

Post BB Debt should not be more than 2, that means $\frac{\text{Debt}}{\text{Equity}} \leq 2$ or less than 2, that means equity $\geq \frac{1}{2}$ Debt

SEBI (BUYBACK of Securities) Reg., 2018

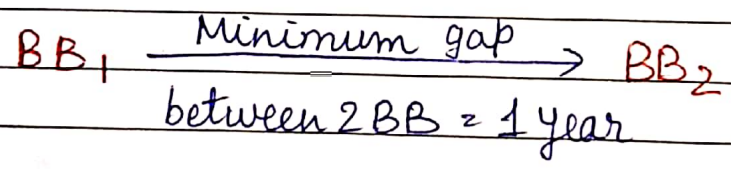
★ Buyback → via BR

(BB equity shares) Max amount available = 10% (Paid up for BB of Eq. Sh through Share Capital & BR Free Reserves)

★ Buyback → via SR

Share Capital & other specified securities Maximum amount available for BB through SR = 25% (Paid up Share Capital + Free Reserves)
 eq. share Pref share cap.

NOTE: For the purpose of Sec 68 → Free reserve also include security premium.



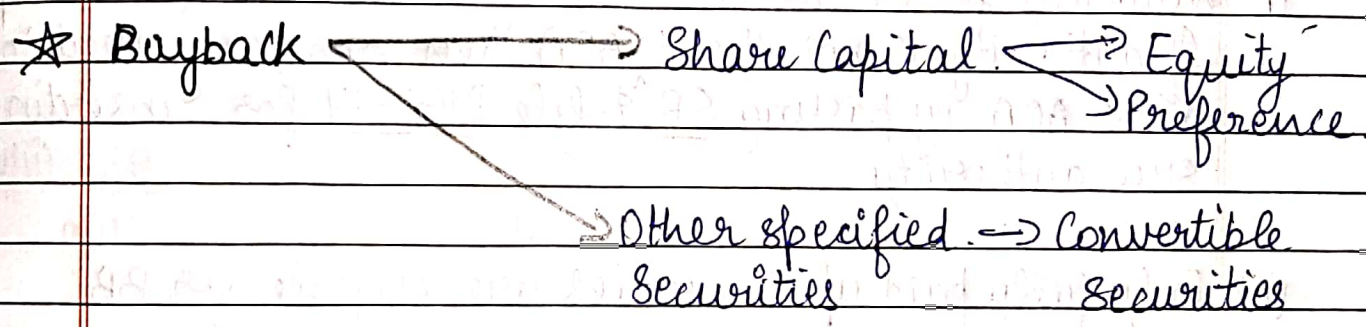
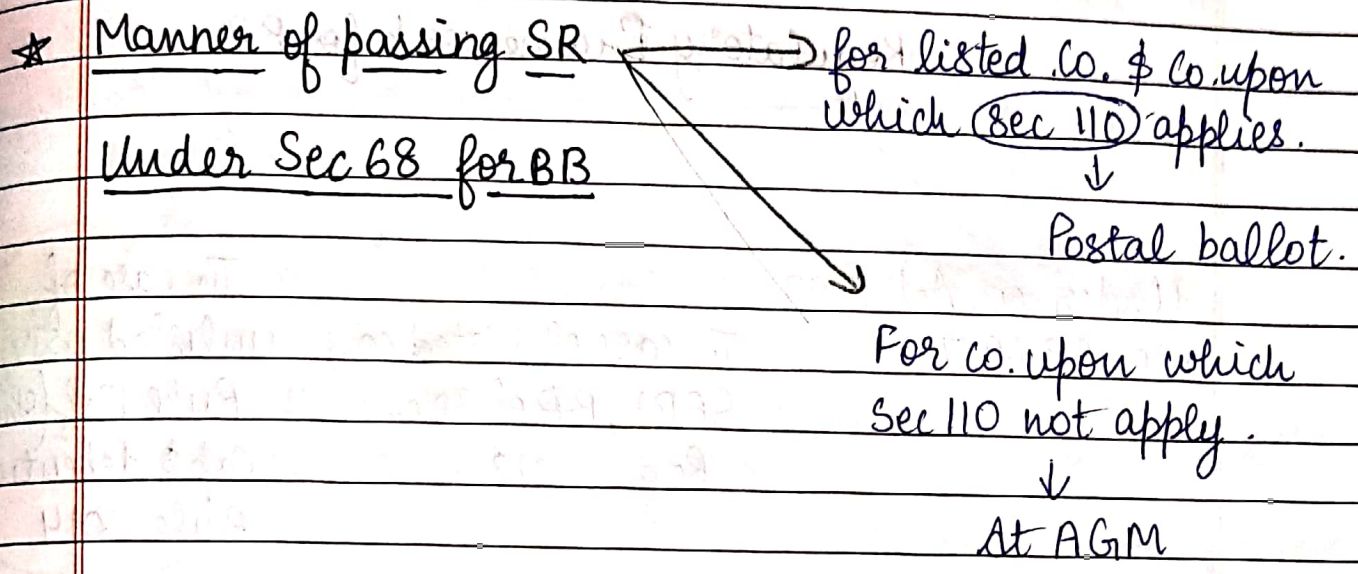
NOTE: Company can do BB of 100% preference shares & other specified securities provided the fund utilized for such BB should not exceed 25% of (PSC + FR)

★ Post BB

$\frac{\text{Debt}}{\text{Equity}} > 2 \rightarrow \frac{\text{Debt}}{\text{Equity}} \leq 2 \rightarrow \text{Equity} \geq \frac{1}{2} \text{ Debt}$

Debt → outside liability
 Equity → Shareholders fund.

★ Value of CRR = Nominal Value of securities BB
(If BB being done out of FR / Sec. Premium)



Case 1 → When BB is through BR

ESC → 10 cr. P FV of share = 10
 PSC → 1 cr BB price = ₹100
 RS → 90 cr

Maximum amount = 10% of (PSC + FR)
 = 10% (10 + 90)
 = ₹10 cr

No. of shares which can be BB = $\frac{\text{Amount available for BB}}{\text{BB price}}$

≥ 10 cr. ≥ 10 L eq. Shares
100

Regulatory Framework for BB

Under co. Act, 2013
sec 68, 69, 70

In case of listed co.
SEBI, BB of sec.
Reg., 2018.

In case of unlisted co.
Rule 17 of (Share
Cap & debentures)
Rule, 2014

- (i) Authority for BB need to there in the AOA of the company. If authority is not there in AOA then company needs to alter AOA by passing SR & file MGT-14 for inserting such authority.
- (ii) Only fully paid up securities are eligible for BB.
- (iii) BB need to complete within 1 year of passing such BR/SR
- (iv) The Board of director need to provide a declaration of solvency confirming that board has inquiry into the functioning of the company and are of the opinion that company is solvent and going to be remain solvent for next 12 months from the adopting of declaration by the board.
- (v) Such declaration of solvency need to signed by at least 2 directors of the company, one of it shall be a Managing

director if any and shall inform in SH-9 & shall be filed with ROC & SEBI

(vi) BB can be done out of

- a) Free reserves
- b) Security Premium
- c) Proceeds of different kind of securities
(proceeds of Deb, PS → no. objective need to be mentioned and can be freely used)

(vii) The notice for passing SR for BB need to provide an explanatory statement containing the following info.:

- a) Reason of doing such BB
- b) Class of securities which intends to be bought back
- c) Time limit for completion of BB.
- d) Amount to be invested in BB.
- e) Such other information as maybe considered necessary.

(viii) BB can be done

- | | | |
|--|---------------------|--|
| a) From existing security holder on proportionate Basis. | b) From open market | c) By purchasing security issued to the employees under ESOP/sweat equity. |
|--|---------------------|--|

(ix) When a company BB its securities then it shall extinguish & physically destroy shares / securities so bought back within 7 days from the last date of completion of BB

NOTE: If the securities are in electronic mode for extinguishment of securities company need to reverse corporate action with depository.

- (x) When company completes BB of securities then it shall not make further issue of same kind of shares / specified securities within 6 months. **except**
- By way of bonus shares
 - By conversion of convertible securities equity shares
- (xi) When company BB its securities then it shall maintain a register of securities bought back in SH-10
- (xii) The company after completion of BB file with ROC & SEBI a return on BB in form SH-11 along with a certificate in form SH-15 signed by 2 directors of the company and 1 of whom should be managing director (MD) if any confirming that all the requirement of BB has duly complied.

(xiii) If the requirement of B B has not being complied & it shall be considered as default & penalty shall be fixed levied

Upon the company



Min → ₹ 1 Lakh

Max → ₹ 3 Lakh

Upon every officer in default



Imprisonment upto. 3 Years

OR

Fine 1L or Max 3L

OR

BOTH.

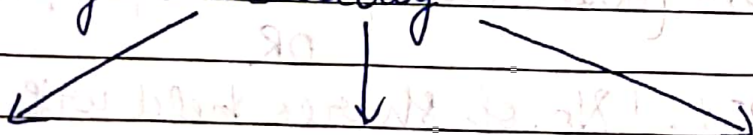
Sec 69 (Companies Act, 2013)

(i) If the B.B. of securities out of Free Reserves or Security Premium then company need to create CRR & value of CRR shall be equal to the nominal value of securities bought back.

(ii) Such CRR shall be utilized for the purpose of issuance of fully paid up bonus shares

Sec 70

A company shall not do BB of shares or other specified securities directly or indirectly



Through

- ① Subsidiary co.
- ② Investment co.

The company has made default in any

If a company has defaulted in complying the requirement

- | | |
|---|--|
| (i) Repayment of Deposit | (i) Sec 92 (Annual Report) |
| (ii) Red ⁿ of Deb | (ii) Sec 123 (Decl ⁿ of Dividend) |
| (iii) Red ⁿ of Pref. Share | (iii) Sec 127 (Payment of Dividend) |
| (iv) Payment of Declared Dividend | (iv) Sec 129 (Financial Statement) |
| (v) Repayment of any term loan raised from bank/FI. | |

NOTE: Co. can do BB after the default being redemption and the period of 3 years is lapsed after the default ~~is~~ ceased to subsist

SMALL SHAREHOLDER

- ★ Total no. of shares of the Company = 10 cr shares
- No. of shares held with small SH = 2 cr share ~~holders~~
- No. of shares held with other SH = 8 cr shares

- ★ Total no. of shares company purpose to BB = 25% (total no. of shares)
- = 25% of 10 cr
- = 2.5 cr

Reservation need to made in favour of small SH:

15% (total no. of shares purpose to be BB) OR 25% (No. of shares held with small SH) } which ever is higher

= 15% (2.5 cr.) or 25% (2 cr.)
37,50,000 or 50,00,000 → Ans.

Total no. of shares under BB = 2.5 cr.

Reservation for SH = 50L

Other SH = 2 cr.

Important Points of Rule 17 of Companies (Share Capital Debenture) Rule, 2014

[Unlisted Co.]

- ① After Passing SR for BB & before the BB of securities the company shall file SH-8 with ROC
- ② Such letter of offer shall be & signed by at least 2 directors of the company one of whom should be MD if any
- ③ Along with letter of offer the company is required to file a declaration of solvency in form SH-9
- ④ After filing the letter of offer with ROC such letter of offer shall be dispatched to all the securities holder immediately, if not dispatched immediately then it need to dispatch within 21 days of filling the same with ROC
- ⑤ The letter of offer shall contain true, complete & correct information and shall not have any misleading information.
- ⑥ Duration of BB offer → Min → 15 days from the date of dispatch of the letter offer
→ Max → 30 days from the date of dispatch of the letter of offer

7) If the number of shares tendered by SH under BB is more than the securities proposed to be bought back then such BB shall be done on proportionate basis.

8.) The co. shall complete the verification of offer receipt within 15 days from the day of closure of offer & if no rejection communicated then within 21 days of closure of offer then securities lodged shall be deemed to accepted.

9.) The company shall within 7 days of completion of verification

Make the payment of consideration in cash to securities holder whose securities has been accepted under BB

Return the security to the security holder whose security has not accepted or accepted in part.

10.) After the closure of offer the co. shall open an escrow A/c & need to deposit there in the entire consideration requirement ~~to~~ to made under BB in cash

Doesn't apply in listed co

11.) Once the offer of BB being made by filing a letter of offer company cannot ^{draw} with BB offer.

12.) BB shall not be done out of borrowed fund raised from bank / FI.

* BB through SE

⑦ Meaning.

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Date	/	/
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13) Company shall not utilize the proceed of same kind of securities issued earlier in the purpose BB

Imp BB through Stock Exchange

A listed company can BB its securities through SE in the following manner

- ① BR / SR for BB shall specify the maximum ^{amount} price at which BB shall be made
- ② The BB of securities shall not be made from the promoter or PAC of promoter
- ③ The company shall appoint Merchant Banker and shall make Public announcement for BB.
- ④ The Public announcement shall be made within 7 working days from the date of passing BR / SR.
- ⑤ The company shall file copy of PA with SEBI
- ⑥ Such BB shall be made only through SE having nationwide trading terminal.
- ⑦ The PA shall provide disclosure relating to the broker & the SE through which BB shall be made.
- ⑧ Such BB shall be done only through order matching mechanism. accept all or none order matching mechanism.
- ⑨ The company shall provide the details of securities bought

back to the SE on daily basis & SE shall upload the same on its official website immediately.

- (10) The identity of the co. shall be "A purchaser" shall appear on the electronic screen when the order being placed.
- (11) The company shall also provide the details of securities Bought back on daily basis on its website.
- (12) Such BB shall open not later 7 working days from the date of Public Announcement & shall close with 6 months from the date of opening an offer BB through book building.

A listed company can buy back its securities through book building in the following manner

- (1) The SR/BR shall specify the maximum amount at which BB shall made.
- (2) The company shall amount Merchant Banker and shall make Public Announcement.
- (3) The Public Announcement shall be made at least 7 days before the commencement of B.B.
- (4) The co. shall open escrow A/c & deposit the money in escrow A/c before the date of PA & the amount to deposit in escrow A/c shall be depended upon and determined with respect to the maximum price specified in PA.

- (5) The copy of PA shall be filed with SEBI within 2 working days from the date of PA.
- (6) Such PA shall contain the detail methodology of Book building process the manner of acceptance, detail of bidding centers, format of acceptance required to be sent to securities holder.
- (7) Such book building process shall be made through electronically link transparent facility.
- (8) The no. of bidding centres = minimum 30.
- (9) There should be minimum 1 electronically link computer terminal at all the bidding centres.
- (10) Period of BB offer
Min \rightarrow 15 days Max = 30 days.
- (11) The merchant banker and the company shall determine the buyback price based on the acceptance received. Final Buyback price shall be less than equal to maximum price mentioned in BR/SR.
- (12) The final BB price i.e. highest price accepted shall be paid through all the security holders who has tendered their securities & have accepted by the co. for buyback.