under section 62 or other specified securities within a period of six months except by way of a bonus issue or in the discharge of subsisting obligations such as conversion of warrants, stock option schemes, sweat equity or conversion of preference shares or debentures into equity shares.
7. The company shall not issue any new shares including by way of bonus shares from the date of passing of special resolution authorizing the buy-back till the date of the closure of the offer under these rules, except those arising out of any outstanding convertible instruments.
8. Company shall not withdraw offer once it has announced to the shareholders.
9. Company shall not utilize any money borrowed from Bank or financial institution for Buy back.

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