

**PROCEDURE IF BUY-BACK OF
SHARES/OTHER SPECIFIED SECURITIES
ARE UP TO 10% OR LESS THAN 10% OF
EQUITY PAID-UP SHARE CAPITAL
AND FREE RESERVES [SECTION 68]**

73

{Sections 68 and 70 of the Act read with Rule 17 of the
Companies (Share Capital and Debentures) Rules, 2014}

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Relevant Sections, Rules and Forms at a Glance

Particulars	Section(s), Rule(s) and Name of e-Form(s)
The Companies Act, 2013	Sections 68, 69, 70, 88, 117, 118, 173, 179 and 403
The Companies (Share Capital and Debentures) Rules, 2014	Rule 17
The Companies (Management and Administration) Rules, 2014	Rules 3 and 24
The Companies (Registration Offices and Fees) Rules, 2014	Rules 7, 8 and 12
Secretarial Standard-1 of ICSI	Clauses 3, 4, 5, 6, 7 and 8
e-Forms to be filed	MGT-14 (in case of public companies) SH-8 SH-11
Forms to be filed as an attachment with respective forms	SH-15

Significant Relevant Approvals and Requirements

- ❖ Board resolution
- ❖ If securities are partly paid up, make them fully paid up before buying back
- ❖ Company has not defaulted in complying with the sections 92 related to Annual Return, section 123 related to payment of dividend, section 127 related to punishment for failure to distribute dividend, and section 129 related financial statement.
- ❖ Company shall purchase its own shares or other specified securities out of its free reserves, securities premium account, or proceeds of the issue of any shares/other specified securities
- ❖ Company has not made any default in the repayment of deposits and interest thereon, redemption of debentures and interest thereon, redemption of preference shares, dividend payment to any shareholder, repayment of term loan or interest thereon to any bank or any financial institution and in case of such defaults, the default is remedied and a period of 3 years has elapsed after such default ceased to subsist
- ❖ Debt Equity Ratio post buy back shall not be more than 2:1, while 6:1 in case of government companies carrying specified activities
- ❖ Buy back shall be completed within a period of 1 year from the date of passing of the board resolution
- ❖ Period of complete one year has elapsed from the closure of preceding offer of buy back
- ❖ Declaration of Solvency, duly signed by at least 2 directors and one of whom shall be MD, if any
- ❖ Open a separate bank

73.1 PROCEDURE WITH CHECK POINTS

S. No.	Particulars
1.	<p>Ensure that—</p> <ul style="list-style-type: none"> • the buy-back of securities is authorized by the articles of association of the company and if not authorised by the articles of association, then first alter the articles of association to include the provisions of buy-back of shares {Section 68(2) of the Act}. • the buy back of securities is 10 % or less than 10 % of the total paid up equity capital and free reserves including securities premium account of the company {Section 68(2)(b) of the Act} • the company shall purchase its own shares or other specified securities out of <ul style="list-style-type: none"> - its free reserves - securities premium account, or - proceeds of the issue of any shares/other specified securities provided that no buy-back of any kind of shares or other specified securities shall be made out of the proceeds of an earlier issue of the same kind of shares or same kind of other specified securities {Section 68(1) of the Act}.

S. No.	Particulars
	<p>The subscribers, who are individuals in the Memorandum of Association (MOA) shall be deemed as first directors until the directors are duly appointed by the members in accordance with Section 152 of the Companies Act, 2013 and rules made thereunder (Section 152 of the Act).</p> <ul style="list-style-type: none"> • Not the person intended/proposed to be appointed a director of a company has a valid Director Identification Number (DIN) under section 174 or any other number as may be prescribed under section 174 of the Companies Act, 2013, however, in case of first directors of a new company, the DIN up to 3 (three) persons can be obtained through incorporation with integrated form SPICe-1 (INC-32) (Section 152 of the Act read with rule 152 of the Companies Incorporation Rules, 2014). • Not a total number of directors, at least one director has stayed in India for a total period of not less than 182 days during the financial year. Provided that in case of newly incorporated company, residential status shall be determined proportionately. However, it is not required in case the director is appointed by the Central Government or State Government (Section 152 of the Act). • A person, who is intended to be appointed, shall not be eligible for appointment, if he/she has any disqualification for appointment under section 164 of the Act (Section 164 of the Act read with companies provisions a government company and regulations in COA 2012 about COA 2012). • A person proposed to be appointed as a director in a company other than a company registered under Section 8 (non-profit company) of the Companies Act, 2013 (Section 152 of the Act) <ul style="list-style-type: none"> - shall not hold office as a director including any alternate directorship in more than 20 companies including directorship in dormant companies. - shall not hold office in more than 10 public companies including the private companies which are holding or subsidiary of public company.
1.	In case of one person company, an individual being sole member is deemed to be the first director of the company, if the articles of association has not mentioned the names of first directors (Section 152 of the Act).
2.	Forms created in writing, on or before appointment, from the appointed director to act as director in the company as Form 208-2 (Part 2 of the Companies Incorporation and Qualification of Directors Rules, 2014).
3.	Form created in writing, on or before appointment, from the appointed director as Form 208-3 regarding that he/she is not disqualified under Section 164 of Companies Act, 2013, to act as a Director (Section 164 of the Act read with rule 17 of the Companies Incorporation and Qualification of <u>Directors</u> Rules, 2014).
4.	The particulars of first directors to be integrated with Form SPICe-1 (INC-32) at the time of incorporation of company.

For the detailed procedure, please refer Company Law Procedures & Compliances by Dr. Sanjeev Gupta, 2nd edn, 2021. You can buy from your bookseller or online at www.bharatlaws.com

[COMPANY LAW Procedures & Compliances \(in 2 vols.\)](#)