

Buy-Back of shares

by Private Limited Company and unlisted Public Limited
Company

Megaminds Services Private Limited

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Sources of funds

- Buy-back should be out of following
 - Free Reserves or
 - Securities Premium Account or
 - Proceed of any shares or other specified securities
- No buy back of shares or other specified securities should be out of Proceed of an earlier issue of the same kind of shares or same kind of other specified securities

Requirements

- Buy-back must be authorised by Articles of Association.
- Special Resolution should be passed at an Extra Ordinary General Meeting to authorise buy-back of shares.
- Buy-back should be less than 25% of total paid up capital and free reserve of the company
 - If it is buyback of equity capital then it should not exceed 25% of paid up Equity capital in that financial year
- Debt Equity ratio should be 2:1 after buy-back of shares
 - Debt includes secured and unsecured debts

Requirements Contd . . .

- Shares or specified securities for buy-back should be fully paid-up
- Buy-back procedure should be completed within 12 months from date of passing of resolutions
- Company shall not make further issue of same kind of shares or other specified securities within period of 6 months except by way of bonus issue or in discharge of subsisting obligation such as conversion of warrant, stock option scheme, seat equity or conversion of preference shares or debentures into Equity.
- Valuation of Share Should be done by a Chartered Accountants

Disclosure requirements

- Notice at which special resolution for buy-back of shares is proposed should accompany explanatory statement with following disclosures –
 - Full and complete disclosure of all material facts
 - Necessity for buy-back of shares
 - Class of shares or securities proposed to be purchased under buy-back
 - Amount to be invested in the buy-back of shares

Buy-Back options

- Buy-Back from existing security-holder on proportional basis
- Buy-Back from open market
- From odd lots i.e. for listed companies lots smaller than marketable lots
- Purchasing securities issued to employees of the company pursuant to a scheme of stock option or sweat equity

Procedure

- Convene Board Meeting for approval of buy back and finalize date and time of Extra Ordinary General Meeting, Prepare Notice and explanatory statement as per requirements
- Hold EGM and pass necessary Special Resolution
- Filing of offer letter as specified in schedule II to the rules
- After passing resolution, file Solvency Certificate with The Registrar of Companies in prescribed format and verified by Affidavit to the effect that Board has made a full inquiry into the affairs of the company, that, as a result company will be capable of meeting its liabilities and will not be rendered insolvent within a period of one year.
- Declaration should be adopted by Board and signed by two directors

Procedure contd . . .

- Letter of offer should be dispatched immediately after filing with ROC but not later than 21 days from the date of its filing with ROC.
- The offer shall remain open for members for not less than 15 days and not exceeding 30 days from date of dispatch of offer letter.
- The verification of documents should be completed within 15 days and rejection of offer should be communicated within 21 days from date of closure.
- Immediately after closure of offer, company shall open special account and deposit therein the entire sum due and payable as consideration of buy-back.
- Payment should be made within 21 days of closure of offer and share certificates shall be returned to those shareholders whose offer is not accepted.
- After Completion of buyback file return in form specified in Annexure A to the Rules with The Registrar of companies.

Procedure contd . . .

- Destroy physical certificate within 7 days of last date of completion of buy-back
- A Certificate in this behalf shall be filed within 7 days thereafter with the ROC verified by two directors (MD / whole time Director if any) and company Secretaries in whole time practice.
- Company should maintain register of securities so bought back with following details (as per Annexure B)
 - The consideration paid
 - Date of cancellation of securities
 - Date of extinguishing and physically destroying or securities etc.

- Company should transfer certain sum to Capital Redemption Reserve as per section 77AA read with Section 80
- Buy back should not be routed through investment company or subsidiary company (Section 77B)

Please contact for any further details

Thank You