

**PRIVATE LIMITED COMPANY AND UNLISTED PUBLIC
LIMITED COMPANY (BUY-BACK OF SECURITIES) RULES,
1999**

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PRIVATE LIMITED COMPANY AND UNLISTED PUBLIC LIMITED COMPANY (BUY-BACK OF SECURITIES) RULES, 1999

In exercise of the powers conferred by section 77A of the Companies Act, 1956 (1 of 1956) read with sub-section (1) of section 642 of the said Act, the Central Government hereby makes the following rules, namely :-

1. Short title and commencement. :-

details of the offer including the total number and percentage of the total paid-up capital and free reserves proposed to be bought-back and price;

1 \Short title and commencement.

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(1) These rules may be called the Private Limited Company and Unlisted Public Limited Company (Buy-back of Securities) Rules, 1999.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. Applicability. :-

the proposed time table from opening of the offer till the extinguishment of the certificates;

2 \Applicability.

. These rules shall be applicable to buy-back of equity shares or other specified securities of a Private Limited Company and Unlisted Public Limited Company not listed on any recognised stock exchange.

3. Buying-back. :-

authority for the offer of buy-back;

3 \Buying-back.

. A company may buy-back its shares by either of the following methods :-

(a) from the existing shareholders on a proportionate basis through private offers;

(b) by purchasing the securities issued to employees of the company pursuant to a scheme of stock option or sweat equity.

4. Special resolution. :-

a full and complete disclosure of all material facts including the contents of the explanatory statement annexed to the notice for the general meeting at which the special resolution approving the buy-back was passed;

4 \Special resolution.

. For the purposes of passing a special resolution under sub-section (2) of section 77A of the Companies Act, 1956 (1 of 1956) the explanatory statement to be annexed to the notice for the general meeting pursuant to section 173 of the said Act shall contain disclosures as specified in Schedule 1.

5. Filing of letter of offer, etc. :-

the necessity for the buy-back;

5 \Filing of letter of offer, etc.

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(1) The Company which has been authorised by a special resolution shall, before the buy-back of shares, file with the Registrar of Companies a draft letter of offer containing particulars specified in Schedule II.

(2) The Company shall file along with the letter of offer a declaration of solvency in Form No. 4A, prescribed under the Companies (Central Government's) General Rules and Forms, 1956 and in accordance with provisions of sub-section (6) of section 77A of the Companies Act, 1956.

6. Offer procedure. :-

the process to be adopted for the buy-back;

6 \Offer procedure.

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(1) The letter of offer shall be despatched immediately after filing with Registrar of Companies but not later than 21 days from its filing with Registrar of Companies.

(2) The Offer for buy-back shall remain open to the members for a period not less than 15 days and not exceeding 30 days from the date of despatch of letter of offer.

(3) In case the number of shares offered by the shareholders is more than the total number of shares to be bought-back by the company, the acceptance per shareholder shall be on proportionate basis.

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

7. Payment to the shareholder. :-

the minimum and the maximum number of securities that the company proposes to buy-back, sources of funds from which the buy-back would be made and the cost of financing the buy back;

7 \Payment to the shareholder.

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(1) The Company shall immediately after the date of closure of the offer open a special bank account and deposit therein, such sum, as would make up the entire sum due and payable as consideration for the buy-back in terms of these rules.

(2) The company shall within 7 days of the time specified in sub-rule (4) of rule 6 make payment of consideration in cash or bank draft/pay order to those shareholders whose offer has been accepted or return the share certificates to the shareholders forthwith.

8. General obligations of the company. :-

brief information about the company;

8 \General obligations of the company.

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(1) The company shall ensure that,-

(a) 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;

(b) the company shall not issue any shares including by way of bonus till the date of the closure of the offer under these rules;

(c) the company shall confirm in its offer the opening of separate bank account testifying the availability of funds earmarked for this purpose and pay the consideration only by way of cash or bank draft/pay order;

(d) the company shall not withdraw the offer once the draft letter of offer has been filed with the Registrar of Companies; and

(e) the company shall not utilise any money borrowed from Banks/Financial Institutions for the purpose of buying-back its shares.

9. Return to be filed with the Registrar. :-

audited financial information for the last 3 years and the company and its Directors shall ensure that the particulars (audited statement and un-audited statement) contained therein shall not be more than 6 months old from the date of the offer document together with financial ratios as may be specified by the Board;

9 \Return to be filed with the Registrar.

. A company, after the completion of the buy-back under these rules, shall file with the Registrar a return in the Form specified at Annexure 'A'.

10. Extinguishment of Certificate. :-

present capital structure (including the number of fully paid and partly paid securities) and shareholding pattern;

10 \Extinguishment of Certificate.

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(1) The company shall extinguish and physically destroy the share certificates so bought-back in the presence of the Company Secretary in whole-time practice within 7 days from the date of acceptance of the shares.

(2) The company shall furnish a certificate to the Registrar of

Companies duly verified by

(a) two whole-time directors including the Managing Director and

(b) Company Secretary in whole-time practice, certifying compliance of these rules including those specified in sub-rule (1) above within 7 days of the extinguishment and destruction of the certificates.

(3) The company shall maintain a record of share certificates which have been cancelled and destroyed within 7 days of buy-back of shares.

11. Register of shares. :-

the capital structure including details of outstanding convertible instruments, if any, post buy-back;

11 \Register of shares.

. The company shall maintain a Register of shares bought-back by the Company in the Form specified at Annexure 'B'.

SCHEDULE 1

CONTENTS OF EXPLANATORY STATEMENT

1. . :-

the date of the Board meeting at which the proposal for buy-back was approved by the Board of Directors of the company;

2. . :-

the necessity for the buy-back;

3. . :-

the class of security intended to be purchased under the buy-back;

4. . :-

the method to be adopted for the buy-back;

5. . :-

the maximum amount required under the buy-back and the sources of funds from which the buy-back would be financed;

6. . :-

the basis of arriving at the buy-back price;

7. . :-

the number of securities that the company proposes to buy-back;

8. . :-

the time-limit for the completion of buy-back;

9. . :-

(a) the aggregate shareholding of the promoter and the directors of the promoters, where the promoter is a company and of persons who are in control of the company as on the date of the notice convening the General Meeting;

(b) the aggregate number of equity shares purchased or sold by persons including persons mentioned in (a) above during a period of six months preceding the date of the Board Meeting at which the buy-back was approved from date till date of notice convening the General Meeting;

(c) the maximum and minimum price at which purchases and sales referred to in (b) above were made along with the relevant date;

10. . :-

intention of the promoters and persons in control of the company to tender shares for buy-back indicating the number of shares, details of acquisition with dates and price;

11. . :-

a confirmation that there are no defaults subsisting in repayment of deposits, redemption of debentures or preference shares or repayment of term loans to any financial institutions or banks;

12. . :-

a confirmation that the Board of Directors had made a full enquiry into the affairs and prospects of the company and that they have formed the opinion-

(a) that immediately following the date on which the General Meeting is convened there will be no grounds on which the company could be found unable to pay its debts;

(b) as regards its prospects for the year immediately following that date that, having regard to their intentions with respect to the management of the company's business during that year and to the amount and character of the financial resources which will in their view be available to the company during that year, the company will be able to meet its liabilities as and when they fall due and will not be rendered insolvent within a period of one year from that date; and

(c) in forming their opinion for the above purposes, the directors shall take into account the liabilities as if the company were being wound up under the provisions of the Companies Act, 1956 (including prospective and contingent liabilities);

13. . :-

a report addressed to the Board of Directors by the Company's auditors stating that-

(a) they have inquired into the company's state of affairs;

(b) the amount of the permissible capital payment for the securities in question is in their view properly determined; and

(c) the Board of directors have formed the opinion as specified in clause (xii) on reasonable grounds and that the company, having regard to its state of affairs, will not be rendered insolvent within a period of one year from that date;

14. . :-

the price at which the buy-back of shares shall be made;

15. . :-

if the promoters intend to offer their shares-

(a) the quantum of shares proposed to be tendered; and

(b) the details of their transactions and their holdings for the last six months prior to the passing of the special resolution for buy-back including information of number of shares acquired, the price and the date of the acquisition.

SCHEDULE 2

DISCLOSURES TO BE MADE IN THE LETTER OF OFFER

1. . :-

details of the offer including the total number and percentage of the total paid-up capital and free reserves proposed to be bought-back and price;

2. . :-

the proposed time table from opening of the offer till the extinguishment of the certificates;

3. . :-

authority for the offer of buy-back;

4. . :-

a full and complete disclosure of all material facts including the contents of the explanatory statement annexed to the notice for the general meeting at which the special resolution approving the buy-back was passed;

5. . :-

the necessity for the buy-back;

6. . :-

the process to be adopted for the buy-back;

7. . :-

the minimum and the maximum number of securities that the company proposes to buy-back, sources of funds from which the buy-back would be made and the cost of financing the buy back;

8. . :-

brief information about the company;

9. . :-

audited financial information for the last 3 years and the company and its Directors shall ensure that the particulars (audited statement and un-audited statement) contained therein shall not be more than 6 months old from the date of the offer document together with financial ratios as may be specified by the Board;

10. . :-

present capital structure (including the number of fully paid and partly paid securities) and shareholding pattern;

11. . :-

the capital structure including details of outstanding convertible instruments, if any, post buy-back;

12. . :-

the aggregate shareholding of the promoter group and of the directors of the promoters, where the promoter is a company and of persons who are in control of the company;

13. . :-

the aggregate number of equity shares purchased or sold by persons mentioned in clause (xii) above during a period of twelve months preceding the date of the public announcement and from the date of public announcement to the date of the letter of offer; the maximum and minimum price at which purchases and sales referred to above were made along with the relevant date;

14. . :-

management discussion and analysis on the likely impact of buy-back on the company's earnings, public holdings, holdings of Non-Resident Indians/Foreign Institutional Investors, etc., promoters holdings and any change in management structure;

15. . :-

the details of statutory approvals obtained;

16. . :-

(1) a declaration to be signed by at least two whole-time directors that there are no defaults subsisting in repayment of deposit, redemption of debentures or preference shares or repayment of a term loans to any financial institutions or banks;

(2) a declaration to be signed by at least two whole-time directors, one of whom shall be the managing director stating that the Board of Directors has made a full enquiry into the affairs and prospectus of the company and that they have formed the opinion-

(a) as regards its prospects for the year immediately following the date of the letter of offer that, having regard to their intentions with respect to the management of the company's business during the year and to the amount and character of the financial resources which will in their view be available to the company during that year, the company will be able to meet its liabilities and will not be rendered insolvent within a period of one year from the date;

(b) in forming their opinion for the above purposes, the directors shall take into account the liabilities as if the company were being wound up under the provisions of the Companies Act, 1956 (including prospective and contingent liabilities);

17. . :-

the declaration must in addition have annexed to it a report addressed to the directors by the company's auditors stating that-

(i) they have inquired into the company's state of affairs, and

(ii) the amount of permissible capital payment for the securities in question in their view properly determined; and

(iii) they are not aware of anything to indicate that the opinion expressed by the directors in the declaration as to any of the matters mentioned in the declaration is unreasonable in all the

circumstances;

18. . :-

such other disclosures as may be prescribed by the Central Government from time to time;

19. . :-

the offer document shall be dated and signed by the Board of Directors of the company.