

Abstract

Hostile takeover affects target company in many aspects. For example, Shareholders, debt holders, and investors are concerning on the confidence in the effectiveness of company' operation, continuation of current project, change in company's policy. These threats cause management and shareholders to protect themselves from such action.

Share buy-back can be counted as one of the most effective tool in preventing hostile takeover. It can avoid target to be controlled from unwelcome guest. Moreover, by using share buy-back, company can signal its intrinsic value to outsiders, such shareholders and investors. However, shares buy-back can cause effect to company's stated of capital. After company repurchased its shares, they need to dispose the shares back to the market in limited time. Otherwise, the company will be enforced to decrease its capital for the amount of shares that can't be sold in time. As consequence, it affects debt holder's collateral. Besides, it may cause conflict whether how much restriction would be an appropriate for takeover defense. This Thesis studies on criteria for company to use share buy-back as a takeover defense without effecting on company's capital and shareholder's interests.

By researching in regulations from international area such Australia and United States, company can use share buy-back as takeover defense with similar procedure. Regulations have given company right to buy-back its stock under certain criteria and circumstance. However, in takeover defense procedure using share repurchase, United States will lawsuit to be precedent cases only for this case , while ,Australia will form Takeover Panel to investigate whether share buy-back for takeover defense should be declared to be unacceptable circumstance

Nowadays, share buy-back for takeover defense in Thailand, target company have to act in the rim of The Public Limited Companies Act B.E. 2535 Section66/1 (2) and still has many limitations for target company to use against hostile takeover.

I propose to add the section in The Public Limited Companies Act B.E. 2535 by clarify clearly that company can use share repurchase against hostile takeover. To promulgate Ministerial regulations and The Securities and Exchange Commission's Rules for effective share repurchase. The company can do share repurchase when it pass vote from shareholders. Company may use debt financing in share repurchase with the use of solvency basis and balance sheet basis. Share repurchase can be created from 3 sources. 1.) On market buy back 2.) Tender offer buy back 3.) Selective buyback. However, it needs to set a limit for market buy back that will not affect other investors that wouldn't want to sell their shares. And company must disclose sufficient information to public after the transaction. The share should be treasury share which company can dispose in 4 ways 1.) offer to market 2.) Public offering 3.) selective offering 4.) ESOP

The measures for the relevant person, shareholder should have participation with sufficient information. Regulation should provide right for shareholder and debt holder to an injunction where the company would be insolvent after the transaction. Also it should provide acquirer right to terminate offer if there is a refusing from hostile takeover. Within time - constraint Takeover Panel should have authority to declare whether which tool for doing takeover defense is unlawful.