BUY BACK OF SHARES

As per Section 68 of the Companies Act, 2013,

1. **Purchase can be made out of:**
   - its free reserves;
   - the securities premium account; or
   - the proceeds of the issue of any shares or other specified securities:

No buyback of any kind of shares or other specified securities shall be made out of the proceeds of an earlier issue of the same kind of shares or same kind of other specified securities.

2. **Pre - requisites for buy back :**
   a. Must be authorized by its articles;
   b. A special resolution has to be passed at a general meeting of the company authorizing the buyback, but the same is not required when:
      i. the buyback is 10% or less of the total paid up equity capital and free reserves of the company; and
      ii. such buyback has been authorized by the Board by means of a resolution passed at its meeting.
   c. The buyback is not more than twenty five per cent or less of the aggregate of paid up capital and free reserves of the company. But in case of Equity Shares, the same shall be taken as 25% of paid up equity capital only.
   d. Debt equity ratio shall be 2:1
   e. All the shares or other specified securities for buyback are fully paid up;
   f. If shares or securities are listed, buy back will be in accordance with the regulations made by the Securities and Exchange Board in this behalf; and
   g. the buyback in respect of unlisted shares or other specified securities is in accordance with the Share Capital and Debentures Rules, 2014.

No offer of buyback shall be made within a period of one year from the date of the closure of the preceding offer of buyback, if any.

Procedure for Buyback:

1. **Convening a Board Meeting** for passing the following resolutions : -
   - To include provision in the Articles of Association (subject to the approval of the shareholders) if the article does not contain.
   - To provide approval for buy back (subject to the approval of the shareholders)
   - To convey an Extra Ordinary General Meeting for amending the Articles of Association if required and to obtain approval for buy back.
2. **Convening of Extra Ordinary General Meeting** for approving the buy back. Section 68(3) states that explanatory statement annexed to the notice.
3. The Company should then upload in the MCA21 portal the Letter of offer and the declaration of Solvency **prepared in SH-8 and SH-9 respectively** together with necessary attachments.
4. The 'Letter of Offer' together with all attachments should be dispatched to the shareholders **not later than 21 days from** its filing with the Registrar of Companies.
5. The offer of buy back should remain open for a period of not less than fifteen days but not later than 30 days from the date of dispatch of offer.
6. The Company shall complete the verification of offers within fifteen days from the date of closure of offer. If the number of shares offered by the shareholders are more than the number of shares to be bought back, the acceptance per shareholder should be on a proportionate basis.
7. If the communication of rejection is not sent to the concerned shareholders within fifteen days from the date of closure of offer, the shares lodged would be deemed to have been accepted for buy back.
8. The Company should immediately after the date of closure of offer should open the bank account and deposit the entire purchase consideration money meant to be used for buy back.
9. The Company should then make payment to the respective shareholders which shall not be later than seven days from date of time specified for completion of verification.

10. The Company should also return back the entire share certificates whose shares have not been accepted fully and also return back the balance share certificates if the shares are accepted partially.

Section 68 (4) Time Limit:

Every buyback shall be completed **within a period of one year** from the date of passing of the special resolution, or as the case may be, the resolution passed by the Board.

Options for Buy back

- from the existing shareholders or security holders on a proportionate basis;
- from the open market;
- by purchasing the securities issued to employees of the company pursuant to a scheme of stock option or sweat equity

Solvency Declaration

Before making such buyback, file with the Registrar, a declaration of solvency signed by at least two directors of the company, one of whom shall be the managing director, if any, **Form No. SH.9** may be prescribed and verified by an affidavit to the effect that the Board of Directors of the company has made a full inquiry into the affairs of the company as a result of which they have formed an opinion that it is capable of meeting its liabilities and will not be rendered insolvent within a period of one year from the date of declaration adopted by the Board.

Extinguishment of Certificate

The Company shall extinguish and physically destroy the shares or securities so bought back **within seven days** of the last date of completion of buyback.

No further issue till 6 months:

Where a company completes a buyback of its shares or other specified securities, it shall not make a further issue of the same kind of shares or other securities including allotment of new shares or other specified 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 option schemes, sweat equity or conversion of preference shares or debentures into equity shares.

Register to be maintained:

The Company shall maintain **a register in Form No. SH.10** of the shares or securities so bought, the consideration paid for the shares or securities bought back, the date of cancellation of shares or securities, the date of extinguishing and physically destroying the shares or securities. The register of shares or securities bought back shall be maintained at the registered office of the company and shall be kept in the custody of the secretary of the company or any other person authorized by the board in this behalf. The entries in the register shall be authenticated by the secretary of the company or by any other person authorized by the Board for the purpose.

Return of Buy Back & a Declaration:

A company shall, after the completion of the buyback under this section, file with the Registrar a return in **Form No. SH.11** containing such particulars relating to the buyback **within thirty days** of such completion. There shall be annexed to the return, **a certificate in Form No. SH.15 signed by two directors** of the company including the managing director, if any, certifying that the buyback of securities has been made in compliance with the provisions of the Act and the rules made thereunder.

Punishment for any Default

If a company makes any default in complying with the provisions of this section, the company shall be punishable with fine which shall **not be less than one lakh rupees but which may extend to three lakh rupees** and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to three years or with fine which shall not be less than one lakh rupees but which may extend to three lakh rupees, or with both.

Section 69 (1) Capital Redemption Reserves

Where a company purchases its own shares out of free reserves or securities premium account, 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.

Section 69 (2) Utilization of Capital Redemption Reserves

The capital redemption reserve account may be applied by the company, in paying up unissued shares of the company to be issued to members of the company as fully paid bonus shares.

Section 70 (1) Restriction on Buy Back

No company shall directly or indirectly purchase its own shares or other specified securities

- through any subsidiary company including its own subsidiary companies;
- through any investment company or group of investment companies; or
- if a default, is made by the company, in the repayment of deposits accepted either before or after the commencement of this Act, 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. Provided that the buyback is not prohibited, if the default is remedied and a period of three years has lapsed after such default ceased to subsist.

Section 70 (2) No Buy Back if:

No company shall, directly or indirectly, purchase its own shares or other specified securities in case such company has not complied with the provisions of:

- ✓ Sections 92: Annual Return
- ✓ Section 123: Declaration and Payment of Dividend
- ✓ Section 127: Failure to pay Dividend
- ✓ Section 129: Failure to give True and Fair Statement

Post Buy Back

Once the process of buy back is completed, the following rules have to be observed post buy back.

1. Under rule 12, the Company shall maintain at its registered office 'The Register of shares or other securities which have been bought back in Form No.SH-10 and shall be under the custody of the Secretary or any other person authorized by the Board for this purpose. The entries of the Register shall be authenticated either by the Secretary or by any other person authorized by the Board for this purpose.
2. Under 68(7) of the Act, the Company shall within seven days of the last day of the completion of buy back shall extinguish and physically destroy the shares or securities bought back.
3. The Company shall prepare a certificate of Compliance in respect of Buy Back in Form No.Sh-15 duly signed by two Directors and verified by the Company Secretary in Practice.

4. Form No.15 should be attached along with other attachments to Form No.SH-11 which is the Return in respect of Buy back and upload the Form in the MCA21 Portal. With this compliance, the entire secretarial process of Buy Back of Shares will be completed.

Documents for the first Board Meeting conducted for Buy back

- Notice convening the Board Meeting.
- Resolution for go ahead with the Buy Back subject to the approval of the shareholders.
- Determining the Quantity of Buy Back and the price at which at which to be bought back.
- Calendar for Buy Back
- Confirmation by the Directors as required under rule 17(l) and 17(m).
- Auditors Report as required under Rule 17(n)
- Resolution for amending the Articles of Association for making provision for buy back subject to the approval of the shareholders.
- Resolution for convening an EGM

Documents for the EGM conducted for the Buy Back

- Notice convening the EGM
- Explanatory Statement
- Resolution authorizing the Board of Directors to go for a buy back Board Meeting to formalize the arrangements of buy back
  - Resolutions for
    - Formalizing all arrangements of buy back like
    - quantum of buy back,
    - price at which the shares to be bought back,
    - calendar depicting the process of buy back,
    - approval of Draft Offer of Buy Back prepared in E Form-SH-8 and
    - the draft declaration of Solvency prepared in SH-10 and
    - authorizing two Directors to sign the Forms SH-8,SH-9 and MGT-14 . Managing Director's signature should be one of the signatories if there is one.
  - Opening of special Bank Account for remittance of money for buy back #c.Forms and attachments to be uploaded in the MCA21 Portal #E FORM MGT-14
    - Notice convening the EGM duly signed by the Director

- Explanatory Statement duly by a Director
- Special resolution for amending the Articles of Association if any, and/or authorizing the Board of Directors to go for buy back.
- Board resolution authorizing the Director to sign and the Professional to certify (optional attachment) duly signed by a Director. #E FORM SH-8

b. **The following attachments** should be signed by two Directors who are authorized to the Sign the **Form SH-8**

- ➢ List of Promoters of the Company.
- ➢ Declaration by auditors given under rule 17(9).
- ➢ Copy of Board resolutions passed in the second Board meeting.
- ➢ Copy of EGM Notice and the Explanatory Statement.
- ➢ Audited financial Statements for three years (just the financial statements will do. It is not necessary to have the Notice, Board report and the Auditors report as the file size will increase)
- ➢ Statement showing the details of Buy for the last three years (Only if applicable-optional)
- ➢ Management Discussion and analysis (only for listed Company)
- ➢ List of holding and subsidiary Company (only if applicable)
- ➢ Unaudited financial Statements (only if applicable-optional)
- ➢ Statutory Approvals received (if any-optional)
- ➢ Details of Auditors, legal advisors, bankers and trustees (if any)
- ➢ Board resolution authoring two Directors to sign the Form SH-9
  - ✓ Copy of the Board resolution passed in the second Board meeting
  - ✓ Statement of Assets and Liabilities as on the latest Audited Balance sheet prior to buy back.
  - ✓ Auditors report given under 17(9)
  - ✓ Affidavit as per Rule 17(3)
  - ✓ Copy of the Special resolution passed in the EGM
  - ✓ Copy of the Board resolution authorizing the Directors to sign the Form (optional attachment)