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CHAPTER

Share Capital and Debentures

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■ INTRODUCTION

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

The shares or debentures are movable property (sec 44)

What is a Stock?

- ❑ Shares are the smallest unit of ownership in a company, each with a fixed face value.
- ❑ When many fully paid-up shares are combined together into one lump sum, it becomes Stock.
- ❑ A company cannot issue stock directly. It can only be created by converting fully paid-up shares into stock.
- ❑ Stock can also be reconverted into fully paid-up shares of any denomination.
- ❑ For procedure related to stock refer section 61(1)(c) which says:
 - AOA authorisation is required
 - Shareholder's approval through OR in GM
 - Notice to be sent to ROC in form MGT-7
 - It leads to change in share capital structure.
 - Change in Register of members under section 88 but the rights remain the same.

Issue stock certificates instead of share certificates.

■ SECTION 43 - KINDS OF SHARE CAPITAL

Share capital shall be of 2 kinds, namely:

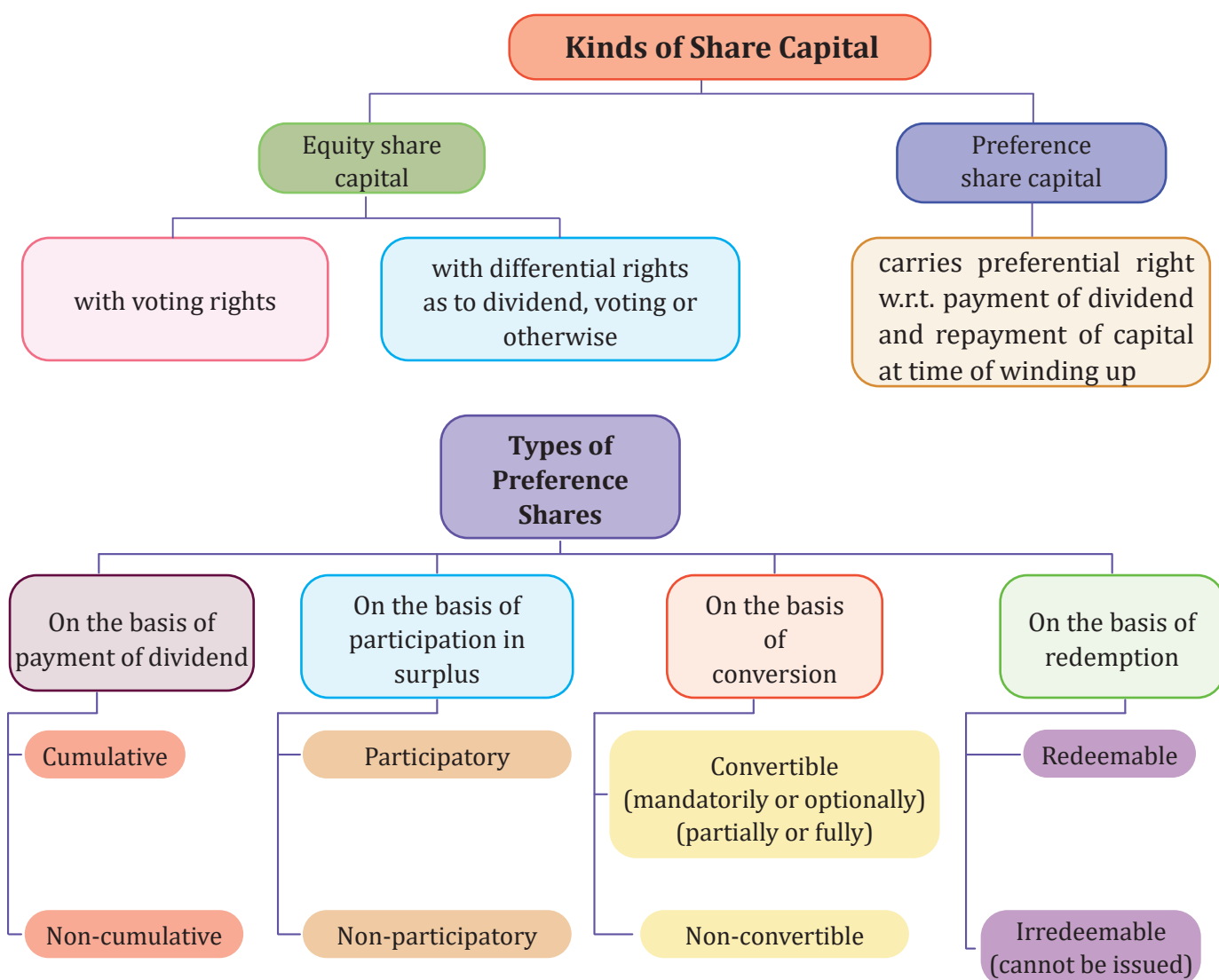
- (a) Equity share capital with
 - i. Voting rights (**Normal equity shares**); or
 - ii. Differential rights as to dividend, voting
- (b) Preference share capital.

Non Applicability of Section 43

Section 43 shall NOT be applicable to – (Only if no default in section 137 and 92 related to filing of financial statements and Annual return respectively)

1. Private company whose MOA/AOA so provides.
2. IFSC Public Co. whose MOA/AOA so provides.

■ 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	<ul style="list-style-type: none"> <input type="checkbox"/> Authorised in AOA → Pass B.R. <input type="checkbox"/> Equity shares are irredeemable in nature. It means redemption of equity shares is called as Buy Back of Equity Shares 	<ul style="list-style-type: none"> <input type="checkbox"/> S.R. No Subsisting default in redemption of Earlier PS. Max Redemption Period- 20 Years <input type="checkbox"/> 30 Years for infrastructure company (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 Note: By default Preference Shares will be Non Participating & Cumulative in nature.
4. Rights	<input type="checkbox"/> Have right to vote in every general meeting <input type="checkbox"/> Equity shareholders are entitled to bonus and right shares	<input type="checkbox"/> Votes on matters only related to them <input type="checkbox"/> Fixed Dividend <input type="checkbox"/> No rights on reserves of company <input type="checkbox"/> No right of Interim Dividend or <input type="checkbox"/> 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 Biotech 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 Biotech provides that the amount payable as preferential dividend may be calculated at a fixed rate @ 8 percent of the nominal value of each share.

MULTIPLE CHOICE QUESTIONS (MCQ)

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. 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.

4. 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.

5. 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>(a) Payment of declared dividend; or</p> <p>(b) Repayment of matured deposits or interest on deposits; or</p>

	<p>(c) Redemption of debentures or interest on it; or (d) Redemption of preference shares.</p> <p>(iv) The company has not defaulted in –</p> <p>(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.</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>(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 (e) Other special Act, under which such company is being regulated by sectoral regulators.</p>
<p>Other important Points</p>	<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>

MULTIPLE CHOICE QUESTIONS (MCQ)

6. 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

7. 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;

8. 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.

9. 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

SECTION 46: SHARE CERTIFICATE

Meaning	Share certificate is required when shares are issued in physical form. It is prima facie evidence that person named is true owner of shares. <div style="border: 1px solid #ccc; padding: 5px; margin-top: 10px;">Physical entitlement to a particular portion of SC is prima facie evidenced by way of a Share certificate</div>
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

	<p>(iii) Signed by a director and the company secretary, if any appointed by the company.</p> <p>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.</p> <p>3. The signature can be printed on the certificate or digitally signed but not affixed by means of rubber stamp.</p> <p>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.</p>
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.
Other Special Points (SH-1 Name, Shares and amount)	<p>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.</p> <p>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.</p>
Duplicate Share Certificate [Sec. 46(2) & Rule 6]	<p>1. A certificate may be renewed or duplicate of a certificate may be issued if such certificate:</p> <p>(i) Is proved to have been lost or destroyed; or</p> <p>(ii) Having been defaced, mutilated or torn is surrendered to the company.</p> <p>2. Time limits for issue of Duplicate Share Certificate;</p> <p>(i) Unlisted company: within 3 months of submission of documents to the company</p> <p>(ii) Listed company: within 45 days of submission of documents to the company.</p> <p>3. Register of renewed or duplicate share certificate:</p> <p>(i) Particulars to be entered in Form No. SH-2</p> <p>(ii) The Register shall be kept at registered office of the company</p> <p>(iii) Entries in register shall be authenticated by company secretary or other person authorised by board.</p>
	<p>4. Procedure of issue of duplicate share certificate;</p> <p>(i) Board's consent is required and mutilated/torn certificate must be surrendered to the company for cancellation.</p> <p>(ii) Company may charge fee but shall not exceed Rs. 50 per certificate.</p> <p>(iii) In case of lost or stolen certificate, there should be proper evidence of loss as well as indemnity.</p>

	(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	If a company intends to defraud issue of duplicate certificate- 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. Every officer in default: Liable for action u/s 447										
Some other important points	<input type="checkbox"/> Share certificate is not a negotiable instrument. <input type="checkbox"/> 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. <input type="checkbox"/> Time limit for delivery of Share certificates - <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%;">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>5 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 trans-mission</td> </tr> </table>	Subscribers	2 months of incorporation	Any shares	2 months of allotment	Any debentures	5 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 trans-mission
Subscribers	2 months of incorporation										
Any shares	2 months of allotment										
Any debentures	5 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 trans-mission										

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.

MULTIPLE CHOICE QUESTIONS (MCQ)

- 10.** 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.
- (a) 17th September, 2020.
(b) 30th September, 2020.
(c) **27th October, 2020.**
(d) 27th November, 2020.
- 11.** Which of the following is the prima facie evidence of the title of the person in respect of shares in a company?
- (a) The distinctive number of shares.
(b) The share certificate number.
(c) **A certificate issued under common seal and signatures of Directors of company specifying shares held by any person.**
(d) A letter of allotment issued by company.
- 12.** A duplicate certificate of shares of a company in lieu of lost or destroyed shall be issued in Form:
- (a) **SH-1**
(b) SH-2
(c) SH-5
(d) SH-9

13. A duplicate share certificate shall be issued in lieu of lost or destroyed certificate, provided:

- (a) The applicant furnishes supporting evidence and indemnity and pays the requisite fee fixed by company.
- (b) The Board authorises issue of duplicate certificate.

(c) Both (a) and (b)

(d) Either (a) or (b)

14. 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:

(a) 27th February, 2020

(b) 12th February, 2020

(c) 13th March, 2020

(d) 12th April, 2020

15. 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?

(a) 9th March, 2020

(b) 24th March, 2020

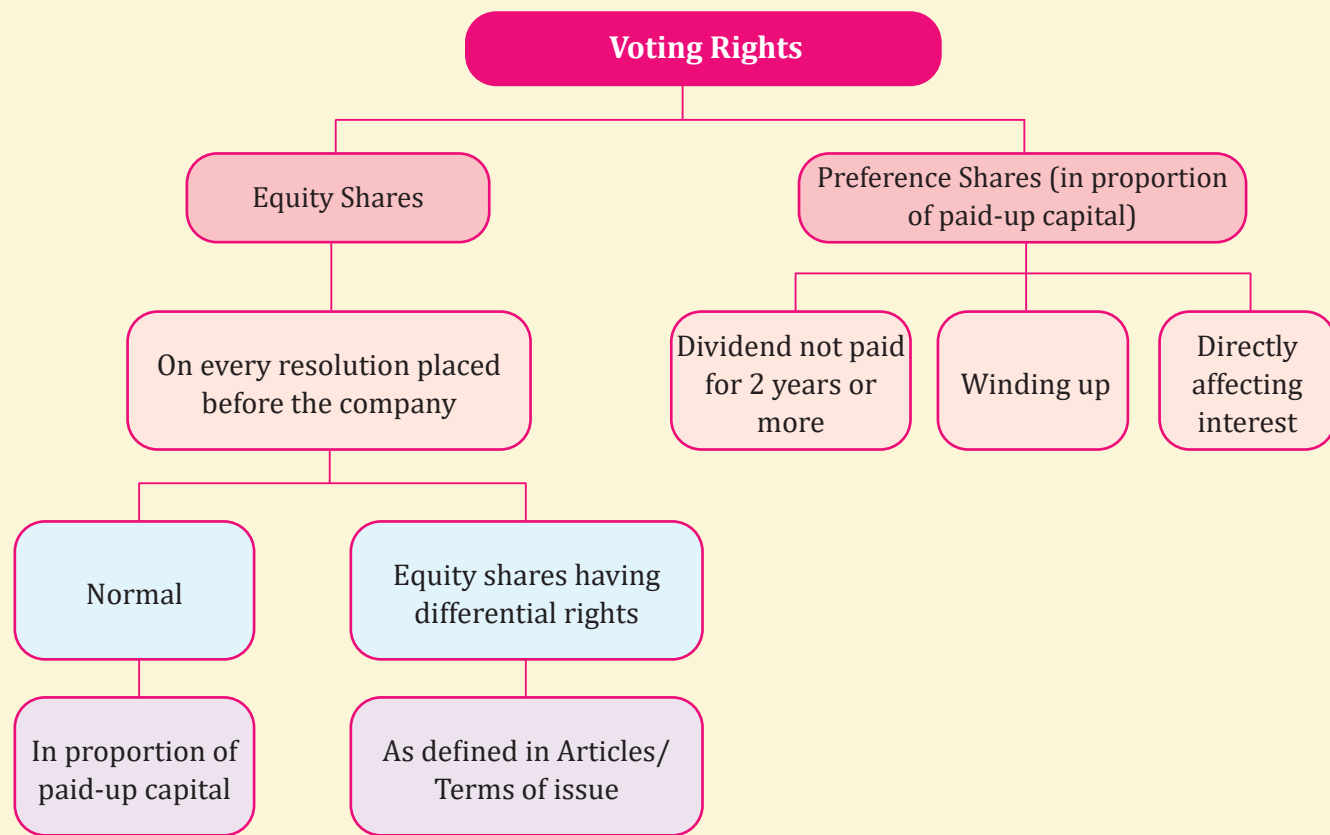
(c) 8th April, 2020

(d) 7th May, 2020

■ SECTION 47 - VOTING RIGHTS

Voting Rights of Equity shareholder [Sec. 47(1)]	<input type="checkbox"/> Show of Hand - 1 Member = 1 Vote <input type="checkbox"/> Poll - 1 Share = 1 Vote <input type="checkbox"/> 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. 7(2)]	Every preference shareholder shall have right to vote <ol style="list-style-type: none"> 1. On matter <ol style="list-style-type: none"> (a) Related to them, that directly affects their rights (b) Reduction of share capital (c) Winding up of the company 2. 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.

Summary of Section 47



Section 47 - Non Applicability to the Private Co./IFSC Public Co. whose MOA/AOA so provides

It means section 43 has overriding effect on section 47 - DVR will exercise voting right as per clauses of AOA or terms of issue and not proportional basis.

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 shareholders 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"> 1. 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. 2. 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.

MULTIPLE CHOICE QUESTIONS (MCQ)

- 16. 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
- 17. 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**
- 18. 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
- 19. 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% |
- 20. 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"> <input type="checkbox"/> Calls shall be made on a uniform basis on all shares falling under that class. <input type="checkbox"/> Once a call has been made it is due on the members to pay and company to receive <input type="checkbox"/> Max. call money = 25% of Face Value. <input type="checkbox"/> Min. gap between 2 calls = 1 months <p>Illustration - Q & A</p> <p>Where a shareholder paid the first two calls after a great delay and neglected to pay the third call and the directors, being annoyed, and called upon him to pay the whole amount due. In your opinion is call valid?</p> <p>Answer - A call can't be made on some of the members only, unless they constitute a separate class of shareholders, hence such a call shall be invalid.</p>
<p>Note</p>	<ul style="list-style-type: none"> <input type="checkbox"/> Usually share with same nominal value are considered as same class, but shares of the same nominal value on which different sums have been paid shall not be deemed, for this purpose, to fall under the same class <input type="checkbox"/> Example – 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. 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>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 - 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 extra-ordinary 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>

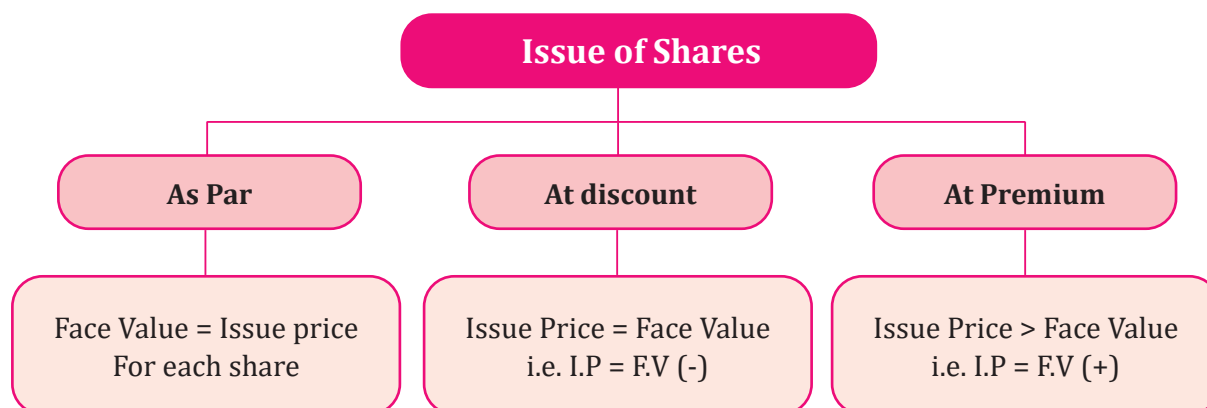
Note

- A shareholder on whom a regular call for payment has been served may choose to pay only a part of the sum due. Here it is important to consider the debt (of calls made) is not an entire and indivisible debt, therefore, the company may be bound to accept the amount tendered by the shareholder
- How much to call on partly-paid share? - This will be the decision of board, subject to clauses to Article and terms of issue.

MULTIPLE CHOICE QUESTIONS (MCQ)

- 21.** 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
- 22.** 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
- 23.** 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
- 24.** 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) 12% or (b) whichever is higher
 - (d) 12% or (b) whichever is lower
- 25.** 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

■ ISSUE OF SHARES



■ (SECTION 52) - ISSUE OF SHARES AT PREMIUM

Meaning	Issue of shares at amount more than face value.
Authorisation	No authorization required in the article to issue shares at premium.
Resolution required	Board Resolution
Other special points	<p>(i) No restriction on amount of premium</p> <p>(ii) Amount of premium should be transferred to 'Securities premium account'.</p> <p>(iii) The 'Securities Premium Account' can be used only for:</p> <p>[Mnemonic - B.COM expenses – Preliminary , Premium, BB]</p> <p>(a) Issue of fully paid bonus shares;</p> <p>(b) Writing off the preliminary expenses;</p> <p>(c) Writing off the issue expenses (expenses including commission paid or discount allowed on any issue of shares or debentures);</p> <p>(d) Premium payable on the redemption (of any preference shares or of any debentures); or</p> <p>(e) Buy-back (purchase of its own shares or other securities under section 68).</p> <p>Example: 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	<p>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:</p> <p>(i) Issuing bonus shares</p> <p>(ii) Writing off commission paid, expense, or discount allowed on, issue of equity shares.</p> <p>(iii) For buy-back of shares u/s 68.</p>

■ (SECTION 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.

■ (SECTION 54) READ 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)		
	For providing know	Making available rights in nature of intellectual right	Value addition
Authorization	Authorization is AOA is required		
Resolution required	(i) Issue of sweat equity shares must be authorised by passing Special Resolution (ii) The resolution passed must specify the following particulars (a) Number of shares (b) Current market price (c) Consideration, if any (d) Class of directors or employees to whom sweat equity shares are to be issued.		

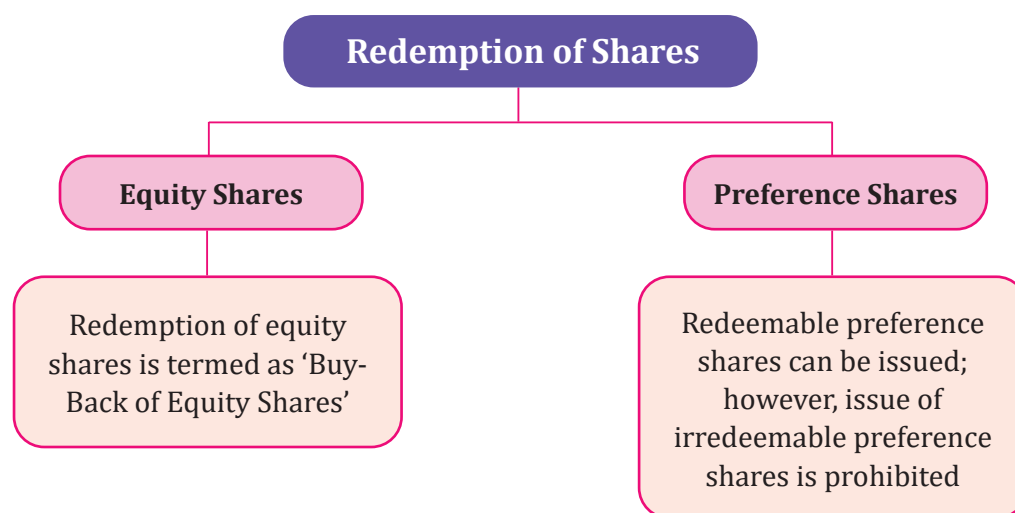
Other Special Points	Nature of shares	It must belong to class of shares already issued.
	Compliance of Rules	Listed companies – shall comply with regulations made by SEBI Unlisted companies – shall comply with rules prescribed by C.G.
	Conditions for issue of sweat equity shares	Sweat equity shares can be issued only to employee or directors. The expression employee means: (i) A permanent employee of the company who has been working in India or outside India, or (ii) A director of the company, whether whole time director or not; or (iii) An employee or a director as defined above of a subsidiary, in India or outside India, or of a holding company of the company.

(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.

MULTIPLE CHOICE QUESTIONS (MCQ)

26. 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
27. 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
28. 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.**
29. 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**
30. 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**
31. 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) 15% or (b) whichever is higher.
 - (d) 15% or (b) whichever is lower.
32. 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%
33. 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



■ SECTION 55 - REDEMPTION OF PREFERENCE SHARES

- (a) Sources of Redemption:
 - 1. Out of the Free Reserves or
 - 2. Out of the Fresh Issue Proceeds of shares made for the purposes of such redemption.
- (b) Fully paid up : Preference shares to be redeemed have to be fully paid up.
- (c) 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.
- (d) 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)

- (i) 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'.
- (ii) Conditions for further issue of redeemable preference shares:
 - (a) Consent of the holders of 3/4th in value of such preference shares; and
 - (b) Approval of the Tribunal on petition made on this behalf
 - (c) 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.
- (iii) On the issue of such shares, the unredeemed preference shares shall be deemed to have been redeemed (Deemed Redemption).
- (iv) This shall not mean increase (Section 61 – Alteration) or Reduction (Section 66 – Reduction) in the share capital of the company. (Not applicable)

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.

MULTIPLE CHOICE QUESTIONS (MCQ)

34. 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

35. 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

36. 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**

37. 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.

38. 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

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 Reserve Account	Prohibition of buy-back in certain circumstances

■ (SECTION 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 by trustees for or on behalf of company's employees in accordance of scheme [employee share scheme] approved by company passed by SR but value of shares < 5% (PSC+FR) and disclosure in Board Report is also required.
- (iii) Giving of loans by company to its employees (other than directors/KMP) for an amount not exceeding their 6 months of salary/wages for only fully paid up shares of Company or holding as well

Note:

1. 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.
2. Section 67 (1) shall not apply to Nidhi Companies,
 - (a) when shares are purchased by the company from a member on his ceasing to be a depositor or borrower and
 - (b) it shall not be considered as reduction of capital under section 66 of the Companies Act, 2013.
 - (c) While complying with such exception, the Nidhi Companies shall ensure that the interests of their shareholders protected.

■ (SECTION 68) - BUY-BACK OF EQUITY SHARES

What is Buy-back?	Buy back is the re-acquisition by a company of its own securities. It is a way of returning money to its investors. Section 68 contains provisions which describe the power of a company to purchase its own securities subject to the applicable conditions.
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?	The buy-back may be – <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:	A company may buy-back its own shares or other specified securities out of: <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)
Transfer to CRR – Section 69	<p>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</p> <div style="border: 1px solid black; padding: 5px; margin: 10px 0;"> <p style="text-align: center;">Section 69 - Transfer to CRR</p> <ul style="list-style-type: none"> <input type="checkbox"/> When BB is made out of SPA and FR <input type="checkbox"/> Nominal value of shares BB to CRR <input type="checkbox"/> Disclosure in BS <input type="checkbox"/> Only be used for only fully paid up Bonus shares </div>
	<p>Illustration - True/False <i>CRR can be used to issue partly paid bonus shares or finance discount portion of sweat equity shares.</i></p> <p>Answer- False, the capital redemption reserve account may be applied by the company, in paying up unissued shares of the company to be issued to members of the company as fully paid bonus shares.</p>

Authorisation for 'Buy-Back':	<p style="text-align: center; color: red;">Authorisation in the articles is required</p> <div style="display: flex; justify-content: space-around; align-items: center;"> <div style="border: 1px solid black; padding: 5px; text-align: center;"> If buy-back is upto 10% of paid up equity capital and free reserves ↓ Pass B.R </div> <div style="border: 1px solid black; padding: 5px; text-align: center;"> If more than 10% ↓ Pass B.R </div> </div>									
	<p>Illustration - True and False <i>Passing an ordinary resolution is sufficient where the buy-back is, not exceeding ten percent of the total paid-up equity capital and free reserves of the company.</i> Answer- False, such buy-back has to be authorised by the Board resolution passed as its meeting.</p>									
Limits/ Restrictions/ Conditions for Buy-back	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="padding: 5px;">Maximum Amount that can be spent on BB</td> <td style="padding: 5px;">= 25% of [PUESC + FR + SP]</td> </tr> <tr> <td style="padding: 5px;">Maximum Number of ES that can be bought back</td> <td style="padding: 5px;">= 25% of Total No. of ES</td> </tr> <tr> <td style="padding: 5px;">Maximum Debt/Equity Ratio after BB</td> <td style="padding: 5px;">= 2:1</td> </tr> <tr> <td style="padding: 5px;">For government companies providing housing finance services</td> <td style="padding: 5px;">= 6:1</td> </tr> </table> <p>(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.</p>		Maximum Amount that can be spent on BB	= 25% of [PUESC + FR + SP]	Maximum Number of ES that can be bought back	= 25% of Total No. of ES	Maximum Debt/Equity Ratio after BB	= 2:1	For government companies providing housing finance services	= 6:1
Maximum Amount that can be spent on BB	= 25% of [PUESC + FR + SP]									
Maximum Number of ES that can be bought back	= 25% of Total No. of ES									
Maximum Debt/Equity Ratio after BB	= 2:1									
For government companies providing housing finance services	= 6:1									

MULTIPLE CHOICE QUESTIONS (MCQ)

39. 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

Time limits – Buy-back

- (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.
- (b) **Completion of buy-back within 1 year of passing the resolution for buy-back.**
- (c) **Prohibition on further buy-back and issue**
 - (a) Gap between 2 buybacks at least 1 year
 - (b) The company shall not make further issue of same kind of shares within next 6 months except by way of
 - (i) Bonus shares; or
 - (ii) Issue of shares to discharge the existing obligations such as conversion of preference shares or debentures or warrants
- (d) **Declaration of Solvency**
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
- (e) **Extinction of shares:** The company shall extinguish and physically destroy the shares bought back within 7 days of completion of buy-back.
- (f) **Security bought back register:**
 - (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.
- (g) **Return of buy-back**
 - (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:
 - In listed companies – ROC and SEBI
 - In Unlisted Companies – ROC
 - (iii) Along with compliance declaration by 2 Directors (1 MD) in SH-15

Punishment for Contravention [Sub-section 11]

If a company contravenes the provisions of this section, the punishment shall be

Liabile	Minimum Fine	Maximum Fine
Company	One Lakh Rupee	Upto Three Lakh Rupee
Every officer of the company who is in default		

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.

■ (SECTION 70) - PROHIBITION OF BUY-BACK

Prohibition for buy-back whether directly/indirectly if-

- (i) 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. [D3 + I]
However, buy-back is not prohibited after 3 years of period when such default was made good.
- (ii) Not complied with the provision of-
 - (a) Sec. 92- Annual Return
 - (b) Sec. 123 – Dividend
 - (c) Sec. 127- payment of dividend
 - (d) Sec. 129- Financial statement
- (iii) Even the company cannot buy-back its own shares through any subsidiary including its own subsidiary ; or through any group of investment companies.

Example: 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 it securities as 3 years has not been elapse since when default is remedied.

MULTIPLE CHOICE QUESTIONS (MCQ)

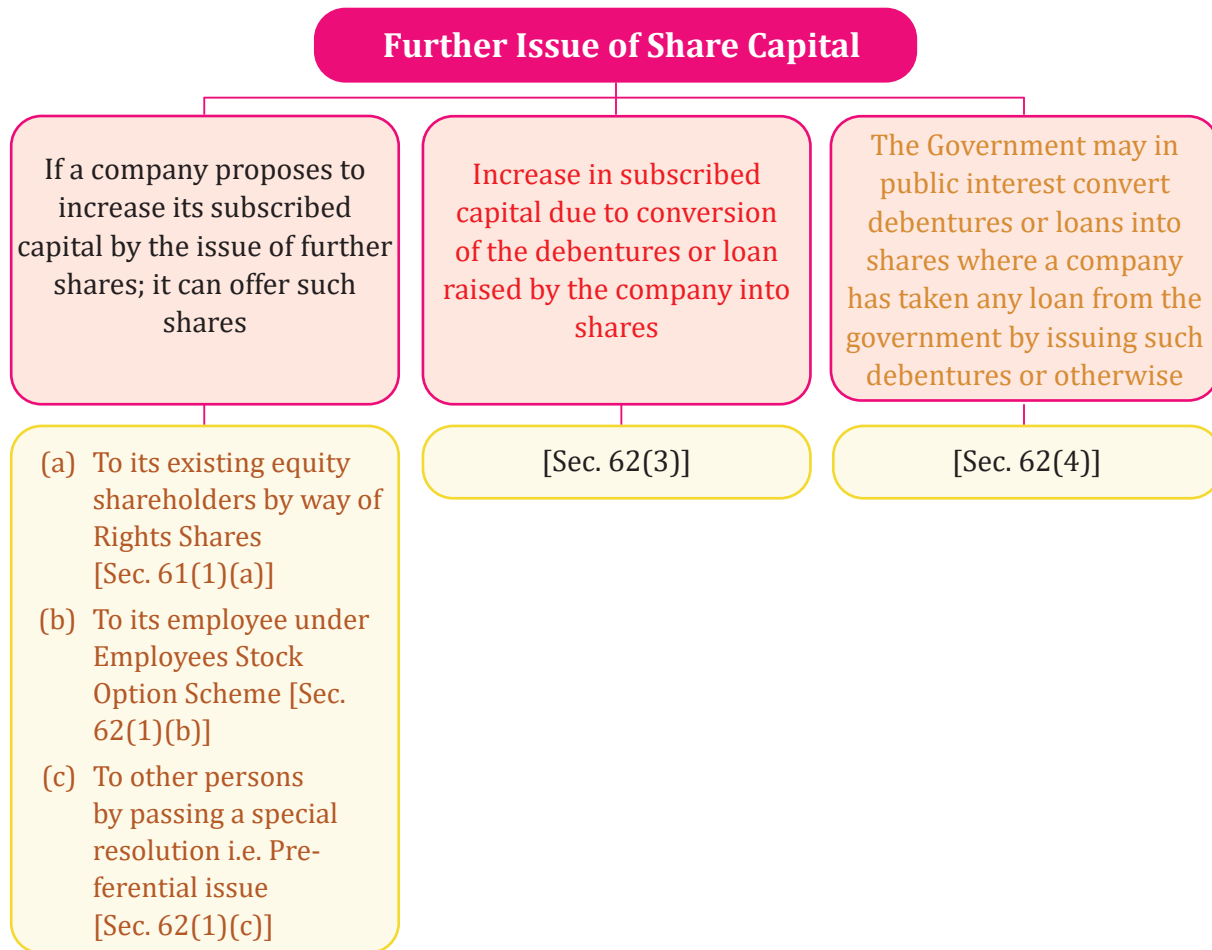
- 40.** A company bought back 10% of its equity shares in August 2020. Due to certain miscalculations during the first buy-back, it again buy back another 10% equity shares in September 2020. Whether the company can resort to second buy-back?
- (a) It can do so subject to the fulfilment of other conditions 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

41. 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.?
- The loan can be given only for an amount not exceeding the salary for a period of 6 months.
 - The shares to be purchased must be fully paid-up.
 - The shares must be held by employee by way of beneficial ownership.
 - None of the above. The company cannot provide financial assistance to any KMP.**
42. A company may purchase its own shares or other specified securities (₹buy-back) out of:
- Free reserves
 - Securities premium account
 - Proceeds of new issue of any shares or other specified securities
 - Either of above**
43. 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?
- 6 Lakh if authorised by a resolution passed in the meeting of Board of Directors.
 - 15 Lakh authorised by a Special Resolution passed at a general meeting of the company.
 - 10 Lakh authorised by a Special Resolution passed at a general meeting of the company.**
 - 12 Lakh authorised by a Special Resolution passed at a general meeting of the company.
44. 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?
- The company can go ahead with buy-back since the maximum permissible limit is 25% of equity capital in 1 year.
 - The company can go ahead provided it passes a Special Resolution at a general meeting.
 - 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.
 - 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.**
45. 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:
- 6 months**
 - 9 months
 - 1 year
 - 18 months
46. The instrument of transfer of securities shall be executed in Form No.:
- SH-2
 - SH-4**
 - SH-10
 - SH-15
47. 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 62] - FURTHER ISSUE OF SHARE CAPITAL**



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.
Coverage of the provision	(a) To Existing Shareholders (RIGHT Issue) (b) To employees (ESOPs) (c) To others (Preferential Allotment)

■ [SECTION 62(1)(a)] - ISSUE OF RIGHT SHARES OR RIGHT OF PRE-EMPTION

Authorization	Authorization is AOA is required										
Resolution required	Board Resolution is required										
Other Special Points	Letter of Offer and its Notice	<ol style="list-style-type: none"> 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)] <ol 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> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th colspan="3" style="background-color: #ffffcc;">Existing shareholders can</th> </tr> <tr> <th style="width: 33%;">Accept the offer</th> <th style="width: 33%;">Decline the offer</th> <th style="width: 33%;">Renounce the offer</th> </tr> </thead> <tbody> <tr> <td style="vertical-align: top;">Time to accept atleast 7 days to maximum 30 days from the date of offer</td> <td style="vertical-align: top;">If offer not accepted within time deemed to have been declined</td> <td style="vertical-align: top;">Unless articles restrict; shareholders have right of renunciation i.e. can transfer in favour of other person (whether such person is existing shareholders or not)</td> </tr> </tbody> </table>		Existing shareholders can			Accept the offer	Decline the offer	Renounce the offer	Time to accept atleast 7 days to maximum 30 days from the date of offer	If offer not accepted within time deemed to have been declined	Unless articles restrict; shareholders have right of renunciation i.e. can transfer in favour of other person (whether such person is existing shareholders or not)
Existing shareholders can											
Accept the offer	Decline the offer	Renounce the offer									
Time to accept atleast 7 days to maximum 30 days from the date of offer	If offer not accepted within time deemed to have been declined	Unless articles restrict; shareholders have right of renunciation i.e. can transfer in favour of other person (whether such person is existing shareholders or not)									

	Disposal of shares, if offer not accepted	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.
	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 authorized by articles.
	Consent of 90% Members (In numbers not their Holding)	
	<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.</p> <p>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.</p> <p>3. Here number of members is to be considered not their holding.</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.

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.

■ [SECTION 62(1)(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"> <input type="checkbox"/> given to the directors, officers or employees of a company or <input type="checkbox"/> of its holding company or subsidiary companies, if any, <input type="checkbox"/> giving them the benefit or right to purchase, or to subscribe for, the shares of the company <input type="checkbox"/> at a future date at a
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	<input type="checkbox"/> pre-determined price. Does not include: <input type="checkbox"/> Independent Director
	<input type="checkbox"/> Promoter or Promoter group <input type="checkbox"/> Director along with his relative holds more than 10% of ESC <input type="checkbox"/> 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 and IFSC Public companies, an Ordinary Resolution can be passed (Only if, no default in Sec. 137 & 92)
Other Special Point	<input type="checkbox"/> Employee meaning (Rule 12(1))- Same like Sweat Equity Shares <input type="checkbox"/> There shall be a minimum period of 1 year between the grant of options and vesting of option. <input type="checkbox"/> The company may specify lock-in-period for such shares. <input type="checkbox"/> 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. <input type="checkbox"/> The option granted are non-transferable, neither can it be pledged, hypothecated, mortgaged. <input type="checkbox"/> In event of death of employee during employment, all options granted shall vest in the legal heirs or nominee. <input type="checkbox"/> If employees suffer 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.

■ [SECTION 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	Case 1: Pricing of Preferential Issue for an unlisted company Price determined by a Registered Valuer u/s 247. Case 2: Pricing of Preferential Issue for Listed company In case of Listed companies, the price shall be determined by the formula given in SEBI Regulations.
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.

	<p>Example:</p> <ul style="list-style-type: none"> ❑ 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).
	<ul style="list-style-type: none"> ❑ 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). <p>3. Thus, new shares of a company limited by shares may be issued to non-members under certain circumstances</p>

Restrictions of Section 62 in Some cases – Conversion of Loans of Debentures into Shares

<p>Voluntary Conversion 62(3)</p>	<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.
<p>Compulsory Conversion 62(4)</p>	<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> <ol style="list-style-type: none"> 1. Financial position of the company, 2. Terms of issue of debentures or loans 3. Rate of interest payable on such debentures or loans 4. Public Interest and 5. Such other matters as it may consider necessary.

Note 3: Deemed Increase in Authorized Share Capital

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.

MULTIPLE CHOICE QUESTIONS (MCQ)

- 48.** 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**
- 49.** 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.
- 50.** 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.**
- 51.** 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
- 52.** 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
- 53.** 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
- 54.** 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:

- (a) **By a Special Resolution passed by the company in general meeting, before the issue of such debentures or the raising of loan.**
- (b) By an Ordinary Resolution passed by the company in general meeting, before the issue of such debentures or the raising of loan.
- (c) By a Special Resolution passed by the company in general meeting at the time of conversion of such debentures or the loan.
- (d) By a resolution passed by the Board at the time of conversion of such debentures or the loan.

55. 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?

- (a) The subscribed and paid-up capital of the company shall stand increased.
- (b) The company's Memorandum shall stand altered and the revised authorized share capital of the company shall be ₹55 Lakh.
- (c) **Both (a) and (b)**
- (d) None of the above.

■ (SECTION 63) - ISSUE OF BONUS SHARES

Meaning	<ul style="list-style-type: none"> (i) Bonus shares are shares issued proportionately by a company to its current shareholders as fully paid-up shares free of cost. (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. <div style="text-align: center; border: 1px solid black; padding: 10px; margin: 10px auto; width: 80%;"> <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> </div>
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

(a) Sources of Issue: Sec. 63(1)

A company may issue fully paid-up bonus shares to its members, in any manner, out of –

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

However, bonus shares cannot be issued out of reserves created by the revaluation of assets.

(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 –

- (i) It is authorized by its articles
- (ii) It has on recommendation of the Board, been authorized in the GM 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 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

(c) Fully paid shares: Bonus shares must be fully paid.

(d) Issued to existing members: Bonus shares can be issued only to the existing members of the company

(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 shareholder of the company, say Mr. 'R', will get 1 bonus share free of cost for every 5 shares held by him.

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.

■ [SECTION 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.
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■ [SECTION 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	<ul style="list-style-type: none"> (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 the whole or any part of its shares 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.
Steps	<ul style="list-style-type: none"> <input type="checkbox"/> Ordinary Resolution is required to be passed in the General Meeting. <input type="checkbox"/> 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"> <input type="checkbox"/> A company alter its share capital in any manner specified in section 61; <input type="checkbox"/> An order made by the Government u/s 62(4); that has the effect of increasing authorised capital of a company. <input type="checkbox"/> 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="border: 1px solid #add8e6; padding: 10px; margin-top: 10px;"> <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"> <input type="checkbox"/> Section 61 - Alteration of SC <input type="checkbox"/> Section 62(4) - increase in Authorised SC by order of CG (Zor Zabardasti) <input type="checkbox"/> Section 55 - Redemption of PS <p>Penalty:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Co. = 500/day Max - 5,00,000 <input type="checkbox"/> Officer = 500/day Max - 1,00,000 </div>

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.

MULTIPLE CHOICE QUESTIONS (MCQ)

56. 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

■ (SECTION 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	<p>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;</p> <p>(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.</p>
Case 2 - If the shares were not fully paid-up (there is uncalled capital)	<p>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.</p> <p>(Example) Face Value = ₹10. Paid up = ₹8. Only 1 Step: Pass Ordinary Resolution and decide to call the balance 22 in Liquidation.</p>

■ [SECTION 66] - REDUCTION OF SHARE CAPITAL

Meaning	<p><input type="checkbox"/> 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>
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	<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)]
Ways capital can be reduced	<ul style="list-style-type: none"> (a) extinguish or reduce the liability on any of its shares in respect of the share capital not paid-up; or (b) either with or without extinguishing or reducing liability on any of its shares: <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.

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.

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.

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.

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)	<p>Every member as of the date of the Registrar's order for reduction is liable to contribute.</p> <p>Liability is limited to the amount they would have contributed if winding up started the day before the order.</p>

Remedy for Unpaid Creditor (If Company is Wound Up)	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	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.

MULTIPLE CHOICE QUESTIONS (MCQ)

- 57.** 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

■ [SECTION 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	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. 	

<p>Instrument is lost/not delivered [Proviso to Sec. 56(1)]</p>	<p>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> <p>Example: 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. Himanshu as transferee must raise his objection to the proposed transfer of partly paid shares latest by 21st August, 2023.</p>												
<p>To whom transfer deed not required</p>	<p>(i) Transfer of bonds issued by Government company. (ii) Transfer of securities held in name of nominee of Government. (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. In fact, 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 (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> <table border="1" data-bbox="604 1623 1524 1942"> <thead> <tr> <th colspan="2">Time limit for delivery of certificates</th> </tr> </thead> <tbody> <tr> <td>Subscribers to MOA</td> <td>2 months of Incorporation</td> </tr> <tr> <td>Any shares by Co.</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> </tbody> </table>	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
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												

Provison to Section 56(4)	Where the securities are dealt with in a depository, the company shall intimate the particulars to depository immediately on allotment of such securities.
Cases of Transmission	<p>Company may register the Transmission of shares on receipt of:</p> <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="border: 1px solid black; padding: 5px;"> <ul style="list-style-type: none"> <input type="checkbox"/> By operation of law <input type="checkbox"/> No TD required for transmission. <input type="checkbox"/> Intimation of transmission - Sufficient <input type="checkbox"/> Death: To the Legal representative <input type="checkbox"/> Insolvency: To the official Receiver <input type="checkbox"/> Lunacy: To administrator appointed by court. <input type="checkbox"/> Until shares are registered by the co LR is not entitled to voting rights </div>
Transfer of Security of the Deceased Person by his Legal Representative [Sub-section 5]	<p>The transfer of any security (or other interest in company) made by legal representative of a deceased person, shall be valid as if such legal representative is holder at the time of the execution of the instrument of transfer; even if, in actual such legal representative is not a registered holder.</p> <p>This sub-section is basically bringing ease to legal heir with deeming effect of being holder of security or other interest in company of a deceased person.</p>

Example : Richa Daniel, after having obtained succession certificate, succeeded to 7,000 shares of ₹100 each allotted to her late father Alexender 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 Alexender 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.

MULTIPLE CHOICE QUESTIONS (MCQ)

58. 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

59. 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.
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.)

	<p>3. Where the company has registered the transferee as a member on the basis of a forged transfer, following shall be the consequences:</p> <p>(i) The original owner can compel the company to restore his name on the ROM. (Sheffield Corpn vs Barclay)</p> <p>(ii) The company shall cancel the share certificate issued to the transferee and remove the name of transferee from the ROM.</p> <p>(iii) Where the transferee has already transferred the shares to an innocent purchaser:</p> <p>(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.</p> <p>(b) The company shall have right to recover damages from the person who had deposited the forged transfer deed.</p>
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■ [SECTION 57] - PUNISHMENT FOR PERSONATION OF SHAREHOLDER

Nature of Personation	<p>If any person deceitfully personates as :</p> <p>(a) An owner of any security or interest; or</p> <p>(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.</p>
Punishment	<p>In such case he shall be punishable with:</p> <p>(a) Imprisonment for a term not less than 1 year and up to 3 years and</p> <p>(b) Fine of at least Rs. 1,00,000 subjects to maximum Rs. 5,00,000.</p>
<p>If any person deceitfully personates as an owner:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Obtains/attempts to obtain securities <input type="checkbox"/> Receives/attempts to receive any money <p>Punishment</p> <ul style="list-style-type: none"> <input type="checkbox"/> Fine 1 to 5 lacs and Imprisonment - 1 to 3 years 	

■ (SECTION 58) - REFUSAL OF REGISTRATION AND APPEAL AGAINST REFUSAL

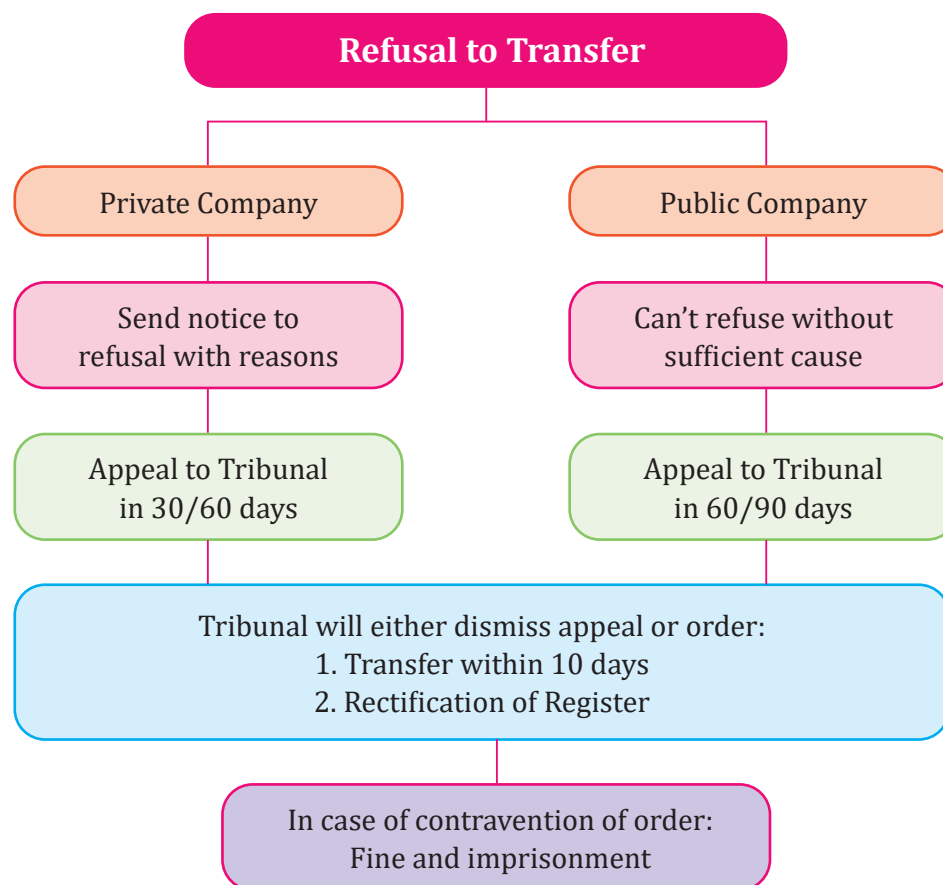
Provisions for Refusal to Transfer or Transmission	<p>1. Company can refuse to transfer or transmit securities by giving notice in writing to:</p> <p>(a) Transferor; and</p> <p>(b) Transferee</p> <p>2. Notice shall contain reason for refusal</p>
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	By 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 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. May refuse to transfer for sufficient reason.
Appeal against Refusal to Transfer or Transmit	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 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;">Order of Tribunal</p> <ul style="list-style-type: none"> <input type="checkbox"/> Shall hear the parties <input type="checkbox"/> Dismiss the appeal or order <input type="checkbox"/> Direct to register the transfer in 10 days <input type="checkbox"/> 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;">Punishment for contravention of order of Tribunal</p> <p style="text-align: center;">Fine 1 to 5 lacs and 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. 	

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.

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.

Summary of Section 58



MULTIPLE CHOICE QUESTIONS (MCQ)

60. 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.

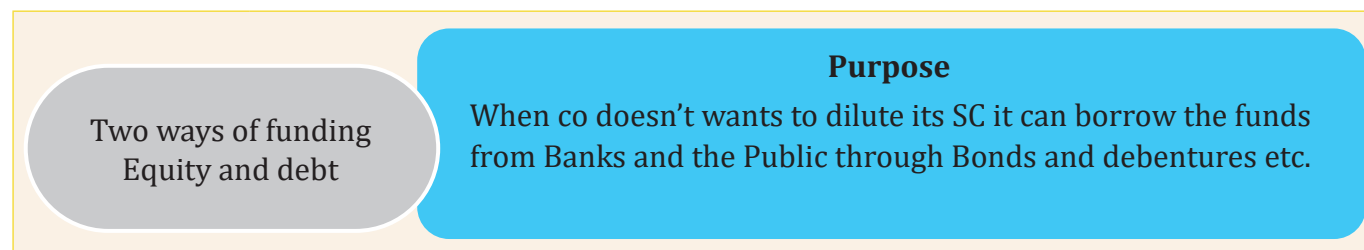
- (b) **Vanshika, as transferee and 'would be' owner of equity shares, has the right to file an appeal with NCLT against the company.**
- (c) Both Keshika and Vanshika have to file a joint appeal with NCLT against the company, for neither Keshika nor Vanshika are authorised to file the appeal individually.
- (d) As per its discretion, NCLT may allow either Keshika or Vanshika to file an appeal against the company.

■ [SECTION 59] - RECTIFICATION OF REGISTER OF MEMBERS (ROM)

Right to appeal for rectification of ROM [Section 59(1)]	<ol style="list-style-type: none"> 1. Grounds for appeal: <ul 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 <ul style="list-style-type: none"> (a) The aggrieved person; or (b) Any member of the company; or (c) The company 3. Appeal to whom? <ul 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.
Order of Tribunal [Sec. 59(2)]	<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.

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.

■ SECTION 71 - DEBENTURES



<p>Debenture [Section 2(30)]</p>	<p>Debenture includes</p> <ul style="list-style-type: none"> <input type="checkbox"/> debenture stock, bonds or any other instrument of a company evidencing a debt, <input type="checkbox"/> whether or not constituting a charge on the assets of the company. <p>Provided that following shall not be treated as debenture:</p> <ul style="list-style-type: none"> (a) The instruments referred to in chapter III- D of the Reserve Bank of India Act, 1934; (Derivatives & money market instruments) (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: <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 even allow repayment of principal amount in equal yearly instalments, in which case a portion of debentures</p>	
<p>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.</p>	
<p>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>	

<p>Can a company issue Deb. With VR ? - NO</p>	<p>Illustration - True/False If interest to debenture holder remain un-paid for two years, then they may vote on resolution affecting their interests. Answer: False, no debenture holder can never assume voting right, unless their debenture is converted in equity as per terms of issue. Though similar provision exist in case of preference dividend remain unpaid for two year to preference shareholder.</p>
<p>Types of Debentures</p>	<div style="text-align: center;"> <p>Types of Debentures</p> <pre> graph TD A[Types of Debentures] --> B[On the basis of security] A --> C[On the basis of security] A --> D[On the basis of security] B --> B1[Secured] B --> B2[Un-secured] C --> C1["Convertible (mandatorily or optionally; partially or fully)"] C --> C2[Non-convertible] D --> D1[Redeemable] D --> D2[Irredeemable] </pre> </div>
<p>Conditions for issuing Debentures</p>	<ol style="list-style-type: none"> 1. 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. <ul style="list-style-type: none"> ➤ 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. 2. 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.
	<ol style="list-style-type: none"> 3. Company shall appoint a DEBENTURE TRUSTEE before the issue of prospectus or letter of offer for subscription of its debentures. 4. 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. 5. 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; 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.
Appointment of Debentures Trustee	<p>The company shall appoint the debenture trustee</p> <ul style="list-style-type: none"> <input type="checkbox"/> before the issue of prospectus or <input type="checkbox"/> letter of offer to the public or to <input type="checkbox"/> 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> <ol style="list-style-type: none"> (a) inform the debenture holders immediately of any breach of the terms of issue of debentures or covenants of the trust deed; (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; (c) ensure that the debentures have been converted or redeemed in accordance with the terms of the issue of debentures; (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.

Meeting of Debenture Holders	<p>The meeting of all the debenture holders shall be convened by the debenture trustee on-</p> <ul style="list-style-type: none"> (a) requisition in writing signed by debenture holders holding at least 1/10th in value of the debentures for the time being outstanding; (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.
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	<p>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.</p>
Pari Passu Clause in Debentures	<p>Meaning: Pari-passu means ‘ranking equally amongst themselves’</p> <p>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.</p>
	<p>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.</p>

Creation of Debenture Redemption reserve (DRR) Account [Sec. 71(4)]	<ol style="list-style-type: none"> 1. When a company issues debentures u/s 71, the company shall create a DRR account out of the profits available for payment of dividend. 2. Such amount created to DRR Account shall not be utilised by the company except for the redemption of debentures. 3. If debentures are partly convertible, DRR created for non-convertible part. Rule 18(7) specifies that company shall comply with requirements of DRR:
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Category	Publicly placed debenture	Privately placed debenture
All India Financial Institutions (Regulated by RBI)	Exempted	Exempted
Financial Institutions like Banking Companies	Exempted	Exempted
Listed companies	Exempted	Exempted
Registered NBFCs with RBI	Exempted	Exempted
Registered House Finance companies with National Housing bank	Exempted	Exempted
Unlisted Other Companies (Other than Companies covered above)	DRR equal to 10% of Outstanding Debenture AT ANY TIME BEFORE REDEMPTION	

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 31st 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 in vested/deposited shall not fall below 15% of the amount of the debentures

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 is 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.

MULTIPLE CHOICE QUESTIONS (MCQ)

61. 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.**

62. 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

63. 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.**

64. 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.

65. 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.
- 66. 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.
- 67. 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.**
- 68. 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
- 69. 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**
- 70. 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.
- 71. 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:**
- (a) Any one debenture holder
 - (b) All of the debenture holders
 - (c) Debenture Trustee**
 - (d) All of the above
- 72. 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:**
- (a) Any one debenture holder
 - (b) All of the debenture holders
 - (c) Debenture Trustee
 - (d) 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- (a) To register himself as holder of the securities; or (b) 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 with the Security	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 securities, as the case may be, until the requirements of the notice have been complied with.
Cancellation or Variation of the Nominee	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. The cancellation or variation shall take effect from the date on which the notice of such variation or cancellation is received by the company.
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.

Form No.	Purpose
SH-1	Share Certificate
SH-2	Register of Renewed and Duplicate Share Certificates
SH-3	Register of Sweat Equity Shares
SH-4	Securities Transfer Form
SH-5	Notice by Company to the Transferee of Transfer of Securities
SH-6	Register of Employee Stock Options (ESOP)
SH-7	Notice to ROC of alteration of Share Capital (Return of Alteration)
SH-8	Letter of Offer for Buy-back of Securities
SH-9	Declaration of Solvency in case of Buy-back
SH-10	Register of Securilles Bought Back
SH-11	Relum in respect of Buy-back of Securities
SH-12	Debenture Trust Deed
SH-13	Nomination Form (by security holder)
SH-14	Cancellaton Variation of Nomination
SH-15	Certificate of Compliance by directors in respect of Buy-back of Securities

