

Companies Act, 1956

Section 77A - [Power of company to purchase its own securities

1) Notwithstanding anything contained in this Act, but subject to the provisions of sub-section (2) of this section and (section 77B), a company may purchase its own shares or other specified securities (hereinafter referred to as "buy-back") out of- (i) its free reserves, or (ii) the securities premium account, or (iii) the proceeds of any shares or other specified securities Provided that no buy-back 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) No company shall purchase its own shares or other specified securities under sub-section (1), unless- (a) the buy-back is authorised by its articles, (b) a special resolution has been passed in general meeting of the company authorising the buy-back [Provided that nothing contained in this clause shall apply in any case where- (a) the buy-back is or less than ten per cent of the total paid-up equity capital and free reserves of the company, and (b) such buy back has been authorised by the Board by means of a resolution passed at its meeting (c) the buy-back is or less than twenty-five per cent of the total paid-up capital and free reserves of the company Provided that the buy-back of equity shares in any financial year shall not exceed twenty-five per cent of its total paid-up equity capital in that financial year, (d) the ratio of the debt owed by the company is not more than twice the capital and its free reserves after such buy-back Provided that the Central Government may prescribe a higher ratio of the debt than that specified under this clause for a class or classes of companies Explanation-For the purposes of this clause, the expression "debt" includes all amounts of unsecured and secured debts, (e) all the shares or other specified securities for buy-back are fully paid- up, (f) the buy-back of the shares or other specified securities listed on any recognised stock exchange is in accordance with the regulations made by the Securities and Exchange Board of India in this behalf, (g) the buy-back in respect of shares or other specified securities other than those specified in clause (f) is in accordance with the guidelines as may be prescribed (3) The notice of the meeting at which special resolution is proposed to be passed shall be accompanied by an explanatory statement stating- (a) a full and complete disclosure of all material facts, (b) the necessity for the buy back, (c) the class of security intended to be purchased under the buy back, (d) the amount to be invested under the buy-back, and (e) the time limit for completion of buy-back (4) Every buy-back shall be completed within twelve months from the date of passing the special resolution [or a resolution passed by the Board] under clause (b) of sub-section (2) (5) The buy-back under sub section (1) may be- (a) from the existing security holders on a proportionate basis, or (b) from the open market, or (c) from odd lots, that is to say, where the lot of securities of a public company, whose shares are listed on a recognised stock exchange, is smaller than such marketable lot, as may be specified by the stock exchange, or (d) by purchasing the securities issued to employees of the company pursuant to a scheme of stock option or sweat equity (6) Where a company has passed a special resolution under clause (b) of sub-section (2) [or the Board has passed a resolution under the first proviso to clause (b) of that sub-section] to buy-back its own shares or other securities under this section, it shall, before making such buy-back, file with the Registrar and the Securities and Exchange Board of India a declaration of solvency in the form as may be prescribed and verified by an affidavit to the effect that the Board 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 of the date of declaration adopted by the Board, and signed by at least two directors of the company, one of whom shall be the managing director, if any: Provided that no declaration of solvency shall be filed with the Securities and Exchange Board of India by a company whose shares are not listed on any recognised stock exchange. (7) Where a company buys-back its own securities, it shall extinguish and physically destroy the securities so bought-back within seven days of the last date of completion of buy-back. (8) Where a company completes a buy-back of its shares or other specified securities under this section, it shall not make further issue of the same kind of shares (including allotment of further shares under clause (a) of sub-section (1) of (section 81) 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. (9) Where a company buys-back its securities under this section, it shall maintain a register of the securities so bought, the consideration paid for the securities bought-back, the date of cancellation of securities, the date of extinguishing and physically destroying of securities and such other particulars as may be prescribed (10) A company shall, after the completion of the buy-back under this section, file with the Registrar and the Securities and Exchange Board of India, a return containing such particulars relating to the buy-back within thirty days of such completion, as may be prescribed : Provided that no return shall be filed with the Securities and Exchange Board of India by a company whose shares are not listed on any recognised stock exchange. (11) If a company makes default in complying with the provisions of this section or any rules made thereunder, or any regulations made under clause (f) of sub-section (2), the company or any officer of the company who is in default shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to fifty thousand rupees, or with both. Explanation.-For the purposes of this section,- (a) "specified securities" includes employees' stock option or other securities as may be notified by the Central Government from time to time; (b) "free reserves" shall have the meaning assigned to it in clause (b) of Explanation to (section 372A). SECTION 77AA: Transfer of certain sums to capital redemption reserve account: Where a company purchases its own shares out of free reserves, then a sum equal to the nominal value of the share so purchased shall be transferred to the capital redemption reserve account referred to in clause (d) of the proviso to sub-section (1) of (section 80) and details of such transfer shall be disclosed in the balance-sheet.

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