

## *CRITICAL CHANGES*

### *SEBI (BUY-BACK OF SECURITIES) REGULATIONS, 2018*

S.No	New Regulations	Comments
1.	“Buy-back period” has been inserted in the definition clause	<i>The time between date of authorisation for buy-back by a company’s board of directors and the date on which the payment is made to shareholders who have accepted the offer is termed as Buy-back period.</i>
2.	‘Unpublished price sensitive information’ has been inserted in the definition clause	<i>It has the same meaning as defined in clause (n) of sub-regulation (1) of regulation 2 of the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015</i>
3.	Reg.3 provides that these regulations shall be applicable to buy-back of shares or other specified securities of a company in accordance with the applicable provisions of the Companies Act.	<ul style="list-style-type: none"> <li>▪ <i>Buy-back of Securities shall be in compliance with the provisions of the Companies Act, 2013.</i></li> <li>▪ <i>Reg. 3 is a clarificatory change</i></li> </ul>
4.	<p><b>Ceiling limit on buy-back of securities</b></p> <p>Reg.4(i) states that the maximum limit of any buy-back shall be twenty-five per cent or less of the aggregate of paid-up capital and free reserves of the company:</p> <p>Explanation: In respect of the buy-back of equity shares in any financial year, the reference to twenty-five per cent in this regulation shall be construed with respect to its total paid-up equity capital in that financial year</p>	<ul style="list-style-type: none"> <li>▪ <i>Reg.4(i) is a new provision</i></li> <li>▪ <i>This is a clarificatory change.</i></li> <li>▪ <i>This insertion is in consistency with Section 68(2)(c) of the Companies Act, 2013</i></li> </ul>
5.	<p><b>Debt Equity Ratio</b></p> <p>Regulation 4(ii) provides that the ratio of the aggregate of secured and unsecured debts owed by the company after buy-back shall not be more than twice the paid-up capital and free reserves. Provided that if a higher ratio of the debt to capital and free reserves for the company has been notified under the Companies Act, 2013, the same shall prevail.</p>	<ul style="list-style-type: none"> <li>▪ <i>Reg.4(ii) is a new provision</i></li> <li>▪ <i>This is a clarificatory change.</i></li> <li>▪ <i>This insertion is in consistency with Section 68(2)(d) of the Companies Act, 2013</i></li> </ul>
6.	<b>Fully paid up shares</b>	<ul style="list-style-type: none"> <li>▪ <i>Reg.4(iii) is a new provision</i></li> </ul>

	Regulation 4(iii) states that all shares or other specified securities for buy-back shall be fully paid-up.	<ul style="list-style-type: none"> <li>▪ <i>This is a clarificatory change.</i></li> <li>▪ <i>This insertion is in consistency with Section 68(2)(e) of the Companies Act, 2013</i></li> </ul>
7.	<b>Reduction of Capital</b> A company shall not allow buy-back of its shares unless the consequent reduction of its share capital is effected.	<ul style="list-style-type: none"> <li>▪ <i>Reg.4(viii) is a new provision</i></li> <li>▪ <i>This is a clarificatory change.</i></li> </ul>
8.	<b>Sources of buy-back</b> A company may undertake a buy-back of its own shares or other specified securities out of— (a) its free reserves; (b) the securities premium account; or (c) the proceeds of the issue of any shares or other specified securities: Provided that no such buy-back shall be made out of the proceeds of an earlier issue of the same kind of shares or same kind of other specified securities.	<ul style="list-style-type: none"> <li>▪ <i>Reg.4(ix) is a new provision</i></li> <li>▪ <i>This is a clarificatory change.</i></li> <li>▪ <i>This insertion is in consistency with Section 68(1) of the Companies Act, 2013</i></li> </ul>
9.	<b>Restrictions on purchase of own shares or securities</b> No company shall directly or indirectly purchase its own shares or other specified securities: (a) through any subsidiary company including its own subsidiary companies; (b) through any investment company or group of investment companies; or (c) if a default is made by the company in the repayment of deposits accepted either before or after the commencement of the Companies Act, 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: Provided that the buy-back is not prohibited, if the default is remedied and a period of three years has lapsed after such default ceased to subsist.	<ul style="list-style-type: none"> <li>▪ <i>Reg.4(x) is a new provision</i></li> <li>▪ <i>This is a clarificatory change.</i></li> <li>▪ <i>This insertion is in consistency with Section 70 of the Companies Act, 2013</i></li> </ul>
10.	<b>Authorisation and Approval</b> The company shall not authorise any buy-back (whether by way of tender offer or from open market or odd lot) unless:	<ul style="list-style-type: none"> <li>▪ <i>Reg.5(i) is a new provision</i></li> <li>▪ <i>This is a clarificatory change.</i></li> <li>▪ <i>This insertion is in consistency with Section 68(2) of the Companies Act, 2013</i></li> </ul>

	<p>a) The buy-back is authorised by the company's articles;</p> <p>b) A special resolution has been passed at a general meeting of the company authorising the buy-back</p>	
11.	<p><b>Board Approval</b></p> <p>Nothing contained in this clause shall apply to a case where the buy-back is, ten per cent or less of the total paid-up equity capital and free reserves of the company; and such buy-back has been authorised by the board of directors by means of a resolution passed at its meeting.</p>	<ul style="list-style-type: none"> <li>▪ <i>Proviso to Reg.5(i) is a new provision</i></li> <li>▪ <i>This is a clarificatory change.</i></li> <li>▪ <i>This insertion is in consistency with Section 68(2)(b) of the Companies Act, 2013</i></li> </ul>
12.	<p><b>Tenure for completion of buy-back of securities</b></p> <p>Every buy-back shall be completed within a period of one year from the date of passing of the special resolution at general meeting, or the resolution passed by the board of directors of the company, as the case may be.</p>	<ul style="list-style-type: none"> <li>▪ <i>Reg.5(ii) is a new provision</i></li> <li>▪ <i>This is a clarificatory change.</i></li> <li>▪ <i>This insertion is in consistency with Section 68(4) of the Companies Act, 2013</i></li> </ul>
13.	<p><b>Return shall be filed with the ROC and SEBI</b></p> <p>The company shall, after expiry of the buy-back period, file with the Registrar of Companies and the Board, a return containing such particulars relating to the buy-back within thirty days of such expiry, in the format as specified in the Companies (Share Capital and Debentures) Rules, 2014.</p>	<ul style="list-style-type: none"> <li>▪ <i>Reg.5(iii) is a new provision</i></li> <li>▪ <i>This is a clarificatory change.</i></li> <li>▪ <i>This insertion is in consistency with Section 68(10) of the Companies Act, 2013</i></li> <li>▪ <i>Return containing such particulars as specified in the Form No. SH.11 shall be filed with ROC and SEBI as per Rule – 17(13), Companies (Share Capital and Debentures) Rules, 2014.</i></li> </ul>
14.	<p><b>Mode of dispatch of letter of offer</b></p> <p>(a) Letter of Offer may also be dispatched through electronic mode in accordance with the provisions of the Companies Act.</p> <p>(b) On receipt of a request from any shareholder to receive a copy of the letter of offer in physical form, the same shall be provided.</p> <p>(c) The aforesaid shall be disclosed in the letter of offer.</p>	<ul style="list-style-type: none"> <li>▪ <i>Explanation to Reg. 9 has been inserted in reference to Companies Act, 2013.</i></li> <li>▪ <i>This is a clarificatory change.</i></li> <li>▪ <i>This amendment should be read along with Sec.20(2) of the Companies Act, 2013 and Rule - 35, Companies (Incorporation) Rules, 2014</i></li> </ul>
15.	<p>Even if an eligible public shareholder does not receive the tender offer/offer form, he may participate in the buy-back offer and tender shares in the manner as provided by the Board.</p>	<ul style="list-style-type: none"> <li>▪ <i>Reg.9(iii) is a new provision</i></li> <li>▪ <i>This provision has been added based on Question no.5 of FREQUENTLY ASKED QUESTIONS ON SEBI (BUYBACK OF SECURITIES) REGULATIONS, 1998: “How does one participate in the buyback in</i></li> </ul>

		<p><i>case one does not receive the tender/offer form?"</i></p> <ul style="list-style-type: none"> <li>▪ This has been added in the interest of the Shareholders.</li> </ul>		
16.	An unregistered shareholder may also tender his shares for buy-back by submitting the duly executed transfer deed for transfer of shares in his name, along with the offer form and other relevant documents as required for transfer, if any.	<ul style="list-style-type: none"> <li>▪ <i>Reg.9(iii) is a new provision</i></li> <li>▪ This provision has been added based on Question no.6 of FREQUENTLY ASKED QUESTIONS ON SEBI (BUYBACK OF SECURITIES) REGULATIONS, 1998: <i>Can you tender your shares for buyback if you are not a registered shareholder?</i></li> <li>▪ This has been added in the interest of the Shareholders.</li> </ul>		
17.	<p><b>SEBI's power to allow tendering of shares and settlement of the same, through the stock exchange mechanism</b></p> <table border="1"> <tr> <td> <p><b>Existing provision</b> "The <i>acquirer or promoter</i> shall facilitate tendering of shares by the shareholders and settlement of the same, through the stock exchange mechanism as specified by the Board."</p> </td> <td> <p><b>Proposed provision</b> "The <i>company</i> shall facilitate tendering of shares by the shareholders and settlement of the same, through the stock exchange mechanism in the manner as provided by the Board."</p> </td> </tr> </table>	<p><b>Existing provision</b> "The <i>acquirer or promoter</i> shall facilitate tendering of shares by the shareholders and settlement of the same, through the stock exchange mechanism as specified by the Board."</p>	<p><b>Proposed provision</b> "The <i>company</i> shall facilitate tendering of shares by the shareholders and settlement of the same, through the stock exchange mechanism in the manner as provided by the Board."</p>	<ul style="list-style-type: none"> <li>▪ <i>Reg. 9(vii) have alteration in its provision.</i></li> <li>▪ <i>The proposed amendment makes the entire company responsible for facilitation of the tendering of shares and its settlement. Previously, the responsibility was only limited to the acquirer or promoters.</i></li> </ul>
<p><b>Existing provision</b> "The <i>acquirer or promoter</i> shall facilitate tendering of shares by the shareholders and settlement of the same, through the stock exchange mechanism as specified by the Board."</p>	<p><b>Proposed provision</b> "The <i>company</i> shall facilitate tendering of shares by the shareholders and settlement of the same, through the stock exchange mechanism in the manner as provided by the Board."</p>			
18.	<p><b>Register of buy-back</b> Where a company buys back its shares or other specified securities under these regulations, 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 in sub-section (9) of section 68 of the Companies Act.</p>	<ul style="list-style-type: none"> <li>▪ <i>Reg.11(5) is a new provision</i></li> <li>▪ <i>This is a clarificatory change.</i></li> <li>▪ <i>This insertion is in consistency with Section 68(9) of the Companies Act, 2013</i></li> <li>▪ <i>Return containing such particulars as specified in the Form No. SH.10 shall be filed with ROC and SEBI as per Rule – 17(12)(a), Companies (Share Capital and Debentures) Rules, 2014.</i></li> </ul>		
19.	<p><b>Escrow Account</b> The cash component of the escrow account may be maintained in an interest bearing account, provided that the merchant banker ensures that the funds</p>	<ul style="list-style-type: none"> <li>▪ <i>Explanation to Reg. 9(ix) is a new provision.</i></li> <li>▪ <i>This is provided to exclude the loss of interest of the amounts, deposited by the companies in the escrow account.</i></li> </ul>		

	are available at the time of making payment to shareholders.	
20.	<p><b>Exemptions by the Board</b></p> <p>(i) The Board may, in the interest of investors and the securities market, relax the strict enforcement of any requirement of these regulations except the provisions incorporated from the Companies Act, if the Board is satisfied that:</p> <p>(a) the requirement is procedural in nature; or</p> <p>(b) the requirement may cause undue hardship to investors;</p> <p>(ii) For seeking relaxation under sub-regulation (i), the company shall file an application with the Board, supported by a duly sworn affidavit, giving details and the grounds on which such relaxation has been sought.</p>	<ul style="list-style-type: none"> <li>▪ <b>Reg.28 is a new provision inserted in this Regulation.</b></li> <li>▪ <b>This regulation provides on an application can be made by the Company in writing to the SEBI for exemption or relaxation of the strict enforcement of any requirement of these regulations.</b></li> <li>▪ <b>This provision is similar to the Reg.11 of the SEBI (Substantial Acquisition of shares &amp; Takeovers) Regulations, 2011.</b></li> </ul>
21.	<p><b><i>It is pertinent to note that the entire provisions related to:</i></b></p> <p><b><i>(a) Power of the Board to order investigation;</i></b></p> <p><b><i>(b) Duty to produce records, etc.;</i></b></p> <p><b><i>(c) Submission of Report to the Board under Regulation 1998, has been omitted/excluded.</i></b></p>	

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