

BUY-BACK OF SHARES AND OTHER SPECIFIED SECURITIES

1. As an alternative mode of buy-back but without requiring approval of the Court/NCLT, a Company can carry out buy-back of shares and other specified securities (section 77A and related provisions). The conditions and requirements for carrying out buy-back of securities are as follows:
 - a. The buy-back has to be out of free reserves/securities premium account or out of proceeds of issue of shares or other specified securities other than the type of the same kind of securities.
 - b. Further, the Company cannot make issue of the same type of securities as bought back within six months of buy-back except as bonus shares or sweat equity shares or discharge of subsiding obligations like on conversion or stock option.
 - c. Where the buy-back is from free reserves/securities premium account, the Company is required to transfer to Capital Redemption Reserve an amount equal to the face value of the shares bought back.
2. The Articles of Association of the company should authorise the buy-back in.
3. The Company should pass a special resolution for authority for buy-back except in following cases;
 - a. Where buy-back is for 10% or less than of the total paid-up equity capital and free reserves, the buy-back can be authorized by the Board without approval by special resolution. In such case, further, there should be gap of 365 days between two such buy-backs; and
 - b. The authority by way of special of Board resolution will be valid for twelve months.
4. The buy-back should be up to 25% of the total paid-up capital and free reserves and in any case the buy-back of equity shares should not exceed 25% of the paid-up equity share capital in a financial year.
5. The debt equity ratio post buy-back should not exceed 2:1. For this purpose, the term "debt" includes all secured as well as unsecured debt.
6. Buy-back can be only of fully paid-up securities.
7. Listed Companies have to comply additionally with SEBI Regulations for buy-back and Unlisted Companies have to follow Guidelines prescribed by the Central Government.
8. The buy-back can be on proportionate basis or of odd lots or through open market or of ESOPs.
9. The Company will have to file a solvency certificate in Form 4A to be signed by at least two Directors including the Managing Director.
10. Shares bought back have to be extinguished/physically destroyed within seven days.
11. Buy-back cannot be done —
 - a. Through any subsidiary company
 - b. Through any investment company or group of investment companies.
 - c. Where a Company has defaulted in repaying deposits or interest thereon or in paying dividends or in redeeming debentures or preference shares or in repaying any term loans (or interest thereon) from banks/financial institutions.
 - d. In case a Company that has not complied with section 159, 207 or 211.
12. Detailed provisions for disclosures in the notice of general meeting, filing of "post buy-back" reports, maintenance of registers, among others need to be complied
13. Forms:
 - a. Form 4A – Form of Declaration of Solvency
 - b. Form 4B – Form of Register of Buy-back
 - c. Form 4C – Form of Return to be filed with ROC/SEBI within 30 days of buy-back
15. Penal provisions in case of default – Two years' imprisonment or a fine of Rs. 50,000/- or both to every person connected with the default.