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Selective Share Buyback under the Singapore Companies Act 1967

The Singapore Companies Act 1967 (Companies Act) permits a company to buy back its own shares under certain conditions. This article provides an overview of the share buyback process under Section 76B of the Companies Act and the selective off-market acquisition procedure under Section 76D of the Companies Act.

Share Buyback Scheme

Section 76B of the Companies Act permits a company to buy back its own shares provided that the company's Constitution allows for share buyback and the company is solvent.

A company is solvent if:

- there are no reasons to believe that the company will be unable to pay its debts;
- the company will be able to pay its debts as they fall due during the period of 12 months from the date of the solvency statement; and
- the value of the company's assets is more than or equal to the value of its liabilities (including contingent liabilities). Similarly, after the proposed redemption, the company's assets will not become less than the value of its liabilities.

The company may buy back its ordinary shares, stocks and preference shares. However, the total number of shares and stocks purchased by the company should not exceed 20% of the total number of ordinary shares and stocks of the company.

Further, the company must lodge the following documents with the Accounting and Corporate Regulatory Authority ("ACRA") when the company purchases its own shares:

- A copy of the resolution authorising the agreement for the company to buy back its shares referred; and
- A notice of purchase in the prescribed form with the following particulars:
    - the date of the purchase or acquisition;
    - the number of shares purchased or acquired;
    - the number of shares cancelled;
    - the number of shares held as treasury shares;
    - the company's issued share capital before the purchase or acquisition;
    - the company's issued share capital after the purchase or acquisition;
    - the amount of consideration paid by the company for the purchase or acquisition of the shares;
    - whether the shares were purchased or acquired out of the profits or the capital of the company; and
    - such other particulars as may be required in the prescribed form.

In addition, the feasibility and accounting treatment involved in the share buyback process has to be examined by an accountant.

Selective off-market acquisition

Additionally, the company may purchase shares through a selective off-market purchase under Section 76D of the Companies Act. A selective off-market purchase means that shares are purchased outside of a securities exchange and the offer of purchase need not be made to every person who holds shares in the company.

The terms of the agreement for a selective off-market purchase must be authorized by a special resolution (75% of the voting members) of the company, with the following conditions:

- A person whose shares are proposed to be purchased and his associated persons (the person's spouse, child or step-child and persons who are treated as associates under Section 7(5) of the Companies Act) cannot cast any votes (whether in a poll or in writing);
- Any member (or his proxy) of the company may demand a poll on the special resolution to pass the share buyback;
- The notice proposing a special resolution (approving the selective off-market purchase) must specify:
    - the sources of funds to be used for the purchase. The notice should also include the amount of financing and the impact of the purchase on the company's financial position; and
    - a date (no later than the date of the company's next annual general meeting) on which the authority to execute the share buyback is to expire; and
- The special resolution may determine the maximum price for the purchase of shares by
    - specifying a particular sum, or
    - providing a basis or formula for calculating the amount of the price in question.

The agreement for a selective off-market purchase may be varied or revoked by a special resolution.

If the special resolution for the selective off-market buyback is not passed by written means, a copy of the agreement or a written memorandum of its terms has to be accessible to members of the company. The copy has to be accessible at the meeting (where the special resolution was passed) and at the company's registered office for at least 15 days from the date of the meeting. The written memorandum must include:

- the names of any members holding shares to which the agreement relates;
- where a member holds such shares as nominee for another person, the name of that other person; and
- a copy of the agreement so made available must have annexed to it a written memorandum specifying any such names which do not appear in the agreement itself.

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After the share buyback – Cancellation of shares

Shares which have been purchased by the company are deemed cancelled. This means that the rights and privileges attached to those shares expire on cancellation. Further, where a share buyback has been executed, the company needs to make the relevant changes to its share capital (or profits) to reflect the total amount of purchase price paid by the company for the shares cancelled.

After the share buyback – Treasury shares

Instead of cancelling the shares after the share buyback as mentioned above, the company may choose to hold the repurchased shares as treasury shares instead. Where the company holds treasury shares, the company is considered a member holding such shares or stocks. It should be noted that treasury shares shall have no voting rights.

The company may transfer treasury shares through several methods. Notably, the company may:

- Sell the treasury shares for cash;
- Transfer the shares for the purposes of an employee's share scheme (whether for employees, directors or other persons); and/or
- Transfer the shares as consideration for the acquisition of shares in or assets of another company or assets of a person and cancel the shares.

Alternatively, the company may cancel the treasury shares by lodging a prescribed notice of the cancellation or disposal with the ACRA with the prescribed fee. Notably, the cancellation of treasury shares will not take effect until the electronic register of members of the company is updated by ACRA.

Note: The information in this publication is intended to provide a brief overview of the share buyback process under the Companies Act 1967 of Singapore. It is not intended as, and should not be relied upon as, legal advice on the subject matter.