

## Proposed changes under SEBI (Buy-Back of Securities) Regulations, 2018

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SEBI at its meeting held on March 28, 2018<sup>1</sup> has approved the proposal of undertaking a public consultation process for reviewing the SEBI (Buy-Back of Securities) Regulations, 1998 (Regulations, 1998) with an objective of simplifying the language, removing redundant provisions and inconsistencies, updating the references to the Companies Act, 2013/ other new SEBI Regulations, and incorporating the relevant circulars, FAQs, informal guidance in the regulations, wherever possible. In this regard, the present Article presents a brief of the changes as suggested in the discussion paper by SEBI:

### a) Maximum limit of buy-back of securities

#### ○ Proposed provision [New insertion]-

*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:*

*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 mean its total paid-up equity capital in that financial year;*

- **VK&Co. Comments-** Clarificatory change, updating reference to provisions of Section 68 (2) (c) of the Companies Act, 2013.

### b) Ratio of the aggregate of secured and unsecured debts

#### ○ Proposed provision [New insertion]-

*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 the Central Government may, by order, notify a higher ratio of the debt to capital and free reserves for a class or classes of companies.*

- **VK&Co. Comments-** Clarificatory change, updating reference to provisions of Section 68 (2) (d) of the Companies Act, 2013.

### c) Fully paid up securities

#### ○ Proposed provision [New insertion]-

*All shares or other specified securities for buy-back shall be fully paid-up.*

- **VK&Co. Comments-** Clarificatory change, updating reference to provisions of Section 68 (2) (e) of the Companies Act, 2013

#### **d) Reduction of share capital:**

- **Proposed provision [New insertion]-**

*A company shall not allow buy-back of its shares unless the consequent reduction of its share capital is effected.*

#### **e) Buy-Back can be undertaken through**

- **Proposed provision [New insertion]-**

*(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.*

- **VK&Co. Comments-** Clarificatory change, updating reference to provisions of Section 68 (1) of the Companies Act, 2013.

#### **f) Restrictions on purchase of own shares or securities:**

- **Proposed provision [New insertion]-**

*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.*

- **VK&Co. Comments-** Clarificatory change, updating reference to provisions of Section 70 of the Companies Act, 2013.

#### **g) Restrictions on further issuance of the same kind of shares or other securities post buy-back**

- **Proposed provision [New insertion]-**

*Where a company completes a buy-back of its shares or other specified securities, it shall not make a further issue of the same kind of shares or other securities including allotment of new shares under applicable provisions of Companies Act or other specified securities within a period of six months except by way of a bonus issue or in the discharge of subsisting obligations such as conversion of warrants, stock option schemes, sweat equity or conversion of preference shares or debentures into equity shares.*

- **VK&Co. Comments-** Clarificatory change, updating reference to provisions of Section 68 (8) of the Companies Act, 2013.

#### **h) Authorization/ approval for buy-back**

- **Proposed provision [New insertion]-**

*The company shall not authorise any buy-back (whether tender offer or from open market or odd lot) unless:*

*a) The buy-back is authorised by the company's articles;*

*b) Except otherwise specified in this regulation, a special resolution has been passed at a general meeting of the company authorising the buy-back;*

- **VK&Co. Comments-** Clarificatory change, updating reference to provisions of Section 68 (2) of the Companies Act, 2013.

#### **i) Max tenure to complete the buy-back process**

- **Proposed provision [New insertion]-**

*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.*

- **VK&Co. Comments-** Clarificatory change, updating reference to provisions of Section 68 (4) of the Companies Act, 2013.

#### **j) Filing of form post the completion of the buy-back**

- **Proposed provision [New insertion]-**

*The company shall, after the completion of the buy-back, file with the Registrar of Companies and the Board, a return containing such particulars relating to the buy-back within thirty days of such completion, in the format as may be specified.*

- **VK&Co. Comments-** Clarificatory change, updating reference to provisions of Section 68 (10) of the Companies Act, 2013.

#### **k) Exemption from seeking shareholder's approval**

- **Proposed provision [New insertion]-**

*Nothing contained in sub-regulation (iv) of this regulation shall apply to a case where—*

*a) the buy-back is, ten per cent. or less of the total paid-up equity capital and free reserves of the company; and*

*b) such buy-back has been authorised by the Board of Directors of the company by means of a resolution passed at its meeting;*

- **VK&Co. Comments-** Clarificatory change, updating reference to provisions of Section 68 (2) (b) of the Companies Act, 2013

#### **l) Mode of dispatch**

- **Proposed provision [New insertion]-**

*1. Letter of Offer may also be dispatched through electronic mode in accordance with the provisions of the Companies Act.*

*2. On receipt of a request from any shareholder to receive a copy of the letter of offer in physical format, the same shall be provided.*

*3. The aforesaid shall be disclosed in the letter of offer.*

- **VK&Co. Comments-** Clarificatory change, updating reference to provisions of the Companies Act, 2013.

#### **m) Participation of an eligible public shareholder, who does not receive the tender offer/offer form**

- **Proposed provision [New insertion]-**

*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.*

**VK&Co. Comments-** The proposed amendment has been brought to safeguard the interest of the shareholders.

#### **n) Rights of an unregistered shareholder to participate in the buy-back process**

- **Proposed provision [New insertion]-**

*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.*

**VK&Co. Comments-** The proposed amendment has been brought to safeguard the interest of the shareholders.

#### **o) SEBI's power to allow tendering of shares and settlement of the same, through the stock exchange mechanism**

- **Existing provision-**

*"The acquirer or promoter shall facilitate tendering of shares by the shareholders and settlement of the same, through the stock exchange mechanism as specified by the Board."*

- **Proposed provision -**

*"The company 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."*

- **VK&Co. Comments-** The proposed amendment makes the entire company responsible for facilitation of the tendering of shares and its settlement. Earlier the responsibility was only limited to the promoters.

#### **p) Register of shares or other securities which have been bought-back**

- **Existing provision-**

*"The company shall maintain a record of security certificates] which have been cancelled and destroyed as prescribed in sub-section (9) of section 77A of the Companies Act."*

- **Proposed provision -**

*“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.”*

- **VK&Co. Comments-** Clarificatory change, updating reference to provisions of Section 68 of the Companies Act, 2013 read with Rule 17 (12) (a) of the Companies (Share Capital and Debenture) Rules, 2014.

#### **q) Interest bearing escrow account**

- **Proposed provision [New insertion]-**

*The cash component of the escrow account may be maintained in an interest bearing account, provided that the merchant banker ensures that the funds are available at the time of making payment to shareholders.*

**VK&Co. Comments-** The proposed amendment will eliminate the loss of interest of the amounts, deposited by the companies in the escrow account.

#### **r) Deletion of certain provisions**

*The entire provisions related to:*

- (a) Power of the Board to order investigation;*
- (b) Duty to produce records, etc.;*
- (c) Submission of Report to the Board under Regulation 1998, has been deleted*