Share Buy Backs in Private Joint Stock Companies

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1. What is a Share Buyback

A share buyback occurs when a corporation buys shares in its own capital. Once the shares are bought by the company, they are referred to as “treasury shares”.

2. Permissibility of Shares Buy Back

The general rule is that any buyback of shares by the shares issuing entity is prohibited by Federal law no. 8 of 1984 on commercial companies (“Companies Law”) except in controlled circumstances. The reason is that the buy-back has the same effect as reducing the capital of the company, diminishing the resources available for working capital and satisfaction of the company liabilities.

Article 168 of the Companies Law states: “No company shall have the right to pledge its shares or purchase such shares unless the purchasing is for the purpose of decreasing the capital or for depreciation of shares. Such shares thereupon shall not have voting right in the deliberations of the general assembly nor shall they have the right to any dividends.”

However the second paragraph of Article 168 of the Companies Law does provide that the company may purchase some shares subject to the following significant restrictions:

– The shares bought back should not exceed (10%) of the company’s share capital; and
– The shares should be bought back with the intention of re-selling them.

3. Share Buy Backs in Private Joint Stock Companies

Initially, Article 168 of the Companies Law was interpreted to apply only to public joint stock companies. However, the UAE Ministry of the Economy’s interpretation has since evolved and it allows private joint stock companies to buy back their own shares in the terms set out in Article 168 if approved by the extraordinary general assembly of the private joint stock company, a requirement not reflected in Article 168 of the Companies Law. This requirement to obtain general assembly approval is not imposed in the case of public joint stock company.

However, recently because private joint stock companies have recently pressed to access the flexibility offered by share buy-back, the Ministry of Economy has modified its position and has been applying the provisions of Article 168 CCL to private joint stock companies without imposing the general assembly approval requirement.

4. Why Do Private Joint Stock Companies Buy Back Shares?

Private Joint Stock Companies buy back their shares to reconcile incompatible needs or perceptions between different shareholders. If some shareholders need cash and want their investment liquidated, the company can facilitate this outcome upon terms which are fair to the continuing shareholders. If some shareholders have less confidence than others in the company’s prospects, the company can likely facilitate their exit and possibly head off conflicts amongst the shareholders.

5. In How Can Private joint Stock Companies Buy Back their Own Shares

Article 168 of the Companies Law set out parameters to be followed for shares buy-back. These conditions have been adjusted to fit the form of private joint stock companies:

1. The company shall obtain the approval of the Ministry of Economy prior to the purchase;

2. The company’s board of directors shall carry out the purchasing process during a period not exceeding one year from the date of the Ministry of Economy’s approval;

3. The company shall have a cash surplus to meet the purchasing process without using the capital or legal reserve in the purchasing process;

4. The purchasing process shall be advertised to the public in two local daily newspapers of wide circulation with one of them at least being in Arabic, and a period not less than two weeks must elapse between the date of announcing the company’s intention to purchase and the actual purchasing;

5. The company shall not conduct any selling process whilst carrying out the announced purchasing processes and the selling of the purchased shares shall be conducted within a period not exceeding two years from the date of last purchase. However, if the sale is not completed during the specified period, the purchasing process shall be considered to have been made for reducing the capital and consequently the purchased shares shall be cancelled;

6. The company shall not issue any new shares before completing the selling process of the purchased shares;

7. The process of the company’s purchasing of its shares shall not be carried out within a period of (15) days before and (3) days after the advertising of the financial details of the company or any substantial information which is likely to affect the share price (whether by an increase or a decrease);

8. The company shall not re-apply for approval to purchase its shares with the intention of selling them except after expiry of not less than one year from the date of the latest selling of its purchased shares;

9. The company, if it is a bank, shall obtain the approval of the central bank before the purchasing and it shall undertake to finance the purchasing process from financing sources in accordance with the rules set by the central bank in this respect;

10. No member of the company’s board of directors or any of its executive managers shall be a party to the purchasing and selling processes which are carried out by the company;

11. Disclosure of the purchasing and selling processes of the company shares shall be made in the quarterly report which is issued by the company.

It is worthwhile noting that shares purchased with the intention of being sold shall lose their right to attain dividends and the right to vote at the general assemblies until they are resold.