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Chapter IV

Share Capital and Debentures

1. OVERVIEW OF THE CHAPTER

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Part A : Share Capital

Introduction

Share means a share in the share capital of a company and includes stock.

The shares or debentures are movable property (sec 44)

Section 43 - KINDS OF SHARE CAPITAL

Share capital shall be of 2 kinds, namely:

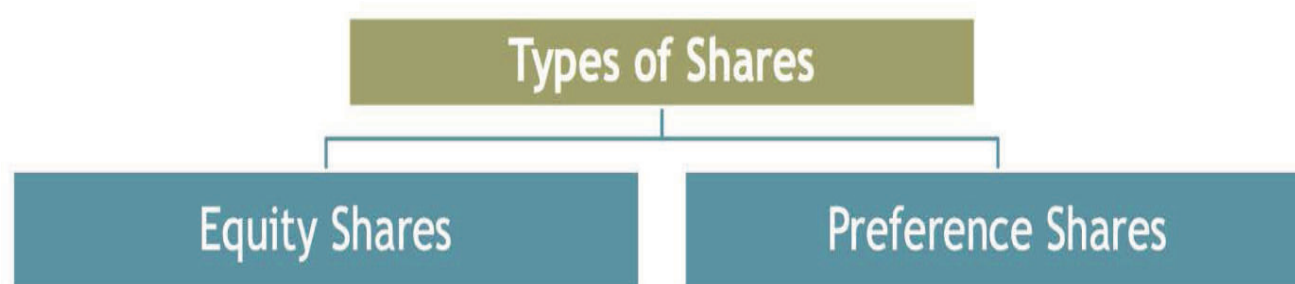
Equity share capital with

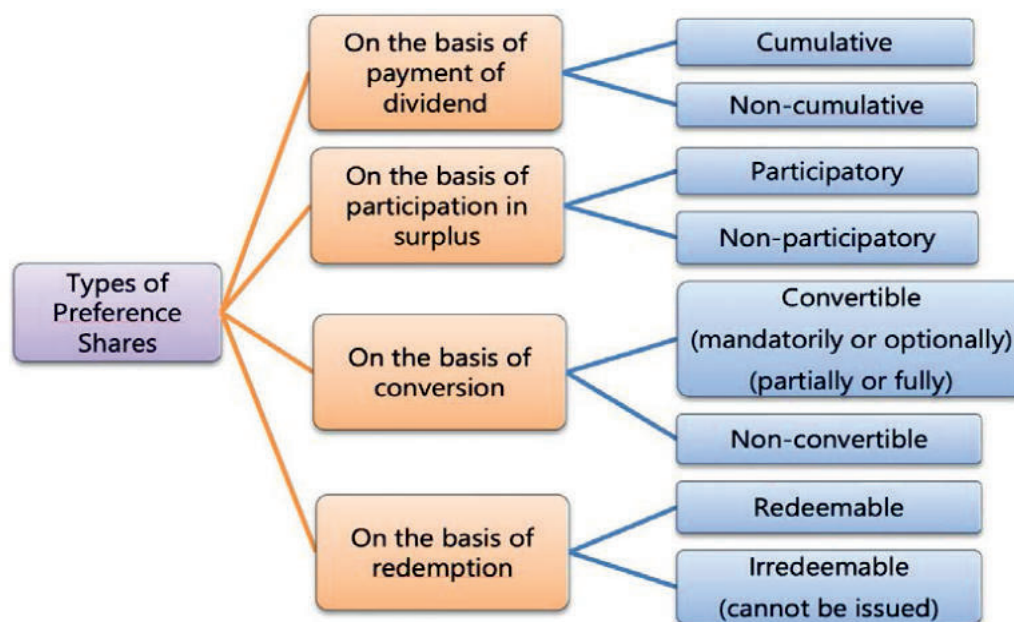
Voting rights (**Normal equity shares**); or

Differential rights as to dividend, voting

Preference share capital.

TYPES OF SHARES





Basis	Equity Shares	Preference Shares
1. Meaning / Definition	The shares other than preference shares are called equity shares	The shares which carry a preferential right as to payment of dividend and repayment of capital are called as preference shares
Note - MOA-AOA of a Private Company may specify that the Preference shareholders shall not have any preference either for payment of Dividend or Repayment in winding up.(MCQ)		
2. Issue	Authorised in AOA ☑ Pass B.R.	<ul style="list-style-type: none"> • SR • No Subsisting default in redemption of Earlier PS. • Max Redemption Period <ul style="list-style-type: none"> • 20 Years • 30 Years for infrastructure cos. (Redeem 10% p.a. from 21" year onwards)

3. Types	<ul style="list-style-type: none"> a) Equity Shares (Normal) b) Equity shares with differential rights 	<ul style="list-style-type: none"> (a) Cumulative Pref. Shares. (b) Non-cumulative Pref. shares (c) Participating Pref. Shares (d) Non-participating Pref. shares (e) Redeemable Pref. shares (f) Irredeemable Pref. shares (g) Convertible Pref. shares (h) Non-convertible Pref. shares
4. Rights	<ul style="list-style-type: none"> • Have right to vote in every general meeting • Equity shareholders are entitled to bonus and right shares 	<ul style="list-style-type: none"> • Votes on matters only related to them • Fixed Dividend • No rights on reserves of company • No right of Interim Dividend or Bonus Shares or Right Shares.

Example : Sun Bakers Limited has authorised share capital of ₹ 50 lakh. The face value of each unit of capital or 'share' is ₹ 10. In this case, it can be said that the company has 5 lakh shares of ₹ 10 each. When these shares (either in part or whole) are allotted to various persons, they, on the date of allotment, become shareholders of the company.

Example : Ind-swift Pharma Labs Limited and Panacea Biotec Limited issued preference share. Ind-swift Pharma provides that the preferential dividend may be a fixed amount say ₹ 5,00,000 in one year, payable to preference shareholders before anything is paid to the ordinary shareholders. Whereas the Panacea Biotec provides that the amount payable as preferential dividend may be calculated at a fixed rate @ 8 percent of the nominal value of each share.

1. The Articles of Association of a private limited company state that the company may issue preference shares which will have preference of dividend only but no preference as to the repayment of capital, in the case of winding up. Is it possible for the company to issue such preference shares?
 - a. No; as per section 43 preference shares should have both preferences.
 - b. No; this will become equity share as per section 43.
 - c. Yes; because as per section 43 preference shares should have any one preference.
 - d. Yes; because Articles of Association of the company allow issue of such preference shares and the issuing company is a private limited company.
2. 'Rajesh Infrastructure Limited wants to issue preference shares for a period exceeding 20 years for financing its proposed infrastructure project. On the basis of which statement, company can do so?
 - a. Yes; company can issue irredeemable preference shares by passing special resolution

- b. Yes; company can issue preference shares for a period of more than 20 years with the prior approval of Central Government
- c. Yes; company can issue irredeemable preference shares for infrastructure project
- d. Yes; company can issue preference shares for infrastructure project for a period up to 30 years.
3. Swagat Hospitality Limited defaulted in the repayment of last two instalments of term loan availed from National Commercial Bank. On 30th September, 2019, they cleared all the dues by repaying it. When can it issue equity shares with differential voting rights?
- a. Upon expiry of five years from the date on which the default was made good
- b. Upon expiry of three years from the end of the financial Year in which the default was made good
- c. Upon expiry of five years from the end of the financial Year in which the default was made good
- d. Upon expiry of seven years from the end of the financial Year in which the default was made good
4. A company can issue preference shares provided the issue is authorised by:
- a. A Special Resolution passed in the general meeting of the company.
- b. An Ordinary Resolution passed in the general meeting of the company.
- c. A resolution of the Board passed in the meeting of Board of Directors of the company.
- d. A Special Resolution passed by way of postal ballot.
5. CTI Ltd. is a multi-product manufacturing company located in Haridwar. It wants to issue redeemable preference shares. What can be the maximum period within which the preference shares shall have to be redeemed?
- a. 10 years from the date of issue of preference shares.
- b. 20 years from the date of commencement of Companies Act, 2013.
- c. 20 years from the date of issue of preference shares.
- d. 20 years from the date of redemption of any previous outstanding preference shares.
6. NRB Ltd. is a company which is engaged in the business of making Roads, National and State highways. It wants to issue preference shares to finance its infrastructure projects. What can be the maximum period within which the preference shares shall have to be redeemed?
- a. 20 years from date of issue of preference shares.
- b. 30 years from date of issue of preference shares with the prior approval of Tribunal.
- c. 30 years from date of issue of preference shares with the prior approval of Central Government.
- d. 30 years from date of issue of preference shares, subject to the redemption of a minimum 10% of such preference shares per year from the 21st year onwards or earlier.

Equity shares with Differential Rights : (Rule 4)

Meaning :	Rights of equity shares in respect of dividend, voting power or other as per Rule.
Authorisation:	<p>(a) The issue of shares with differential rights must be authorised by the articles</p> <p>(b) Must be authorised by passing 'OR' in general meeting. However, where equity shares of a company are listed on a recognized stock exchange, the issue of such shares shall be approved by shareholders through postal ballot</p>
Restrictions	<p>(i) The voting power w.r.t such shares shall not exceed 74% of the total voting power including voting power in respect of equity shares with differential rights issued at any point of time.</p> <p>(ii) The company has not defaulted in filing financial statements and annual returns for 3 immediately preceding financial years.</p> <p>(iii) The company has no subsisting default w.r.t.</p> <p style="margin-left: 20px;">a. Payment of declared dividend; or</p> <p style="margin-left: 20px;">b. Repayment of matured deposits or interest on deposits; or</p> <p style="margin-left: 20px;">c. Redemption of debentures or interest on it; or</p> <p style="margin-left: 20px;">d. Redemption of preference shares.</p> <p>(iv) The company has not defaulted in –</p> <p style="margin-left: 20px;">a. Payment of dividend on preference shares; or</p> <p style="margin-left: 20px;">b. Repayment of term loan from Public Financial Institution or State Level Financial Institution or Scheduled Bank; or</p> <p style="margin-left: 20px;">c. Dues w.r.t statutory payment relating to its employees; or</p> <p style="margin-left: 20px;">d. Crediting the amount in IEPF to C.G.</p> <p>However, a company may issue shares with differential rights upon expiry of 5 years from the end of F.Y. in which such default was made good.</p> <p>(v) The company has not been penalized by Court or Tribunal during last 3 years of any offence under –</p> <p style="margin-left: 20px;">a. Reserve Bank of India Act, 1934; or</p> <p style="margin-left: 20px;">b. Securities and Exchange Board of India Act, 1992; or</p> <p style="margin-left: 20px;">c. Securities Contracts (Regulation) Act, 1956; or</p> <p style="margin-left: 20px;">d. Foreign Exchange Management Act, 1999; or</p> <p style="margin-left: 20px;">e. Other special Act, under which such company is being regulated by sectoral regulators</p>
Other important Points	<p>(a) No conversion : The company shall not convert its existing equity share capital with voting rights into equity share capital carrying differential voting rights and vice versa.</p> <p>(b) Disclosure in Board's report: The BOD shall disclose in its Board's Report for the F.Y. in which the issue of equity shares with differential rights was completed and the prescribed details thereof.</p> <p>(c) Disclosure in Explanatory Statement: The explanatory statement to be annexed to the notice of the general meeting in pursuance of section 102 or of a postal ballot as per section 110 shall contain the prescribed particulars.</p>

	<p>(d) Disclosure in Register of Members (RCM): The ROM maintained u/s 88 shall contain all the relevant particulars of the shares with differential rights issued along with the details of the shareholders.</p> <p>(e) Nature of rights : The holders of such shares shall enjoy all other rights such as bonus share, right shares etc.</p>
Refer the concept clarity sheet at the end of the chapter on DVR (RULE-4)	

1. A Company limited by shares can issue equity shares with differential voting rights. Which of the following is not a necessary condition to be fulfilled before issue of such shares: *(RTP MAY 2019)*
 - a. The articles of association of the company shall authorize issue of shares with differential rights;
 - b. The issue of shares shall be authorized by an ordinary resolution passed at a general meeting of the shareholders;
 - c. The issue of shares shall be authorized by special resolution passed at a general meeting of the shareholders;
 - d. The company shall have consistent track record of distributable profits for the last three years;


2. The Authorised share capital clause of LMN & Co. Ltd. consisted of Preference share capital and Equity share capital both. With regard to equity share capital, the article of association of the company has given authorisation to issue differential equity shares. Apart from authorisation by the Articles, from the following strike out the condition, which is not mandatory to comply with— *(MTP MAY 2019)*
 - a. Such issue of shares must be authorised by an ordinary resolution passed at a general meeting of the shareholders or by postal ballot, as the case may be
 - b. The company must have consistent track record of distributable profit for the last five years.
 - c. The company has no subsisting default in the payment of the declared dividend to its shareholders.
 - d. The company has not defaulted in filing financial statements and annual returns for three financial years immediately preceding the financial year in which it is decided to issue such shares

3. Part of the capital for which application have been received from the public and shares allotted to them: *(MTP NOV 2019)*
 - a. Nominal capital
 - b. Issued capital
 - c. Subscribed capital
 - d. Called up capital

4. Swagat Hospitality Limited defaulted in the repayment of last two instalments of term loan availed from National Commercial Bank. On 30th September, 2019, they cleared all the dues by repaying it. When can it issue equity shares with differential voting rights?
 - a. Upon expiry of five years from the date on which the default was made good
 - b. Upon expiry of three years from the end of the financial Year in which the default was made good
 - c. Upon expiry of five years from the end of the financial Year in which the default was made good
 - d. Upon expiry of seven years from the end of the financial Year in which the default was made good

[Sec. 46] - SHARE CERTIFICATE

Meaning	<p>Share certificate is required when shares are issued in physical form. It is a prima facie evidence that person named is true owner of shares.</p> <p style="text-align: center;">Physical entitlement to a particular portion of SC is prima facie evidenced by way of a Share certificate</p>
Authorisation	<ol style="list-style-type: none"> 1. Passed by way of Board Resolution 2. It is compulsory for all company having share capital (Public or Private) 3. The company may issue certificate on surrender of letter of allotment or bonus shares.
Rules / Restrictions	<ol style="list-style-type: none"> 1. A share Certificate must be signed by : <ol style="list-style-type: none"> (i) Issued under common seal, if any; or (ii) Signed by 2 directors; or (iii) Signed by a director and the company secretary, if any appointed by the company. 2. In case of One Person Company, it shall be sufficient if the certificate is signed by a director and the company secretary or any other person authorised by the Board.

	<ol style="list-style-type: none"> 3. The signature can be printed on the certificate or digitally signed but not affixed by means of rubber stamp. 4. The Director or Company Secretary shall be personally responsible for permitting the affixation of his signature and the safe custody of any machine, equipment, or other material used for the purpose.
Other Special Points 	<ol style="list-style-type: none"> 1. Every certificate shall be in Form No. SH. 1 and shall specify the name of the person (title) and amount paid up as near as possible and certificate shall be signed in manner as provided above. However, in case the company has common seal it shall be affixed in the presence of persons required to sign certificate. 2. The particulars of every share certificate issue shall be entered in the ROM maintained u/s 88 along with the name of the person to whom it has been issued, indicating the date of issue.
Shares held in Demat form	Where a share is held in depository form, the record of the depository is the prima facie evidence of the interest of the beneficial owner.
Duplicate Share Certificate [Sec. 46(2) & Rule 6]	<ol style="list-style-type: none"> 1. A certificate may be renewed or duplicate of a certificate may be issued if such certificate: <ol style="list-style-type: none"> (i) Is proved to have been lost or destroyed; or (ii) Having been defaced, mutilated or torn is surrendered to the company. 2. Time limits for issue of Duplicate Share Certificate; <ol style="list-style-type: none"> (i) Unlisted company: within 3 months of submission of documents to the company (ii) Listed company : within 45 days of submission of documents to the company. 3. Register of renewed or duplicate share certificate: <ol style="list-style-type: none"> (i) Particulars to be entered in Form No. SH-2 (ii) The Register shall be kept at registered office of the company (iii) Entries in register shall be authenticated by company secretary or other person authorised by board. 4. Procedure of issue of duplicate share certificate; <ol style="list-style-type: none"> (i) Board's consent is required and mutilated / torn certificate must be surrendered to the company for cancellation. (ii) Company may charge fee but shall not exceed Rs. 50 per certificate. (iii) In case of lost or stolen certificate, there should be proper evidence of loss as well as indemnity. (iv) Fact about duplicate certificate must be clearly shown on face of the share certificate with word 'duplicate'. (v) Required details must be recorded in the ROM.

Penalty	<p>If a company intends to defraud issue of duplicate certificate</p> <p>Fine to company : Minimum 5 times the face value of shares or upto 10 times to the face value but maximum amount upto Rs. 10 crores.</p> <p>Every officer in default : Liable for action u/s 447</p>										
Some other important points	<ul style="list-style-type: none"> Share certificate is not an negotiable instrument. Company shall issue only one certificate in all those cases where shares are held by more than one person jointly and delivery to any one of them will be counted as delivery to all. Time limit for delivery of Share certificates - <table border="1" data-bbox="607 637 1406 962"> <tr> <td>Subscribers</td> <td>2 months of Incorporation</td> </tr> <tr> <td>Any shares</td> <td>2 months of allotment</td> </tr> <tr> <td>Any debentures</td> <td>6 months of allotment</td> </tr> <tr> <td>T/T of securities</td> <td>1 month of TD or Intimation of Transfer</td> </tr> <tr> <td>All securities by IFSC public / Pvt Co.</td> <td>60 days after incorporation, allotment, transfer or transmission</td> </tr> </table> 	Subscribers	2 months of Incorporation	Any shares	2 months of allotment	Any debentures	6 months of allotment	T/T of securities	1 month of TD or Intimation of Transfer	All securities by IFSC public / Pvt Co.	60 days after incorporation, allotment, transfer or transmission
Subscribers	2 months of Incorporation										
Any shares	2 months of allotment										
Any debentures	6 months of allotment										
T/T of securities	1 month of TD or Intimation of Transfer										
All securities by IFSC public / Pvt Co.	60 days after incorporation, allotment, transfer or transmission										

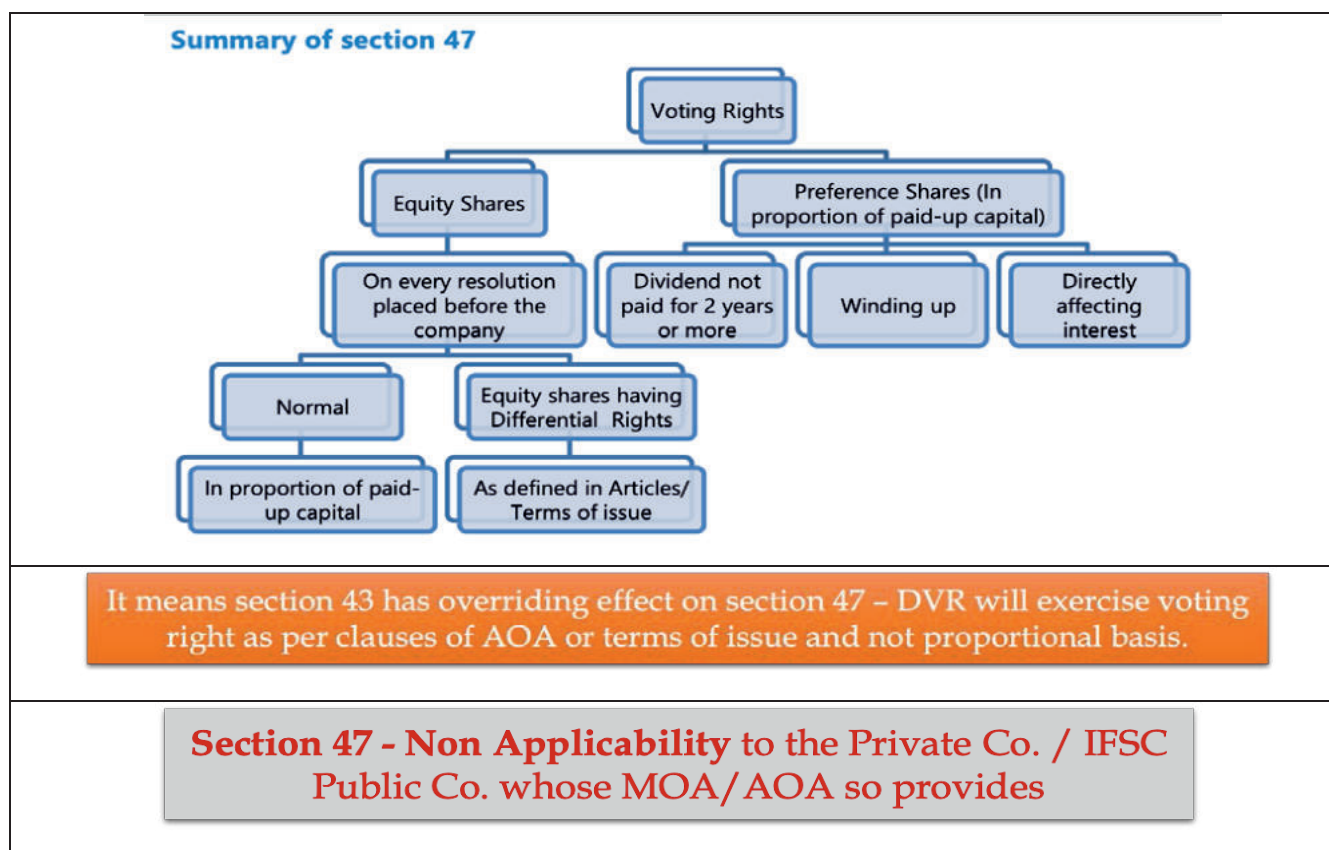
Example : It is observed that Golden Apple Transport Limited issued share certificates in duplicate with intend to defraud. The total shares in regard to which such certificates are issued are nearly 12,00,000. Face value of each share is ₹ 10. The maximum fine that can be imposed on company shall be ₹ 12,00,00,000.

- Shreem Lakshmi Jewellery Store Private Limited was incorporated on 27th August, 2020 with 30 persons as subscribers to the Memorandum of Association and with Authorised share capital of ₹ 1.00 crore divided into equal number of shares of ₹ 1 each. Each subscriber subscribed for ₹ 1.00 lac shares. Advise the company about the company by what date it needs to deliver the share certificates to the subscribers.
 - 17th September, 2020.
 - 30th September, 2020.
 - 27th October, 2020.
 - 27th November, 2020.
- Which of the following is the prima facie evidence of the title of the person in respect of shares in a company?
 - The distinctive number of shares.
 - The share certificate number.
 - A certificate issued under common seal and signatures of Directors of company specifying shares held by any person.
 - A letter of allotment issued by company.
- A duplicate certificate of shares of a company in lieu of lost or destroyed shall be issued in Form:
 - SH-1
 - SH-2
 - SH-5
 - SH-9

4. A duplicate share certificate shall be issued in lieu of lost or destroyed certificate, provided:
- The applicant furnishes supporting evidence and indemnity and pays the requisite fee fixed by company.
 - The Board authorises issue of duplicate certificate.
 - Both (a) and (b)
 - Either (a) or (b)
5. The shares of ABC Ltd. are listed on Mumbai Stock Exchange. On 13th January, 2020, Mr. Ram applies to company for issue of duplicate share certificate and submits the requisite indemnity, fee etc. The company shall be obliged to issue the duplicate share certificate by:
- 27th February, 2020
 - 12th February, 2020
 - 13th March, 2020
 - 12th April, 2020
6. Mr. Suresh holds 20% of share capital of PQR Private Limited. There was a burglary in his house and along with other valuables his important documents and share certificates were also stolen. After filing a police report, on 8th February, 2020 he applies to the company for issue of duplicate share certificates. By what time the company shall have to issue duplicate share certificates?
- 9th March, 2020
 - 24th March, 2020
 - 8th April, 2020
 - 7th May, 2020

Section 47 - VOTING RIGHTS

Voting Rights of Equity shareholder [Sec. 47(1)]	<ul style="list-style-type: none"> Show of Hand - 1 Member = 1 Vote Poll - 1 Share = 1 Vote voting right on a poll shall be in proportion to his share in the paid-up ESC of the company.
Voting Rights of Preference Share holder [Sec. 47(2)]	<p>Every preference shareholder shall have right to vote</p> <ol style="list-style-type: none"> On matter <ol style="list-style-type: none"> Related to them, that directly affects their rights Reduction of share capital Winding up of the company In poll his voting right shall be in proportion of shares in total paid up preference share capital of the company
Note	Where dividend of a class of preference shares has not been paid for a period of 2 years or more, such preference shareholders shall have right to vote on all the resolutions placed before the company.
Nidhi Company	In case of Nidhi companies, members shall have right to vote on poll only upto 5% of total voting rights of equity shareholders.



Example : Indswift Pharma Labs Limited raised the capital of 300 crore through issue of single series of 8% preference share apart from 1200 crore ordinary shares. Indswift last paid dividend to such preference share holder, for 2021-22.

Preference shareholder w.e.f 1st April 2024 assume the right to vote on any resolution placed before company. But till 31st March 2024 they can vote only on that resolution which directly affect the rights attached to his preference shares or

Section 48 - Variation of Shareholders Rights

Introduction	The rights and obligations of share holders are clearly defined in MOA or AOA. Hence cannot be changed unless provisions are complied with. However, where a share capital of the company is divided into different classes of shares, rights may be varied as per Section 48.
Authorisation	Authorisation in MOA or AOA is required.
Resolution Required	<ol style="list-style-type: none"> Special Resolution is required at a separate meeting or consent in writing of the holders of not less than 3/4th of the issued shares of that class. However, if variation by one class of shareholders affects the rights of any other class of shareholders, the consent of 3/4th of such other class of shareholders shall also be obtained.

Dissenting Shareholders [Sec. 48(2)]	Where at least 10% holders of the issued shares of a class did not consent to such variation, they may apply to the Tribunal to have variation cancelled, and if such application is made, variation shall not take effect unless confirmed by Tribunal.
Application to Tribunal [Proviso to Sec. 48(2)]	Application to Tribunal to be made within 21 days after the date on which the consent was given or the resolution was passed.
Decision of Tribunal & filing with ROC	<ol style="list-style-type: none"> 1. In lieu of section 48 (3), the decision of the Tribunal shall bind on the shareholders. 2. Section 48(4) states that the company shall, within 30 days of the date of order of the Tribunal, file a copy with Registrar.

1. In a company if any change of right of one class also affects the right of other class, then:

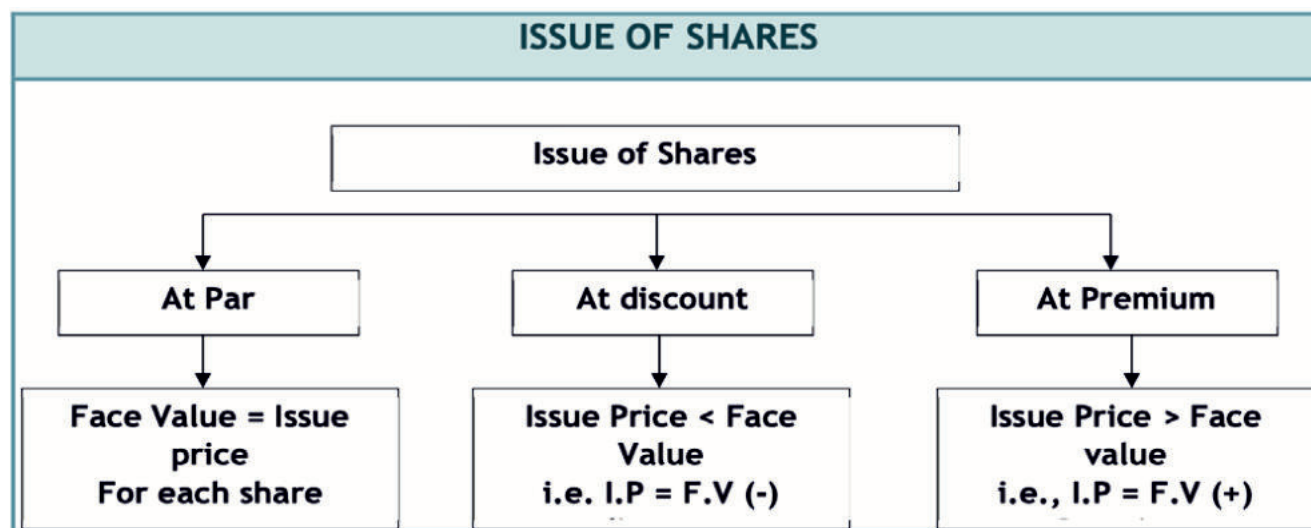
(1 Mark) (MTP M 21)

 - a. A resolution should be passed in general meeting in this case
 - b. Company need not to do anything else
 - c. Written consent of three fourth majority of that other class should be obtained
 - d. A resolution in joint meeting of both the classes should be passed
2. Every member of a company limited by shares and holding any preference share capital therein shall, in respect of such capital, have a right to vote on:
 - a. Resolutions placed before the company which directly affect the rights attached to his preference shares.
 - b. Any resolution for the winding up of the company.
 - c. Any resolution for the repayment or reduction of its equity or preference share capital.
 - d. All of the above
3. Where the dividend in respect of a class of preference shares has not been paid for a period of 2 years or more, such class of preference shareholders shall:
 - a. Have a right to vote on all the resolutions placed before the company.
 - b. Have no right to vote on any of the resolutions *placed* before the company.
 - c. Have a right to vote only on the winding up of the company.
 - d. None of the above
4. A company can vary the rights of its shareholders provided consent in writing of the holders of not less than of the issued shares of that class is obtained.
 - a. 51%
 - b. 75%
 - c. 90%
 - d. 100%
5. If variation by one class of shareholders affects the rights of any other class of shareholders, the consent of of such other class of shareholders shall also be obtained.
 - a. 51%
 - b. 75%
 - c. 90%
 - d. 100%

Section 49 to 51 - Calls on shares

<p>Calls On shares (sec 49)</p>	<ul style="list-style-type: none"> • calls shall be made on a uniform basis on all shares falling under that class. • Once a call has been made it is due on the members to pay and company to receive • Max. call money = 25% of Face Value. • Min. gap between 2 calls = 1 month <p>Example 6 – Prism Glass Limited issued three series of equity shares, all carry the nominal value of ₹ 100, and the paid-up value for each series is 100, 80 and 55 respectively.</p> <p>All will be considered as different class of shares. Since for first class share is fully paid- up, no call can be made, whereas in case of remaining two classes call can be made.</p>
<p>Calls On Advance (sec 50)</p>	<ol style="list-style-type: none"> (1) Yes, can be accepted but only on the part which is called up (2) AOA's authorisation is required - MUST (3) NO voting power will be allotted on the advance money paid. (4) Interest may be paid – As per AOA or decided by BOD or @12% (lower of all) (5) Interest can be varied by SH in a meeting. (6) Interest can be taken on arrears = Lower (10% or AOA rate) to company (7) No refund of money received on calls and calls in advance only in case of WP <p>Example 7 - Coriander Masale Limited has issued 10,00,000 equity shares of ₹ 10 each on which ₹ 6 per share has been called till allotment and the first and final call of ₹ 4 is yet to be made. Reena holds 10,000 shares on which she has paid whole of ₹ 10 per share. In the upcoming extraordinary general meeting of the company she wants to exercise her voting rights as the owner of fully paid-up shares. However, the company cannot permit her as she does not have voting right in respect of the 'advance amount' paid by her in respect of first and final call. The restriction will continue till the amount is duly called up by the company.</p>
<p>Payment of dividend (sec 51)</p>	<p>A company may pay dividends in proportion to the amount paid-up on each shares.</p>

1. BSA Ltd. issued partly-paid equity shares of 10/- each, on which 2.50 per share was paid on application and allotment. The company has adopted Articles as per Schedule I Table 'F' to Companies Act, 2013. It made another call of 2.50 per share on 1-1-2020 which was duly paid by the due date of 15-1-2020. However, the money received from shareholders fell short of the needs of the company and it is considering to make another full and final call of 5 per share on 25-1-2020 which is required to be paid by 10-2-2020. The CFO of BSA Ltd. points out that the proposed call is invalid. Which of the following reasons make the call invalid?
 - a. The company cannot make any call exceeding 25% of the nominal value of share.
 - b. The company cannot make any call which is payable at less than 1 month from the date of last preceding call.
 - c. Both (a) and (b)
 - d. None of the above
2. The company making a call on shares shall have to give a notice of at least days to the shareholder to pay the amount called on his shares.
 - a. 7
 - b. 14
 - c. 21
 - d. 30
3. If a sum called in respect of a share is not paid before or on specified date fixed by company, the shareholder shall pay interest thereon from the day appointed till actual payment, at the rate of
 - a. 10% per annum
 - b. The rate as the Board may determine
 - c. (a) or (b) whichever is lower
 - d. (a) or (b) whichever is higher
4. If any shareholder pays any sum in excess of the amount called, the company may pay to the shareholder interest on accepted, at the rate of
 - a. 12% per annum
 - b. The rate agreed or provided in the Articles
 - c. or (b) whichever is higher
 - d. or (b) whichever is lower
5. If any shareholder pays any sum in excess of the amount called, the shareholder is:
 - a. Not entitled to any voting rights in respect of the amount in advance, until the amount has been called up.
 - b. Entitled to obtain a refund of such amount paid in advance.
 - c. Both (a) and (b)
 - d. None of the above



(Sec. 52) - ISSUE OF SHARES AT PREMIUM

Meaning	Issue of shares at amount more than face value .
Authorization	No authorization required in the article to issue shares at premium.
Resolution required	Board Resolution
Other special points	<ul style="list-style-type: none"> (i) No restriction on amount of premium (ii) Amount of premium should be transferred to 'Securities premium account'. (iii) The 'Securities Premium Account' can be used only for: <div style="background-color: yellow; padding: 2px; margin: 2px 0;">Mnemonic - BPDC Premium on PS redemptions BB</div> <ul style="list-style-type: none"> (a) Issue of fully paid bonus shares; (b) Writing off the preliminary expenses; (c) Writing off the issue expenses (expenses including commission paid or discount allowed on any issue of shares or debentures); (d) Premium payable on the redemption (of any preference shares or of any debentures); or (e) Buy-back (purchase of its own shares or other securities under section 68). <p style="margin-top: 10px;">Example 8 - A share having face value of ₹ 10 is issued at a price of ₹ 14. The amount over and above the face value of ₹ 10 i.e. ₹ 4 is called premium.</p>

Note - In case of such class of companies, as may be prescribed and whose financial statement comply with the accounting standards prescribed u/s 133, the securities premium account can be used for:

- i. Issuing bonus shares
- ii. Writing off commission paid, expense, or discount allowed on, issue of equity shares.
- iii. For buy-back of shares u/s 68.

(Sec. 53) - ISSUE OF SHARES AT DISCOUNT

Prohibition	a) A company shall not issue shares at discount. b) Any share issued by a company at a discount shall be void .
Exceptions	a) Issue of sweat equity shares under section 54.
	b) Issue of shares at a discount to its creditors when debt is converted into shares in accordance with any statutory resolution plan or debt restructuring scheme as per the guidelines or direction or regulations specified by RBI under the Reserve Bank of India Act, 1934 or the Banking (Regulations) Act, 1949.
Consequences of contravention of section 53	Liability of company and every officer in default: a) Refund of all monies received with interest @ 12% p.a. from the date of issue of shares. b) Fine : amount raised through the issue of shares at a discount; or Rs 5,00,000/- whichever is less.

Example : A share having face value of ₹ 100 is issued at a lower price of ₹ 95. The differential amount of ₹ 5 is known as discount which is being allowed by the company.

(Sec. 45) ROAD WITH RULE 8 - ISSUE OF SWEAT EQUITY SHARES

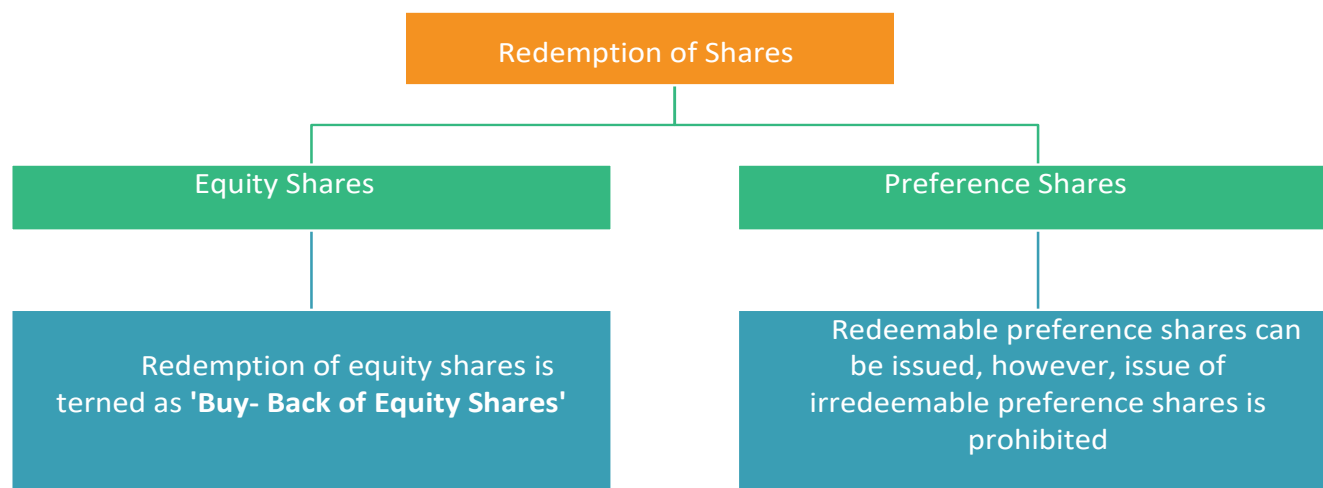
Meaning / definition of sweat equity shares [Sec. 2 (88)]	Sweat equity shares means - BY - Issued the company TO - Directors and employees FOR - Their contribution and efforts (consideration other than cash) AS - A reward TOWARDS - Making available their know how or rights – intellectual property or value additions Issued at DISCOUNT (Exception to 53)
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	For providing know- how	Making available rights in nature of intellectual right	Value addition	
Authorization	Authorization is AOA is required			
Resolution required	<p>(i) Issue of sweat equity shares must be authorised by passing Special Resolution</p> <p>(ii) The resolution passed must specify the following particulars</p> <ol style="list-style-type: none"> Number of shares Current market price Consideration, if any Class of directors or employees to whom sweat equity shares are to be issued. 			
Other Special Points	Nature of shares	It must belong to class of shares already issued.		
	Compliance of Rules	Listed companies – shall comply with regulations made by SEBI		
		Unlisted companies – shall comply with rules prescribed by C.G.		
	Conditions for issue of sweat equity shares	<p>Sweat equity shares can be issued only to employee or directors.</p> <p>The expression employee means:</p> <ol style="list-style-type: none"> A permanent employee of the company who has been working in India or outside India, or A director of the company, whether whole time director or not; or An employee or a director as defined above of a subsidiary, in India or outside India, or of a holding company of the company. 		

Rule 8	Provision	
(1)	Meaning of Employee	Includes permanent employees, directors (whole-time or not), and employees/directors of subsidiary/holding companies in India or abroad.
	Meaning of 'Value Additions'	Includes benefits derived from professionals, know-how, or intellectual property rights for which no separate payment is made under an employment contract.
(3)	Validity of Special Resolution	Special resolution authorizing sweat equity issuance is valid for 12 months from the date of passing.
(4)	Limit on Issue of Sweat Equity Shares	Per year limit: Higher of (a) 15% of paid-up equity share capital, or (b) ₹5 crore worth of shares. Overall limit: 25% of paid-up equity capital (50% for startups up to 10 years).
(5)	Lock-in Period	Sweat equity shares are non-transferable for 3 years from allotment.
(6)	Valuation of SES	Valued by a registered valuer based on fair price and justified valuation.
(7)	Valuation of IPR/Know-how/Value Additions	A registered valuer must assess the value of intellectual property, know-how, or value additions and provide a report to the Board .
(13)	Disclosure in Directors' Report	Board must disclose details of sweat equity issuance in the Directors' Report of the year.
(14)	Maintenance of Register	A Register of Sweat Equity Shares (Form SH.3) must be maintained at the registered office or a location decided by the Board.

1. Such shares which are issued by a company to its directors or employees at a discount or for a consideration other than cash for working extraordinary hard and achieving desired output is honoured with
 - a. Equity Shares
 - b. Preference Shares
 - c. Sweat Equity Shares
 - d. Redeemable preference shares
2. It has been decided by Vanita Watches Limited to issue sweat equity shares to five of its employees for the 'value additions' made by them in term of economic benefits which proved beneficial to the company. For how many year(s), the employees who have been allotted sweat equity shares cannot transfer them:
 - a. One year from the date of allotment
 - b. Three years from the date of allotment
 - c. Five years from the date of allotment
 - d. Six months from the date of allotment
3. Sangam Technologies Ltd. is a newly incorporated company registered on 12th March, 2020. The company wants to issue sweat equity shares to its Directors and key employees. What is the minimum period which must have elapsed since date of commencement of business before it can issue such sweat equity shares?
 - a. 1 year
 - b. 6 months
 - c. 3 years
 - d. None of the above. There is no such requirement.
4. Which of the following statement is/are correct regarding issue of sweat equity shares of a company?
 - a. The shares shall be of a class of shares already issued or a new class.
 - b. The issue is authorised by an Ordinary Resolution passed by the company.
 - c. Both (a) and (b)
 - d. None of the above
5. A company may issue sweat equity shares to:
 - a. A permanent employee of the company working outside India.
 - b. A non-executive director of the company.
 - c. Both (a) and (b)
 - d. None of the above
6. A company may issue sweat equity shares in a year up to maximum limit of
 - a. 15% of the existing paid-up equity share capital.
 - b. 5 Crore.
 - c. or (b) whichever is higher.
 - d. or (b) whichever is lower.
7. The aggregate sweat equity shares in the company shall not exceed of the paid-up equity capital of the company at any time.
 - a. 25%
 - b. 30%
 - c. 50%
 - d. 74%
8. The company shall maintain a register of sweat equity shares in Form No and shall forthwith enter therein the particulars of sweat equity shares issued under Section 54.
 - a. SH-2
 - b. SH-3
 - c. SH-4
 - d. SH-7

REDEMPTION OF SHARES



Buy-Back of Securities			
Sec. 67	Sec. 68	Sec. 69	Sec. 70
Purchase by a company of its own shares	Buy-back of Equity shares	Transfer to Capital Redemption Account	Prohibition of buy-back in certain circumstances

(Sec. 67) - Prohibition of Purchase of Own Shares

- (i) **No**, company shall **buy** its own shares **UNLESS** the consequent reduction of share capital is effected under the provisions of this Act. **(Sec 68 on Buy-Back).**
- (ii) **No public company** can **give financial assistance** to purchase
 - (a) **Its** shares or
 - (b) **Of its holding company**

Exceptions :

- (i) Lending of money by a **Banking Company** in the **ordinary course of business.**
- (ii) Purchase of **fully paid up shares** in company or its holding company by **trustees** for **employee benefit by way of passing Special Resolution.**
- (iii) Giving of loans by company to its **employees** (other than directors / KMP) for an amount **not exceeding their 6 months** of salary/wages.

Note: Sec. 67 is not applicable to a private company satisfying the following conditions:

- (a) **No other body corporate has invested any money in such company.**
- (b) **The borrowing of such private company from banks or financial institutions or anybody corporate is less than twice its paid up share capital or 50 crore; whichever is less.**
- (c) **Such company is not in default in repayment of such borrowings subsisting at the time of making transaction under Sec. 67.**

(Sec. 68) - BUY-BACK OF EQUITY SHARES

Reasons for buy-back:	<ol style="list-style-type: none"> 1. To Prevent Hostile takeovers. 2. To concentrate promoter's shareholding. 3. To boost EPS & MP of Shares. 				
Buy-back from whom?	<p>The buy-back may be -</p> <ol style="list-style-type: none"> i) From the existing shareholders on proportionate basis; ii) From the open market; iii) By purchasing the shares issued to employees under the scheme of stock option or sweat equity. 				
Sources of buy-back:	<p>A company may buy-back its own shares or other specified securities out of:</p> <ol style="list-style-type: none"> a) Free Reserves ; or b) Securities Premium Account ; or c) Proceeds of fresh issue of shares or other specified securities (but not of same kind of shares issued earlier) <p>Note - Where a company purchases its own shares out of free reserves or securities premium account, a sum equal to the NOMINAL VALUE of the shares so purchased shall be transferred to the Capital Redemption Reserve and it can be used to issue bonus shares (sec 69)</p> <div style="border: 1px solid black; padding: 5px; text-align: center;"> <p>Section 69 – Transfer to CRR</p> <ul style="list-style-type: none"> • When BB is made out of SPA and FR • Nominal value of shares BB to CRR • Disclosure in BS • Only be used for only fully paid up Bonus shares </div>				
Which fund may be utilized by a public limited company for purchasing (buy back) its own shares? Also explain the provisions of the Companies Act, 2013 regarding the circumstances in which a company is prohibited to buy back its own shares.(MAY 2019)					
Authorisation for 'Buy-Back':	<p>Authorisation in the articles is required</p> <table style="width: 100%; border: none;"> <tr> <td style="width: 50%; text-align: center; vertical-align: top;"> <p>If buy-back is upto 10% of paid up equity capital and free reserves</p> <p>☐</p> <p>Pass B.R</p> </td> <td style="width: 50%; text-align: center; vertical-align: top;"> <p>If more than 10%</p> <p>☐</p> <p>Pass S.R</p> </td> </tr> </table>			<p>If buy-back is upto 10% of paid up equity capital and free reserves</p> <p>☐</p> <p>Pass B.R</p>	<p>If more than 10%</p> <p>☐</p> <p>Pass S.R</p>
<p>If buy-back is upto 10% of paid up equity capital and free reserves</p> <p>☐</p> <p>Pass B.R</p>	<p>If more than 10%</p> <p>☐</p> <p>Pass S.R</p>				
Limits /		Maximum Amount that can be spent on BB	= 25% of [PUESC + FR + SP]		
Restrictions / Conditions for Buy-back					

	Maximum Number of ES that can be bought back	= 25% of Total No. of ES	
	Maximum Debt/Equity Ratio after BB	=	2
	A. Fully paid shares : All securities for buy-back must be fully paid up.		
	B. Compliances		
	Listed companies – Shall comply with the regulations made by SEBI . Unlisted companies – Shall comply with the rules prescribed by C.G.		
	C. Letter of Offer: After passing of S.R and before buy-back of shares; the company shall file a letter of offer in Form No. SH. 8 with the ROC		

1. Goals Limited, a listed company has authorised share capital of ₹ 25,00,000 (issued, subscribed and paid up capital of ₹ 20,00,000). The company has planned to buy back shares worth ₹ 10,00,000. What is the maximum amount of equity shares that the company is allowed to buy back based on the total amount of equity shares?

(2 Marks) (MTP Sep. 23)

- a. ₹ 2,00,000
- b. ₹ 5,00,000
- c. ₹ 6,25,000
- d. ₹ 8,00,000

<p>Time limits – Buy-back</p>	<p>A. Period for which offer shall remain open: 15 days and maximum 30 days from the date of dispatch of letter of offer. However, after passing of absolute resolution, offer may remain open for less than 15 days.</p> <p>B. Completion of buy-back within 1 year of passing the resolution for buy-back.</p> <p>C. Prohibition on further buy-back and issue</p> <ol style="list-style-type: none"> a. Gap between 2 buybacks atleast 1 year b. The company shall not make further issue of same kind of shares within next 6 months except by way of <ol style="list-style-type: none"> i. Bonus shares; or ii. Issue of shares to discharge the existing obligations such as conversion of preference shares or debentures or warrants <p>D. Declaration of Solvency</p> <ul style="list-style-type: none"> • The company shall file with ROC a declaration of solvency stating that it will not be rendered insolvent within next 1 year. In Form No. SH.9 <p>E. Extinction of shares : The company shall extinguish and physically destroy the shares bought back within 7 days of completion of buy-back.</p> <p>F. Security bought back register :</p> <ol style="list-style-type: none"> (i) The company shall maintain a register of shares bought back in Form No. SH.10 at the registered office of the company under the custody of C.S or other person authorised by the Board. (ii) The entries must be authenticated by Company Secretary or any other person as per Board’s authorization. <p>G. Return of buy-back</p> <ol style="list-style-type: none"> (i) After completion of buy-back, the company shall, within 30 days, file a return in Form No. SH- 11 along with the fee. (ii) The return shall be filed with: <ol style="list-style-type: none"> o In listed companies – ROC and SEBI
	<p>In Unlisted Companies – ROC</p>
<p>Refer the concept clarity sheet at the end of the chapter on Section 68 - Buy Back of Shares</p>	

Example : Form SH-9 filed by a listed company, Rainbow Sports Limited with registrar as well as SEBI stating Board of directors has made a full inquiry into the affairs of the company and have found that it is capable of meeting all its liabilities and will not be rendered insolvent for a period of 6 months from the date of the declaration. Declaration was duly signed by 3 directors, none of them being MD, as MD is out of country to attend FIFA world cup event in Qatar (being one of the sponsors).

There are two lacuna in compliance to sub-section 6, first being declaration shall be for period of 12 months; secondly if managing director is appointed then he shall sign the declaration of solvency.

(Sec. 70) - Prohibition of BUY-BACK

Prohibition for buy-back whether directly/indirectly if-

Default made by the company in the repayment of deposits or its interest; redemption of debentures or preference shares; payment of dividend; repayment of term loan or its interest from bank or financial institution.

However, buy-back is not prohibited after 3 years of period when such default was made good.

Not complied with the provision of

Sec. 92- Annual Return

Sec. 123 – Dividend

Sec. 127- payment of dividend

Sec. 129- Financial statement

Even the company cannot buy-back its own shares through any subsidiary including its own

Example 27: Sigma Electronic Limited (SEL) was financial unstable in 2018 due to economic slowdown, finally it made default in repayment of loan that it has taken from public finance corporation in June 2020 pursuant to cash crunch caused by nation-wide lock down. SEL's account was marked in defaulters list by lender and classified in NPA category. But stimulus package helped SEL to pass the high turbulence phase, it able to repay the due amount on December 2020. In February 2021 SEL account removed from NPA category. SEL won a tender in mid of 2021 and become supplier to military retail canteens. SEL accumulate reasonable amount of reserve and attain the position cash surplus. SEL decided to Buy-back 10% of its equity shares in December 2022.

Consider the facts stated in case, SEL shall not be allowed to buy-back its securities as 3 years has not been elapse since when default is remedied.

1. A company bought back 10% of its equity shares in August 2020. Due to certain miscalculations during the first buy-back, it again buy back another 10% equity shares in September 2020. Whether the company can resort to second buy-back?
 - a. It can do so subject to the fulfilment of other conditions because maximum buy-back in a financial year is up to 25%
 - b. It cannot do so because there must be a time gap of 12 months between two buy-backs
 - c. It can buy back shares within one year but the company need to pass an ordinary resolution by its board of directors
 - d. It can buy back shares within one year but the company will have to pass a special resolution

2. XYZ Ltd. wants to provide financial assistance to the CFO of the company to purchase the shares of ABC Ltd., which is the holding company of XYZ Ltd. Which of the following conditions are required to be complied with by XYZ Ltd.?
 - a. The loan can be given only for an amount not exceeding the salary for a period of 6 months.
 - b. The shares to be purchased must be fully paid-up.
 - c. The shares must be held by employee by way of beneficial ownership.
 - d. None of the above. The company cannot provide financial assistance to any KMP.

3. A company may purchase its own shares or other specified securities ('buy-back') out of:
 - a. Free reserves
 - b. Securities premium account
 - c. Proceeds of new issue of any shares or other specified securities
 - d. Either of above

4. The paid-up equity capital of a company is 50 Lakh. The amount standing to the credit of General Reserve Account is 10 Lakh. The company also has a term loan outstanding of 1 Crore to State Financial Board. The company wants to do a buy-back of its equity shares to the maximum permissible limit What is the amount allowed and whose authorisation would be required?
 - a. 6 Lakh if authorised by a resolution passed in the meeting of Board of Directors.
 - b. 15 Lakh authorised by a Special Resolution passed at a general meeting of the company.
 - c. 10 Lakh authorised by a Special Resolution passed at a general meeting of the company.
 - d. 12 Lakh authorised by a Special Resolution passed at a general meeting of the company.

5. A company bought back 10% of its equity shares in February, 2020 with the approval of a Resolution passed by its Board. By the end of June, 2020 it wants to make another buy-back of 10% of equity shares. Which of the following statement is correct in this regard?
 - a. The company can go ahead with buy-back since the maximum permissible limit is 25% of equity capital in 1 year.
 - b. The company can go ahead provided it passes a Special Resolution at a general meeting.

- c. The company can go ahead provided it passes a Special Resolution at a general meeting and obtains confirmation of the Tribunal by making an application to it.
 - d. The company cannot make another offer of buy-back within a period 1 year reckoned from the date of the closure of the preceding offer of buy- back.
6. Where a company completes a buy-back of its shares, it shall not make a further issue of the same kind of shares including allotment of new shares by way of Rights Issue under Section 62(1)(a) within a period:
- a. 6 months
 - b. 9 months
 - c. 1 year
 - d. 18 months
7. The instrument of transfer of securities shall be executed in Form No.:
- a. SH-2
 - b. SH-4
 - c. SH-10
 - d. SH-15
8. Every company shall, unless prohibited by any provision of law or any order of court, Tribunal or other authority, deliver the certificates of all securities transferred or transmitted:
- a. Within a period of 1 month from the date of receipt of Instrument of transfer or Intimation of transmission.
 - b. Within a period of 2 months from the date of receipt of Instrument of transfer or Intimation of transmission.
 - c. Within a period of 3 months from the date of receipt of Instrument of transfer or Intimation of transmission.
 - d. Within a period of 6 months from the date of receipt of Instrument of transfer or Intimation of transmission.

Section 55 - REDEMPTION OF PREFERENCE SHARES

Sources of Redemption:

Out of the Free Reserves or

Out of the Fresh Issue Proceeds of shares made for the purposes of such redemption.

Fully paid up : Preference shares to be redeemed have to be fully paid up.

Transfer to CRR:- Where such shares are proposed to be redeemed out of the Free Reserves, a sum equal to the nominal amount of the Preference shares to be redeemed shall be transferred to Capital Redemption Reserve.

The notice of redemption of preference shares is to be given to ROC – within 30 days of redemption in Form No. SH-7

Note: The Premium on Redemption of Preference Shares shall be provided for out of the free reserves of the company or out of the company's securities premium account, before such shares are redeemed.

Section 55(3) - RENEWAL OF PREFERENCE SHARES

Where a company is unable to redeem or pay dividend on preference shares (Further redeemable preference shares) Section 55(3)

Where a company is not in position to redeem any preference shares or pay dividend due on such shares due to terms of issue; the company may issue 'further redeemable preference shares' equal to amount due, including dividend thereon. Such shares that cannot be redeemed are referred as 'Unredeemed preference shares'.

Conditions for further issue of redeemable preference shares:

Consent of the holders of 3-4th in value of such preference shares; and

Approval of the Tribunal on petition made on this behalf

The Tribunal while giving approval shall also order the redemption of preference shares held by such persons who have not consented to issue further redeemable preference shares.

On the issue of such shares, the unredeemed preference shares shall be deemed to have been redeemed.

The issue of further redeemable preference shares or reduction of preference shares shall not be deemed to be an increase or reduction, in shares capital of the company.

Example : Medanta Healthcare Limited is planning to raise the capital through issue of preference share. Its article is silent about this. Board of Directors are of opinion that redeemable share can be issued.

Since in the given case article is silent, not authorise the issue of preference shares expressly, hence Medanta Healthcare Limited can't issue preference share. They may alter the article of association.

Example : During the current financial year, the Board of Directors of Vintee Lifestyles Garments Limited is to undertake redemption of 20,000 preference shares of ₹ 100 each at a premium of ₹ 20 per share. It is made out by the Accounts Department that the profits are sufficient to meet the ensuing liability arising out of redemption of preference shares at premium. In this case, the amount that needs to be transferred to Capital Redemption Reserve account out of profits which are otherwise available for dividend, is ₹ 20,00,000 being the sum equal to the nominal amount of the preference shares to be redeemed. There is no need to transfer to CRR account any amount paid towards premium.

Example : Bell Homes Furnisher Limited (BHFL) unable to redeem the preference shares as they become due. Hence BHFL decided to issue further preference share against unredeemed preference shares. Holder holding 93% of such unredeemed preference shares in value, gave their consent; tribunal also assented to issue of further preference shares. The 18 holders who own remaining 7% seek redemption of shares held by them.

In this case while giving approval under section 55(3), tribunal shall order the redemption forthwith of shares (7% in value) held by dissenting 18 holders.

**RENEWAL or Unredeemed PS
(Co. fails to redeem or pay dividend)**

- **With Consent of 3/4th value holders and Approval of Tribunal.**
- **Co can issue further RPS against amount due for PS and dividend thereon.**
- **To dissenting SH = Tribunal order for redemption.**

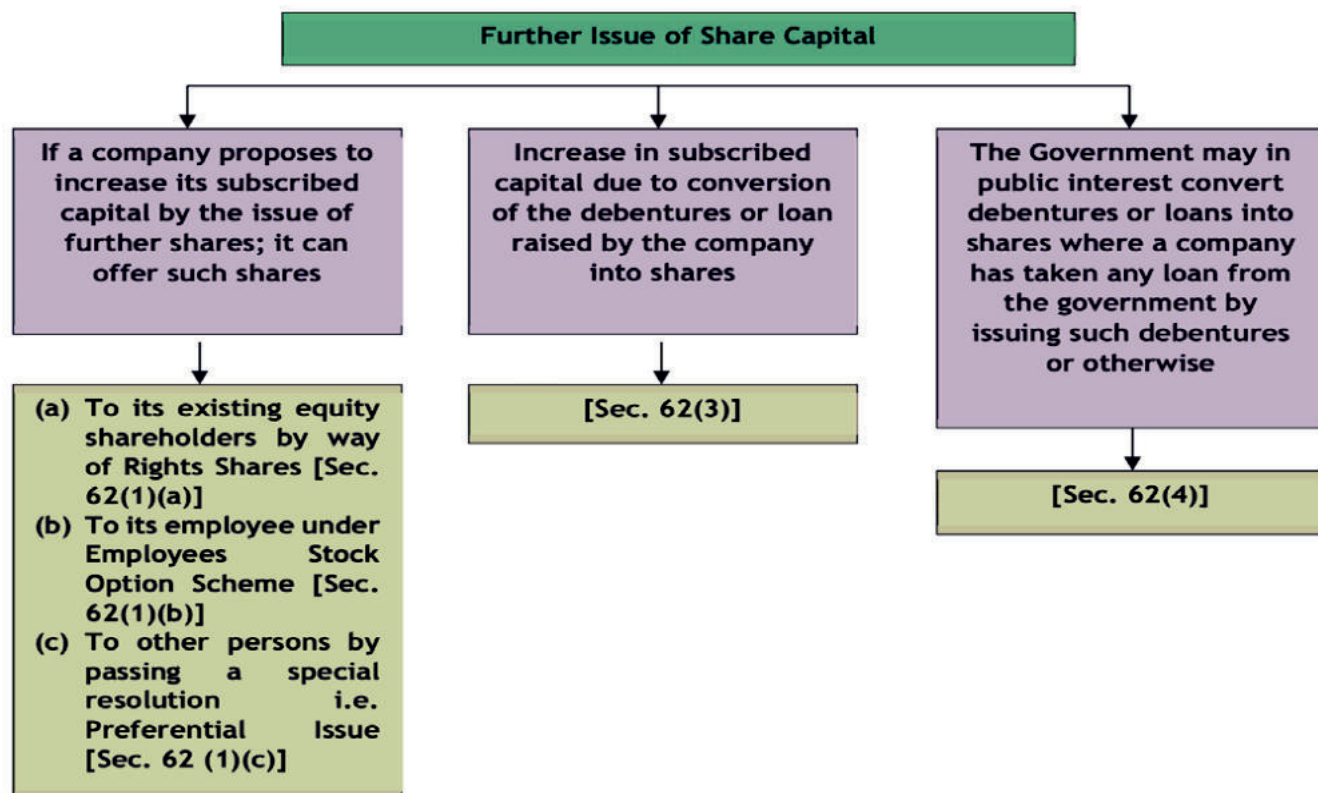
1. Which of the following statement is correct regarding redemption of preference shares?
 - a. Preference shares may be redeemed out of profits of the company which would otherwise be available for dividend.
 - b. Preference shares may be redeemed out of the proceeds of an earlier issue of shares.
 - c. Preference shares may be redeemed whether they are partly-paid or fully paid.
 - d. All of the above
2. The premium payable on redemption of preference shares may be provided out of:
 - a. The profits of the company
 - b. Securities Premium Account
 - c. Both (a) and (b)
 - d. None of the above
3. A company shall file the notice of redemption of Preference Shares with the Registrar in Form No. within a period of of such redemption.
 - a. SH-5, 30 days
 - b. SH-7, 15 days
 - c. SH-5, 15 days
 - d. SH-7, 30 days
4. Where a company is not in a position to redeem any preference shares or to pay dividend, if any, on such shares in accordance with the terms of issue, it may issue further redeemable preference shares equal to the amount due, including the dividend thereon:
 - a. With the approval by Special Resolution passed in a meeting of such preference shareholders.
 - b. With the approval by Special Resolution passed in a general meeting of equity shareholders.

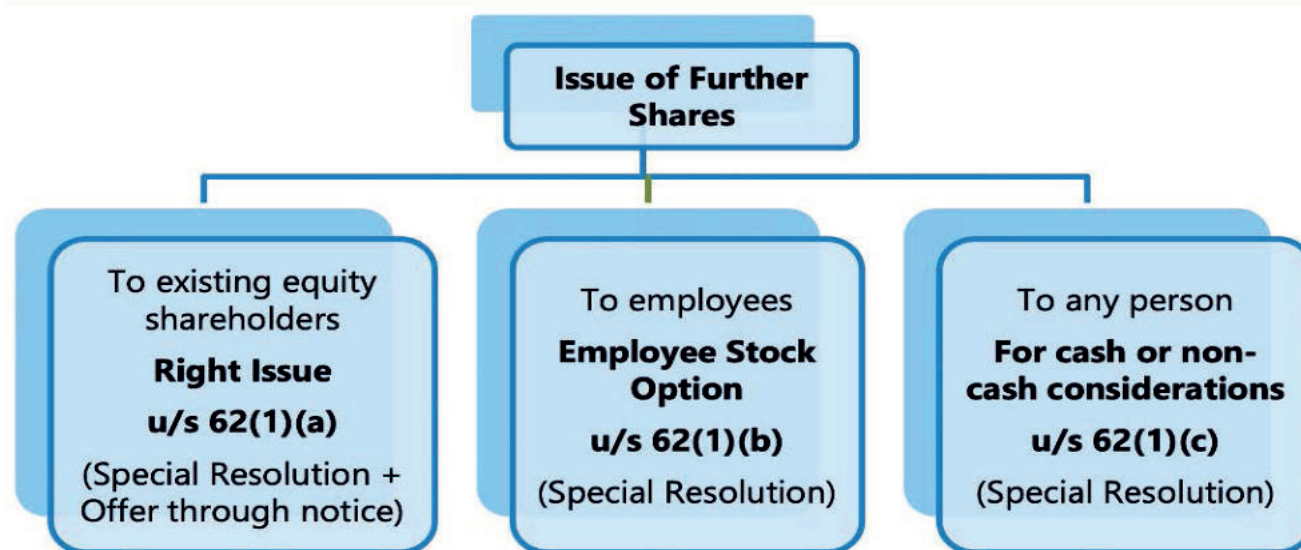
- c. With the consent of the holders of 75% in value of such preference shares and approval of Tribunal.
 - d. With the consent of the holders of 75% in value of such preference shares and approval of Central Government.
5. Where preference shares are proposed to be redeemed out of the profits of the company, a sum equal to the nominal amount of the shares to be redeemed shall be transferred out of such profits, to a reserve, to be called as 'Capital Redemption Reserve Account'. This Capital

Redemption Reserve Account may be applied by the Company:

- a. In paying up unissued shares of the company to be issued to members of the company as fully paid bonus shares.
- b. In writing off the expenses of, or the commission paid or discount allowed on, any issue of shares or debentures of the company.
- c. For the purchase of its own shares or other securities under Section 68.
- d. All of the above

[Sec. 62] - FURTHER ISSUE OF SHARE CAPITAL





[Sec. 62(1) (a)] - ISSUE OF RIGHT SHARES OF RIGHT OF PRE-EMPTION

Meaning	The shares shall be offered to persons who, at the date of the offer, are holders of equity shares of the company in proportion to the paid-up share capital on those shares. <div style="border: 1px solid green; border-radius: 10px; padding: 5px; margin: 10px auto; width: 80%; text-align: center;"> When a company wants to increase its subscribed capital by way of issuing share capital in proportion to the PSC held by them </div>	
Authorization	Authorization in AOA is required.	
Resolution required	Board Resolution is required	
Other Special Points	Letter of Offer and its Notice	1. The shares shall be offered by sending a 'Letter of Offer' by way of notice, specifying the number of shares offered.
		2. The notice shall be dispatched to all the existing shareholders, at least 3 days before the opening of the issue through; [Sec. 62(2)] <ul style="list-style-type: none"> (i) Registered post ; or (ii) Speed post; or (iii) Through electronic mode; or (iv) Courier; or (v) Any other mode having proof of delivery

		<p>Example : Notice of right issue dispatch to holders at their registered e-mail ID in two days advance to opening of issue. Out of 4230 members 3075 member holding 94% of shares acknowledges the mail and consented to shorter length of notice. Despite the mode of dispatching notice and furnishing consent by members to shorter length is valid, the notice stands invalid because at-least 90% of members shall give their consent to shorter length of notice; where as in given case nearly 72.70% (3075 out of 4230) given consent. Here number of members is to be considered not their holding.</p>		
	<p>Acceptance, Decline & Renunciation of Offer</p>	<p>Existing shareholders can</p>		
		<p>Accept the offer</p>	<p>Decline the offer</p>	<p>Renounce the offer</p>
		<p>?</p>	<p>?</p>	<p>?</p>
		<p>Time to accept atleast 7 days to maximum 30 days from the date of offer</p>	<p>If offer not accepted within time deemed to have been declined</p>	<p>Unless article s restrict; shareholders have right of renunciation i.e can transfer in favour of other person (whether such person is existing shareholders or not)</p>
	<p>Disposal of shares, if offer not accepted</p>	<p>The shares which remain unsubscribed by the existing shareholders, may be disposed off by the BOD in manner which is not disadvantageous to the shareholders of the company.</p>		

	Exceptions	<ol style="list-style-type: none"> 1. Private companies in which 90% of the members give their consent in writing or in electronic mode, the periods lesser than 'minimum 7 days' shall apply. 2. Provision of rights issue does not apply: <ol style="list-style-type: none"> (i) Where forfeited shares are reissued (ii) Where shares are allotted to creditors in settlement of debts, if authorised by articles.
<p>Example: If a company announces '1:10 rights issue', it means an existing shareholder can buy one extra share for every ten shares held by him/her. Usually the price at which the new shares are issued by way of rights issue is less than the prevailing market price of the stock to encourage subscription.</p> <p>Example : A company, listed at Bombay Stock Exchange, intends to offer its further shares to the non-members. The existing members of the company consider such offer as invalid in view of the provisions contained in section 62 (1) (a). However, the company is not prohibited in absolute terms while offering new shares to the non-members. It can do so after passing a special resolution as required in section 62 (1) (c). Thus, new shares of a company limited by shares may be issued to non-members under certain circumstances.</p>		

[Sec. 62(b)] - FURTHER ISSUE OF SHARES TO EMPLOYEES UNDER EMPLOYEE STOCK OPTION

Meaning	<p>As per section 2(37), the term 'employees stock option' means the option</p> <ul style="list-style-type: none"> ● given to the directors, officers or employees of a company or ● of its holding company or subsidiary companies, if any, ● giving them the benefit or right to purchase, or to subscribe for, the shares of the company ● at a future date at a ● pre-determined price.
	<p>Does not include –</p> <ul style="list-style-type: none"> ● Independent Director ● Promoter or Promoter group ● Director along with his relative holds more than 10% of ESC ● But start up company can issue ESOPs in his first 10 years
Authorisation	Authorization in articles is required.

Resolution Required	<ol style="list-style-type: none"> 1. Special Resolution is required 2. However, in case of private companies, an Ordinary Resolution can be passed.
Other Special Point	<ul style="list-style-type: none"> • Employee meaning (Rule 12(1))- Same like Sweat Equity Shares • There shall be a minimum period of 1 year between the grant of options and vesting of option. • The company may specify lock-in-period for such shares. • Till shares are issued on exercise of option, employees shall not have right to receive any dividend or to vote in respect of option granted to them.
	<ul style="list-style-type: none"> • The option granted are non-transferable, neither can it be pledged, hypothecated, mortgaged. • In event of death of employee during employment, all options granted shall vest in the legal heirs or nominee. • If employees suffers permanent incapacity during employment, all options granted shall vest in him on the date of permanent incapacitation. However, if employee resigns, all options unvested shall expire on the date of termination.

[Sec. 62(1)(c)] - PREFERENTIAL ALLOTMENT

Meaning	The expression 'Preferential Offer' means an issue of shares or other securities, by a company to any select person or group of persons on a preferential basis
Price	<p>Case 1: Pricing of Preferential Issue for an unlisted company</p> <p>Price determined by a Registered Valuer u/s 247.</p> <p>Case 2: Pricing of Preferential Issue for Listed company</p> <p>In case of Listed companies the price shall be determined by the formula given in SEBI Regulations.</p>
Resolution Required	Special Resolution is required
Other Special Point	<ol style="list-style-type: none"> 1. The special resolution shall remain valid for making allotment with in a period of 12 months from the date of passing of the S.R. 2. If the allotment is not completed within 12 months; another special resolution shall be passed.

Restrictions of Section 62 in Some cases – Conversion of Loans of Debentures into Shares	
Voluntary Conversion 62(3)	<p>The provisions of this section shall not apply when the Convertible Debentures/Convertible Loan are converted into Equity Shares if the following 2 conditions are satisfied –</p> <ol style="list-style-type: none"> 1. Such Convertible Debentures were issued or Convertible Loan was raised after passing SPECIAL RESOLUTION. 2. The terms of issue of such debentures or loan contained such clauses regarding the right of the debenture holders or lender to exercise such conversion to equity shares.
Compulsory conversion 62(4)	<ul style="list-style-type: none"> • Where any debentures have been issued, or loan has been obtained from Government by a company, and • if Government considers it necessary in the PUBLIC INTEREST so to do, • it may direct that such debentures or loans shall be converted into shares in the company on such terms and conditions as appear to the Government to be reasonable in the circumstances of the case • even if terms of the issue of such debentures or the raising of such loans do not include a term for providing for an option for such conversion.
	<p>Note 1: Right to Appeal</p> <p>Where the terms and conditions of such conversion are not acceptable to the company, it may, within 60 days from the date of communication of such order, appeal to the Tribunal which shall after hearing the company and the Government pass such order as it deems fit.</p> <p>Note 2: Factors to be considered by Government while determining the terms of conversion</p> <p>Financial position of the company,</p> <p>Terms of issue of debentures or loans</p> <p>Rate of interest payable on such debentures or loans</p> <p>Public Interest and</p> <p>Such other matters as it may consider necessary.</p> <p>Note 3: Deemed Increase in Authorized Share Capital</p> <p>Where the government has directed that any debenture or loan or any part thereof shall be converted into shares in a company, the memorandum of such company shall, where such order has the effect of increasing the authorized share capital of the company, stand altered and the authorized share capital of such company shall stand increased by an amount equal to the amount of the value of shares which such debentures or loans or part thereof has been converted into.</p>

1. If a company has Authorised Share Capital of ₹ 6,00,000; Paid-up Share Capital of ₹ 5,00,000; a loan of ₹ 2,00,000 obtained from the State Government. The State Government ask the company to convert its loan into shares, then such order shall have the effect of increasing:
 - a. The subscribed share capital of the company
 - b. The paid-up share capital of the company
 - c. The Authorised Share Capital of the company
 - d. All of the above
2. In terms of Section 62(1)(a), the existing shareholders of a company have a pre-emptive right to subscribe to any further issue of capital made by a company. Within what period can a shareholder accept the rights offer issued by the company?
 - a. Not less than 15 days and not exceeding 30 days from the date of the offer.
 - b. Not less than 30 days and not exceeding 60 days from the date of the offer.
 - c. Not less than 15 days and not exceeding 60 days from the date of the offer.
 - d. Not less than 30 days and not exceeding 90 days from the date of the offer.
3. For the purpose of issuing shares under Employee Stock Option Scheme under Section 62(1)(b) of the Companies Act, 2013, an employee excludes all of the following, except:
 - a. A promoter employee.
 - b. A director holding, directly or indirectly, more than 10% of the outstanding equity shares of the company.
 - c. An independent director.
 - d. A non-executive director.
4. The price at which Stock Option shall be granted to the employees and lock-in period, in case of a non-listed company, is decided by:
 - a. The company
 - b. A registered valuer
 - c. Registrar of companies
 - d. The tribunal
5. A Special Resolution authorising the Preferential Issue under Section 62(1)(c) of the Companies Act, 2013 shall be valid for making the allotment within a period of from the date of passing of the Special Resolution.
 - a. 90 days
 - b. 6 months
 - c. 12 months
 - d. 24 months
6. The price of the shares or other securities to be issued on a preferential basis, either for cash or for consideration other than cash, by an unlisted company, shall be determined on the basis of:
 - a. Valuation Report by Company's Auditor
 - b. Valuation Report by a Registered Valuer
 - c. Valuation Report by a Chartered Accountant in practice
 - d. Either of above

7. The subscribed capital of a company may increase by reason of conversion of debentures or loans into shares in the company as per the option attached as a term to the debentures issued or loan raised. Such terms of issue shall be approved:
- By a Special Resolution passed by the company in general meeting, before the issue of such debentures or the raising of loan.
 - By an Ordinary Resolution passed by the company in general meeting, before the issue of such debentures or the raising of loan.
 - By a Special Resolution passed by the company in general meeting at the time of conversion of such debentures or the loan.
 - By a resolution passed by the Board at the time of conversion of such debentures or the loan.
8. The authorised share capital of ABC Ltd. is '50 Lakh and the paid-up capital is 45 Lakh. It has issued debentures worth 10 Lakh to Himachal Pradesh State Government as indemnity against a project undertaken by the company. The debentures do not carry any option to convert to equity shares. Due to default by the company in the project, the State Government issues directions for conversion of debentures into equity shares. What will be the effect of such order issued by State Government?
- The subscribed and paid-up capital of the company shall stand increased.
 - The company's Memorandum shall stand altered and the revised authorized share capital of the company shall be 55 Lakh.
 - Both (a) and (b)
 - None of the above.

(Sec. 63) - Issue of Bonus Shares

Meaning	<p>(i) Bonus shares are shares issued proportionately by a company to its current shareholders as fully paid up shares free of cost.</p> <p>(ii) Bonus shares are issued out of profits available for distribution among the members. Such profits are not distributed in cash but shareholders are allotted further shares in form of bonus shares.</p>
	<p>Concept and Definition</p> <p>Additional shares given to current shareholders without any cost based upon number of shares hold by them. These are company's accumulated earnings which are not given out in the form of dividends, but are converted into free shares</p>

Authorisation	<ul style="list-style-type: none"> (i) Authorisation in the articles is required to issue the bonus shares. (ii) Bonus shares can be issued only if the Board recommends such an issue. However, in lieu of Rule 14 of the Companies (Share Capital and Debenture) Rules, 2014, a company once announced the Board's decision of bonus issue shall not withdraw the decision subsequently.
Resolution required	Ordinary Resolution in the General Meeting
Legal requirements – AOA/OR in GM/Board recommends	
Other Special Points	<p>A. Sources of Issue : Sec. 63(1) A company may issue fully paid-up bonus shares to its members, in any manner, out of –</p> <ul style="list-style-type: none"> (i) Its free reserves (ii) The securities premium account; or (iii) The capital redemption reserve account. <p>However, bonus shares cannot be issued out of reserves created by the revaluation of assets.</p> <p>B. No capitalization of profits / reserves Sec. 63(2) No company shall capitalise its profits or reserves for the purpose of issuing fully paid- up bonus shares, unless –</p> <ul style="list-style-type: none"> (a) It is authorized by its articles (b) It has on recommendation of the Board, been authorized in the GM of the company. (c) It has not defaulted in payment of interest or principal in respect of fixed deposits or debt securities issued by it.
	<ul style="list-style-type: none"> (d) It has not defaulted in payment of statutory dues of the employees, such as, contribution to provident fund, gratuity and bonus. (e) The party paid- up shares, if any outstanding on the date of allotment, are made fully paid-up <p>C. Fully paid shares: Bonus shares must be fully paid.</p> <p>D. Issued to existing members: Bonus shares can be issued only to the existing members of the company</p> <p>E. Not to be in lieu of dividend Sec. 63(3) The bonus shares shall not be issued in lieu of dividend. Example; XYZ Ltd. declares bonus shares in the ratio of 1:5. It means an existing shareholders of the company, say Mr. 'R', will get 1 bonus share free of cost for every 5 shares held by him.</p>

Example : If a company decided to issue bonus share in ratio of 1:2 (one for every two shares held), then the holder of 100 shares of a company will get 50 bonus share without making any payment. There his holding of shares will now be 150 instead of 100.

[Sec. 60] - PUBLICATION OF AUTHORISED, SUBSCRIBED AND PAID UP CAPITAL

SUBSCRIBED and PAID-UP share capital	Where any notice, advertisement or other official publication, or any business letter, billhead or letter paper of a company contains a statement of the amount of the AUTHORISED capital of the company, then such document shall also contain the SUBSCRIBED share capital and the PAID-UP share capital, with an equal prominence.
Punishment for contravention	If any default is made in complying with the above, the company shall be liable to pay a penalty of Z 10,000 and every officer of the company who is in default shall be liable to pay a penalty of Z 5,000, for each default.

[Sec. 61] - POWER OF LIMITED COMPANY TO ALTER ITS SHARE CAPITAL

Meaning	A limited company having a share capital is empowered to alter its capital clause of the MOA whenever there is change in composition of the share capital.
Ways	<p>(i) increase its authorized share capital by such amount as it thinks expedient;</p> <p>(ii) consolidate and divide all or any of its share capital into shares of a larger amount than its existing shares</p> <p>However, no consolidation and division which results in changes in the voting percentage of shareholders shall take effect unless it is approved by the Tribunal on an application made in the prescribed manner.</p> <p>(iii) convert all or any of its paid- up shares into stock and reconvert that stock into fully paid shares of any denomination</p> <p>(iv) sub-divide the whole or any part of its shares into shares of smaller amount than is fixed by the Memorandum</p>

	(v) cancel shares which, at the date of the passing of the resolution in that behalf, have not been taken or agreed to be taken by any person, and diminish the amount of its share capital by the amount of the shares so cancelled.
Steps	<ul style="list-style-type: none"> • Ordinary Resolution is required to be passed in the General Meeting. • the company shall file a notice in the prescribed form with the Registrar within a period of 30 days of such alteration or increase or redemption, as the case may be, along with an altered memorandum.
NOTICE TO BE GIVEN TO REGISTRAR FOR ALTERATION OF SHARE CAPITAL (Sec. 64)	<ul style="list-style-type: none"> • A company alter its share capital in any manner specified in section 61; • An order made by the Government u/s 62(4); that has the effect of increasing authorised capital of a company. • A company redeems any redeemable preference shares the company shall file a notice with the Registrar in the Form No. SH-7 within a period of 30 days of such alteration or increase or redemption, along with an altered memorandum and fee. <div style="background-color: #fff9c4; padding: 10px; border: 1px solid #ccc;"> <p style="text-align: center;">Section 64 – Notice to ROC in various cases</p> <p>Procedure – 30 days in Form SH-7 and copy of altered MOA also to be filed.</p> <ul style="list-style-type: none"> • Section 61 – Alteration of SC • Section 62(6) – Increase in Authorised SC by order of CG (zor zabardasti) • Section 55 – Redemption of PS <p>Penalty –</p> <ul style="list-style-type: none"> • Co. = 500/day Max – 5,00,000 • Officer = 500/day Max – 1,00,000 </div>
<p>Example : A share with face value of ₹ 100, on which ₹ 80 is paid up, can be split into 10 shares of ₹ 10 nominal value each, with ₹ 8 being paid up.</p>	

1. A limited company having a share capital may, if so authorised by its Articles, alter its Memorandum in general meeting by, to convert all or any of its fully paid-up shares into stock, and reconvert that stock into fully paid-up shares of any denomination.
 - a. Special Resolution
 - b. Ordinary Resolution
 - c. Ordinary Resolution and confirmation by Tribunal
 - d. Special Resolution and confirmation by Tribunal

(Sec 65) - Unlimited Company to Provide for Reserve Share Capital on Conversion into Limited Company [Reserve Capital]

An **UNLIMITED company** having a share capital may, by an **Ordinary Resolution** for registration as a **LIMITED company** under this Act, do either or both of the following things, namely—

Case 1 - If the shares were already fully paid-up	Increase the nominal amount of its share capital by increasing the nominal amount of each of its shares, subject to the condition that no part of the increased capital shall be capable of being called up except in the event and for the purposes of the company being wound up;	
	(Example) Face Value = 10. Paid up = 10. Step 1: Increase the Face value to 15 (assume). Step 2: Pass Ordinary Resolution and decide to call the balance 5 in Liquidation.	
Case 2 - If the shares were not fully paid-up (there is uncalled capital)	Provided that a specified portion of its uncalled share capital shall not be capable of being called up except in the event and for the purposes of the company being wound up.	
	(Example) Face Value = Z10. Paid up = Z8. Only 1 Step: Pass Ordinary Resolution and decide to call the balance Z2 in Liquidation.	

[Section 66] - REDUCTION OF SHARE CAPITAL

Meaning	<p>A company limited by shares or by guarantee and having a share capital may reduce the share capital to maintain the financial health of the company.</p> <ul style="list-style-type: none"> ▪ A company may reduce its share capital and of its shares accordingly, as per the provisions of Section 66. ▪ Nothing in this section shall apply to buy-back of its own securities by a Company under Section 68. [Section 66(6)]
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Ways capital can be reduced	<p>(a) extinguish or reduce the liability on any of its shares in respect of the share capital not paid-up; or</p> <p>(b) either with or without extinguishing or reducing liability on any of its shares:</p> <ul style="list-style-type: none"> (i) cancel any paid-up share capital which is lost or is unrepresented by available assets; or (ii) pay off any paid-up share capital which is in excess of the wants of the company.
Manner and conditions	<ul style="list-style-type: none"> ▪ The reduction in share capital shall be made only by passing a Special Resolution. ▪ The reduction in share capital shall be subject to confirmation by the Tribunal on an application by the company. ▪ No such reduction shall be made if the company is in arrears in the repayment of any deposits accepted by it, or the interest payable thereon.
<p>Example : In respect of a share of ₹ 10, a company has called only ₹ 7 per share and the same has been paid by all the shareholders. The company decides not to call remaining ₹ 3 per share and reduces its shareholders' liability. If done, the company is said to have reduced its share of ₹ 10 to ₹ 7 as fully paid-up share.</p> <p>Example : An application for reduction of capital received by NCLT on 22nd November 2022 from a unlisted company, he send a notice of such application to concerned RD, RoC as well as to creditor on 28th November 2022. Notice to RD and RoC sent in registered post which reached to them on 1st December 2022. Hence in given case RD and RoC can make representation till 28th Feb 2023. If any representation made thereafter, Tribunal is not bound to consider that.</p> <p>Example : Name and Interest of Mr. Nilanjan Iyer, a creditor of Modern Furniture Limited has been kept outside the list of creditor while company went into reduction of its capital; later when Mr. Iyer came to know about this he wish to take legal action against company under IBC 2016, as limitation period is not expired yet. Mr. Iyer entitled to do so, exclusion of his name construe as offence under IBC as well.</p>	

Other important points

Situation - If a company reduces share capital and a creditor entitled to object is not listed due to ignorance or nature of interest, it will be considered as the company's defaults under Section 6 of the Insolvency and Bankruptcy Code, 2016.

Remedy for Unpaid Creditor (If Company is Running)	<ul style="list-style-type: none"> •Every member as of the date of the Registrar's order for reduction is liable to contribute. •Liability is limited to the amount they would have contributed if winding up started the day before the order.
Remedy for Unpaid Creditor (If Company is Wound Up)	<ul style="list-style-type: none"> •The Tribunal can settle a list of persons liable to contribute. •It can make and enforce calls on these contributories as if they were ordinary winding-up contributories.
Liability of Officers	<ul style="list-style-type: none"> •An officer is punishable under Section 447 if they: <ul style="list-style-type: none"> a)Knowingly conceal the name of a creditor entitled to object. b)Abet or are privy to such concealment. c)Misrepresent the nature or amount of a creditor's claim. d)Abet or are privy to such misrepresentation.

1. While making an application to the Tribunal for seeking its confirmation in respect of extinguishing the liability of ₹ 3 per equity share, Medhavi Publishers Limited has to file a certificate along with the application, that the accounting treatment proposed by it for such reduction of share capital is in conformity with the accounting standards specified in the prescribed Section. Advise the company as to who can issue such certificate?
 - a. Any of the directors of the company as authorised by the Board may issue such certificate
 - b. A practicing company secretary is authorised to issue such certificate
 - c. The auditor of the company is authorised to issue such certificate
 - d. The legal advisor of the company is authorised to issue such certificate

[Sec. 56] - TRANSFER & TRANSMISSION OF SECURITIES

Basis	Transfer of Shares	Transmission of Shares
Voluntary Act or not	Yes (Sale or Gift)	No. By operation of law
Transfer deed or instrument required	Yes, (SH-4) execution required	1. Not required

Stamp duty	Is payable	Not payable
Consideration	Yes (Except gift)	No
Requirements for transfer of securities [Sec. 56(1)]	<ol style="list-style-type: none"> 1 The application for transfer of securities must be made in the Form No. SH-4; this form is called as 'instrument of transfer' or 'transfer deed' or 'transfer form'. 2 However, no transfer deed is required in case where names of both transferor and transferee are entered as holders of beneficial interest in the records of a depository. 3 The deed must be duly stamped, dated and executed by or on behalf of transferor and transferee specifying the name, address and occupation, if any of the transferee. 4 The deed must be delivered to the company by the transferor or the transferee within 60 days from the date of execution. 	
Instrument is lost / not delivered [Proviso to Sec. 56(1)]	Where the instrument of transfer has been lost or the instrument has not been delivered within prescribed time, then the company may register the transfer on such terms as to indemnity (security against loss) as the Board may think fit.	
	<p>Example 12 - Himanshu has received a notice from Chaitanya Progressive Books Private Limited on 7th August, 2023 intimating that Shefali has submitted a transfer deed duly signed by her for transfer of 500 partly paid shares (₹ 6 paid-up out of Face Value of ₹ 10 per share) in his name.</p> <p>Himanshu as transferee must raise his objection to the proposed transfer of partly paid shares latest by 21st August, 2023.</p>	
To whom transfer deed not required	<ol style="list-style-type: none"> (i) Transfer of bonds issued by Government company. (ii) Transfer of securities held in name of nominee of Government. 	

Time limit for delivery of certificates	
Subscribers to MOA	2 months of Incorporation
Any shares by Co.	2 months of allotment
Any debentures	6 months of allotment
T/T of securities	1 month of TD or Intimation of Transfer
All securities by IFSC public / Pvt Co.	60 days after incorporation, allotment, transfer or transmission

	<p>(iii) Transmission of security by nomination, will, succession, Court order or order of arbitration.</p> <p>Provided, the Government company has not defaulted in filing its financial statements u/s 137 or Annual Return u/s 92 with Registrar.</p> <p>Infact, in case of transmission of shares, there is no need for submission of transfer deed [Sec. 56(2)]</p>
<p>Notice to Transferee in case of Partly paid Securities [Sec. 56(3)]</p>	<p>Application is made by the transferor alone and relates to partly paid shares, the transfer shall be registered only if:</p> <p>(i) The company gives the notice of the application to the transferee in Form No. SH-5 and</p> <p>(ii) The transferee gives no objection to the transfer within 2 weeks from the receipt of notice.</p> <p>Example: Mr. A has received a notice from XYZ Pvt. Ltd. on 7th Aug. 2019 intimating that Mr. B has submitted transfer deed signed by him for transferring 500 partly paid shares (face value Rs. 10 paid up Rs. 6) in his name A as transferee must raise his objection latest by 21st August, 2018.</p>
<p>Delivery of Certificate of Security [Sec. 56(4)]</p>	<p>Every company shall deliver the certificates of all securities allotted, transferred or transmitted unless prohibited by any provision or order of Court, Tribunal or other authority.</p>
<p>Proviso to Section 56(4)</p>	<p>Where the securities are dealt with in a depository, the company shall intimate the particulars to depository immediately on allotment of such securities.</p>

Cases of Transmission	Company may register the Transmission of shares on receipt of: <p>(a) Intimation of transmission of any right to securities by operation of law from any person to whom such right has been transmitted i.e., Death Certificate/Court Order</p> <p>(b) A Securities Transfer Form in Form No. SH-4 shall be delivered to the company within 60 days from the date of such execution. [Instrument of Transfer]</p>
	<p>(c) Share Certificates</p> <div style="background-color: #4a7ebb; color: white; padding: 10px; border: 1px solid #4a7ebb;"> <ul style="list-style-type: none"> By operation of law No TD required for transmission. Intimation of transmission – Sufficient Death – To the Legal representative Insolvency – To the official Receiver Lunacy – To administrator appointed by court. Until shares are registered by the co LR is not entitled to voting rights </div>

Example : Richa Daniel, after having obtained succession certificate, succeeded to 7,000 shares of ₹ 100 each allotted to her late father Alexander Daniel by Speed Software Limited. To pay off the debt of her cousin Stesley, she wants to transfer whole of the 7,000 shares to her on the basis of a duly stamped instrument of transfer which has been signed by her as well as Stesley. Accordingly, she has delivered the required documents to the company for transfer of shares.

In terms of Section 56 (5), the company, on receipt of duly stamped instrument of transfer along with requisite share certificates and succession certificate, shall transfer the shares in favour of Stesley. Thus, even though Richa Daniel, the legal representative of Alexander Daniel, is not a holder of 7,000 shares as per the Register of Members of the company, the transfer effected by her in favour of her cousin Stesley is a valid transfer as if she had been the holder of securities at the time of executing the transfer deed.

Note : As an alternative, Richa Daniel may choose to get herself registered as holder of the 7,000 shares in which case, she will make an application to Speed Software Limited. Such application shall be accompanied with share certificates and succession certificate. There is no need to submit instrument of transfer or transfer deed in such a case of transmission. This is so because transfer deed cannot be signed by the deceased person as transferor.

On receipt of these documents, the company will scrutinize them and if found in order, it shall proceed to enter the name of Richa Daniel in the Register of Members. Consequently, the name of the deceased person *i.e.* Alexander Daniel shall be deleted. Further, new share certificates will be issued in the name of Richa Daniel, the legal representative of Alexander Daniel.

Example : A request for transfer of shares has been received by Ind-swift Pharma Labs Limited in form SH-4 along with instrument of transfer on 25th November 2022. The company shall deliver the certificate to that effect by 24th December 2022.

1. Corrupt Limited has received a request from Mr. Suresh for transfer of 100 partly paid equity shares, to Mr. Ramesh. However, Mr. Ramesh expired in the meantime, but no intimation of the same has been received by the company. In the given circumstances, advise as per the provisions of the Companies Act, 2013:
 - a. Corrupt Limited will not register the transfer the shares in the name of Mr. Ramesh, without verification from Mr. Suresh
 - b. Corrupt Limited can register the shares in the name of Mr. Ramesh as it is not aware of the untoward incident.
 - c. Corrupt Limited will not register the transfer the shares in the name of Mr. Ramesh, without verification from Mr. Ramesh
 - d. Corrupt Limited will give the shares back to Mr. Suresh
2. Ruchi was handed over an instrument of transfer dated 21st August, 2020, duly stamped and signed by Radha who had transferred 2000 equity shares of ₹ 100 each allotted to her by Murti Mechanical Toys Private Limited. Advise Ruchi regarding the date by which the instrument of transfer along with share certificates must be delivered to the company, to register the transfer in its register of members.
 - a. 21st August, 2020.
 - b. 20th September, 2020
 - c. 20th October, 2020.
 - d. 19th November, 2020.

Forged Transfer

Meaning	Any instrument on which signature of the transferor is forged, is called a forged instrument of transfer and the transfer made on the basis of forged instrument of transfer is termed 'forged transfer'. Forged transfer is possible only in case of physical holding of shares.
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Effect of forged transfer and rights of parties	<ol style="list-style-type: none"> 1. A forged transfer is void ab initio i.e nullity, i.e. without any legal effect. It confers no title on the transferee of shares. [Rubben v. Great Fingall Consolidated Company–1906] 2. The original owner continues to be the member (Barton vs N. Staffordshire 1988.) 3. Where the company has registered the transferee as a member on the basis of a forged transfer, following shall be the consequences: <ol style="list-style-type: none"> (i) The original owner can compel the company to restore his name on the ROM. (Sheffield Corpn vs Barclay) (ii) The company shall cancel the share certificate issued to the transferee and remove the name of transferee from the ROM. (iii) Where the transferee has already transferred the shares to an innocent purchaser: <ol style="list-style-type: none"> (a) The company shall refuse to register new purchaser as a member. However the new purchaser shall have the right to claim damages from the company.
	<ol style="list-style-type: none"> (b) The company shall have right to recover damages from the person who had deposited the forged transfer deed.

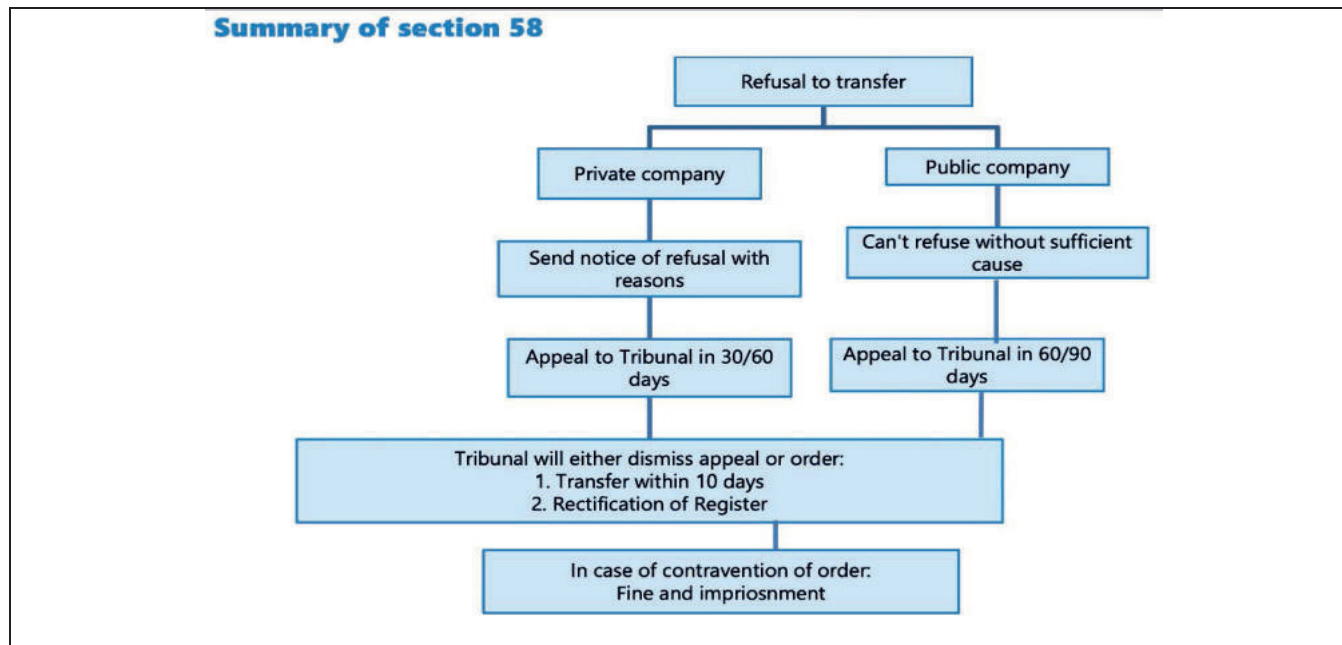
[Sec. 57] - PUNISHMENT FOR PERSONATION OF SHAREHOLDER

Nature of Personation	<p>If any person deceitfully personates as :</p> <ol style="list-style-type: none"> (a) An owner of any security or interest; or (b) As an owner of any shares warrant or coupon issued in lieu of the Companies Act, 2013 and thereby obtains or attempts to obtain such security or interest or share warrant or receives or attempts to receive money due to such owners.
Punishment	<p>In such case he shall be punishable with:</p> <ol style="list-style-type: none"> (a) Imprisonment for a term not less than 1 year and upto 3 years and (b) Fine of atleast Rs. 1,00,000 subject to maximum Rs. 5,00,000.
<p>If any person deceitfully personates as an owner :</p> <ul style="list-style-type: none"> • Obtains/attempts to obtain securities • Receives/attempts to receive any money <p>Punishment Fine 1 to 5 lacs and Imprisonment – 1 to 3 years</p>	

(Sec. 58) - REFUSAL OF REGISTRATION AND APPEAL AGAINST REFUSAL

Provisions for Refusal to Transfer or Transmission	<ol style="list-style-type: none"> 1. Company can refuse to transfer or transmit securities by giving notice in writing to : <ol style="list-style-type: none"> a. Transferor; and b. Transferee 2. Notice shall contain reason for refusal 	
	By private company	<ol style="list-style-type: none"> 1 May refuse to transfer securities within 30 days from the date of submission of transfer form. 2 It can refuse to transfer as per provisions of its articles
	By public	<ol style="list-style-type: none"> 1 May refuse to transfer securities within 30 days from the date of submission of transfer form. 2 May refuse to transfer for sufficient reason.
	Private Company	Transferee may appeal to Tribunal within 30 days from the date of refusal . However, where notice of refusal is not received , transferee may appeal within
Appeal against Refusal to Transfer or Transmit		60 days from the date of delivery of transfer instrument to the company.
	Public Company	Transferee may appeal to Tribunal within 60 days from the date of refusal. However, where notice of refusal is not received, transferee may appeal within 90 days from the date of delivery of transfer instrument to the company.
Remedy by Tribunal	<ol style="list-style-type: none"> 1. Tribunal after hearing the parties, either <ol style="list-style-type: none"> a. Dismiss the appeal; or b. Direct that the transfer shall be registered by the company within 10 days 2. The Tribunal may direct company to pay damages to aggrieved party. 	

	<p style="text-align: center;"><u>Order of Tribunal</u></p> <ul style="list-style-type: none"> • Shall hear the parties • Dismiss the appeal or order • Direct to register the transfer in 10 days • Direct the company to pay damages to parties and rectify the register
Penalty	<p>Person contravening the order of the Tribunal shall be punishable with imprisonment for a term of 1-3 year and fine of Rs. 1 lakh subject to maximum Rs. 5 lakh.</p> <p style="text-align: center;"><u>Punishment for contravention of order of Tribunal</u> Fine 1 to 5 lacs & Imprisonment - 1 to 3 years</p>
Examples of valid refusal	<ol style="list-style-type: none"> 1. Improper transfer deed 2. If there is stay order granted by the Court 3. Transfer is in violation of SEBI Takeover Code or other law 4. If shares are subject to lock in and there is endorsement on certificate 5. Transfer of shares in case of private company is not as per AOA.
<p>Example: An application has been received by Private Company for transfer of share on 25th Nov 2022. The transferee didn't get any response from company, hence may advance an appeal to the tribunal by 24th January 2023.</p> <p>Example: An application has been received by Public Company for transfer of share on 25th Nov 2022. The transferee didn't get any response from company, hence may advance an appeal to the tribunal by 23rd February 2023.</p>	



1. Keshika is the original owner of 1000 equity shares of ₹ 50 each being allotted by Modern Biscuits Private Limited. As she wanted these shares to be transferred to her younger sister Vanshika as a gift, she completed the transfer deed in all respects and delivered the same to the company along with share certificates on 17th July, 2020. However, the company did not register the transfer even after the expiry of more than one month nor did it send any notice of refusal. The lone reminder to the company remained unanswered. An appeal needs to be filed against the company with the National Company Law Tribunal (NCLT). Advise by choosing the correct option as to who has the right to file the appeal.
 - a. Keshika, who continues to remain owner and transferor of equity shares till they are registered in the name of Vanshika, has the right to file an appeal with NCLT against the company.
 - b. Vanshika, as transferee and 'would be' owner of equity shares, has the right to file an appeal with NCLT against the company.
 - c. Both Keshika and Vanshika have to file a joint appeal with NCLT against the company, for neither Keshika nor Vanshika are authorised to file the appeal individually.
 - d. As per its discretion, NCLT may allow either Keshika or Vanshika to file an appeal against the company

[Sec. 59] - RECTIFICATION OF REGISTER OF MEMBERS (ROM)

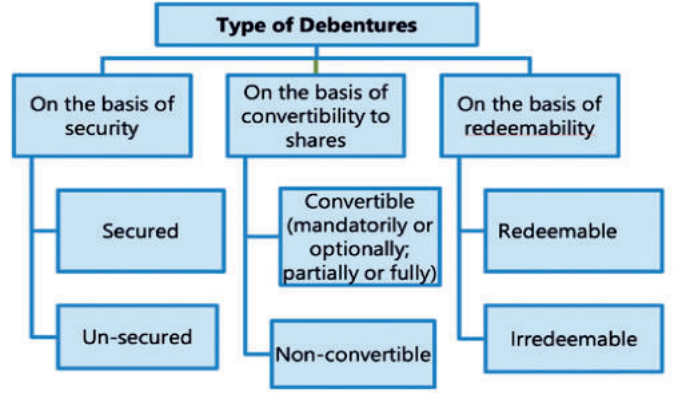
<p>Right to appeal for rectification of ROM [Section 59(1)]</p>	<ol style="list-style-type: none"> 1. Grounds for appeal: <ol style="list-style-type: none"> (a) The name of any person is entered in ROM; or (b) The name of any person is omitted from the ROM; or (c) Default or unnecessary delay is being made in entering in the ROM, the fact of any person having become a member; or fact of any person having ceased to be a member. 2. The appeal may be done by <ol style="list-style-type: none"> (a) The aggrieved person; or (b) Any member of the company; or (c) The company 3. Appeal to whom? <ol style="list-style-type: none"> (a) The appeal shall be filed with the Tribunal in case of foreign members or debenture holders residing outside India. The appeal shall be filed in a competent Court outside India as may be specified by C.G by notification.
<p>Order of Tribunal [Sec. 59(2)]</p>	<p>The tribunal shall hear the parties to the appeal and</p> <ol style="list-style-type: none"> (a) May dismiss the appeal or (b) By order, direct rectification of the records of the depository or the ROM and (c) Tribunal may direct the company to pay damages, if any, sustained by any party aggrieved.
	<p>Example : After hearing both parties of appeal over removal of name of applicant from register of member without sufficient cause, tribunal pass an order to reinstate the name in register with payment of damages to holder as well cost of litigation. Company has to pay damages as ordered apart from rectification of the register.</p>

Section 71 - Debentures

<p>Two ways of funding Equity and debt</p>	<p><i>Purpose :</i> When co doesn't want to dilute its SC it can borrow the funds from Banks and the Public through Bonds and debentures etc.</p>
<p>Debenture [Section 2(30)]</p>	<p>Debenture" includes</p> <ul style="list-style-type: none"> • debenture stock, bonds or any other instrument of a company evidencing a debt, • whether or not constituting a charge on the assets of the company. <p>Provided that following shall not be treated as debenture:</p> <p>(a) The instruments referred to in chapter III- D of the Reserve Bank of India Act, 1934; (Derivatives & money market instruments)</p> <p>(b) Such other instruments, as prescribed by the C.G. in consultation with the RBI, such as that prescribed in Rule 18 of Companies (Share Capital and Debentures) Rule, 2014:</p> <ul style="list-style-type: none"> (i) Amount received through issue of Commercial papers (ii) Foreign currency convertible bonds or foreign currency bonds (iii) Rupee denominated bonds issued exclusively to overseas investors as per RBI guidelines.
<p>Features of Debentures</p>	<ol style="list-style-type: none"> 1. They are movable property transferrable in the manner provided in Articles (Sec. 44) 2. Debenture holders are creditors of the company and not members. 3. They may be secured or unsecured. 4. Debenture certificate must be issued to the allottee within 6 months from the date of allotment and within 1 month from the date of receipt of instrument of transfer. 5. It is generally pre-fixed with the rate of interest. 6. They may be convertible into equity shares as per terms of the issue, or may be redeemable. 7. No company shall issue any debentures carrying any voting rights
<p>Example : The name '10% Debentures' indicates that the company shall pay interest at the rate of 10% on the outstanding amount till maturity of such debentures.</p> <p>Example : Sigma Computers Limited desires to borrow ₹ 50,00,000 from the public by issuing 7% debentures. It is intended that each unit of debenture shall be of ₹ 100. Thus, it can issue 50,000 debentures of ₹ 100 each carrying 7% rate of interest which can be paid at the end of every quarter. If such debentures (secured by a charge on the assets of the company) are issued for six-year duration, the principal amount shall be repaid by the end of sixth year. The terms of issue may</p>	

even allow repayment of principal amount in equal yearly instalments, in which case a portion of debentures shall be redeemed on yearly basis and the company shall be required to pay interest only on the outstanding amount. The debenture holders may also be given the option of converting their debentures into equity shares at the time of maturity.

Thus, Sigma Computers Limited is able to borrow a large sum of money from different borrowers with the help of debentures and it is not required to approach a single borrower for such a big amount.

<p>Types of Debentures</p>	 <pre> graph TD Root[Type of Debentures] --> Security[On the basis of security] Root --> Convertibility[On the basis of convertibility to shares] Root --> Redeemability[On the basis of redeemability] Security --> Secured[Secured] Security --> Unsecured[Un-secured] Convertibility --> Convertible["Convertible (mandatorily or optionally; partially or fully)"] Convertibility --> Nonconvertible[Non-convertible] Redeemability --> Redeemable[Redeemable] Redeemability --> Irredeemable[Irredeemable] </pre>
<p>Conditions for issuing Debentures</p>	<ol style="list-style-type: none"> Date of redemption shall not exceed 10 years from the date of issue. However, following companies may issue secured debentures for a period exceeding 10 years but not exceeding 30 years. Companies engaged in infrastructural projects Infrastructure Debt Fund Non-Banking Financial Companies, . Others permitted by C.G or RBI or National Housing Bank or other Statutory Body. Such an issue of debentures shall be secured by the creation of a charge on the properties or assets of the company or its subsidiaries or its holding company or its associates companies, having a value which is sufficient for the due repayment of the amount of debentures and interest thereon. Company shall appoint a DEBENTURE TRUSTEE before the issue of prospectus or letter of offer for subscription of its debentures. Company shall execute a DEBENTURE TRUST DEED in Form SH-12 to protect the interest of the debenture holders within 3 months of the closure of the issue. The security for the debentures by way of a charge or mortgage shall be created in favour of the debenture trustee except Government Co

Eligibility criteria for becoming Debenture Trustee	<p>A person shall not be appointed as a debenture trustee, if he-</p> <ol style="list-style-type: none"> 1. Beneficially holds shares in the company; 2. Is a promoter, director or key managerial personnel or any other officer or an employee of the company or its holding, subsidiary or associate company; 3. Is beneficially entitled to moneys which are to be paid by the company otherwise than as remuneration payable to the debenture trustee; 4. Is indebted to the company, or its subsidiary or its holding or associate company or a subsidiary of such holding company; 5. Has furnished any guarantee in respect of the principal debts secured by the debentures or interest thereon;
	<ol style="list-style-type: none"> 6. Has any pecuniary relationship with the company amounting to 2% or more of its gross turnover or total income or 50 lacs or such higher amount as may be prescribed, whichever is lower, during the 2 immediately preceding financial years or during the current financial year; 7. Is relative of any promoter or any person who is in the employment of the company as a director or key managerial personnel.
Refer the concept clarity sheet at the end of the chapter on Eligibility of a Debenture Trustee	
Appointment of Debentures Trustee	<p>The company shall appoint the debenture trustee</p> <ul style="list-style-type: none"> • before the issue of prospectus or • letter of offer to the public or to • its members exceeding 500 for its subscription of debentures.
Removal of Debenture Trustee	<p>Any debenture trustee may be removed from office before the expiry of his term only if it is approved by the holders of 3/4th in value of the debentures, at their meeting.</p>
Casual Vacancy	<ol style="list-style-type: none"> 1. To be filled by the Board but while continuation of vacancy, the remaining trustees, if any, may act. 2. Where casual vacancy caused by the resignation of the debenture trustee, the vacancy shall be filled only with the written consent of the majority of the debenture holders.

Role of Debenture Trustee	<p>It shall be the duty of every debenture trustee to-</p> <p>(a) inform the debenture holders immediately of any breach of the terms of issue of debentures or covenants of the trust deed;</p> <p>(b) ensure that the assets of the company issuing debentures and of the guarantors, if any, are sufficient to discharge the interest and principal amount at all times and that such assets are free from any other encumbrances;</p> <p>(c) ensure that the debentures have been converted or redeemed in accordance with the terms of the issue of debentures;</p>
	<p>(d) perform such acts as are necessary for the protection of the interest of the debenture holders and do all other acts as are necessary in order to resolve the grievances of the debenture holders.</p>
Meeting of Debenture Holders	<p>The meeting of all the debenture holders shall be convened by the debenture trustee on-</p> <p>a) requisition in writing signed by debenture holders holding at least 1/10th in value of the debentures for the time being outstanding;</p> <p>b) the happening of any event, which constitutes a breach, default or which in the opinion of the debenture trustees affects the interest of the debenture holders.</p>
No Indemnity to Debenture Trustee if he is Negligent of his Duties	<p>Any provision contained in a trust deed for shall be void in so far as it would have the effect of exempting a trustee thereof from, or indemnifying him against any liability for breach of trust, where he fails to show the degree of care and due diligence required of him as a trustee.</p>
	<p>Provided that the liability of the debenture trustee shall be subject to such exemptions as may be agreed upon by a majority of debenture-holders holding 3/4th in value of the debentures, at their meeting.</p>
Application by Debenture Trustee to Tribunal	<p>If the debenture trustee comes to a conclusion that the assets of the company are insufficient to discharge the principal amount as and when it becomes due, the debenture trustee may file a petition before the Tribunal and the Tribunal may impose restrictions on the incurring of any further liabilities by the company in the interests of the debenture-holders.</p>
Inspection and Copy of Debenture Trust Deed	<ol style="list-style-type: none"> 1. A Trust Deed for securing any issue of debentures shall be open for inspection to any Member or Debenture Holder of the company, in the same manner as if it were the Register of Members of the company; and 2. A copy of the Trust Deed shall be forwarded to any Member or Debenture Holder of the company, at his request, within 7 days of the making thereof, on payment of fee.

Order by Tribunal to redeem debentures or pay interest	Where a company fails to redeem the debentures on the date of their maturity or fails to pay interest on the debentures when it is due, the Tribunal may , on the application of any or all of the debenture-holders, or debenture trustee direct the company to redeem the debentures forthwith.		
Pari Passu Clause in Debentures	Meaning	Pari-passu means 'ranking equally amongst themselves'	
	With Pari-Passu clause	In such case, the security amount realised shall be divided pro-rata in the case of insufficient funds, even if debentures with issued at different points of time.	
	Without Pari-passu clause	The debentures shall rank as per date of issue of debentures, i.e. a debenture issued first shall have priority over the debentures issued afterwards. If they are issued on the same day, they will be payable as per their serial number.	
	Restriction on Power of the Company	Company cannot issue new series of debentures having priority over an earlier series or rank pari passu with earlier series unless such right is expressed earlier.	
Creation of Debenture Redemption reserve (DRR) Account [Sec. 71(4)]	<ol style="list-style-type: none"> When a company issues debentures u/s 71, the company shall create a DRR account out of the profits available for payment of dividend. Such amount created to DRR Account shall not be utilised by the company except for the redemption of debentures. If debentures are partly convertible, DRR created for non-convertible part. Rule 18(7) specifies that company shall comply with requirements of DRR: 		
	Adequacy of DRR/Rates of DRR		
	(I) Non- Requirement	(II) Requirement	
	?	?	
	<p>In case of following companies, there is no need to maintain DRR:</p> <ol style="list-style-type: none"> All India Financial Institutions regulated by RBI. Other Financial Institutions as per Sec. 2(72) of Companies Act, 2013. Non-Banking Financial Companies registered with RBI u/s 45-IA of RBI Act. 	<p>Unlisted Companies [other than those specified in (I)]</p> <p style="text-align: center;">?</p> <p style="text-align: center;">Adequacy of DRR</p> <p style="text-align: center;">?</p> <p style="text-align: center;">10% of the value of the outstanding debentures</p>	

	4. Housing Finance companies registered with National Housing Bank.						
	5. Listed Companies						
Applicability and Quantum of DRR	Type of Company	Mode of Issue of Debentures	DRR Needed?	How much DRR?	How much DRF?	How much DRF?	
	All India Financial Institutions (AIFI) and Banking Companies	Public Issue or Private Placement	NC.	N/A,	N/A	N/A	
	Public Financial Institution (PFI)	Public Issue or Private Placement	Same as for NBFC	Same as for NBFC	N/A	N/A	
	Listed Companies	(A) Public Issue (Listed NBFC/HFC)	NO.	N/A.	15%	(*)	
	Listed Companies	(A) Public Issue (other Listed Co.)	NO.	N/A.	15%	(*)	
	Listed Companies	(B) Private Placement (Listed NBFC/HFC)	NO.	N/A.	N/A	(#)	
	Listed Companies	(B) Private Placement (other Listed Co.)	NO,	N/A.	N/A	(#)	

	Unlisted Companies [Private Placement]	(A) Unlisted NBFC/HFC	NO.	N/A.	N/A.		
	Unlisted Companies [Private Placement]	(B) Other Unlisted Companies	YES	10% of O/S Debentures	15%	(*)	
Debenture Reserve Fund (Investment) [Rule 18(7)]	Debentures Reserve Fund (Investment)						
	When	How much	Where		Utilization		
	?	?	?		?		
	Company required to Create DRR shall invest / deposit on or before 30 th April, each year	A sum of atleast 15% of the amount of its debentures maturing during the year ending on 31 st March of the next year	Methods to deposits: (i) Deposit with any Scheduled Bank (free from charge /lien) (ii) Unencumber securities of C.G/S.G (iii) Unencumbered securities and bonds u/s 20 of the Indian Trusts Act, 1882.		(i) To be used only for the purpose of redemption of debentures maturing during the year (ii) The amount to remain invested/ deposited shall not fall below 15% of the amount of the debentures maturing during the year end on 31 st March of that year; at any time.		

Note 1	DRR shall be created out of profits of the company available for payment of dividend.
Note 2	In case of Partly Convertible Debentures, DRR shall be created only in respect of non-convertible portion of debentures.
Note 3	The amount credited to DRR shall not be utilized by the company except for the purpose of redemption of debentures.

Example : Roshan Bulb Limited took a bank loan in contravention to covenant regarding permissible debt-equity ratio, stated in offer document issued for subscription of its debentures. In this case debenture trustee bound to convene the meeting of all the debenture holder as decision of taking loan by company is not only breach but also a default that will affect the interest of the debenture holders.

Example : Debenture trustee fails in keeping a close watch on change in value of asset against which such debenture are secured, which is specified a preliminary responsibility marked upon him; it can be said debenture trustee fails to show degree of care and due diligence required of him as a trustee.

1. Prithvi Cements Limited is desirous of issuing debentures carrying voting rights. Which of the following options is best suited in such a situation:
(MTP NOV 2020)
 - a. Prithvi Cements Limited can issue debentures carrying voting rights if an ordinary resolution is passed permitting such issue.
 - b. Prithvi Cements Limited can issue debentures carrying voting rights if a special resolution is passed permitting such issue.
 - c. Prithvi Cements Limited can issue debentures carrying voting rights if it mortgages land and buildings worth two times the amount of such debentures..
 - d. Prithvi Cements Limited cannot issue debentures carrying voting rights.
2. The meaning of 'pari passu' in relation to issue of debentures shall mean:
 - a. The debentures are issued at par value.
 - b. In respect of security available for distribution, the debentures are having same priority of repayment as other preference shareholders.
 - c. In respect of security available for distribution, the debentures rank equally with other debenture holders already issued irrespective of the time when these debentures were issued.
 - d. None of the above
3. The voting rights of debenture holders are:
 - a. In the proportion of aggregate debentures outstanding to the total paid-up capital of the company.
 - b. In the proportion of the amount paid-up on the debentures.
 - c. At par with the rights as preference and equity shareholders.
 - d. None of the above. Debentures cannot be issued carrying any voting rights.

4. The maximum tenure of debentures to be issued by a company can be:
 - a. 10 years from the date of issue.
 - b. 20 years from the date of issue.
 - c. 25 years from the date of issue.
 - d. None of the above. A company can issue irredeemable debentures.
5. A listed company is required to maintain adequate DRR to the extent to:
 - a. 25% of the value of the outstanding debentures.
 - b. 15% of the value of the outstanding debentures.
 - c. 10% of the value of the outstanding debentures.
 - d. None of the above. A listed company is not required to maintain a DRR account.
6. A company is required to maintain liquid funds out of DRR in prescribed investments and deposits by 30th April in each year. What is the minimum amount required to be invested or deposited?
 - a. 5% of the amount of the debentures maturing during the relevant year.
 - b. 10% of the amount of the debentures maturing during the relevant year.
 - c. 15% of the amount of the debentures maturing during the relevant year.
 - d. 25% of the amount of the debentures maturing during the relevant year.
7. Which of the following persons can be appointed as debenture trustee?
 - a. A person who beneficially holds shares in the company.
 - b. A person who is indebted to the company.
 - c. A person who is a creditor of the company.
 - d. A person who has no pecuniary relationship with the company.
8. A casual vacancy in the office of debenture trustee can be filled by:
 - a. The members of the company
 - b. The Board of Directors of the company
 - c. The debenture holders by 3/4th majority in value
 - d. The Tribunal
9. A casual vacancy in the office of debenture trustee caused by resignation, can be filled by:
 - a. The Board of Directors of the company
 - b. 3/4th majority of members of the company in a general meeting
 - c. 3/4th majority of debenture holders in a meeting held for the purpose
 - d. Written consent of majority of debenture holders
10. A debenture Trustee can be exempted from his liability:
 - a. If approved by 3/4th of debenture holders in value at a meeting held for the purpose.
 - b. If approved by 3/4th of the members in value at a meeting held for the purpose.
 - c. If it is approved by Tribunal on an application made by debenture trustee in this regard.
 - d. None of the above. A debenture trustee cannot be exempted from his liability in any case.

11. When the assets of the company are likely to be or become insufficient to discharge the principal amount of debentures as and when it becomes due, a petition may be filed with the Tribunal, by:
- Any one debenture holder
 - All of the debenture holders
 - Debenture Trustee
 - All of the above

12. An application to Tribunal against the company for non-payment of debentures on due date of redemption or interest when it is due, can be made by:
- Any one debenture holder
 - All of the debenture holders
 - Debenture Trustee
 - All of the above

Section 72 - POWER TO NOMINATE

Topic	Detailed Explanation
Nomination in Form SH-13	Any holder of securities of a company may, at any time, nominate, in Form No. SH.13 , any person as his nominee in whom the securities shall vest in the event of his death.
Entry in the Register	On the receipt of the nomination form, a corresponding entry shall forthwith be made in the relevant register of securities holders, maintained under section 88.
Death of Shareholder	In the event of death of the holder of securities, the nominee may upon the production of such evidence as may be required by the Board, elect, either- <ol style="list-style-type: none"> To register himself as holder of the securities; or To transfer the securities, as the deceased holder could have done.
Nominee chooses to be the Security Holder	if the nominee elects to be registered as holder of the securities himself, he shall deliver or send to the company a notice in writing signed by him stating that he so elects and such notice shall be accompanied with the death certificate of the deceased share or debenture holder.
Entitlement of the Nominee to benefits associated	The Board may, at any time, give notice requiring any such person to elect either to be registered himself or to transfer the securities, and if the notice is not complied with within 90 days, the Board may thereafter withhold payment of all dividends or interests, bonuses or other moneys payable in respect of the

with the Security	securities, as the case may be, until the requirements of the notice have been complied with.
Cancellation or Variation of the Nominee	<p>A nomination may be cancelled or varied by nominating any other person in place of the present nominee, by the holder of securities, by giving a notice of such cancellation or variation, to the company in Form SH-14.</p> <p>The cancellation or variation shall take effect from the date on which the notice of such variation or cancellation is received by the company.</p>
Minor as a Nominee	Where the nominee is a minor, the holder of the securities, making the nomination, may appoint a person in Form SH-13 , who shall become entitled to the securities of the company, in the event of death of the nominee during his minority.

DIFFERENTIAL VOTING RIGHTS (DVRs)

Rule 4 - Legal requirements for issue of shares with DVRs (3 year old company) -

- AOA authorisation
- Resolution - OR and if listed then by postal ballot
- Track record of distributing profits – 3 years
- Maximum DVRs = 74% of post total ESC (including DVRs issued at that time)
- No default in FS/AR – 3 years
- No subsisting default – dividend payment, D/D/Interest thereon and redemption of PS
- No default – Loan / Statutory payment to employees / IEPF (If corrected then 5 years from that FY shall be passed, then only you can issue DVR)
- Not penalised in last 3 years by – RBI / SEBI / SCRA / FEMA / Any other Act.

Other provisions

- No conversion allowed from vanilla to DVRs and v.v.
- Disclosures - BR, Register of members (Sec 88) / Notice of GM + Expl. statement
- Can issue Bonus and right shares as well.

ELIGIBILITY TO BE A DEBENTURE TRUSTEE ?

S.N.	Category	Restriction
1	Shareholder	Cannot be a beneficiary holder of shares in the company.
2	Promoter/Director/KMP/EE	Cannot be a promoter, director, key managerial personnel (KMP), or any officer/employee of the company, its CASH
3	Relative	Cannot be a relative of any promoter, director, or KMP of the company.
4	Payments (Remuneration)	Cannot be a person entitled to receive payments from the company, except as remuneration for the trustee role.
5	Indebted Person	Cannot be a person indebted to the CASH or a SC of such HC.
6	Guarantor	Cannot have furnished any guarantee for the principal debt secured by the debentures or interest thereon.
7	Pecuniary Relationship	Cannot have a pecuniary relationship – Lower of - 1. $\geq 2\%$ of gross T/O or 2. Higher of (Total income of Deb Trustee or 50 lakhs) During the last two FY

Section 68 - Buy back of shares

Sources -

FR / SPA / Proceeds of fresh issue of securities (Shall not be made out of an earlier SAME kind)

Conditions -

- Power in AOA
- Resolutions = SR but
- BR if BB is not exceeding 10% (Paid up SC+FR) and
- Explanatory statement with SR = material facts, necessity for BB, class, amount and time limit.
- Limit =
 - BB shall be not more than 25% (Paid up SC+FR) includes ESC and PSC and SPA
 - If BB is only for ESC then - In one FY shall not exceed 25% (Paid up SC).
 - Debt (secured and unsecured) : Equity (PSC+FR) = 2:1 *after* such BB.
- All securities must be fully paid up.
- BB shall be completed in 12 months of passing resolution.

Section 67 to 70 - BUY BACK OF SHARES

BB from Whom ?

- Existing SH / Open market (SE) / Employees. (*Different methods cannot be used for single BB.*)

Declaration = After resolution but before BB in SH-9

- To ROC that co will not be rendered insolvent in 12 months
- In case of listed = To SEBI also
- Signature by 2 directors (1 MD)

Extinction = Destroy physically within 7 days.

Prohibitions = 1. Further offer of BB till 1 year (Cooling period)

2. NO further issue of same kind of shares in the next 6 months except : Bonus / SES / ESOPs / warrants etc. (*NO RIGHT SHARES*)

Register in SH-10 – Date of cancellation / securities / consideration and date of extinguishing.

Return of BB in SH-11 – To ROC in 30 days and if listed then to SEBI as well

Problem Kya Hai? Question Bank
ICAI Module Descriptive Questions

Section 52 Application of Premium Received on Issue of shares

1. Walnut Foods Limited has an authorized share capital of 2,00,000 equity shares of ₹ 100 per share and an amount of ₹ 2 crore in its Securities Premium Account as on 31-3-2024. The Board of Directors seeks your advice about the application of securities premium account for its business purposes. Please give your advice.

Solution:

Amount lying to the credit of Securities Premium Account is required to be utilised for certain prescribed purposes.

According to section 52 of the Companies Act, 2013, where a company issues shares at a premium, whether for cash or otherwise, a sum equal to the aggregate amount of the premium received on those shares shall be transferred to a "securities premium account" and the provisions of this Act relating to reduction of share capital of a company shall, except as provided in this Section, apply as if the securities premium account were the paid-up share capital of the company.

The securities premium account may be applied by the company—

- (a) towards the issue of unissued shares of the company to the members of the company as fully paid bonus shares;
- (b) in writing off the preliminary expenses of the company;
- (c) in writing off the expenses of, or the commission paid or discount allowed on, any issue of shares or debentures of the company;
- (d) in providing for the premium payable on the redemption of any redeemable preference shares or of any debentures of the company; or
- (e) for the purchase of its own shares or other securities under section 68.

The securities premium account may be applied by such class of companies, as may be prescribed and whose financial statement comply with the accounting standards prescribed for such class of companies under section 133,—

- (a) in paying up unissued equity shares of the company to be issued to members of the company as fully paid bonus shares; or
- (b) in writing off the expenses of or the commission paid or discount allowed on any issue of equity shares of the company; or
- (c) for the purchase of its own shares or other securities under section 68.

Keeping the above points in view Walnut Foods Limited should proceed to utilise the amount of Securities Premium Account.

Section 54 Issue of sweat equity shares

2. Trisha Data Security Limited was incorporated just a year ago with a paid-up share capital of ₹ 200 crore. Within such a small period of about year in operation, it has earned sizeable profits and has topped the charts for its high employee-friendly environment. The company wants to issue sweat equity to its employees. A close friend of the CEO of the company has told him that the company cannot issue sweat equity shares as minimum 2 years have not elapsed since the time company commenced its business. The CEO of the company has approached you to advise about the essential conditions to be fulfilled before the issue of sweat equity shares, especially since their company is just about a year old.

Solution:

Sweat equity shares of a class of shares already issued.

According to section 54 of the Companies Act, 2013, a company may issue sweat equity shares of a class of shares already issued, if the following conditions are fulfilled, namely—

- (i) the issue is authorised by a special resolution passed by the company;
- (ii) the resolution specifies the number of shares, the current market price, consideration, if any, and the class or classes of directors or employees to whom such equity shares are to be issued;
- (iii) where the equity shares of the company are listed on a recognised stock exchange, the sweat equity shares are issued in accordance with the regulations made by the Securities and Exchange Board in this behalf and if they are not so listed, the sweat equity shares are issued in accordance with such rules as prescribed under Rule 8 of the Companies (Share and Debentures) Rules, 2014,

The rights, limitations, restrictions and provisions as are for the time being applicable to equity shares shall be applicable to the sweat equity shares issued under Section 54 and the holders of such shares shall rank pari passu with other equity shareholders.

Trisha Data Security Limited can issue Sweat equity shares by following the conditions as mentioned above. It does not make any difference that the company is just about a year old, because there is no such age (time since commencement of business) requirement under section 54.

Section 55 Issue & Redemption of Preference shares

3. Due to insufficient profits, Silver Robotics Limited is unable to redeem its existing preference shares amounting to ₹ 10,00,000 (10,000 preference shares of ₹ 100 each) though as per the terms of issue they need to be redeemed within next two months. It did not, however, default in payment of dividend as and when it became due. What is the remedy available to the company in respect of outstanding preference shares as per the Companies Act, 2013?

Solution:

According to section 55(3) of the Companies Act, 2013, where a company is not in a position to redeem any preference shares or to pay dividend, if any, on such shares in accordance with the terms of issue (such shares hereinafter referred to as unredeemed preference shares), it may— with the consent of the holders of three-fourths in value of such preference shares, and with the

approval of the Tribunal on a petition made by it in this behalf, issue further redeemable preference shares equal to the amount due, including the dividend thereon, in respect of the unredeemed preference shares, and on the issue of such further redeemable preference shares, the unredeemed preference shares shall be deemed to have been redeemed.

Provided that the Tribunal shall, while giving approval under this sub-section, order the redemption forthwith of preference shares held by such persons who have not consented to the issue of further redeemable preference shares.

In view of the provisions of section 55 (3), Silver Robotics Limited can initiate steps for the issue of further redeemable preference shares equal to the amount due i.e. ₹ 10,00,000. For this purpose, it shall obtain the consent of the holders of three-fourths in value of such preference shares and also seek approval of the Tribunal by making a petition. In case, there are certain preference shareholders who have not accorded their consent for the proposal of issuing further redeemable preference shares, the Tribunal may order the company to redeem forthwith such preference shares. Accordingly, Silver Robotics Limited must be ready with sufficient funds for the redemption of preference shares held by those who have not consented.

On the issue of such further redeemable preference shares by the company, the unredeemed preference shares shall be deemed to have been redeemed.

Section 56 Share Certificate

4. Ramesh, a resident of New Delhi, sent a transfer deed duly signed by him as transferee and his brother Suresh as transferor, for registration of transfer of shares to Ryan Entertainment Private Limited at its Registered Office in Mumbai. He did not receive the transferred shares certificates even after the expiry of four months from the date of dispatch of transfer deed. Is there any liability of company and officer in default in the said matter?

Solution:

According to section 56 (4) of the Companies Act, 2013, every company, unless prohibited by any provision of law or of any order of court, Tribunal or other authority, shall deliver the certificates of all shares transferred within a period of one month from the date of receipt by the company of the instrument of transfer.

Further, as per section 56 (6), where any default is made in complying with the provisions of sub-sections (1) to (5), the company and every officer of the company who is in default shall be liable to a penalty of fifty thousand rupees.

Section 58 Refusal of Transfer

5. Mr. Nilesh has transferred 1000 equity shares of Perfect Vision Private Limited to his sister, Ms. Mukta. The company did not register the transfer of shares and also did not send a notice of refusal to Mr. Nilesh or Ms. Mukta within the prescribed period. Discuss as per the provisions of the Companies Act, 2013, whether aggrieved party has any right(s) against the company?

Solution:

The problem given in the question is governed by Section 58 of the Companies Act, 2013 dealing with the refusal to register transfer and appeal against such refusal.

In the present case, the company has committed the wrongful act of not sending the notice of refusal to register the transfer of shares.

Under section 58 (1), if a private company limited by shares refuses to register the transfer of, or the transmission by operation of law of the right to any securities or interest of a member in the company, then the company shall send notice of refusal to the transferor and the transferee or to the person giving intimation of such transmission, within a period of thirty days from the date on which the instrument of transfer, or the intimation of such transmission, was delivered to the company.

According to section 58 (3), the transferee may appeal to the Tribunal against the refusal within a period of thirty days from the date of receipt of the notice or in case no notice has been sent by the company, within a period of sixty days from the date on which the instrument of transfer or the intimation of transmission, was delivered to the company.

In this case, as the company has not sent even a notice of refusal, Ms. Mukta being transferee can file an appeal before the Tribunal within a period of sixty days from the date on which the instrument of transfer was delivered to the company.

Section 61 Alteration of Share Capital

6. The Directors of Mars Motors India Ltd. desire to alter Capital Clause of the Memorandum of Association of their company. Advise them about the ways in which the said clause may be altered under the provisions of the Companies Act, 2013.

Solution:

Alteration of Capital: Under section 61 (1) a limited company having a share capital may, if authorised by its Articles, alter its Memorandum in its general meeting to:

- (i) increase its authorized share capital by such amount as it thinks expedient;
- (ii) consolidate and divide all or any of its share capital into shares of a larger amount than its existing shares;
However, no consolidation and division which results in changes in the voting percentage of shareholders shall take effect unless it is approved by the Tribunal on an application made in the prescribed manner.
- (iii) convert all or any of its paid- up shares into stock and reconvert that stock into fully paid shares of any denomination.
- (iv) sub-divide its shares, or any of them, into shares of smaller amount than is fixed by the Memorandum;

- (v) cancel shares which, at the date of the passing of the resolution in that behalf, have not been taken or agreed to be taken by any person, and diminish the amount of its share capital by the amount of the shares so cancelled.

Further, under section 64 where a company alters its share capital in any of the above-mentioned ways, the company shall file a notice in the Form No. SH-7 as per Rule 15 of the Companies (Share Capital and Debentures) Rules, 2014 with the Registrar, along with an altered memorandum within thirty days of alteration. The capital clause of memorandum, if authorised by the Articles, shall be altered by passing an ordinary resolution as per section 61 (1) of the Companies Act, 2013.

Section 62 Further Issue of Share Capital

7. VRS Company Ltd. is holding 45% of total equity shares in SV Company Ltd. The Board of Directors of SV Company Ltd. (incorporated on January 1, 2019) decided to raise the share capital by issuing further equity shares. The Board of Directors resolved not to offer any shares to VRS Company Ltd., on the ground that it was already holding a high percentage of the total number of shares issued by SV Company Ltd. The Articles of Association of SV Company Ltd. provided that the new shares should first be offered to the existing shareholders of the company. On March 1, 2019 SV Company Ltd. offered new equity shares to all the shareholders, except VRS Company Ltd.

Referring to the provisions of the Companies Act, 2013 examine the validity of the decision of the Board of Directors of SV Company Ltd. of not offering any further shares to VRS Company Limited.

Solution:

The legal issues involved herein are covered under Section 62 (1) of the Companies Act, 2013.

Section 62 (1) (a) of the Companies Act, 2013 provides that if, at any time, a company having a share capital proposes to increase its subscribed capital by issue of further shares, such shares should first be offered to the existing equity shareholders of the company as at the date of the offer, in proportion to the paid-up capital on those shares. Hence, the company cannot ignore a section of the existing shareholders and must offer the shares to the existing equity shareholders in proportion of their holdings.

As per facts of the case, the Articles of SV Company Ltd. provide that the new shares should first be offered to the existing shareholders. However, the company offered new shares to all shareholders excepting VRS Company Ltd., which held a major portion of its equity shares. It is to be noted that under the Companies Act, 2013, SV Company Ltd. did not have any legal authority to do so.

Therefore, in the given case, decision of the Board of Directors of SV Company Ltd. not to offer any further equity shares to VRS Company Ltd. on the ground that VRS Company Ltd. already held a high percentage of shareholding in SV Company Ltd. is not valid. Such a decision violates the provisions of section 62 (1) (a) as well as Articles of the issuing company.

Section 62

8. Shilpi Developers India Limited owed to Sunil ₹ 10,000. On becoming this debt payable, the company offered Sunil 100 shares of ₹ 100 each in full settlement of the debt. The said shares were allotted to Sunil as fully paid-up in lieu of his debt. Examine the validity of this allotment in the light of the provisions of the Companies Act, 2013

Solution:

Under section 62 (1) (c) of the Companies Act, 2013 where at any time, a company having a share capital proposes to increase its subscribed capital by the issue of further shares, either for cash or for a consideration other than cash, such shares may be offered to any persons, if it is authorised by a special resolution and if the price of such shares is determined by a empowered to allot the shares to Sunil in settlement of its debt to him. This valuation report of a registered valuer, subject to the compliance with the applicable provisions of Chapter III and any other conditions as may be prescribed.

In the present case, Shilpi Developers India Limited's allotment, to be classified as shares issued for consideration other than cash, must be approved by the members by a special resolution. Further, the valuation of the shares must be done by a registered valuer, subject to the compliance with the applicable provisions of Chapter III and any other conditions as may be prescribed.

Section 63 Bonus Shares

9. Shankar Portland Cement Limited is engaged in the manufacture of different types of cements and has got a good brand value. Over the years, it has built a good reputation and its Balance Sheet as at March 31, 2024 showed the following position:

1. Authorized Share Capital (25,00,000 equity shares of ₹ 10/- each) ₹ 2,50,00,000
2. Issued, subscribed and paid-up Share Capital (10,00,000 equity shares of ₹ 10/- each, fully paid-up) ₹ 1,00,00,000
3. Free Reserves ₹ 3,00,00,000

The Board of Directors are proposing to declare a bonus issue of 1 share for every 2 shares held by the existing shareholders. The Board wants to know the conditions and the manner of issuing bonus shares under the provisions of the Companies Act, 2013.

Solution:

According to section 63 of the Companies Act, 2013, a company may issue fully paid-up bonus shares to its members, in any manner whatsoever, out of:

- (i) its free reserves;
- (ii) the securities premium account; or
- (iii) the capital redemption reserve account.

Provided that no issue of bonus shares shall be made by capitalising reserves created by the revaluation of assets.

Conditions for issue of Bonus Shares: No company shall capitalise its profits or reserves for the purpose of issuing fully paid-up bonus shares, unless:

- (i) it is authorised by its Articles;
- (ii) it has, on the recommendation of the Board, been authorised in the general meeting of the company;
- (iii) it has not defaulted in payment of interest or principal in respect of fixed deposits or debt securities issued by it;
- (iv) it has not defaulted in respect of payment of statutory dues of the employees, such as, contribution to provident fund, gratuity and bonus;
- (v) the partly paid-up shares, if any, outstanding on the date of allotment, are made fully paid-up;
- (vi) it complies with such conditions as are prescribed by Rule 14 of the Companies (Share Capital and debentures) Rules, 2014 which states that the company which has once announced the decision of its Board recommending a bonus issue, shall not subsequently withdraw the same.

Further, the company has to ensure that the bonus shares shall not be issued in lieu of dividend. For the issue of bonus shares Shankar Portland Cement Limited will require reserves of ₹ 50,00,000 (i.e. half of ₹ 1,00,00,000 being the paid-up share capital), which is readily available with the company. Hence, after following the above conditions relating to the issue of bonus shares, the company may proceed for a bonus issue of 1 share for every 2 shares held by the existing shareholders.

Section 67 Prohibition for Financial Assistance

10. OLAF Limited, a subsidiary of PQR Limited, decides to give a loan of ₹ 4,00,000 to its Human Resource Manager Mr. Surya Nayan, who does not fall in the category of Key Managerial Personnel and draws a salary of ₹ 40,000 per month, to buy 500 partly paid-up equity shares of ₹ 1000 each in OLAF Limited. Examine the validity of company's decision under the provisions of the Companies Act, 2013.

Solution:

Restrictions on purchase by company or giving of loans by it for purchase of its share: As per section 67 (3) of the Companies Act, 2013 a company is allowed to give a loan to its employees subject to the following limitations:

- (a) The employee must not be a director or Key Managerial Personnel;
- (b) The amount of such loan shall not exceed an amount equal to six months' salary of the employee.
- (c) The loan must be extended for subscribing fully paid-up shares.

In the given instance, Human Resource Manager Mr. Surya Nayan is not a Key Managerial Personnel of the OLAF Limited. Further, he is drawing a salary of ₹ 40,000 per month and wants to avail loan for purchasing 500 partly paid-up equity shares of ₹ 1000 each of OLAF Limited in which he is employed.

Keeping the above facts and legal provisions in view, the decision of OLAF Limited in granting a loan of ₹ 4,00,000 for purchase of its partly paid-up shares to Human Resource Manager is invalid due to the following reasons:

- i. The amount of loan is more than 6 months' salary of Mr. Surya Nayan, the HR Manager. It should have been restricted to ₹ 2,40,000 only.
- ii. The loan to be given by OLAF Limited to its HR Manager Mr. Surya Nayan is meant for purchase of partly paid shares.

Section 68 Buy back

11. State the legal provisions in respect of 'Declaration of Solvency', which an unlisted public company needs to adhere to while taking steps to buy-back its own shares.

Solution:

According to section 68 (6), where an unlisted public company has passed a special resolution under section 68 (2) (b) or the Board has passed a resolution under item (ii) of the proviso to section 68 (2) (b) to buy-back its own shares, it shall, before making such buy-back, file with the Registrar a 'Declaration of Solvency' in Form SH-9.

The declaration shall be verified by an affidavit to the effect that the Board has made a full inquiry into the affairs of the company as a result of which they have formed an opinion that it is capable of meeting its liabilities and will not be rendered insolvent within a period of one year from the date of declaration of solvency adopted by the Board. The declaration shall be signed by at least two directors of the company, one of whom shall be the managing director, if any.

Section 71 Debentures

12. What are the provisions of the Companies Act, 2013 relating to the appointment of 'Debenture Trustee' by a company? Whether the following can be appointed as 'Debenture Trustee':

- (i) A shareholder who has no beneficial interest.
- (ii) A creditor whom the company owes ₹ 499 only.
- (iii) A person who has given a guarantee for repayment of amount of debentures issued by the company?

Solution:

Appointment of Debenture Trustee: Under section 71 (5) of the Companies Act, 2013, no company shall issue a prospectus or make an offer or invitation to the public or to its members exceeding five hundred for the subscription of its debentures, unless the company has, before such issue or offer, appointed one or more debenture trustees and the conditions governing the appointment of such trustees shall be such as may be prescribed.

Rule 18 (2) of the Companies (Share Capital and Debentures) Rules, 2014, framed under the

Companies Act for the issue of secured debentures provide that before the appointment of debenture trustee or trustees, a written consent shall be obtained from such debenture trustee or trustees proposed to be appointed and a statement to that effect shall appear in the letter of offer issued for inviting the subscription of the debentures.

Further according to the rules, no person shall be appointed as a debenture trustee, if he-

- (i) beneficially holds shares in the company;
- (ii) is a promoter, director or key managerial personnel or any other officer or an employee of the company or its holding, subsidiary or associate company;
- (iii) is beneficially entitled to moneys which are to be paid by the company otherwise than as remuneration payable to the debenture trustee;
- (iv) is indebted to the company, or its subsidiary or its holding or associate company or a subsidiary of such holding company;
- (v) has furnished any guarantee in respect of the principal debts secured by the debentures or interest thereon;
- (vi) Has any pecuniary relationship with the company amounting to two percent. or more of its gross turnover or total income or fifty lakh rupees or such higher amount as may be prescribed, whichever is lower, during the two immediately preceding financial years or during the current financial year;
- (vii) is a relative of any promoter or any person who is in the employment of the company as a director or key managerial personnel;

Thus, based on the above provisions answers to the given questions are as follows:

- (i) A shareholder who has no beneficial interest, can be appointed as a debenture trustee.
- (ii) A creditor whom company owes ₹ 499 cannot be appointed as a debenture trustee. The amount owed is immaterial.
- (iii) A person who has given guarantee for repayment of principal and interest thereon in respect of debentures also cannot be appointed as a debenture trustee.

RTP, MTP and PYQ Descriptive Questions

Section 43 Equity Shares with DVR

1. To prevent excessive concentration of control among a group of shareholders, describe with the help of an example how the Companies Act, 2013, imposes limits and regulates the voting power of shares with differential rights (equity shares)?

(MTP May 25)

Can equity share with differential voting rights be issued? If yes, state the conditions under which such shares may be issued.

(MAY 2018)

Solution:

Equity shares with differential voting rights(DVR)

Sec 43 Companies Act, 2013, allows companies to issue equity shares with differential voting rights (DVRs), which provide different voting power compared to ordinary equity shares. However, to prevent excessive concentration of control in the hands of a few shareholders, the Act places specific restrictions on the total voting power that can be assigned to DVR shares.

Conditions to issue shares with differential rights

- (i) The issue of shares with differential rights must be authorised by the articles
- (ii) Must be authorised by passing 'OR' in general meeting. However, where equity shares of a company are listed on a recognized stock exchange, the issue of such shares shall be approved by shareholders through postal ballot
- (iii) The voting power w.r.t such shares shall not exceed 74% of the total voting power including voting power in respect of equity shares with differential rights issued at any point of time.
- (iv) The company has not defaulted in filing financial statements and annual returns for 3 immediately preceding financial years.
- (v) The company has no subsisting default w.r.t.
 - a. Payment of declared dividend; or
 - b. Repayment of matured deposits or interest on deposits; or
 - c. Redemption of debentures or interest on it; or
 - d. Redemption of preference shares.
- (vi) The company has not defaulted in –
 - a. Payment of dividend on preference shares; or
 - b. Repayment of term loan from Public Financial Institution or State Level Financial Institution or Scheduled Bank; or
 - c. Dues w.r.t statutory payment relating to its employees; or
 - d. Crediting the amount in IEPF to C.G.
- i. However, a company may issue shares with differential rights upon expiry of 5 years from the end of F.Y. in which such default was made good.
- (vii) The company has not been penalized by Court or Tribunal during last 3 years of any offence under –
 - a. Reserve Bank of India Act, 1934; or

- b. Securities and Exchange Board of India Act, 1992; or
- c. Securities Contracts (Regulation) Act, 1956; or
- d. Foreign Exchange Management Act, 1999; or

(viii) The company shall not convert its existing equity share capital with voting rights into equity share capital carrying differential voting rights and vice versa.

Example to understand the above rule.

Hind Ltd. has 2,000 total shareholders, including:

Regular Equity Shareholders (with normal voting rights) DVR Shareholders (with differential voting rights)

Step 1: Understanding Voting Power Distribution

Let's assume Hind Ltd. issues DVR shares where each shareholder has twice the voting power compared to regular equity shareholders.

Regular Equity Shareholders = 600 shareholders → 600 votes

DVR Shareholders = 400 shareholders → Each holding 2 votes → 800 votes
Total Voting Power in the Company

= 600 + 800 = 1,400 votes

Step 2: Applying the 74% Rule

74% of 1,400 total votes = 1,036 votes

The DVR shareholders collectively hold 800 votes, which is below 1,036 votes. Hence this provision strikes a balance by allowing companies to issue differential voting rights shares and restrict the over concentration of power with dominating few group of peoples. By capping DVR voting power at 74%, the company ensures that the control is not excessively prejudiced in favor of DVR shareholders.

Section 48 Variation of Rights

2. Growmore Limited's share capital is divided into different classes. Now, Growmore Limited intends to vary the rights attached to a particular class of shares. Explain the provisions of the Companies Act, 2013 to Growmore Limited as to obtaining consent from the shareholders in relation to variation of rights.

(RTP NOV 2018) (MTP NOV 2017)

Solution:

Variation in rights of shareholders with consent According to section 48 of the Companies Act, 2013-

- (i) Where a share capital of the company is divided into different classes of shares, the rights attached to the shares of any class may be varied with the consent in writing of the holders of not less than three-fourths of the issued shares of that class or by means of a special resolution passed at a separate meeting of the holders of the issued shares of that class if authorized by MOA/AOA and such variation is not prohibited by the terms of issue of the shares of that class:

Provided that if variation by one class of shareholders affects the rights of any other class of shareholders, the consent of three-fourths of such other class of shareholders shall also be obtained and the provisions of this section shall apply to such variation.

- (ii) Application to Tribunal: Where the holders of not less than ten per cent of the issued shares of a class did not consent to such variation or vote in favour of the special resolution for the variation, they may apply to the Tribunal within twenty-one days after the date on which the consent was given or the resolution was passed to have the variation cancelled, and where any such application is made, the variation shall not have effect unless and until it is confirmed by the Tribunal:

Section 48

3. The share capital of Lego Ltd. is divided as under:

- (i) Authorised Share capital: Rs. 10,00,000
- (ii) Rate per share: Rs. 100
- (iii) Number of equity shares: 8,000
- (iv) Number of 10% preference shares: 2,000

Lego Ltd. wants to vary the rights attached to the preference shares. Lego Ltd. has obtained the consent of 1600 preference shareholders. However, 350 preference shareholders have not given consent to such variation.

In the light of the provisions of the Companies Act, 2013, advise does the non- consenting shareholders of Lego Ltd. have any rights for not bringing into effect the variation of their rights.

(MTP NOV 2017)

Solution:

Hint – Law similar to previous question above

Conclusion: In present case, since 1600 out of 2000 i.e 80% consented in writing about variation which is more than 75% , Lego Ltd can vary the rights attached to the preference shares

Since 350 out of 2000 i.e more than 10% are dissenting shareholders they may apply to tribunal

Section 48

4. Moringa Ltd. initially issued preference shares with a fixed 10% dividend. Later, the company decided to reduce the dividend rate to 8%, as the company's profit margins declined in the last two quarters. Some preference shareholders opposed this change, arguing that their rights were being altered unfairly. The company, however, claimed that the change was valid under its Articles of Association. Will Moringa Ltd. be able to proceed with the change. What legal provisions under the Companies Act, 2013, govern such variations in shareholders' rights, and what procedural requirements must be followed?

(MTP May 25)

Solution:

Law: When a company modifies or alters the rights associated with a specific class of shares, it must comply with Section 48 of the Companies Act, 2013, to ensure fairness and transparency as follows

1. There should be a provision in the Company's Articles of Association (AOA) or Memorandum of Association (MOA) permitting the variation of class rights. If there is no such provision, the terms of the issue of preference shares must not prohibit such a variation.
2. The company must obtain written consent from the holders of at least 75% of the issued shares of that class of affected shareholders (preference shareholders in this case).
3. Alternatively, a special resolution approving the variation must be passed at a separate class meeting of preference shareholders.
4. If the change in preference share rights affects equity shareholders, then three-fourths of such equity shareholders must also approve the variation.
5. Shareholders holding at least 10% of that class who did not consent or vote in favor of the resolution can apply to the Tribunal. The variation will only take effect if confirmed by the Tribunal.

Conclusion: In present case, Moringa Ltd. cannot alone reduce the preference dividend from 10% to 8% without taking $\frac{3}{4}$ rth majority or passing special resolution. Therefore such variation is invalid and affected shareholders may challenge the decision in the Tribunal.

Section 50 Calls in advance

5. Sujeev, a shareholder, holding 2000 shares of ₹ 100 per share of Touchwood Pharma Ltd. The company has called and collected ₹ 60 per share. Sujeev has paid ₹ 40 per share (the balance amount not yet demanded by the company) as calls in advance. At the time of annual general meeting of the company, he demanded that he is entitled to vote in respect of the advance money paid by him. The directors of the company rejected his demand. He claimed for refund of calls in advance amount paid by him with interest.

Examine the validity of Sujeev's claim for voting or refund of money with interest with reference to the provisions of the Companies Act, 2013.

(RTP May 2016) (MTP NOV 2017)

Solution:

According to Section 50 of the Companies Act, 2013,

- (i) a company may, if so authorized by the Articles, accept from any member, the whole or a part of the amount remaining unpaid on any shares by him, even if no part of that amount has been called up.

The amount so received or accepted is described as payment in advance of calls.

(ii) When a company receives payment in advance of calls the shareholder is not entitled to voting rights in respect of the moneys so paid by him until the same would, but for such payment, become presently payable [Section 50]).

Conclusion: Therefore, according to the above provisions: -

Sujeev is not entitled to vote in respect of the moneys so paid by him until the same would, but for such payment, become presently payable.

As per the provisions of law, the amount received in advance of calls is not refundable. However, Sujeev is entitled to claim interest on the amount of the call to the extent payable according to the Articles of Association. If there are no profits, it must be paid out of capital, because shareholder becomes the creditor of the company in respect of this amount.

Section 52 Application of shares at premium

6. Navni Ltd. has accumulated a significant amount in its securities premium account. The company is considering different ways to utilize these funds. Advise the directors of the company on the application of the securities premium account as per the provisions of the Companies Act, 2013. (MTP Sept 24),or

Walnut Limited has an authorized share capital of 1,00,000 equity shares of ₹ 100 per share and an amount of ₹ 3 crores in its Share Premium Account as on 31-3-2018. The Board of Directors seeks your advice about the application of share premium account for its business purposes. Please give your advice.(RTP MAY 2019),or State the purposes for which the securities premium account can be utilized?

(5 Marks) (MTP Sep. 23)

Solution :

Application of Premium received on Issue of Shares

The provisions of the Companies Act, 2013, allow the companies to apply securities premium account for:

- a. Issue of fully paid bonus shares;
- b. Writing off the preliminary expenses;
- c. Writing off the issue expenses (expenses including commission paid or discount allowed on any issue of shares or debentures);
- d. Premium payable on the redemption (of any preference shares or of any debentures); or
- e. Buy-back (purchase of its own shares or other securities under section 68).

Section 54 Sweat Equity Shares

7. Alpha Limited (listed on Stock Exchange) was incorporated on 1st October, 2019 with a paid-up share capital of ₹ 200 crore. Within this small time of 4 months, it has earned huge profits and has topped the charts for its high employee friendly environment. The company wants to issue sweat equity to its employees. A friend of the CEO of the company has told him that they cannot issue sweat equity shares as 5 years have not elapsed since the time company has commenced its business. The CEO of the company has approached you to advise them about the essential conditions to be fulfilled before the issue of sweat equity shares especially since their company is just a few months old?

(MTP Jan 25)(RTP MAY 2019) (MTP MAY 2019) (MTP MAY 2020) (MTP Nov 24) (5 Marks)

Solution:

Law : Sweat equity shares are the shares that are issued by a company to its employees or directors at a discount or for consideration, other than cash. These shares are given as a reward for their contribution to the company's growth, such as providing intellectual property, technical expertise, or other valuable services. The holders of sweat equity shares shall rank pari-passu with other equity shareholders.

The issuance of sweat equity shares is regulated under Section 54 of the Companies Act, 2013, along with the Companies (Share Capital and Debentures) Rules, 2014.

1. the issue is authorised by a special resolution passed by the company;
2. the resolution specifies the number of shares, the current market price, consideration, if any, and the class or classes of directors or employees to whom such equity shares are to be issued;
3. where the equity shares of the company are listed on a recognised stock exchange, the sweat equity shares are issued in accordance with the regulations made by the Securities and Exchange Board in this behalf and if they are not so listed, the sweat equity shares are issued in accordance with such rules as prescribed under Rule 8 of the Companies (Share and Debentures) Rules, 2014,
5. Maximum Ratio to Other equity capital - 25% of PAID-UP equity share capital (PUESC) of the Company at any time except in start up company it can be upto 50% for first 10 years
6. The sweat equity shares issued shall be locked in i.e non-transferable for a period of 3 years from the date of allotment.
7. The holders of sweat equity shares shall rank pari-passu with other equity shareholders.

Conclusion: In present case, Alpha Limited can issue sweat equity shares by following the conditions as mentioned above. It does not make a difference that the company is just a few months old. A friend of the CEO is incorrect as there is no provision in companies act or rules which deny companies to issue sweat equity shares after certain period from commencement of business

Section 54

8. XYZ Tech Solutions Limited is a growing technology company that has seen significant contributions from its employees and directors in the development of a ground breaking software product.

To reward these key contributors, the board proposed issuing sweat equity shares to certain employees and directors. XYZ Tech Solutions Limited already has issued ordinary equity shares but has never issued sweat equity shares before.

The company has a paid-up equity share capital ₹ 20 crore. The company has proposed to issue sweat equity shares worth ₹ 4 crore of face value. The company's board has drafted a special resolution outlining the proposed issuance of sweat equity shares and including specific details, such as the number of shares, the current market price, consideration (if any), and the classes of directors and employees eligible to receive the shares. The company has approached you to advise them about the issue of the said sweat equity shares, in line with the provisions of the Companies Act, 2013.

(RTP Jan 25)**Solution:**

Law : Law similar to above question

Conclusion: In the given question, the company has proposed to issue sweat equity shares to the tune of ₹ 4 crore. However, the maximum limit to which it can issue such shares is- Higher of:

- a. 15% of the issued paid up share capital, i.e. ₹ 3 crore, or
- b. 5 crore

Thus, company can issue sweat equity shares to the tune of ₹ 5 crore. However, the company cannot issue such shares more than 25% of the paid-up equity capital= 25% of ₹ 20 crore= ₹ 5 crore.

Hence, the company can issue sweat equity shares of ₹ 4 crore.

Section 54

9. Innovative Ltd. is a start-up by a few qualified professionals, which was incorporated in 2014. The Company is booming and favoring the younger generation to work. The Capital Structure of the Company is as follows:

Particulars	I N R (Crores)
Authorised Share Capital 100,00,000 Equity Shares of ₹ 10 Each	10
Issued, Subscribed and Paid-up Share Capital 50,00,000 Equity Shares of ₹ 10 Each	5
Share Premium	1

General Reserve	3.52
Profit & Loss Account	1.58

The company decided to issue 30% sweat equity shares to a class of directors and permanent employees to keep them motivated and partner in growth. Lock-in period for sweat equity will be five years. For this purpose, a resolution in General meeting of Company was passed in this manner.

Solution:

"The Resolution specifies 15 lakh sweat equity shares, Current Market price! 25 per share with a consideration of rs 5 per share to be issued to a class of directors and employees."

The company seeks your advice with reference to the provision of issue of sweat equity shares company under the Companies Act, 2013.

- (i) Whether size of issue of sweat equity shares was appropriate?
- (ii) Whether lock-in period was justifiable? 6 Marks (May 23)

Law : Sweat equity shares are the shares that are issued by a company to its employees or directors at a discount or for consideration, other than cash. These shares are given as a reward for their contribution to the company's growth, such as providing intellectual property, technical expertise, or other valuable services. The holders of sweat equity shares shall rank pari-passu with other equity shareholders.

The issuance of sweat equity shares is regulated under Section 54 of the Companies Act, 2013, along with the Companies (Share Capital and Debentures) Rules, 2014.

Maximum Limit: To prevent excessive dilution of ownership, the law imposes certain limits on the amount of sweat equity shares a company can issue. As per Sub-rule 4 of the Companies (Share Capital and Debentures) Rules, 2014, a company can issue sweat equity shares within the following limits:

- i) **Annual Limit:**The company can issue sweat equity shares up to the higher of the 15% of the existing paid-up equity share capital, or Shares worth ₹ 5 crore.
- ii) **Overall Limit:** At any point in time, the total sweat equity shares issued (including all previous issues) cannot exceed 25% of the total paid-up equity share capital of the company. Except 50% for start up company upto 10 years
- iii) **Lock in period -** The sweat equity shares issued shall be locked in i.e non- transferable for a period of 3 years from the date of allotment.

Conclusion:

In present case ,

- (i) Company wants to issue 30% equity shares of rs 10 which is 15 lakh shares of rs 10 each at rs 5 which is of 1.5 cr (allowed within the maximum sweat equity share limit of 5 cr in a year), also it is a start up company so they can have ratio to total paid up equity upto 50% for first 10 years , so considering both the factors size of equity shares is appropriate
- (ii) Lock in period of 5 years is not justified as mximum lock in period can be upto 10 years

Section 54

10. One X Ltd., a technology-based company, has a paid-up equity share capital of ₹ 40 crore.

The company previously issued sweat equity shares worth on ₹ 8 crore and now plans to issue an additional ₹ 7 crore this year.

Describe sweat equity shares, and to whom are they issued? What is the overall maximum limit to issue sweat equity share, and does the proposed issuance exceed the limit?

(MTP May 25)

Solution:

Law: Law same like above question except lock in period

Conclusion: In the present case the paid-up share capital of the company is ₹ 40 crore. The company has previously issued sweat equity shares worth ₹ 8 crore and now plans to issue ₹ 7 crore more this year. So according to annual limit imposed, 15% of ₹ 40 crore is ₹ 6 crore. The fixed limit is ₹ 5 crore. So considering the higher value in the current financial year, company can issue up to ₹6 crore in sweat equity shares.

Secondly, as per the overall limit imposed to issue sweat equity shares is 25% of Paid-Up Capital. So 25% of ₹ 40 crore is ₹ 10 crore. Previously the company issued sweat equity shares worth ₹ 8 crore. Since the company has already issued ₹ 8 crore worth of sweat equity shares, it cannot issue more than ₹ 2 crore under the 25% overall limit.

However, according to the annual limit, the company can issue shares worth ₹ 6 crore, but can issue further more upto ₹ 2 crore in sweat equity shares while staying within overall legal limits.

Yes, proposal to issue an additional ₹ 7 crore this year exceed the limits. Hence if the company wants to issue more sweat equity shares, it will have to increase its paid-up equity share capital to expand the permissible limit.

Section 55 Redemption of Preference Shares

11. Vardha Ltd., a textile company, had issued 5,00,000 preference shares of ₹ 100 each in 2015, which are now due for redemption in 2025. The company has retained earnings of ₹ 3 crore and free reserves of ₹ 2 crore.

Being an expert, you are asked to recommend possible options that the management can avail as regard redemption of shares according to the provisions of the Companies Act, 2013?

(MTP May 25)

Solution:

Law: The redemption of preference shares is governed by Section 55(2) of the Companies Act, 2013, which outlines specific conditions for redemption and payment of premium on redemption, if any. In the given case, the company can redeem the preference shares out of the following sources:

1. Out of profits that would otherwise be available for dividend distribution.

2. From the proceeds of a fresh issue of shares, specifically made for the purpose of redemption.
3. Where such shares are proposed to be redeemed out of the profits of the company, there the sum to be redeemed, shall be transferred to a reserve, called Capital Redemption Reserve (CRR). The Capital Redemption Reserve (CRR) is a mandatory reserve that must be created when preference shares are redeemed using profits or free reserves. The amount to be transferred to CRR should be equal to the nominal value of the shares redeemed.
4. However, if the company issues fresh equity shares to fund the redemption, it is not required to create a CRR since the redemption is backed by new capital inflow. Once created, the CRR is treated with the same sanctity as paid-up share capital.

Conclusion: Since the company has retained earnings of ₹ 3 crore and free reserves of ₹ 2 crore, it can opt for redemption from these sources. Alternatively, it can issue new equity shares to raise funds for redemption. Hence in the present case, the company has two options, firstly if it redeems shares using profits and reserves, it must transfer ₹ 5 crore to CRR and secondly if it issues fresh equity shares, it does not need to create CRR.

Section 55

12. Due to insufficient profits, Silver Robotics Limited is unable to redeem its existing preference shares amounting to ₹ 10,00,000 (10,000 preference shares of ₹ 100 each) though as per the terms of issue they need to be redeemed within next two months. It did not, however, default in payment of dividend as and when it became due. What is the remedy available to the company in respect of outstanding preference shares as per the Companies Act, 2013?

(Module)

Solution:

Law: Renewal of Preference shares

According to section 55(3) of the Companies Act, 2013,

- (i) where a company is not able to redeem any preference shares or to pay dividend, if any, on such shares in accordance with the terms of issue (such shares hereinafter referred to as unredeemed preference shares), it may—
 - i. with the consent of the holders of three-fourths in value of such preference shares, and
 - ii. with the approval of the Tribunal on a petition made by it in this behalf, issue further redeemable preference shares equal to the amount due, including the dividend thereon, in respect of the unredeemed preference shares, and on the issue of such further redeemable preference shares, the unredeemed preference shares shall be deemed to have been redeemed
- (ii) Provided that the Tribunal shall, while giving approval under this sub-section, order the redemption forthwith of preference shares held by such persons who have not consented to the issue of further redeemable preference shares.

Conclusion: In view of the provisions of section 55 (3), Silver Robotics Limited can initiate steps for the issue of further redeemable preference shares equal to the amount due i.e. ₹ 10,00,000. For this purpose, it shall obtain the consent of the holders of three-fourths in value of such preference shares and also seek approval of the Tribunal by making a petition. In case, there are certain preference shareholders who have not accorded their consent for the proposal of issuing further redeemable preference shares, the Tribunal may order the company to redeem forthwith such preference shares.

Accordingly, Silver Robotics Limited must be ready with sufficient funds for the redemption of preference shares held by those who have not consented.

On the issue of such further redeemable preference shares by the company, the unredeemed preference shares shall be deemed to have been redeemed

Section 56 Transfer and Transmission of Securities

13. Mr. A was having 500 equity shares of Open Sky Aircrafts Limited. Mr. B acquired these shares of the company from Mr. A but the signature of Mr. A, the transferor on the transfer deed was forged. The company registered the shares in the name of Mr. B by issuing share certificate. Mr. B sold 100 equity shares to Mr. C on the basis of share certificate issued by Open Sky Aircrafts Ltd. Mr. B and Mr. C are not having the knowledge of forgery. State the rights of Mr. A, Mr. B and Mr. C under the Companies Act, 2013.

(MTP MAY 2020)

Solution:

Law:

According to the Companies Act, 2013,

Where the company has registered the transferee as a member on the basis of a forged transfer, following shall be the consequences:

- (i) A forged transfer is nullity. It does not give the transferee (Mr. B) any title to the shares. The original owner can compel the company to restore his name on the ROM.
- (ii) The company shall cancel the share certificate issued to the transferee and remove the name of transferee from the ROM.
- (iii) Where the transferee has already transferred the shares to an innocent purchaser:
 - (a) They shall claim damages from the company. The company shall have right to recover damages from the person who had deposited the forged transfer deed.
 - (b) Instead new purchaser can directly sue person who has done forgery

Conclusion: A forged transfer is nullity. Therefore, if the company acts on a forged transfer and removes the name of the real owner (Mr. A) from the Register of Members, then the company is bound to restore the name of Mr. A as the holder of the shares and to pay him any dividends which he ought to have received (Barton v. North Staffordshire Railway Co.). In the above case, 'therefore, Mr. A has the right against the company to get the shares recorded in his name.

However, Mr. B and Mr. C being innocent purchaser can claim damages from the company. The company shall have right to recover damages from the person who had deposited the forged transfer deed or alternatively sue person who has done forgery

Section 58 Refusal of Transfer

14. Mr Nilesh has transferred 1000 shares of Perfect Ltd. to Ms. Mukta. The company has refused to register transfer of shares and does not even send a notice of refusal to Mr. Nilesh or Ms. Mukta respectively within the prescribed period. Discuss as per the provisions of the Companies Act, 2013, whether aggrieved party has any right(s) against the company for such refusal?

(RTP MAY 2018) (MTP MAY 2019) (MTP NOV 2019) (MAY 2018)

Solution:

Law: The problem as asked in the question is governed by Section 58 of the Companies Act, 2013 dealing with the refusal to register transfer and appeal against refusal.

- i) Under section 58 (4), if a public company without sufficient cause refuses to register the transfer of securities within a period of thirty days from the date on which the instrument of transfer is delivered to the company, the transferee may, within a period of sixty days of such refusal or where no intimation has been received from the company, within ninety days of the delivery of the instrument of transfer, appeal to the Tribunal.
- (ii) Section 58 (5) further provides that the Tribunal, while dealing with an appeal made under sub-section (4), may, after hearing the parties, either dismiss the appeal, or by order—
 - (a) direct that the transfer or transmission shall be registered by the company and the company shall comply with such order within a period of ten days of the receipt of the order; or
 - (b) direct rectification of the register and also direct the company to pay damages, if any, sustained by any party aggrieved;

Conclusion: In the present case Ms. Mukta can make an appeal before the tribunal and claim damages.

Section 61 Alteration of share capital

15. The Directors of Mars India Ltd. desire to alter capital clause of Memorandum of Association of their company. Advise them, under the provisions of the Companies Act, 2013 about the ways in which the said clause may be altered.

(MTP NOV 2019)

Solution:

Alteration of Capital

Under section 61 (1) a limited company having a share capital may, if authorised by its Articles, alter its Memorandum in its general meeting to:

- (i) increase its authorized share capital

- (ii) cancel shares which, at the date of the passing of the resolution in that behalf, have not been taken or agreed to be taken by any person, and diminish the amount of its share capital by the amount of the shares so cancelled
- (iii) consolidate and divide all or any of its share capital into shares of a larger amount than its existing shares;
- (iv) sub-divide its shares, or any of them, into shares of smaller amount than is fixed by the Memorandum; .

However, no consolidation and division which results in changes in the voting percentage of shareholders shall take effect unless it is approved by the Tribunal on an application made in the prescribed manner

- (v) convert all or any of its paid- up shares into stock and reconvert that stock into fully paid shares of any denomination.

Procedure

- (i) The capital clause of memorandum, if authorised by the Articles, shall be altered by passing an ordinary resolution
- (ii) Further, under section 64 where a company alters its share capital in any of the above-mentioned ways, the company shall file a notice in the Form No. SH-7 as per Rule 15 of the Companies (Share Capital and Debentures) Rules, 2014 with the Registrar, along with an altered memorandum within thirty days of alteration.

Section 61

16. Shenoy Limited is a company with an authorized share capital of 20,00,000 equity shares of ₹100 each. At the Annual General Meeting (AGM), the shareholders proposed to reduce the face value of each share from ₹100 to ₹10 and correspondingly increase the number of shares from 20 lakh to 2 crore, keeping the total authorized share capital unchanged. Analyse whether the request of the shareholders is considerable and if so, how can the company alter its share capital as per the provisions of the Companies Act 2013?

(RTP May 25) (RTP Nov 23)

Solution:

Law : According to section 61(1)(d) of the Companies Act, 2013 (the Act), a limited company having a share capital may, if so authorised by its articles, alter its memorandum in its general meeting to sub-divide its shares, or any of them, into shares of smaller amount than is fixed by the memorandum, so, however, that in the sub-division the proportion between the amount paid and the amount, if any, unpaid on each reduced share shall be the same as it was in the case of the share from which the reduced share is derived.

Procedure

- (i) The capital clause of memorandum, if authorised by the Articles, shall be altered by passing an ordinary resolution

- (ii) Further, under section 64 where a company alters its share capital in any of the above-mentioned ways, the company shall file a notice in the Form No. SH-7 as per Rule 15 of the Companies (Share Capital and Debentures) Rules, 2014 with the Registrar, along with an altered memorandum within thirty days of alteration.

Conclusion: In the given situation, shareholders of Shenoy Limited, in the AGM requested the company to reduce the face value of each share (from ₹ 100 to ₹ 10) and increase the number of shares than fixed by the memorandum (i.e. from 20 Lakh to 2 crore).

According to the above provision, Shenoy Limited, having authorized capital of 20,00,000 equity shares (face value ₹ 100 each) can reduce the face value of each share to ₹ 10 each and increase the shares to 2,00,00,000 [thereby keeping the total amount of authorized share capital to ₹ 20,00,00,000], if authorised by the articles of association. Hence, the request of the shareholders can be considered.

The company has to alter its memorandum in its general meeting as per the procedure contained in section 13 of the Companies Act, 2013 and give notice to the Registrar along with an altered memorandum.

Section 62 Right Issue

17. VRS Company Ltd. is holding 45% of total equity shares in SV Company Ltd. The Board of Directors of SV Company Ltd. (incorporated on January 1, 2019) decided to raise the share capital by issuing further equity shares. The Board of Directors resolved not to offer any shares to VRS Company Ltd., on the ground that it was already holding a high percentage of the total number of shares issued by SV Company Ltd. The Articles of Association of SV Company Ltd. provided that the new shares should first be offered to the existing shareholders of the company. On March 1, 2019 SV Company Ltd. offered new equity shares to all the shareholders, except VRS Company Ltd. Referring to the provisions of the Companies Act, 2013 examine the validity of the decision of the Board of Directors of SV Company Ltd. of not offering any further shares to VRS Company Limited.

(Module)

Solution:

Law : The legal issues involved herein are covered under Section 62 (1) of the Companies Act, 2013.

Section 62 (1) (a) of the Companies Act, 2013 provides that if, at any time, a company having a share capital proposes to increase its subscribed capital by issue of further shares, such shares should first be offered to the existing equity shareholders of the company as at the date of the offer, in proportion to the paid-up capital on those shares. Hence, the company cannot ignore a section of the existing shareholders and must offer the shares to the existing equity shareholders in proportion of their holdings.

Conclusion: As per facts of the case, the Articles of SV Company Ltd. provide that the new shares should first be offered to the existing shareholders. However, the company offered new shares to all shareholders excepting VRS Company Ltd., which held a major portion of its equity shares. It is to be noted that under the Companies Act, 2013, SV Company Ltd. did not have any legal authority to do so.

Therefore, in the given case, decision of the Board of Directors of SV Company Ltd. not to offer any further equity shares to VRS Company Ltd. on the ground that VRS Company Ltd. already held a high percentage of shareholding in SV Company Ltd. is not valid. Such a decision violates the provisions of section 62 (1) (a) as well as Articles of the issuing company

Section 62

18. Earth Ltd., a Public Company offer the new shares (further issue of shares) to persons other than the existing shareholders of the Company. Explain the conditions when shares can be issued to persons other than existing shareholders. Discuss whether these shares can be offered to the Preference Shareholders?

(RTP NOV 2018)

Solution:

Issue of Further Shares:

Section 62 (1) (a) of the Companies Act, 2013 provides that if, at any time, a company having a share capital proposes to increase its subscribed capital by the issue of further shares, such shares should be offered to the existing equity shareholders of the company as at the date of the offer, in proportion to the capital paid up on those shares.

However, certain exceptions have been provided in the Companies Act, 2013 when such further shares of a company may-be offered to other persons as well. These are as under-

- a. Under section 62 (1) (b) issue of further shares may be offered to employees under a scheme of employees' stock option subject to a special resolution passed by the company and subject to such conditions as may be prescribed.
- b. Under section 62 (1) (c) such shares may be offered to any persons, if it is authorised by a special resolution, either for cash or for a consideration other than cash, if the price of such shares is determined by the valuation report of a registered valuer,
- c. if any shareholder to whom the shares are offered in terms of section 62 (1) (a) as described above, declines such offer, the Board of Directors may dispose of the shares in such manner as is not disadvantageous to the shareholders or to the company.

Preference Shareholders: From the wordings of Section 62 (1) (c), it is quite clear that these shares can be issued to any persons who may be preference shareholders as well provided such issue is authorized by a special resolution of the company and are issued on such conditions as may be prescribed.

Section 62

19. Mr. Shashidhar holding shares in Green Ltd., wants to renounce the right issue offer in favour of Mr. Tuli. However, Mr. Tuli is currently not holding any share in Green Ltd. Analyse the given situation in the light of the provisions of the Companies Act, 2013.

(MTP NOV 2017)**Solution:**

Law: According to section 62(1)(a)(ii), where at any time, a company having a share capital proposes to increase its subscribed capital by the issue of further shares, such shares shall be offered to persons who, at the date of the offer, are holders of equity shares of the company in proportion, to the paid-up share capital on those shares by sending a letter of offer.

The offer aforesaid shall be deemed to include a right exercisable by the person concerned to renounce the shares offered to him or any of them in favour of any other person member or not; and the notice referred to in clause (i) of section 62(1)(a) shall contain a statement of this right, unless the articles of the company otherwise provide.

Conclusion: Therefore, Mr. Shashidhar can renounce the shares offered to him in rights issue in favour of Mr. Tuli unless the articles provide otherwise.

Section 62

20. Dhyan Dairy Ltd., a dairy products manufacturing company wants to set-up a new processing unit at Udaipur. Due to paucity of funds, the existing shareholders are not willing to fund for expansion. Hence, the Company approached Shayam Ltd. for subscribing to the shares of the Company for expansion purposes. Can Dhyan Dairy Ltd. issue shares only to Shayam Ltd. under the provisions of the Companies Act, 2013? If so, state the conditions.

(MTP MAY 2018)**Solution :****Law:**

According to Section 62 (1) of the Companies Act, 2013 if at any time, a company having a share capital proposes to increase its subscribed capital by the issue of further shares, such shares should be offered to –

- (i) the existing equity shareholders of the company as at the date of the offer, in proportion to the capital paid up on those shares.
- (ii) employees under a scheme of employees' stock option subject to a special resolution passed by the company and subject to such conditions as may be prescribed.
- (iii) to any persons, if it is authorised by a special resolution, whether or not those persons include the persons referred to in clause (i) or clause (ii), either for cash or for a consideration other than cash, if the price of such shares is determined by the valuation report of a registered valuer subject to such conditions as may be prescribed.

Conclusion: Since, in the given case Dhyam Dairy Ltd. approached Shayam Ltd. for subscribing to the shares of the company for its expansion and Shayam Ltd. is neither an existing equity shareholder of the company nor an employee, Dhyam Dairy Ltd., if it is authorised by a special resolution, may issue shares to Shayam Ltd. either for cash or for a consideration other than cash, subject to the condition that the price of such shares is determined by the valuation report of a registered valuer.

Section 62

21. Examine the validity of these allotments in the light of the provisions of the Companies Act, 2013 Mars India Ltd. owed to Sunil Rs.1,000. On becoming this debt payable, the company offered Sunil 10 shares of Rs.100 each in full settlement of the debt. The said shares were fully paid and were allotted to Sunil.

(MTP NOV 2018)

Solution :

Law: Under section 62 (1) (c) of the Companies Act, 2013 where at any time, a company having a share capital proposes to increase its subscribed capital by the issue of further shares, either for cash or for a consideration other than cash, such shares may be offered to any persons, if it is authorised by a special resolution and if the price of such shares is determined by a valuation report of a registered valuer, subject to the compliance with the applicable provisions of Chapter III and any other conditions as may be prescribed.

Conclusion: In the present case, Mars India Ltd is empowered to allot the shares to Sunil in settlement of its debt to him. The issue will be classified as issue for consideration other than cash must be approved by the members by a special resolution. Further, the valuation of the shares must be done by a registered valuer, subject to the compliance with the applicable provisions of Chapter III and any other conditions as may be prescribed.

Section 63 Bonus shares

22. Surya Ltd. is engaged in the manufacture of consumer goods and has got a good brand value. Over the years, it has built a good reputation and its Balance Sheet as at March 31, 2019 shows the following position:

- Authorized Share Capital (25,00,000 equity shares of face value of ₹ 10/- each) ₹ 2,50,00,000
- Issued, subscribed and paid-up capital (10,00,000 equity shares of face value of ₹10/- each, fully paid-up) ₹ 1,00,00,000
- Free Reserves ₹ 3,00,00,000

The Board of Directors are proposing to declare a bonus issue of 1 share for every 2 shares held by the existing shareholders. The Board wants to know the conditions and the manner of issuing bonus shares under the provisions of the Companies Act, 2013. Discuss.

(RTP NOV 2020) (RTP MAY 2021) (MTP MAY 2018) (MTP May 24)

Solution:

Law: According to section 63 of the Companies Act, 2013, a company may issue fully paid-up bonus shares to its members, in any manner whatsoever, out of:

- (i) its free reserves;
- (ii) the securities premium account; or
- (iii) the capital redemption reserve account.

Provided that no issue of bonus shares shall be made by capitalising reserves created by the revaluation of assets.

Conditions for issue of Bonus Shares: No company shall capitalise its profits or reserves for the purpose of issuing fully paid-up bonus shares, unless—

- (i) it is authorised by its Articles;
- (ii) it has, on the recommendation of the Board, been authorised in the general meeting of the company;
- (iii) it has not defaulted in payment of interest or principal in respect of fixed deposits or debt securities issued by it;
- (iv) it has not defaulted in respect of payment of statutory dues of the employees, such as, contribution to provident fund, gratuity and bonus;
- (v) the partly paid-up shares, if any, outstanding on the date of allotment, are made fully paid-up;
- (vi) it complies with conditions as are prescribed by Rule 14 of the Companies (Share Capital and debentures) Rules, 2014 which states that the company which has once announced the decision of its Board recommending a bonus issue, shall not subsequently withdraw the same.

Further, the company has to ensure that the bonus shares shall not be issued in lieu of dividend.

Conclusion: For the issue of bonus shares surya ltd will require reserves of ₹ 50,00,000 (i.e. half of ₹ 1,00,00,000 being the paid-up share capital), which is readily available with the company. Hence, after following the above conditions relating to the issue of bonus shares, the company may proceed for a bonus issue of 1 share for every 2 shares held by the existing shareholders.

Section 63

23. ABC Ltd. has following balances in their Balance Sheet as on 31st March, 2018:

- | | |
|---|------------|
| 1. Equity shares capital (3.00 lakhs equity shares of ₹10 each) | 30.00 lacs |
| 2. Free reserves | 5.00 lacs |
| 3. Securities Premium Account | 3.00 lacs |
| 4. Capital redemption reserve account | 4.00 lacs |
| 5. Revaluation Reserve | 3.00 lacs |

Directors of the company seeks your advice in following cases:

- (i) Whether company can give bonus shares in the ratio of 1:3?
- (ii) What if company decide to give bonus shares in the ratio of 1:2?

(NOV 2018)

Solution :

Law: Same like above questions

Conclusion: As per the given facts, ABC Ltd. has total eligible amount of ₹12 lakhs (i.e. 5.00+3.00+4.00) out of which bonus shares can be issued and the total share capital is ₹ 30.00 lakhs.

Accordingly:

- (i) For issue of 1:3 bonus shares, there will be a requirement of ₹ 10 lakhs (i.e., $1/3 \times 30.00$ lakh) which is well within the limit of available amount of ₹ 12 lakhs. So, ABC Limited can go ahead with the bonus issue in the ratio of 1:3.
- (ii) In case ABC Limited intends to issue bonus shares in the ratio of 1:2, there will be a requirement of ₹ 15 lakhs (i.e., $1/2 \times 30.00$ lakh). Here in this case, the company cannot go ahead with the issue of bonus shares in the ratio of 1:2

Section 66 Reduction and Alteration

24. The Authorized share capital of SSP Limited is ₹ 5 crore divided into 50 Lakhs equity shares of ₹ 10 each. The Company issued 30 Lakhs equity shares for subscription which was fully subscribed. The Company called so far ₹ 8 per share and it was paid up. Later on the Company proposed to reduce the Nominal Value of equity share from ₹ 10 each to ₹ 8 each and to carry out the following proposals:

- (i) Reduction in Authorized Capital from ₹ 5 crore divided into 50 Lakhs equity shares of ₹ 10 each to ₹ 4 crore divided into 50 Lakhs equity shares of ₹ 8 each.
- (ii) Conversion of 30 Lakhs partly paid-up equity shares of ₹ 8 each to fully paid up equity shares of ₹ 8 each there by relieving the shareholders from making further payment of ₹ 2 per share. State the procedures to be followed by the Company to carry out the above proposals under the provisions of the Companies Act, 2013.

(MTP MAY 21)(5 Marks)

Solution :

- (i) Reduction in Authorized Capital from ₹ 5 crore divided into 50 Lakhs equity shares of ₹ 10 each to ₹ 4 crore divided into 50 Lakhs equity shares of ₹ 8 each. – is alteration of share capital so follow procedure of sec 61(refer book)
- (ii) Conversion of 30 Lakhs partly paid-up equity shares of ₹ 8 each to fully paid up equity shares of ₹ 8 each there by relieving the shareholders from making further payment of ₹ 2 per share. – It is reduction of share capital so follow procedure of sec 66 which is as follows-
 - (i) Special Resolution -The reduction in share capital shall be made only by passing a Special Resolution.
 - (ii) Application to Tribunal -The reduction in share capital shall be subject to confirmation by the Tribunal on an application by the company.
 - (iii) Representation from CG, ROC, Creditors - The Tribunal shall give notice of every application made to it;
 - a. to the Central Government (power delegated to Regional Directors)

- b. to the Registrar and
 - c. to the Securities and Exchange Board, in the case of listed companies, and
 - d. the creditors of the company
- (iv) Time limit for representation -Tribunal shall consider the representations (if any) made by them within a period of three months from the date of receipt of the notice.
- (v) Order of Tribunal - Tribunal when satisfied that The debt or claim of every creditor of the company has been either discharged, determined , secured or consent is obtained and accounting treatment, proposed by the company for such reduction is in conformity with the accounting standards specified in Section 133 makes a order confirming reduction on terms and conditions deems fit.
- (vi) Deliver NCLT's order with Roc within 30 days of receipt of copy of order. (vii)Registrar on receipt, shall register the same and issue a certificate to that effect

Section 67 Prohibition for financial assistance

25. K Limited, a subsidiary of Old Limited, decides to give a loan of ₹ 4,00,000 to the Human Resource Manager, who is not a Key Managerial Personnel of K Limited, drawing salary of ₹ 30,000 per month, to buy 500 partly paid-up equity Shares of ₹ 1000 each in K Limited. Examine the validity of company's decision under the provisions of the Companies Act, 2013.

(RTP MAY 2020) (MTP NOV 2018) (MTP NOV 2020)

Solution:

Law: As per section 67 (3) of the Companies Act, 2013 a company is allowed to give a loan to its employees subject to the following limitations:

- (a) The employee must not be a Key Managerial Personnel;
- (b) The amount of such loan shall not exceed an amount equal to six months' salary of the employee.
- (c) The shares to be subscribed must be fully paid shares.

Conclusion: In the given instance, Human Resource Manager is not a Key Managerial Personnel of the K Ltd. He is drawing salary of ₹ 30,000 per month and took loan taken to buy 500 partly paid up equity shares of ₹ 1000 each in K Ltd.

Keeping the above provisions of law in mind, the company's (K Ltd.) decision is invalid due to two reasons:

- (a) The amount of loan being more than 6 months' salary of the HR Manager, which should have restricted the loan to ₹ 1.8 Lakh.
- (b) The shares subscribed are partly paid shares whereas the benefit is available only for subscribing fully paid shares.

Section 67

26. Heavy Metals Limited wants to provide financial assistance to its employees, to enable them to subscribe for certain number of fully paid shares. Considering the provision of the Companies Act, 2013, what advice would you give to the company in this regard?

(RTP NOV 2018) (MTP MAY 2017) (5 Marks) (MTP M 21)

Solution:

As per section 67 (3) of the Companies Act, 2013 a company is allowed to give a loan to its employees subject to the following limitations:

- (a) The employee must not be a Key Managerial Personnel;
- (b) The amount of such loan shall not exceed an amount equal to six months' salary of the employee.
- (c) The shares to be subscribed must be fully paid shares.

Section 67

27. Silk Segment Private Ltd. (SSPL) is a wholly owned subsidiary of Silk Block Ltd. (SBL), a listed public limited company. The Board of Directors of Silk Segment Private Ltd. have collectively decided upon the proposal to grant loans of ₹15,00,000 and ₹20,00,000 to Mr. Sohan and Ms. Subarna respectively for the purchase of fully paid-up shares in Silk Segment Private Ltd.

(3 + 2 = 5 Marks) (Jan25)

Mr. Sohan is the Deputy Marketing Manager of Silk Segment Private Ltd. with a monthly salary of ₹ 1,00,000; whereas Ms. Subarna, a qualified Chartered Accountant, is the Chief Financial Officer of Silk Segment Private Ltd. with a monthly salary of ₹2,00,000.

(Jan 25)

Solution:

In view of the provisions of the Companies Act, 2013, decide:

- (i) Whether the proposed loans to Mr. Sohan as well as Ms. Subarna can be disbursed by the company keeping in view that Silk Segment is a private limited company?
- (ii) Whether the answer would be different in case only 25% shares of SSPL are held by SBL?

Law:

- (i) No public company can give financial assistance to purchase
 - (a) Its shares or
 - (b) Of its holding company

Except Giving of loans by company to its employees (other than directors / KMP) for an amount not exceeding their 6 months of salary / wages.

Sec. 67 is not applicable to a private company satisfying the following conditions:

- (a) No other body corporate has invested any money in such company.
- (b) The borrowing of such private company from banks or financial institutions or anybody corporate is less than twice its paid up share capital or 50 crore; whichever is less.
- (c) Such company is not in default in repayment of such borrowings subsisting at the time of making transaction under Sec. 67.

Conclusion : In present case

- (i) As SSPL is pvt company who is wholly owned subsidiary of Silk Block Ltd. (SBL) a public limited company so it is deemed to be public company. Therefore, it cannot give loan of 15 lac to sohan as sohan's salary is 1 lac per month, so he can get maximum 6 months salary i.e upto 6 lac rs. Also, company cannot give loan of 20 lac rs to subarna of Rs 20 lac as subarna is CFO i.e KMP of company and company cannot give loan to its KMP.

- (ii) No, our answer would be same, Although only 25% shares of SSPL as now it will not be deemed to be public company, but sec 67 applies to private company in which a body corporate has invested any money so restriction of giving loan is not applicable to SSPL

Section 68 Buy back

28. Which fund may be utilized by a public limited company for purchasing (buy back) its own shares? Also explain the provisions of the Companies Act, 2013 regarding the circumstances in which a company is prohibited to buy back its own shares.

(MAY 2019)

Solution:

Funds utilized for purchase of its own securities: Section 68 of the Companies Act, 2013 states that a company may purchase its own securities out of:

- (i) its free reserves; or
- (ii) the securities premium account; or
- (iii) the proceeds of the issue of any shares or other specified securities.

However, buy-back of any kind of shares or other specified securities cannot be made out of the proceeds of an earlier issue of the same kind of shares or same kind of other specified securities.

Prohibition for buy-back in certain circumstances [Section 70]

- (1) The provision says that no company shall directly or indirectly purchase its own shares or other specified securities-
 - (a) through any subsidiary company including its own subsidiary companies; or
 - (b) through any investment company or group of investment companies; or
 - (c) if a default is made by the company in repayment of deposits or interest payment thereon, redemption of debentures or preference shares or payment of dividend to any shareholder or repayment of any term loan or interest payable thereon, to any financial institutions or banking company;

But where the default is remedied and a period of three years has lapsed after such default ceased to subsist, then such buy-back is not prohibited.
- (2) No company shall directly or indirectly purchase its own shares or other specified securities in case such company has not complied with provisions of Sections 92 (Annual Report), 123 (Declaration of dividend), 127 (Punishment for failure to distribute dividends), and section 129 (Financial Statements).

Section 68

29. "The offer of buy-back of its own shares by a company shall not be made within a period of six months from the date of the closure of the preceding offer of buy-back, if any and cooling period to make further issue of same kind of shares including allotment of further shares shall be a period of one year from the completion of buy back subject to certain exceptions." Examine the validity of this statement by explaining the provisions of the Companies Act, 2013 in this regard.

(MTP May 24)

Solution:

According to proviso to section 68(2) of the Companies Act, 2013, no offer of buy-back, shall be made within a period of one year from the date of the closure of the preceding offer of buy-back, if any.

Section 68 (8) casts an obligation that where a company completes a buy-back of its shares or other specified securities under this section, it shall not make further issue of same kind of shares including allotment of further shares under section 62 (1) (a) or other specified securities within a period of six months except by way of bonus issue or in the discharge of subsisting obligations such as conversion of warrants, stock option schemes, sweat equity or conversion of preference shares or debentures into equity shares.

Keeping in view of the above provisions, the statement “the offer of buy-back of its own shares by a company shall not be made within a period of six months from the date of the closure of the preceding offer of buy back, if any and cooling period to make further issue of same kind of shares including allotment of further shares shall be a period of one year from the completion of buy back subject to certain exceptions” is not valid.

Section 68

30. Xgen Limited has a paid-up equity capital and free reserves to the extent of ₹ 50,00,000. The company is planning to buy-back shares to the extent of ₹ 4,50,000. The company approaches you for advice with regard to the following
- Is special resolution required to be passed?
 - What is the time limit for completion of buy-back?
 - What should be ratio of aggregate debts to the paid-up capital-and free reserves after buy-back?

(MAY 2018)

Solution:

Law: According to sec 68, A company may purchase its own shares or other specified securities, if met with the following conditions, namely:

- The buy-back is authorised by its articles;
- A special resolution authorising the buy-back is passed in general meeting of the company
- A special resolution is not necessary where The buy-back is, not exceeding ten percent of the total paid-up equity capital and free reserves of the company; and Such buy-back has been authorised by the Board resolution passed at its meeting

Conclusion: In present case,

- Xgen Limited has a paid-up equity capital and free reserves to the extent of ₹ 50,00,000. The company is planning to buy-back shares to the extent of ₹ 4,50,000 i.e less than 10% so board resolution is required and not special resolution
- Every buy-back shall be completed within 1 year from the date of passing the special resolution or board resolution authorising the buy-back
- After the buyback, the ratio between the debts (secured and unsecured) owed by the company should not be more than twice the paid-up capital and free resources of the company

Section 68

31. XYZ Company Ltd, at general meeting of members of the company pass an ordinary resolution to buy-back 30% of its equity share capital. The Articles of the company empower the company for buy-back of equity shares. The company further decides that the payment for buy-back be made out of the proceeds of the company's earlier issue of equity shares. Explaining the provisions of the Companies Act, 2013, and stating the sources through which the buy-back of companies own shares be executed. Examine:

- (i) Whether company's proposal is in order?
- (ii) Would your answer be still the same in case the company instead of 30% decide to buy-back only 20% of its equity share capital?

Solution:

Law: According to sec 68, A company may purchase its own shares or other specified securities, if met with the following conditions, namely:

- (i) The buy-back is authorised by its articles;
- (ii) A special resolution authorising the buy-back is passed in general meeting of the company
- (iii) A special resolution is not necessary where The buy-back is, not exceeding ten percent of the total paid-up equity capital and free reserves of the company; and Such buy-back has been authorised by the Board resolution passed at its meeting
- (iv) A company may buy-back its own shares or other specified securities out of :
 - a) Free Reserves ; or
 - b) Securities Premium Account ; or
 - c) Proceeds of fresh issue of shares or other specified securities (but not of same kind of shares issued earlier)
 - d) Maximum Number of ES that can be bought back - = 25% of Total No. of ES

Conclusion: In Present case,

- (i) Company's proposal is not in order as company need special resolution instead of ordinary resolution and company cannot buy back more than 25% of Total No. of ES and third violation is that company decides that the payment for buy-back be made out of the proceeds of the company's earlier issue of equity shares however it can use fresh issue of shares
- (ii) In case the company instead of 30% decide to buy-back only 20% of its equity share capital even then company has violated with laws related to resolution and source of payment.