Buy Back of Shares (Sec 68)

Buy back of shares, or other specified securities means **buying back of its own shares** or other specified securities by the company from the holder thereof and cancelling them.

After the enactment of the companies act, 2013 section 68, 69 and 70 read with rule 17 of the companies (share capital and debentures) rules, 2014 deal with buy back of shares. The companies are allowed to buy back their own shares and other specified securities subject to certain conditions. SEBI has also issued certain guidelines regulating the buy-back of shares in case of listed companies.

Conditions of Buy-back

1. Buy back of shares **must be authorized by its articles**
2. A special resolution passed at general meeting is needed to authorize buy-back. However, if **buy-back is upto 10% of the total paid up equity capital and free reserves, the board of directors by passing a resolution at its meeting may authorize the company** for such buy-back (only one such buy-back can be done in a year).
3. Buy-back **should not be more than 25%** of the total paid up capital and free reserves of the company.
4. Buy-back of equity shares in any **financial year must not exceed 25% of its paid up equity** capital.
5. **Debt-equity ratio should not fall below 2:1** after buy-back.
6. The **shares** and the specified securities **should be fully paid up.**
7. Company must follow the **SEBI guidelines in case of listed shares** and prescribed guidelines in case of others.
8. Only one buy-back in a year is allowed.
9. Shares must be physically destroyed within 7 days of completion of buy-back.
10. **No fresh issue is allowed within 6 months from buy-back,** except by way of issue of bonus shares, ESOPs, sweat equity and conversion of debt/preference shares into equity.

Objectives/Advantages of Buy-back of shares:

1. To **increase the promoters holding** as the shares which are bought are cancelled.
2. **To increase EPS**, if there is no dilution in companies earnings as the buy-back reduces the outstanding number of shares.
3. **To support the share price** when the share price, in the opinion of the management is less than its fair value.
4. **To pay surplus cash to the shareholders** when the company does not need it for the business. For e.g. TCS, Infosys, Wipro, HCL and Tech Mahindra are regularly conducting such programmes since 2014 as part of their capital allocation policies.
5. To **reward shareholders** by Buy-back of shares at much higher price than ruling market price.
6. It **safeguard against a hostile takeover** by increasing promoters holding.

Sources of Buy-back:

1. **Free reserves** (if used this source, Sec 69-an amount equal to the nominal value of shares bought back must be transferred to CRR)
2. **Securities premium account**
3. The **proceeds of any shares** or other specified securities. However, buy-back cannot be made out of the proceeds of an earlier issue of the same kind of shares.

Procedures for buy-back

1. **Notice of the meeting to be accompanied by the explanatory statement-** Notice must include the details regarding all the materials facts, the necessity of the buy back, class of the securities intended to be bought back, amount to be invested under the buy back and the time limit for the completion of the buy back.
2. **Declaration of solvency-** Before making the buy-back, the company is required to file with the registrar and SEBI a declaration of solvency in prescribed form and an affidavit declaring that it is capable of meeting its liabilities and will not be rendered insolvent within a period of one year of the date of declaration adopted by the board.
3. **Completion of Buy-back-** Every buy-back must be completed within 12 months from the date of passing the special resolution or the resolution passed by the board.
4. **Extinguishment of securities-** The Company must extinguish and physically destroy the securities bought back within 7 days of the last date of completion of buy-back.
5. Register of bought back of securities is to be maintained by the company.
6. Filling of return to be made with the registrar and SEBI (in case of listed company) within 30 days of such completion.

Prohibition of buy back (Sec 70)

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

a. Through **any subsidiary company** (including its own subsidiary)
b. Through **any investment company** or group of investment companies
c. If there is any **default in payment** of deposits or interest due, redemption of debentures/preference shares or payment of dividend.

Sec 70 further provide that no company can buy back:

a. If it failed to file annual return
b. Failed in making payment of dividend within 30 days of declaration
c. Failed in preparation of statement of profit and loss and balance sheet in accordance with schedule III.

A company may buy-back its shares or other specified securities by any one of the following methods:

a) From the existing shares or other specified security-holders on a proportionate basis through the tender offer;

b) From the open market through—

- i) Book-building process,
- ii) Stock exchange;

c) from odd-lot holders