Financial Restructuring

Financial restructuring of a company involves Rearrangement of its Financial Structure so as to make the company's finances more balanced.

Financial Structure of a company comprises

- Paid up equity and Preference share capital;
- Various Reserves;
- All borrowings in the form of –
  - long-term loans from financial institutions;
  - working capital from banks including loans through commercial papers;
  - debentures;
  - bonds;
  - credits from suppliers;
  - trade deposits;
  - public deposits;
  - deposits/loans from directors, their relatives and business associates;
  - deposits from shareholders;
  - Global Depository Receipts,
  - American Depository Receipts
  - Foreign Currency Convertible Bonds;
  - funds raised through any other loan instrument.

Need for Financial Restructuring

- Necessity for injecting more working capital to meet the market demand for the company's products or services;
- Company is unable to meet its current commitments;
- Company is unable to obtain further credit from suppliers of raw materials, consumable stores, bought-out components etc. and from other parties like those doing job work for the company.
- Company is unable to utilise its full production capacity for lack of liquid funds.

Over Capitalization

- Earnings of company are not sufficient to justify a fair return on the amount of share capital and debentures that have been issued.
- When total of owned and borrowed capital exceeds it's fixed and current assets i.e. when it shows accumulated losses on the assets side of the balance sheet.

Under capitalization

- If the owned capital of the business is much less than the total borrowed.
- Owned capital of the company is disproportionate to the scale of its operation and the business is dependent more upon borrowed capital.

Restructuring of Under-Capitalized Company

- Injecting more capital whenever required either by resorting to rights issue/preferential issue or additional public issue.
- Resorting to additional borrowings from financial institutions, banks, other companies etc.

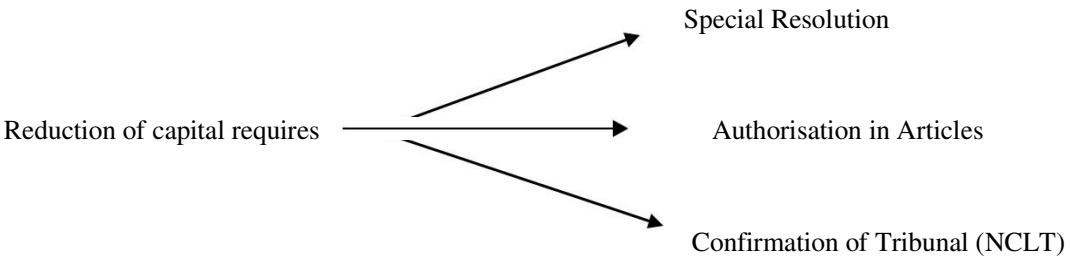
- Issuing debentures, bonds, etc.
- Inviting and accepting fixed deposits from directors, their relatives, business associates and public.

Restructuring of Over-Capitalized Company

- Buy-back of own shares.
- Paying back surplus share capital to shareholders.
- Repaying loans to financial institutions, banks, etc.
- Repaying fixed deposits to public, etc.
- Redeeming its debentures, bonds, etc.

REDUCTION OF SHARE CAPITAL

Reduction of capital means reduction of issued, subscribed and paid-up capital of the company.



MODE OF REDUCTION

- Extinguish or reduce the liability on any of its shares in respect of the share capital not paid-up; or
- Either with or without extinguishing or reducing liability on any of its shares,—
  - cancel any paid-up share capital which is lost or is unrepresented by available assets; or
  - pay off any paid-up share capital which is in excess of the wants of the company, alter its memorandum by reducing the amount of its share capital and of its shares accordingly:

Reduction of Capital without sanction of NCLT

- Surrender of shares
- Forfeiture of shares
- Diminution of capital

  Where the company cancels shares which have not been taken or agreed to be taken by any person.
- Redemption of Redeemable preference shares
- Buy-back of its own shares

Case Laws on Reduction of Capital

1. Can appeal against order of Single Judge allowing reduction, by a sole public shareholder, be allowed, when there is no fault in reasoning of Single Judge?

Case :- Chander Bhan Gandhi v. Reckitt Benckiser (India) Ltd.

Where a company, reducing its share capital by cancelling and extinguishing some equity shares held by its subsidiary and some shares held by the public, passes the requisite resolution approving the reduction by a special majority in an extraordinary general meeting called for in this regard, and there is no fault in the reasoning given by the Single Judge approving the same, and also the valuation of shares, the appeal by a sole shareholder objecting to the said reduction is liable to be dismissed.

2. Whether the role of the court, while approving scheme of reduction of capital is limited to the extent of ensuring that the scheme is not unconscionable or illegal or unfair or unjust?

Case :- Wartsila India Ltd.v. Janak Mathuradas and Others.

The role of the court, while approving scheme of reduction of capital, is limited to the extent of ensuring that the scheme is not unconscionable or illegal or unfair or unjust. Merely because the determination of the share exchange ratio or the valuation of shares is done by a different method which might result in a different conclusion would not justify interference of the court, unless found to be unfair. The court does not have the expertise nor the jurisdiction to delve into the deep commercial wisdom exercised by the creditors and members of the company who have approved the scheme by the requisite majority. Thus, where the valuer has used widely accepted methodologies, i.e., the discounted cash flow methodology and the comparable companies methodology which inter alia include the P/E multiple analysis for valuation of shares, there is no reason why the valuation report of the valuer, which is fair, reasonable and based on cogent reasoning, and which has also been accepted by a majority of the non-promoter shareholders of the company, should not be accepted by the court.

Rejecting the objections of the interveners/objectors that the fair value of shares arrived at by the valuer is not in the interest of the promoter shareholders, the High Court approved the valuation of shares and allowed the petition confirming reduction of share capital.

3. Can the share premium account be utilized for reducing share capital?

Case:- Alembic Ltd.

The capital was proposed to be reduced by utilization of the Securities Premium Account and General Reserve. There was to be no dimunition of liabilities or repayment of paid up capital. No reduction of issued, subscribed or paid up capital was involved. The Court said that the proposed reduction not being prejudicial in any manner was, therefore to be allowed.

4. Can the reduction result in extinguishment of class of shares?

Case:- Siel Ltd.

A scheme of amalgamation and arrangement involved reduction of share capital by extinguishment of shares of a particular class. The reduction was approved by majority of shareholders and creditors of Transferee Company. The court approved the reduction and extinguishment of portion of shares was held to be permissible as no one was prejudicially affected.

Equal Reduction of Shares of One Class

Case:- Marwari Stores Ltd. v. Gouri Shanker Goenka

Where there is only one class of shares, prima facie, the same percentage should be paid off or cancelled or reduced in respect of each share, but where different amounts are paid-up on shares of the same class, the reduction can be effected by equalizing the amount so paid-up. The same principle is to be followed where there are different classes of shares.

Case:- In Re: Asian Investment Ltd

It is, however, not necessary that extinguishment of shares in all cases should necessarily result in reduction of share capital. Accordingly, where reduction is not involved, Section 66 would not be attracted.

Restructuring of Debts and reduction of capital

Case:- Essar Steel Ltd

The petitioner-company was referred to the corporate debt restructuring ('CDR') forum for re-scheduling and restructuring its debt. As per restructuring package, as approved by CDR forum, for every 10 equity shares the company would cancel 4 equity shares and in lieu of such cancellation, 4 non-cumulative preference shares would be allotted and the existing equity shareholders would continue to hold remaining 6 shares without any alteration of rights. When the petitioner-company moved to the High Court for confirmation of its restricting package, the objector opposed the scheme on the ground that it would suffer financial loss. Taking an overall view and considering the proposed scheme of reduction of share capital in larger perspective, the High Court found no reason not to confirm the proposed action of the company to reduce its share capital. The High Court observed that the proposal is likely to improve the financial resources of the company, and to increase the share of profit available for expansion and growth of the company. Moreover, the proposal does not involve diminution of any liability in respect of unpaid capital or the payment to any shareholder of any paid-up capital.

Creditors' Right to Object to Reduction

After passing the special resolution for the reduction of capital, the company is required to apply to the Tribunal by way of petition for the confirmation of the resolution under Section 66 Companies Act 2013. Where the proposed reduction of share capital involves either (i) diminution of liability in respect of unpaid share capital, or (ii) the payment to any shareholder of any paid-up share capital, or (iii) in any other case, if the tribunal so directs, the following provisions shall have effect:

The creditors having a debt or claim admissible in winding up are entitled to object. To enable them to do so, the tribunal will settle a list of creditors entitled to object. If any creditor objects, then either his consent to the proposed reduction should be obtained or he should be paid off or his payment be secured. The Tribunal,

in deciding whether or not to confirm the reduction will take into consideration the minority shareholders and creditors.

The Tribunal shall give notice of every application made to it under sub-section (1) to the Central Government, Registrar and to the Securities and Exchange Board, in the case of listed companies, and the creditors of the company and shall take into consideration the representations , if any, made to it by that

Government, Registrar, the Securities and Exchange Board and the creditors within a period of **3 months** from the date of receipt of the notice:

Provided that where no representation has been received from the Central Government, Registrar, the Securities and Exchange Board or the creditors within the said period, it shall be presumed that they have no objection to the reduction.

Case: - British and American Trustee and Finance Corpn. v. Couper,
There is no limitation on the power of the Court to confirm the reduction except that it must first be satisfied that all the creditors entitled to object to the reduction have either consented or been paid or secured.

When exercising its discretion, the NCLT must ensure that the reduction is fair and equitable and shall consider the following, while sanctioning the reduction:

- The interests of creditors are safeguarded;
- The interests of shareholders are considered; and
- The public interest is taken care of.

Confirmation and Registration

The Tribunal order confirming the reduction together with the minutes giving the details of the company's

- the amount of share capital;
- the number of shares into which it is to be divided;
- the amount of each share; and
- the amount, if any, at the date of registration deemed to be paid-up on each share,

should be delivered to the Registrar within **30 days** of receipt of the order of tribunal who will register them. The reduction takes effect only on registration of the order and minutes, and not before. The Registrar will then issue a certificate of registration which will be a conclusive evidence that the requirements of the Act have been complied with and that the share capital is now as set out in the minutes. The Memorandum has to be altered accordingly.

Conclusiveness of certificate for Reduction of Capital

Case:- In Re Walkar & Smith Ltd.

Where the Registrar had issued his certificate confirming the reduction, the same was held to be conclusive although it was discovered later that the company had no authority under its articles to reduce capital.

.

Case:- Ladies's Dress Assn. v. Pulbrook

Similarly, in a case where the special resolution for reduction was an invalid one, but the company had gone through with the reduction, the reduction was not allowed to be upset.

The effective date of reduction of capital is the date on which the Registrar of Companies registers the order of the court and the minutes approved by the court.

Liability of Members in respect of Reduced Share Capital

On the reduction of share capital, A member of the company, past or present, shall not be liable to any call or contribution in respect of any share held by him exceeding the amount of difference, if any, between the amount paid on the share, or reduced amount, if any, which is to be deemed to have been paid thereon, as the case may be, and the amount of the share as fixed by the order of reduction.

If, however the name of any creditor entitled to object to the reduction of share capital under this section is, by reason of his ignorance of the proceedings for reduction or of their nature and effect with respect to his debt or claim, not entered on the list of creditors, and after such reduction, the company commits a default, within the meaning of section 6 of the Insolvency and Bankruptcy Code, 2016, in respect of the amount of his debt or claim,—

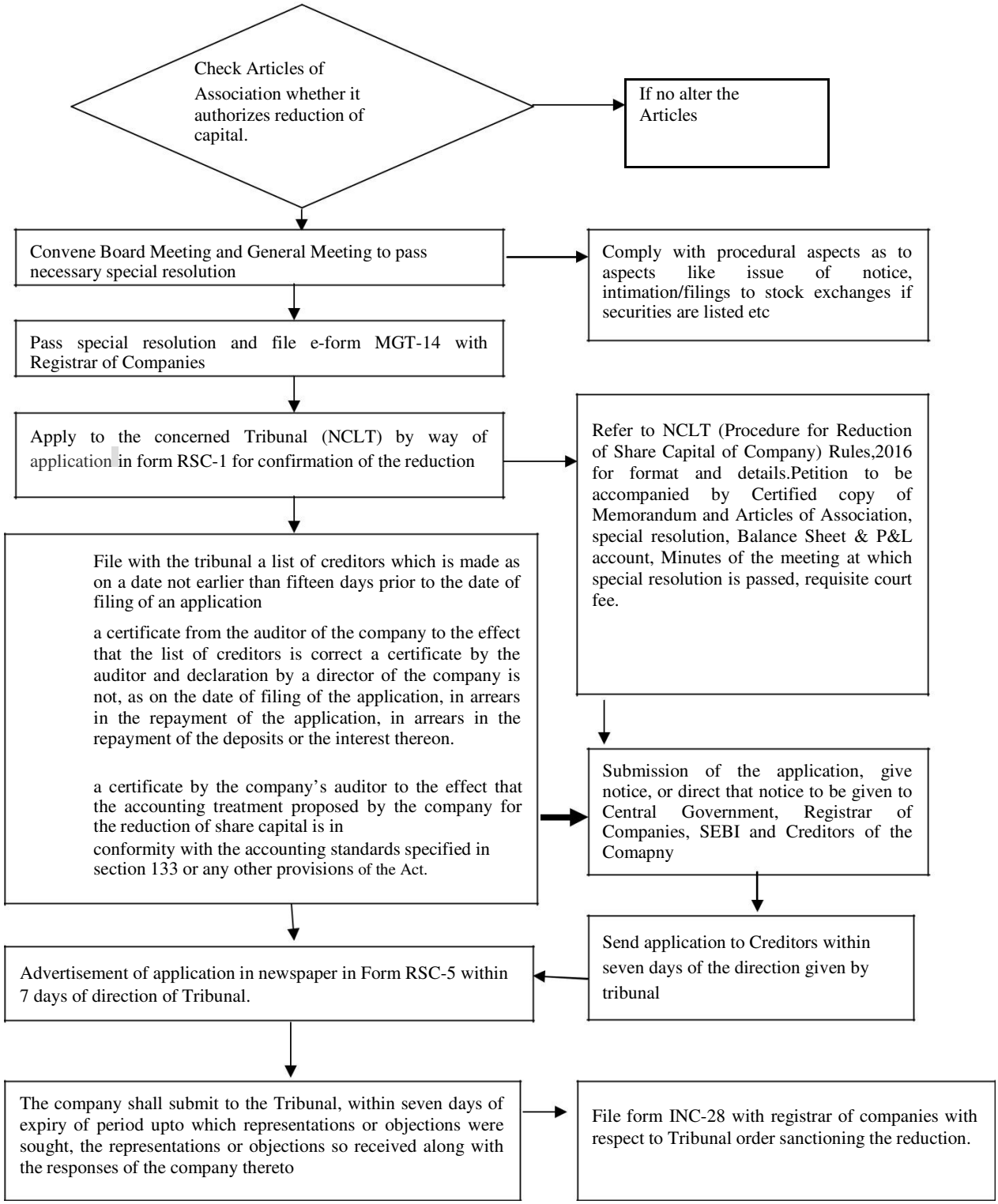
- every person, who was a member of the company on the date of the registration of the order for reduction by the Registrar, shall be liable to contribute to the payment of that debt or claim, an amount not exceeding the amount which he would have been liable to contribute if the company had commenced winding up on the day immediately before the said date; and
- if the company is wound up, the Tribunal may, on the application of any such creditor and proof of his ignorance as aforesaid, if it thinks fit, settle a list of persons so liable to contribute, and make and enforce calls and orders on the contributories settled on the list, as if they were ordinary contributories in a winding up.

If any officer of the company—

- knowingly conceals the name of any creditor entitled to object to the reduction;
- knowingly misrepresents the nature or amount of the debt or claim of any creditor; or
- abets or is privy to any such concealment or misrepresentation as aforesaid,

he shall be liable under section 447.

Procedure for reduction of capital – a Flow Chart



BUY BACK OF SHARE

Objective/Reason of Buy- Back

- To increase promoters holding
- To increase EPS (Earning Per Share)
- Support Share value
- To prevent takeover
- To pay surplus such not required by business.
- Rationalize the capital structure by writing off capital not represented by available assets.

Provisions regulating Buy-Back

- Sec-77(Sec – 67) , Sec-77A (Sec – 68), Sec- 77AA (Sec – 69), Sec-77B (Sec – 70) of Companies Act,1956(Companies Act,2013)
- Aspects under Income Tax Act, 1961
- SEBI (Buy-Back of Securities) Regulation,1998
- Rules made under Chapter IV of the Companies Act,2013 i.e. Rule 17 of Companies (Share Capital and Debenture) Rules, 2014

Conditions for Buy-Back (Sec-68, 69, 70 of Companies Act, 2013)

1) There shall be provision in AOA
2) Share are fully paid-up
3) Maximum no. of share Buy-Back in one FY 25%
4) Debt/Equity ≤ 2 (post Buy-Back)
5) Resource for Buy-Back
   - Free reserves
   - SPA(Securities Premium Account)
   - Proceeds of earlier issue of different kind of securities
6) Methods of Buy-Back
   - OMO
   - On proportionate basis from shareholders
   - Through employee to whom share issued in ESOP/ Sweat Equity share

8) Buy-Back shall be completed $\leq$ 1year from BOD resolution or SR (as the case may be)
9) Same kind of securities shall not be issued within (6) months from the completion of Buy- Back
10) Declaration of solvency shall be made by BOD that the company shall remain solvent for at least One year after Buy-Back in Form SH - 9
11) If payment for Buy-Back is made from free-Reserves or SPA than Nominal value of share Buy- Back shall be transferred to CRR
12) There shall not any default
    - In repayment of deposit or interest there on Sec- 58A, Sec- 58AA of (Companies Act, 1956) Sec- 73, Sec- 74 of Companies Act, 2013

    if a default, is made by the company, in the repayment of deposits accepted, 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: However, the buy-back is not prohibited, if the default is remedied and a period of **3 years** has lapsed after such default ceased to subsist.

- u/s 207(127) :- Payment of dividend
- u/s 159 (92) :- Annual Return filing
- u/s 211(129, 133) :- Balance sheet and financial statement shall be made as per Schedule VI (Schedule III) of Companies Act,1956/ Companies Act, 2013
- u/s 123 :- Declaration of Dividend
- Payment in any term loan or interest (Bank/ FI)

Explanatory statement

Rule 17 of Companies (Share Capital and Debentures) Rules 2014, provide for following disclosures in explanatory statement with respect to private companies and unlisted public companies:

- the date of the board meeting at which the proposal for buyback was approved by the board of directors of the company;
- the objective of the buy-back;
- the class of shares or other securities intended to be purchased under the buy-back;
- the number of securities that the company proposes to buyback;
- the method to be adopted for the buy-back;
- the price at which the buy-back of shares or other securities shall be made;
- the basis of arriving at the buy-back price;
- the maximum amount to be paid for the buy-back and the sources of funds from which the buy-back would be financed;
- the time-limit for the completion of buy-back;

Procedure

According to Rule 17(2) the company which has been authorized by a special resolution shall, before the buy-back of shares, file with the Registrar of Companies a letter of offer in Form No.SH-8, along with the fee as prescribed. Such letter of offer shall be dated and signed on behalf of the Board of directors of the company by not less than two directors of the company, one of whom shall be the managing director, where there is one.

Filing Declaration of Solvency with SEBI/ROC [Rule 17(3)]

When a company proposes to buy-back its own shares or other specified securities under this section in pursuance of a special resolution or board resolution as the case may be , it shall, before making such buy-back, file with the Registrar and the Securities and Exchange Board (in case of listed companies), a declaration of solvency in Form SH-9 signed by at least two directors of the company, one of whom shall be the managing director, if any, in such form as may be prescribed and verified by an affidavit as specified in said form.

Dispatch of letter of Offer [Rule 17(4)]

The letter of offer shall be dispatched to the shareholders or security holders immediately after filing the same with the Registrar of Companies but not later than 21 days from its filing with the Registrar of Companies.

The letter of offer shall contain true, factual and material information and shall not contain any misleading information and must state that the directors of the company accept the responsibility for the information contained in such document; [Rule 17(1)]

Validity [Rule 17(5)]

The offer for buy-back shall remain open for a period of not less than 15 days and not exceeding 30 days from the date of dispatch of the letter of offer.

Acceptance on proportional basis [Rule 17(6)]

In case the number of shares or other specified securities offered by the shareholders or security holders is more than the total number of shares or securities to be bought back by the company, the acceptance per shareholder shall be on proportionate basis out of the total shares offered for being bought back.

Time limit for verification: [Rule 17(7)]

The company shall complete the verifications of the offers received within 15 days from the date of closure of the offer and the shares or other securities lodged shall be deemed to be accepted unless a communication of rejection is made within 21 days from the date of closure of the offer.

Payment of consideration/returning of share certificates

The company shall within seven days of the time limit of verification:
make payment of consideration in cash to those shareholders or security holders whose securities have been accepted, or return the share certificates to the shareholders or security holders whose securities have not been accepted at all or the balance of securities in case of part acceptance .

Separate Account [Rule 17(8)]

The company shall immediately after the date of closure of the offer, open a separate bank account and deposit therein, such sum, as would make up the entire sum due and payable as consideration for the shares tendered for buy-back.

The company shall confirm in its offer the opening of a separate bank account adequately funded for this purpose and to pay the consideration only by way of cash. [Rule 17(10)]

Other conditions [Rule 17(10)]

- the company shall not withdraw the offer once it has announced the offer to the shareholders;
- the company shall not utilize any money borrowed from banks or financial institutions for the purpose of buying back its shares; and
- the company shall not utilize the proceeds of an earlier issue of the same kind of shares or same kind of other specified securities for the buy-back.

Extinguishment of securities bought back [Section 68(7)]

When a company buys back its own shares or other specified securities, it shall extinguish and physically destroy the shares or securities so bought back within seven days of the last date of completion of buy-back.

Register of buy-back [Section 68(9)]

When a company buys back its shares or other specified securities , it shall maintain a register 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 and such other particulars as may be prescribed.

According to the rules the register of shares or securities bought back shall be maintained in Form SH-10, 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. 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. [Rule 17(12)(a)]

Return of buyback [Section 68(10)]

A company shall, after the completion of the buy-back under this section, file with the Registrar and the Securities and Exchange Board (in case of listed companies) a return containing such particulars relating to the buy-back within thirty days of such completion, as may be prescribed.

The company shall file with the Registrar, and in case of a listed company with the Registrar and the SEBI, a return in the Form No. SH-11 along with the 'fee'. There shall be annexed to the return filed with the Registrar in Form No. SH-11, a certificate in Form No. SH- 15 signed by two directors of the company including the managing director, if any, certifying that the buy-back of securities has been made in compliance with the provisions of the Act and rules made there under. [Rule 17(13) and Rule 17(14)]

Penal Provisions [Section 68(11)]

If a company makes any default in complying with the provisions of this section or any regulation made by the Securities and Exchange Board, in case of listed companies, 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.

Transfer to and application of Capital Redemption Reserve Account: (Section 69)

When 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. 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.

INCOME TAX ASPECTS

- Any consideration received by a security holder from any company on buy back shall be chargeable to tax on the difference between the cost of acquisition and the value of consideration received by the security holder as capital gains. (Section 46A)
- The computation of capital gains shall be in accordance with the provisions of Section 48 of the Income Tax Act, 1961.
- In respect of Foreign Institutional Investors (FIIs)
    - No deduction of tax at source shall be made before remitting the consideration for equity shares tendered under the offer by FIIs {Section 196D(2)} .

- NRIs, OCBs and other non-resident shareholders (excluding FIIs) will be required to submit a No Objection Certificate (NOC) or tax clearance certificate obtained from the Income Tax authorities.
- In case the aforesaid NOC or tax clearance certificate is not submitted, the company should deduct tax at the maximum marginal rate as may be applicable to the category of shareholders on the entire consideration amount payable to such shareholders.

Methods of Buy-Back for listed Securities (Regulation 4)

- From the existing security-holders on a proportionate basis through the tender offer;
- From the open market through:
  - Book-Building process,
  - Stock Exchange
- From odd-lot holders.

Note 1:- No offer of buy back for 15% or more of paid up capital and free reserves, shall be made from the open market.

Note 2 :- A company shall not make any offer of buy-back within a period of one year from the date of closure of the preceding offer of buy-back.

Can a company buy back its shares or any specified securities through negotiated deal on or of the stock exchange?

No, Regulation 4(2) does not permit buy back through negotiated deals (of and on stock exchange), private arrangement, spot transactions.

Buy-back from existing security-holders through tender offer

According to Regulation 6 of the Regulations, a company may buy back its securities from its existing security-holders on a proportionate basis in accordance with the provisions of the Regulations. It may be noted that fifteen percent of the number of securities which the company proposes to buy back or number of securities entitled as per their shareholding, whichever is higher, shall be reserved for small shareholders.

Public announcement and Filing of offer documents (Regulation 8)

- A copy of the public announcement along with the soft copy, shall also be submitted to the Board simultaneously through a merchant banker.
- The company shall within five working days of the public announcement file with the Board a draft-letter of offer, along with soft copy, containing disclosures as specified in Schedule III through a merchant banker who is not associated with the company.
- The Board may give its comments on the draft letter of offer not later than seven working days of the receipt of the draft letter of offer. In the event the Board has sought clarifications or additional information from the merchant banker to the buyback offer, the period of issuance of comments shall be extended to the seventh working day from the date of receipt of satisfactory reply to the clarification or additional information sought.
- In the event the Board specifies any changes, the merchant banker to the buyback offer and the company shall carryout such changes in the letter of offer before it is dispatched to the shareholders.
- The company shall file along with the draft letter of offer, a declaration of solvency in the prescribed form and in a manner prescribed in the Companies Act.

Offer procedure (Regulation 9)

- A company making a buyback offer shall announce a record date for the purpose of determining the entitlement and the names of the security holders, who are eligible to participate in the proposed buyback offer.

- The letter of offer along with the tender form shall be dispatched to the security holders who are eligible to participate in the buyback offer, not later than **5 working days** from the receipt of communication of comments from the Board.

- The date of the opening of the offer shall be not later than five working days from the date of dispatch of letter of offer.
- The offer for buy back shall remain open for a period of ten working days.

ESCROW ACCOUNT (Reg. 10) in case of Tender Offer

- To be opened before Public Announcement
- Objective : Security Performance of his obligations under Buy - Back
- Can be deposited in any of the following form:
    - cash deposited with a scheduled commercial bank, or
    - bank guarantee in favour of the merchant banker, or
    - deposit of acceptable securities with appropriate margin, with the merchant banker, or
    - a combination of above;

- In case of Bank Guarantee / Deposit of Approved Securities: Acquirer shall deposit in CASH with scheduled commercial bank at least 1% of total consideration.

- In case of Shares / Securities – in the event of any shortfall in the amount required to be maintained in the ESCROW A/C – Merchant Banker shall be liable to make good such shortfall.

CONSIDERATION PAYABLE UNDER THE OPEN OFFER	ESCROW AMOUNT
UP TO ₹100 Crore	25% of the amount of consideration
On Balance Consideration	10% of the consideration above ₹ 100 Cr.

Payment to the Security holders (Regulation 11)

The company should immediately after the date of closure of the offer, open a special account with a SEBI registered banker to an issue and deposit therein, such sum as would, together with the amount lying in the escrow account make up the entire sum due and payable as consideration for the buy-back and for this purpose, may transfer the funds from the escrow account.

The company shall complete the verifications of offers received and make payment of consideration to those security holders whose offer has been accepted or return the shares or other specified securities to the security holders within seven working days of the closure of the offer.

Extinguishing of bought-back securities (Regulation 12)

The company shall extinguish and physically destroy the security certificates so bought back in the presence of a Registrar to issue or the Merchant Banker and the Statutory Auditor within fifteen days of the date of acceptance of the shares or other specified securities. The company shall also ensure that all the securities bought-back are extinguished within seven days of the last date of completion of buy–back.

The shares or other specified securities offered for buy-back if already dematerialised shall be extinguished and destroyed in the manner specified under the Securities and Exchange Board of India (Depositories and Participants) Regulations, 1996, and the bye-laws framed thereunder.

The company shall, furnish a certificate to the Board certifying compliance as specified above and duly certified and verified by -

- the registrar and whenever there is no registrar by the merchant banker;
- two directors of the company one of whom shall be a managing director where there is one;
- the statutory auditor of the company,

The certificate shall be furnished to the Board on a monthly basis by the **7th day** of the month succeeding the month in which the securities certificates are extinguished and destroyed.

Odd-lot Buy-back (Regulation 13)

The provisions pertaining to buy-back through tender offer as specified shall be applicable mutatis mutandis to odd-lot shares or other specified securities.

Buy-back from Open Market (Regulation 14)

Buy-back of shares or other specified securities from the open market may be in any one of the following methods:

- Through stock exchange.
- Book-building process.

The company shall ensure that atleast 50% of the amount earmarked for buy back, as specified in resolutions (Board/special resolution) is utilized for buying back shares and other specified securities

Buy-back through the stock exchange (Regulation 15)

- the special resolution/ board resolution should specify the maximum price at which the buy-back will be made;
- the buy-back of securities should not be from the promoters or persons in control of the company;
- the company should appoint a merchant banker and make a public announcement as referred to in Regulation 8 within seven days from the date of passing the resolution
- the public announcement shall be made within 7 working days from the date of passing special resolution;
- simultaneously with the issue of such public announcement, the company shall file a copy of the public announcement with the Board.

- the company shall submit the information regarding the shares or other specified securities bought-back, to the stock exchange on a daily basis in such form as may be specified by the Board and the stock exchange shall upload the same on its official website immediately;"

- the company shall upload the information regarding the shares or other specified securities bought-back on its website on a daily basis;"

- the buy-back offer shall open not later than seven working days from the date of public announcement and shall close within six months from the date of opening of the offer."

- the buy-back should be made only on stock exchanges having Nationwide Trading Terminal facility and only through the order matching mechanism except 'all or none' order matching system;

- the company shall submit information regarding the shares or other specified securities bought back, to the stock exchange on daily basis in such form as may be specified by the board;
- the identity of the company as a purchaser would appear on the electronic screen when the order is placed.
- The company shall upload the information regarding the shares or other specified securities bought back, on its website on daily basis.

Buy –Back of physical shares or other specified securities (Regulation 15 B)

- A separate window shall be created by the stock exchange, which shall remain open during the buy-back period, for buy-back of shares or other specified securities in physical form.

- the company shall buy-back shares or other specified securities from eligible shareholders holding physical shares through the separate windows specified, only after verification of the identity proof and address proof by the broker.

- the price at which the shares or other specified securities are bought back shall be the volume weighted average price of the shares or other specified securities bought-back, other than in the physical form, during the calendar week in which such shares or other specified securities were received by the broker:

- Provided that the price of shares or other specified securities tendered during the first calendar week of the buy-back shall be the volume weighted average market price of the shares or other specified securities of the company during the preceding calendar week.

ESCROW ACCOUNT (Reg. 15B) in case of Buy – Back through STOCK EXCHANGE

- To be opened before Public Announcement

- Objective : Security Performance of his obligations under Buy - Back

- Can be deposited in any of the following form:
  - cash deposited with a scheduled commercial bank, or
  - bank guarantee in favour of the merchant banker, or
  - a combination of above;

- In case of Bank Guarantee: Acquirer shall deposit in CASH with scheduled commercial bank at least 2.5 % of total consideration.

CONSIDERATION PAYABLE UNDER THE OPEN OFFER	ESCROW AMOUNT
UP TO ₹100 Crore	25% of the amount of consideration
On Balance Consideration	10% of the consideration above ₹ 100 Cr.

Buy-back through book-building (Regulation 17)

The company should appoint a merchant banker.

The deposit in the escrow account should be made before the date of the public announcement.
The book-building process should be made through an electronically linked transparent facility.

The number of bidding centres should not be less than thirty and there should be at least one electronically linked computer terminal at all the bidding centres.

The offer for buy-back should be kept open to the security-holders for a period of not less than fifteen days and not exceeding thirty days.

Obligations of the company (Regulation 19)

- The company shall ensure that the letter of offer, the public announcement of the offer or any other advertisement, circular, brochure, publicity material contains true, factual and material information and does not contain any misleading information and must state that the directors of the company accept the responsibility for the information contained in such documents;
- the company shall not issue any specified securities including by way of bonus till the date of closure of the offer is made under these Regulations;
- the company shall pay consideration only by cash;
- the company shall not withdraw the offer to buy-back after the draft letter of offer is filed with the SEBI or public announcement of the offer to buy-back is made;
- the promoter or the person shall not deal in the specified securities of the company in the stock exchange or off market, including inter-se transfer of shares among the promoters during the period from the date of passing the resolution till the closing of the offer.
- the company shall not raise further capital for a period of one year from the closure of buy-back offer, except in discharge of its subsisting obligations.
- No public announcement of buy-back shall be made during the pendency of any scheme of amalgamation or compromise or arrangement pursuant to the provisions of the Companies Act.
- The company should nominate a compliance officer and investors service centre for compliance with the buy-back regulations and to redress the grievances of the investors.
- The particulars of the said security certificates extinguished and destroyed should be furnished by the company to the stock exchanges where the securities of the company are listed, within seven days of extinguishment and destruction of the certificates.

- The company should not buy-back the locked-in securities and non-transferable securities till the pendency of the lock-in or till the securities become transferable.
- The company should issue, within two days of the completion of buy-back, a public advertisement in a national daily, disclosing the following:
    - number of securities bought;
    - price at which the securities were bought;
    - total amount invested in the buy-back;
    - details of the security-holders from whom securities exceeding **1%** of the total securities were bought-back; and
    - the consequent changes in the capital structure and the shareholding pattern after and before the buy-back.

Obligations of the Merchant Banker (Regulation 20)

The Merchant Banker should ensure that:

- the company is able to implement the offer;
- the provision relating to escrow account has been made;
- firm arrangements for monies for payment to fulfil the obligations under the offer are in place;
- the public announcement of buy-back is made and the letter of offer has been filed in terms of the Regulations;
- the merchant banker should furnish to SEBI, a due diligence certificate which should accompany the draft letter of offer;
- the merchant banker should ensure that the contents of the public announcement of offer as well as the letter of offer are true, fair and adequate and quoting the source wherever necessary.
- the merchant banker should ensure compliance of Section 68 and Section 69 of the Companies Act, and any other applicable laws or rules in this regard;
- upon fulfilment of all obligations by the company under the Regulations, the merchant banker should inform the bank with whom the escrow or special amount has been deposited to release the balance amount to the company and send a final report to SEBI in the specified form, within 15 days from the date of closure of the buy-back offer.