

BUY-BACK OF SHARES: Using Six-Month Financial Statements Does Not Mean Reporting Six-Month-Old Share Capital

A Practical Perspective on Maintaining Consistency in Buy-Back Compliances

The buy-back provisions under the Companies Act, 2013 offer companies considerable flexibility by permitting reliance on the latest financial statements that are not older than six months from the date of the buy-back. This enables companies to undertake a buy-back without necessarily waiting for the next audited financial statements.

While this flexibility facilitates corporate actions, it also gives rise to an important compliance consideration that deserves greater attention.

The financial statements used for determining the eligibility of a buy-back are not necessarily the basis for reporting the company's share capital in the statutory forms and certificates, particularly where the capital structure has changed before the buy-back is undertaken.

This distinction, though subtle, is crucial for ensuring consistency across statutory records maintained with the Ministry of Corporate Affairs.

The Legal Framework

Section 68 of the Companies Act, 2013, read with the applicable Rules, permits a company to undertake a buy-back based on financial statements that are not older than six months from the date of the buy-back.

These financial statements serve an important purpose—they establish whether the company satisfies the prescribed financial conditions relating to, inter alia:

- the maximum permissible size of the buy-back;
- the debt-equity ratio;
- the availability of free reserves; and
- other statutory eligibility criteria.

The law, therefore, provides flexibility with respect to the **financial base** for determining eligibility.

However, this flexibility should not be confused with the **reporting of the company's actual capital structure**.

Eligibility and Reporting Are Two Different Concepts

In practice, two distinct dates exist in every buy-back transaction.

The first is the **financial statement date**, which determines whether the company is eligible to undertake the buy-back.

The second is the **date of the buy-back**, on which the company's capital structure actually exists.

Where the company has issued further shares, undertaken a rights issue, preferential allotment, bonus issue, conversion of securities or any other capital restructuring after the date of the financial statements, its issued, subscribed and paid-up share capital may no longer correspond with the figures appearing in those financial statements.

In such circumstances, the financial statements continue to remain valid for determining eligibility, but the company's capital position may have materially changed.



The Need for Accurate Reporting

The statutory documents relating to a buy-back—including the Board's documentation, the Chartered Accountant's Certificate, Form SH-8, Form SH-9 and Form SH-11—should accurately reflect the information required under the respective provisions.

Where the capital structure has changed after the financial statements relied upon for eligibility, professionals should carefully examine whether the share capital disclosed in the relevant documents represents the company's actual capital position as on the relevant reporting date.

Merely reproducing the capital figures appearing in earlier financial statements may result in inconsistencies with other statutory filings, particularly where subsequent filings such as Form PAS-3 record changes in the share capital.

Why Consistency Matters

Corporate filings made with the Ministry of Corporate Affairs are not viewed in isolation.

Every statutory form forms part of the company's permanent compliance record.

Consequently, inconsistencies between various filings may invite avoidable queries during:

- Secretarial Audit;
- Statutory Audit;
- Due Diligence exercises;
- Regulatory inspections;
- Investor reviews; or
- Future corporate transactions.



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Consistency across statutory records enhances the credibility of disclosures and reduces the possibility of unnecessary compliance issues.

A Practical Approach

Where any change in the capital structure has taken place after the financial statements relied upon for determining buy-back eligibility, companies should consider maintaining updated financial information reflecting the revised capital position. Depending upon the facts of the transaction, this may include obtaining limited reviewed financial statements closer to the date of the buy-back or preparing an appropriate reconciliation of the capital structure supported by relevant corporate records.

Such an approach enables professionals to establish eligibility using the financial statements permitted under law while simultaneously ensuring that statutory disclosures accurately reflect the company's prevailing capital structure.

Conclusion

The relaxation permitting the use of financial statements that are up to six months old is intended to determine **whether a company is eligible to undertake a buy-back**. It should not be interpreted as permitting the disclosure of an outdated capital structure where subsequent corporate actions have altered the company's issued, subscribed or paid-up share capital.

A simple distinction can prevent significant compliance inconsistencies:

Financial statements determine eligibility.



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The company's actual capital structure determines statutory reporting.

Recognising this distinction promotes greater accuracy in statutory filings, preserves consistency across MCA records and strengthens the quality of professional certifications issued in connection with buy-back transactions.

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