

Buyback of Securities – Companies Act, 2013

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In brief

The literal meaning of word 'buyback' is 'repurchase'. Buy back means purchase of its own shares or specified securities by its own company. It is one of the most viable option for the company to distribute the excess cash on its balance sheet which the Company wants to distribute amongst the shareholders. This small gesture will not only bring positive image of the company in the market but also it will prevent its competitors by using tactics and taking over the control of the business. The following are the gist of provisions with respect to buyback.

Relevant provisions

Section 68, 69, 70 of the Companies Act, 2013

Chapter iv - Rule 17 of Companies (Share Capital and Debenture Rules), 2014

In detail

Pre-requisites of Buyback

1. Authorized by the Articles of Association;
2. Special resolution at the general meeting, If the buyback is 10% or less of the total (PUSC+FR) of the company then board resolution will suffice;
3. The amount of buyback shall be 25% or less of the aggregate of (PUSC+FR) of the Company;
4. The ratio of aggregate of secured and unsecured debts owned by the company after buyback shall not be more than twice the (PUSC+FR);
5. The shares and the other specified securities are fully paid up;

Steps for Buyback

Step 1: Hold a Board Meeting and pass Board resolutions for –

- Approval for Buy-Back of Equity Shares;
- Notice & Explanatory statement for calling EGM;

Step 2: Send notice for holding General meeting along with the explanatory statement stating –

- Full and complete disclosure of all material facts;
- Price, method and basis of Buy back price;
- The necessity of buyback;
- The class of shares or securities intended to be bought back;
- Audited accounts on the basis of which calculation with reference to buy back is done which is not more than 6 months old (In case the audited accounts are more than 6 months old, the calculations shall be on the basis of un-audited accounts not older than six months from the date of offer document which are subjected to limited review by the auditors of the company)
- Amount to be used for buyback;
- The time limit for completion of buyback;
- Other important things to be mentioned as stated in rules;

Step 3: Hold General meeting and pass resolution for –

- Approval to Open Offer for Shorter Period for The Buyback;
- Buyback of Equity Shares;

Step 4: File form MGT-14, Form SH – 8 and Form SH – 9

The Company is required to file Letter of Offer in Form SH - 8 with the Registrar of Companies which shall be dated and signed by at least two directors of the company one of them shall be Managing Director. The Company shall file a Declaration of Insolvency in Form SH - 9 with the Registrar of Companies and in case of listed company also with SEBI along with required fees and signed by at least two directors of the company one of whom shall be managing director and it should be verified by an affidavit.

Step 5: Dispatch Letter of Offer –

The Letter of Offer shall be dispatched to the shareholders or security holders within 21 days from its filing with Registrar of Companies.

Step 6: Opening of Buyback Offer –

The offer shall remain open for a period of not less than 15 days and not exceeding 30 days from the

date of dispatch of letter of offer.

Note - Where all members of a Company agree, the offer for buy-back may remain open for a period less than 15 days.

Step 7: Verification of Offer –

The company shall verify the offer within 15 days of closure of offer and a communication of rejection shall be made within 21 days from the closure of offer.

Step 8: Opening a separate Bank Account –

After the date of closure of the offer, the company shall open a separate Bank Account and then within 7 days make payment of consideration in cash to shareholders whose securities have been accepted or return the share certificate whose securities have not been accepted.

Step 9: Extinguish or Physically Destroy the Shares –

The company shall extinguish or physically destroy the shares within 7 days of the last date of completion of buyback.

Step 10: Maintaining Register of Shares –

The Company shall maintain register of shares or other securities which have been bought back in Form No. 10 and it shall be kept at registered office.

Step 11: Return of Buyback –

The company shall file with ROC within 30 days of completion of buyback, a return in the Form No. 11 and annex a certificate in Form No. 15 signed by two directors of the company certifying that the buyback of securities has been made in compliance with the provisions of the act and the rules.

Modes of Buyback

1. Existing shareholders or security holders on a proportionate basis,
2. Open market,
3. Purchasing the securities issued to employees of the company pursuant to a scheme of stock option or sweat equity.

Source of Funds

A company can purchase its own shares or other specified securities out of:

1. It's free reserves;
2. The securities premium account or
3. The proceeds of the issue of any shares or other specified securities.

A buyback shall not be made out of proceeds of earlier issue of same kind of shares or other specified securities.

Other provisions related to Buyback

- Every buyback shall be completed within a period of one year from the date of passing of special resolution or board resolution is passed.
- After completing the buyback, the company shall not make further issue of same kind of securities within a period of six months except by way of bonus issue or in the discharge of subsisting obligations such as conversion of warrants, stock options schemes, sweat equity or conversion of preference shares or debenture into equity.
- The company shall ensure that—

1. the letter of offer shall contain true, factual and material information and

shall not contain any misleading information;

2. the company shall not issue any new shares including by way of bonus shares from the date of passing of SR authorizing the buy-back till the date of the closure of the offer, except those arising out of any outstanding convertible instruments;
3. the company shall confirm in its offer the opening of a separate bank account adequately funded for this purpose and to pay the consideration only by way of cash;
4. the company shall not withdraw the offer once it has announced the offer to the shareholders;
5. the company shall not utilize any money borrowed from banks or financial institutions for the purpose of buying back its shares; and
6. the company shall not utilize the proceeds of an earlier issue of the same kind of shares or same kind of other specified securities for the buy-back.

• Determination of price –

the shares can be bought back at the fair value of the shares which may or may not be the book value of shares. Fair value is to be determined by an independent Valuer.

Note - Statutory auditor is not eligible to provide valuation certificate to the company and therefore, it should be obtained from an independent valuer.

Transfer of certain sums to Capital Redemption Reserve Account (Section 69)

After Buy back, a sum equal to the nominal value of the shares so

purchased shall be transferred to the capital redemption reserve account and details of such transfer shall be disclosed in the balance sheet. This amount can be used for paying up unissued shares of the company to be issued to members of the company as fully paid bonus shares.

Circumstances in which Buyback is Prohibited (Section 70)

1. No company shall directly or indirectly purchase its own shares:
 - Through any subsidiary company including its own subsidiary companies,
 - Through any investment company,
 - If a default, is made by the company, in the

repayment of deposits interest payment thereon, redemption of debentures or preference shares or payment of dividend to any shareholder, or repayment of any term loan or interest payable thereon to any financial institution or banking company.

However, the buy-back is not prohibited, if the default is remedied and a period of three years has lapsed after such default ceased to subsist.

2. No company shall, directly or indirectly, purchase its own shares in case such company has not complied with the provisions of Section:
 - 92 (Annual Return),

- 123(Declaration of Dividend),
- 127(punishment for failure to distribute dividend) and
- 129(Financial Statement).

Conclusion

Buyback is a strategy used by the company to retain the trust of its shareholders which will in turn benefit the long-term survival of the company because unused Cash. But at the same time, it is of utmost importance that all the condition and procedures are duly is costly followed otherwise it would huge penalty and harm the goodwill of the company.

Annexure - Timelines for buyback

Timelines – Tentative dates for buy back

Sr. No.	Activity	Dates
1.	Passing of the board resolution approving Buy Back.	X
2.	Passing of the board resolution for approving notice of EGM.	X
3.	Passing of the shareholders resolution approving Buy Back.	X+24
4.	Filing the draft letter of offer and declaration of solvency with the Registrar of Companies (" ROC ").	X+26
5.	Dispatch of letter of offer to the shareholders.	X+30
6.	Opening of a Special Bank Account for the Buy Back consideration.	X+32
7.	Opening of offer for Buy Back.	X+33
8.	Closure of offer for Buy Back.	X+50
9.	Deposit of the entire amount of consideration required to complete the Buy Back in the special bank account opened for such purpose.	X+51
10.	Acceptance / rejection of Buy Back offers received.	X+53
11.	Completion of verification of offers.	X+55
12.	Payment to shareholders and completion of Buy Back.	X+57
13.	Extinguishment and destruction of share certificates.	X+59
14.	Register of Buy Back to be updated.	X+61
15.	Filing of return of Buy Back with the ROC.	X+66

Note- All the working days are only considered. Further, this timeline can be reduced after taking necessary approvals from the shareholders. Also, this might stretch if any unforeseen event occurred.

Point 3 can be reduced by shorter consent and point 7 can be reduced by shareholders' approval.



Our Offices

Mumbai, Maharashtra

Jabalpur, Madhya Pradesh (M.P)

Contact Details

Mob: +91 8454 989 789

Email: info@lawgicalstartup.com

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