

**CS EXECUTIVE NEW SYLLABUS
CAPITAL MARKET & SECURITIES LAWS**

**Topic Name: PART-B
ATTEMPT ALL QUESTIONS**

Time: 90 Minutes.

Marks-50

Q1. Case Study.

(10 marks)

The term buy-back implies the act of purchasing its own shares/securities by a company. This facility enables the Company to go back to the holders of its own shares/securities and make an offer to purchase such shares/securities from them.

The corporates adopts various tools, viz., mergers, amalgamations and takeovers for restructuring the business. All these activities, in turn, impacts the functioning of the capital market, more particularly the movement of share prices. As the shares of companies are held by different segments of society, viz., entrepreneurs, Body Corporates, institutional investors and individual shareholders including small investors, it is reasonable that there should be equality of treatment and opportunities to all shareholders, transparency, proper disclosure and above all protection of interests of small and minority shareholders.

Similarly, buy-back of securities is a corporate financial strategy which involves repurchase of its outstanding shares by a company.

There are generally two ways a company can return cash to its shareholders –

- declaration of dividend; or
- through buy-back of shares.

A buy-back represent a more flexible way of returning surplus cash to its shareholders as it is governed by a process laid down by law, it is carried out through the stock exchange mechanism and is more tax efficient as it does not involve the company to make payment of dividend distribution tax and it has the benefits of long term capital gains.

Buy-back leads to reduction in outstanding number of equity shares, which may lead to improvement in earnings per equity share and enhance return on net worth and create long term value for continuing shareholders. In India, while buy-back of securities is not permitted as a treasury option under which the securities may be reissued later, a company can resort to buy-back to reduce the number of shares issued and return surplus cash to the shareholders.

The buy-back of securities is governed by Section 68, 69 and 70 of the Companies Act, 2013 and Rule 17 of the Companies (Share Capital and Debentures) Rules, 2014. For Listed Companies, the SEBI Regulations for Buy Back will also be applicable.

Answer the following questions

1. The financial information of a listed company as on 31st March, 2018 is as follows:

Authorized equity share capital 10 Crore (1) Crore shares of ₹ 10 each); Paid-up equity share capital 5 Crore; General reserve ₹3 Crore; and Deben- ture redemption reserve 2 Crore. The Board of directors of your company passed resolution by circulation for buy-back of shares to the extent of 9% of the company's paid-up share capital and free reserves. You are required to examine the validity of the proposal with reference to the provisions of the SEBI Buy-back Regulations.

Answer

As per Regulation 5(1) of the SEBI (Buy-back of Securities) Regulations, 2018, the company shall not authorize any buy-back (whether by way of tender offer or from open market or odd lot) unless:

- (a) The buy-back is authorized by the company's articles.
 - (b) A special resolution has been passed at a general meeting of the company authorizing the buy-back.
- However, for buy-back up to 10% of paid-up capital and free reserves of the company Board resolution is sufficient and such buy-back has been authorized by the board of directors by means of a resolution passed at its meeting.

Therefore, in the present case, the Board of Directors are authorized to buy-back the shares of the company up to 9% of the paid-up capital and free reserves, provided the resolution authorizing the buy-back is passed at the Board meeting and not by circular resolution.

2. Your company is planning to buy back shares from the open market through stock exchange method. You are required to state the provisions and procedure to implement the proposal as per the SEBI (Buy-back of Securities) Regulations, 2018.

Answer

Buy-back through stock exchange [Regulation 16]:

- (1) The buy-back shall be made only on stock exchanges having nationwide trading terminals.
- (2) The buy-back of the shares or other specified securities through the stock exchange shall not be made from the promoters or persons in control of the company.
- (3) The buy-back of shares or other specified securities shall be made only through the order matching mechanism except 'all or none' order matching system.
- (4) Disclosures, filing requirements and timelines of public announcement:
 - (a) The company shall appoint a merchant banker and make a public announcement as per Regulation 7 pertaining to tender offer.
 - (b) The public announcement shall be made within 2 working days from the date of passing the board of directors resolution or date of declaration of results of the postal ballot for special resolution and shall contain disclosures as specified in Schedule IV.
 - (c) Simultaneously with the issue of public announcement, the company shall file a copy of the public announcement with the SEBI along with the fees specified in Schedule V.
 - (d) The public announcement shall also contain disclosures regarding details of the brokers and stock exchanges through which the buy-back of shares or other specified securities would be made.

Explanation: In case of the buy-back from open market, no draft letter of offer/letter of offer is required to be filed with the SEBI.

Opening of the offer on stock exchange [Regulation 17]: The identity of the company as a purchaser shall appear on the electronic screen when the order is placed. The buy-back offer shall open not later than 7 working days from the date of public announcement and shall close within 6 months from the date of opening of the offer.

Subsequent compliances for open market buy-back through stock exchange [Regulation 18]: 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 SEBI 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.

Q2. Answer the following questions.

(5 marks each)

1. Karuna Ltd. made an Initial Public Offer (IPO) of equity shares in March, 2020 and was granted listing on stock exchange. Soon, thereafter, the promoters of the company started contemplating a change in the objects clause mentioned in the offer document. To give effect to the same, the company convened an extraordinary general meeting of shareholders in April 2020. Though the requisite resolution was passed by the company, there were, nevertheless, the dissenting shareholders too. The promoters decided to provide an exit opportunity to the dissenting shareholders. In the light of the above, answer the following

- (i) Who are the dissenting shareholders?
- (ii) What is the eligibility of shareholders for availing the exit offer?
- (iii) Enumerate the conditions required to be complied with to give effect to this recourse which was availed by the promoters.
- (iv) How the exit offer price will be determined?

Answer

Person responsible for basis of allotment: In a public issue of securities, the Executive or Managing Director of the Designated Stock Exchange along with the post issue Lead Merchant Banker and the Registrars to the Issue shall be responsible to ensure that the basis of allotment is finalised in a fair and proper manner in accordance with the SEBI (ICDR) Regulations, 2018.

Allotment procedure and basis of allotment [Regulation 49]:

- (1) The issuer shall not make an allotment pursuant to a public issue if the number of prospective allottees is less than 1,000.

(2) The issuer shall not make any allotment in excess of the specified securities offered through the offer document except in case of oversubscription for the purpose of rounding off to make allotment, in consultation with the designated stock exchange. However, in case of oversubscription, an allotment of not more than 1% of the net offer to public may be made for the purpose of making allotment in minimum lots.

(3) The allotment of specified securities to applicants other than to the retail individual investors, non-institutional investors and anchor investors shall be on a proportionate basis within the respective investor categories and the number of securities allotted shall be rounded off to the nearest integer, subject to minimum allotment being equal to the minimum application size as determined and disclosed in the offer document. The value of specified securities allotted to any person, except in case of employees, shall not exceed 2 lakh for retail investors or up to 5 lakh for eligible employees.

(4) The allotment of specified securities to each retail individual investor shall not be less than the minimum bid lot, subject to the availability of shares in retail individual investor category, and the remaining available shares, if any, shall be allotted on a proportionate basis.

(5) The allotment of specified securities to each non-institutional investor shall not be less than the minimum application size, subject to the availability of shares in non-institutional investors' category, and the remaining shares, if any, shall be allotted on a proportionate basis in accordance with the conditions specified in this regard in Schedule XIII of these regulations.

(6) The authorized employees of the designated stock exchange, along with the lead manager and registrars to the issue, shall ensure that the basis of allotment is finalized in a fair and proper manner in accordance with the procedure as specified in Part A of Schedule XIV.

2. Due to growing numbers of startups in India, one of the leading listed startup has apprehension that the experienced employees may leave the company to get higher pay package. The CEO desires to issue Sweat Equity Shares to the employees to retain them. You being a Company Secretary advise the management about pricing of the shares under the SEBI (Share Based Employee Benefits & Sweat Equity) Regulations, 2021.

Answer

Pricing of sweat equity shares [Regulation 33]: The price of sweat equity shares shall be determined in accordance with the pricing requirements stipulated for a preferential issue to a person other than a qualified institutional buyer under the SEBI (ICDR) Regulations, 2018.

Pricing of Frequently Traded Shares [Regulation 164]: Price of shares in preferential issue is determined as follows:

(1) If the equity shares have been listed on a recognized stock exchange for a period of 90 trading days or more: The price of the equity shares to be allotted pursuant to the preferential issue shall be not less than higher of the following:

(a) 90 trading days volume weighted average price of the related equity shares quoted on the recognized stock exchange preceding the relevant date; or

(b) 10 trading days volume weighted average prices of the related equity shares quoted on a recognized stock exchange preceding the relevant date.

(2) If the equity shares of the issuer have been listed on a recognized stock exchange for a period of less than 90 trading days: The price of the equity shares to be allotted pursuant to the preferential issue shall be not less than higher of the following:

(a) The price at which equity shares were issued by the issuer in its initial public offer or the value per share arrived at in a scheme of compromise, arrangement and amalgamation under sections 230 to 234 the Companies Act, 2013, as applicable, pursuant to which the equity shares of the issuer were listed, as the case may be.

(b) The average of the volume weighted average prices of the related equity shares quoted on the recognized stock exchange during the period the equity shares have been listed preceding the relevant date.

(c) The average of the 10 trading days volume weighted average prices of the related equity shares quoted on a recognized stock exchange during the 2 weeks preceding the relevant date.

(3) Where the price of the equity shares is determined in Clause (2), such price shall be recomputed by the issuer on completion of 90 trading days from the date of listing as specified above in Clause (1).

If such recomputed price is higher than the price paid on allotment, the difference shall be paid by the allottees to the issuer.

However, if the Articles of Association of the issuer provide for a method of determination which results in a floor price higher than that determined under determinations, then the same shall be considered as the floor price for equity shares to be allotted pursuant to the preferential issue

(4) A preferential issue of specified securities to qualified institutional buyers, not exceeding five in number: It shall be made at a price not less than the 10 trading day's volume weighted average prices of the related equity shares quoted on a recognized stock exchange preceding the relevant date. However, if the Articles of Association of the issuer provide for a method of determination which results in a floor price higher than that determined under these regulations, then the same shall be considered as the floor price for equity shares to be allotted pursuant to the preferential issue.

No allotment shall be made, either directly or indirectly, to any qualified institutional buyer who is a promoter or any person related to the promoters of the issuer.

A qualified institutional buyer who does not hold any shares in the issuer and who has acquired rights in the capacity of a lender shall not be deemed to be a person related to the promoters.

Explanation: A qualified institutional buyer who has any of the following rights shall be deemed to be a person related to the promoters of the issuer:

- (a) Rights under shareholders agreement or voting agreement entered into with promoters or promoter group;
- (b) Veto rights; or
- (c) Right to appoint any nominee director on the board of the issuer.

(5) Frequently traded shares: It means the shares of the issuer, in which the traded turnover on any recognized stock exchange during the 240 trading days preceding the relevant date is at least 10% of the total number of shares of such class of shares of the issuer.

If the share capital of a particular class of shares of the issuer is not identical throughout such period, the weighted average number of total shares of such class of the issuer shall represent the total number of shares. Pricing of Infrequently Traded Shares [Regulation 165]: Where the shares of an issuer are not frequently traded, the price determined by the issuer shall take into account the valuation parameters including book value, comparable trading multiples, and such other parameters as are customary for valuation of shares of such companies.

The issuer shall submit a certificate stating that the issuer is in compliance of this regulation, obtained from an independent registered valuer to the stock exchange where the equity shares of the issuer are listed.

Q3. Answer the following questions.

(5 marks each)

1. Manohar shares issued on private placement basis NSE. Prepare a brief note for the directors of Manohar Ltd. regarding applicable provision relating to Listing Application and documents required to be attached to listing application under the SEBI (Issue & Listing of Non-Convertible Securities Regulations, 2021).

Answer

Listing Application [Regulation 44]: Where the issuer has disclosed the intention to seek listing of debt securities and non-convertible redeemable preference shares issued on private placement basis, the issuer shall forward the listing application along with the disclosures to the stock exchange within such days as may be specified by the SEBI from the date of closure of the issue.

In case of delay in listing of such securities beyond such time period as may be specified by the SEBI from the date of closure of the issue, the issuer shall pay an additional interest/dividend at the rate specified by the SEBI, over and above the coupon/dividend applicable for such securities.

Documents required to be filed with listing application: The issuer shall file the following documents along with the listing application to the stock exchange and with the debenture trustee (in case of debt securities):

- (a) Placement Memorandum.

(b) MOA & AOA

(c) Copy of the board resolutions authorizing the borrowing and list of authorized signatories for the allotment of securities.

(d) Copy of last 3 years Annual Reports.

(e) Statement containing particulars, dates and parties to all material contracts & agreements.

(f) An undertaking from the issuer stating that the necessary documents for creation of the charge, wherever applicable, including the Trust Deed has been executed within the time frame prescribed in the relevant regulations/Act/rules etc. and the same would be uploaded on the website of the designated stock exchange, where such securities have been proposed to be listed.

(g) In case of debt securities, an undertaking that permission/consent from the prior creditor for a second or pari passu charge being created, wherever applicable. in favour of the debenture trustee to the proposed issue has been obtained.

(h) Any other particulars or documents that the recognized stock exchange may call for as it deems fit. However, issuers desirous of issuing debt securities on private placement basis who are in existence for less than 3 years may provide Annual Reports pertaining to the years of existence.

Due Diligence Certificate: The debenture trustee shall submit a due diligence certificate to the stock exchange:

(a) In case of secured debt securities: In the format as specified in Schedule IV.

(b) In case of unsecured debt securities: In the format as specified in Schedule IVA.

Listing by stock exchange: The stock exchange shall list the debt securities only upon receipt of the due diligence certificate from the debenture trustee as per format specified by the SEBI.

2. RJS Ltd. is in the list of top 500 listed entities. P is a non-executive chairman of the company. QR & T are the promoters of the company. P is related to the one of the promoter T. A is the only woman director (executive director) in the Board. Further, the company is planning to appoint C (aged 70 years) as a non-executive director. Answer the following with reference to the SEBI (LODR) Regulations, 2015:

(i) Whether the company still requires to appoint another woman director?

(ii) What is your view for the requirement of independent directors of RJS Ltd.?

(iii) Who shall approve the related party transactions in the Audit Committee meeting of a listed company?

(iv) Whether the appointment of C is valid?

Answer

Considering the facts that RJS Ltd. is in the list of 500 listed entities and provisions of the SEBI (LODR) Regulations, 2015, answer to given case is as follows:

(i) As per Regulation 17(1)(a), Board of directors if listed entity shall have an optimum combination of executive and non-executive directors with at least 1 woman director and not less than 50% of the board of directors shall comprise of non-executive directors.

However, the Board of directors of the top 500 listed entities shall have at least one independent woman director by April 1, 2019 and the Board of directors of the top 1000 listed entities shall have at least 1 independent woman director by April 1, 2020.

RJS Ltd. already have one woman director but she is executive director and hence company shall have one more woman director in category of independent director.

(ii) Where the chairperson of the board of directors is a non-executive director, at least 1/3rd of the board of directors shall comprise of independent directors.

Where the listed entity does not have a regular non-executive chairperson, at least 50% of the board of directors shall comprise of independent directors.

However, where the regular non-executive chairperson is a promoter of the listed entity or is related to any promoter or person occupying management positions at the level of board of director or at one level below the board of directors, at least half of the board of directors of the listed entity shall consist of independent directors.

The board of directors of the top 1000 listed entities (w.e.f. from April 1, 2019) and the top 2000 listed entities (w.e.f. April 1, 2020) shall comprise of not less than 6 directors.

Where the listed company has outstanding SR equity shares, at least half of the board of directors shall comprise of independent directors.

P is the non-executive chairman of the RIS Ltd. and P is related to promoter T and hence in RJS Ltd. at least half of the board of directors shall consist of independent directors.

(iii) Regulation 23(2) provides that all related party transactions and subsequent material modification shall require prior approval of the audit committee. Only those members of the audit committee, who are independent directors, shall approve related party transactions.

(iv) Regulation 17(1A) provides that no listed entity shall appoint a person or continue the directorship of any person as a non-executive director who has attained the age of 75 years unless a special resolution is passed to that effect, in which case the explanatory statement annexed to the notice for such motion shall indicate the justification for appointing such a person.

Thus, RJS Ltd. can appoint C (aged 70 years) as a non-executive director.

Q4. Answer the following questions.

(5 marks each)

1. Romeo International Limited, an Indian public limited company, is listed on BSE. On Friday i.e. 14th December, 2018 one of the shareholders of the Company, Ganesh, who was already holding 30% stake in the company, made a public announcement for an open offer for the acquisition of Rs. 13 crore equity shares (Face value Rs. 10 each), constituting 26% of the equity share capital of the Romeo International Limited. The offer price per share according to Takeover Regulations is arrived at Rs. 500 per share. Explain the following with reference to SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011:

- (a) What is the time limit for depositing amount in escrow account and explain with the relevant provisions, what amount should be deposited in escrow account in this case?
- (b) Explain the forms of maintaining the escrow account.

Answer

(a) The acquirer shall create an escrow account towards security for performance of his obligations under SEBI (SAST) Regulations, 2011, not later than 2 working days prior to the date of the detailed public statement of the open offer for acquiring shares.

(b) The escrow account may be in the form of:

- (1) Cash deposited with any scheduled commercial bank;
- (2) Bank guarantee issued in favour of the manager to the open offer by any scheduled commercial bank; or
- (3) Deposit of frequently traded and freely transferable equity shares or other freely transferable securities with appropriate margin.

2. David, General Manager (Finance) of Suren Enterprises Ltd., was found to be indulging in insider trading activities. As a result, the company terminated his services. The SEBI also took cognizance of the matter and initiated proceedings against him under Insider Trading Regulations. David pleaded that since his service had already been terminated, SEBI could not initiate any proceedings against him. Suggest, what type of action can be taken by SEBI against him?

Answer

Insider shall not communicate, provide or allow access to any unpublished price sensitive information relating to the company or its securities to any person.

In given case David has found to be indulging in insider trading which is prohibited under the SEBI (Prohibition of Insider Trading) Regulations, 2015.

Insider trading is punishable under section 15G of the SEBI Act, 1992. The penalty is as follows: An insider shall be liable to penalty which shall not be less than 10 lakh but which may extend to 25 Crore or 3 times of profits out of insider trading, whichever is higher.

Taking action by company does not preclude the SEBI from taking any action under the SEBI Act, 1992. Hence, David's plea that he had already penalised by the company by terminating his services is not acceptable.

Q5. Answer the following questions.

(5 marks each)

1. In case if a Company is found to be in violation of the SEBI (Prohibition of Fraudulent & Unfair Trade Practice relating to Securities Market) Regulations, 2003, what are the actions SEBI can take against the

company?

Answer

Enforcement by the SEBI [Regulation 10]: After consideration of the report of Investigating Authority, the SEBI may issue such directions or take such action mentioned in Regulations 11 & 12 if it is satisfied that there is a violation of the regulations.

The SEBI may give a reasonable opportunity of hearing to concerned persons.

The SEBI may issue directions in the interest of investors and the securities market under Regulation 11 even in case of pending of receipt of the report of investigating authority.

The SEBI may, in the interest of investors and securities market, dispense with the opportunity of pre-decisional hearing by recording reasons in writing and shall give an opportunity of post-decisional hearing to the persons concerned as expeditiously as possible.

Directions and action in case of default [Regulation 11]: The SEBI may, without prejudice to the provisions contained in Sections 11 & 11B of the SEBI Act, 1992, by an order, for reasons to be recorded in writing, in the interests of investors and securities market, issue or take any of the following actions or directions, either pending investigation or enquiry or on completion of such investigation or enquiry:

- (a) Suspend the trading of the security found to be or prima facie found to be involved in fraudulent and unfair trade practice in a recognized stock exchange.
- (b) Restrain persons from accessing the securities market and prohibit any person associated with securities market to buy, sell or deal in securities.
- (c) Suspend any office-bearer of any stock exchange or self-regulatory organization from holding such position.
- (d) Impound and retain the proceeds or securities in respect of any transaction which is in violation or prima facie in violation of these regulations.
- (e) Direct and intermediary or any person associated with the securities market in any manner not to dispose of or alienate an asset forming part of a fraudulent and unfair transaction.
- (f) Require the person concerned to call upon any of its officers, other employees or representatives to refrain from dealing in securities in any particular manner.
- (g) Prohibit the person concerned from disposing of any of the securities acquired in contravention of these regulations.

Direct the person concerned to dispose of any such securities acquired in contravention of these regulations, in such manner as the SEBI may deem fit, for restoring the status quo ante.

Publication of order on SEBI's website: Any final order passed shall be put on the website of the SEBI.

2. Managing Director of AB Ltd., a listed company wishes to implement the procedure for voluntary delisting from a few stock exchanges subject to listing of at least one stock exchange having nationwide terminals. As a Company Secretary prepare a note on your Managing Director in the light of SEBI (Delisting of Equity Shares) Regulations, 2021.

Answer

Conditions and procedure for delisting where exit opportunity is not required:

Delisting from some of the recognised stock exchanges [Regulation 5]: A company may delist its equity shares from one or more of the recognised stock exchanges on which it is listed without providing an exit opportunity to the public shareholders, if after the proposed delisting, the equity shares remain listed on any recognised stock exchange that has nationwide trading terminals.

Procedure for delisting where no exit opportunity is required [Regulation 6]:

- (1) Any company desirous of delisting its equity shares under the provisions of regulation 5 of these

regulations shall-

- (a) Obtain the prior approval of its Board of Directors.
 - (b) Make an application to the relevant recognised stock exchanges for delisting its equity shares.
 - (c) Issue a public notice of the proposed delisting from the relevant stock exchanges in at least one English national newspaper with wide circulation, one Hindi national newspaper with wide circulation in their all India editions and one vernacular newspaper of the region where the relevant stock exchanges is located.
 - (d) Disclose the fact of delisting in its first annual report post delisting.
- (2) The public notice shall mention the name of the recognised stock exchanges from which the equity shares of the company are intended to be delisted, the reasons for such delisting and the fact of continuation of listing of equity shares on the recognised stock exchanges having nationwide trading terminals.
- (3) An application for delisting shall be disposed of by the recognised stock exchange within a period not exceeding 30 working days from the date of receipt of such application that is complete in all respects.

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